

IHF FOCUS: elections; judicial system; ill-treatment and police misconduct; conditions in prisons and detention facilities; national and ethnic minorities (Roma).

2005 was a year of important political developments aimed at strengthening the rule of law and efforts to improve the general human rights situation, which, however, were only partially successful. Toward the end of the year, increasing concern was raised about the rigorous measures employed by the new government to carry out legal and institutional reforms and to address widespread corruption and organized crime: while effective measures were necessary to deal with corruption and organized crime, their proportionality and compatibility with international standards for human rights and the rule of law became subject to serious criticism.

The July parliamentary elections brought into power a coalition led by the Democratic Party with former president Sali Berisha as the new prime minister. The new government, with participation of the political right and center, was sworn in after considerable delay in September 2005. This was the first peaceful change of political power in Albania. Some political parties, however, deemed the new government illegitimate due to the so-called "Mega Dushk" strategy¹ the Democratic Party used during the elections, making it possible for some small political parties to be disproportionately represented in the parliament to solidify the winner's power.

Albania's human rights record improved in some areas, partly as a result of implementation of the new government's program. The positive developments included more democratic elections, measures to ameliorate prison conditions, success in the fight against corruption and organized crime, and progress in the implementation of the governmental strategy to address the situation of the Roma. Steps were also taken to strengthen the rule of law and the independence of the judiciary

- many of which, however, appeared to have been hastily planned without consultation with experts, interest groups and civil society.

The change of government also brought about changes and "reforms" in public administration, which often appeared not to be based on objective, substantial reasons but seemed to be mainly politically motivated. A considerable number of complaints about such changes were submitted to the Civil Service Commission, the ombudsperson and courts.

The media field saw both positive and negative developments: while freedom of the press increased, political or economical interests negatively influenced the quality of media reporting.

Rigorous measures were still needed in many fields. These included steps to fight poverty, promote an independent and efficient judicial system, address the problem of police brutality, speed up prison reform, and to ensure that election legislation would be amended well ahead of the upcoming elections to bring it fully into line with international standards. Moreover, the government needed to re-evaluate the methods used to implement its anti-corruption and anti-crime programs while preventing infringements upon individuals' basic human rights.

Elections

The parliamentary elections of 3 July were conducted under the new electoral code adopted in 2003 and amended in October 2004 and January and March 2005.

The elections demonstrated some improvements over the past local government and parliamentary elections in some areas. The OSCE/ODIHR reported that the elections "complied, only in part, with

* Unless otherwise noted, this chapter is based on the *Annual Report 2005* of the Albanian Helsinki Committee.

OSCE commitments and other international standards for democratic elections, and marked some progress in the conduct of election. It was a competitive contest and voters were offered a wide electoral choice from a range of political parties. Yet, the process was again protracted and at times uncertain.²

In the wake of the elections the Albanian parliament set up a bipartisan commission assigned with the task of proposing electoral reforms. Its establishment and its operation was long overdue but delayed due to problems concerning the composition of the Central Electoral Commission (CEC) and the division of electoral constituencies. The first issue was solved after a compromise was reached on the premature termination of the mandate of a CEC member and his replacement with another candidate proposed by the opposition. Problems related to the division of constituencies were solved as late as March 2005 when amendments to the respective law were finally approved.

All the above-mentioned problems resulted in some delays in the establishment of the zone electoral commissions (ZECs). Furthermore, there were delays in the preparation of preliminary voters' lists, their publication and in the registration of candidates and political parties that wanted to stand for election. These processes were often associated with fierce political debates.

The amendments made to the electoral code in March 2005 provided, for example, measures for improving the accuracy of the voter lists and the establishment of the media monitoring board. Nevertheless, some of the amendments³ restricted the rights of local observers to monitor the electoral process and provided that vote counting teams⁴ could be set up as late as two hours before the end of polling. The amendments were poorly publicized with the result that the public

was hardly aware of them.⁵ According to the OSCE/ODIHR, while there was room for further improvements of the legal framework, the law was overall conducive to the conduct of democratic elections.⁶

The Albanian Helsinki Committee (AHC) monitored the operation of the CEC and concluded that its work was generally professional, objective, impartial, and efficient. The fact that the CEC was unable to meet some deadlines was attributed to the failure of some political parties to submit their nominees to ZECs and voting center commissions (VCC) on time. The CEC also demonstrated professionalism and commitment to administer the voting process according to the required standards.⁷ The same could not be said about the performance of the members of the lower level commissions: VCC members and vote counters were insufficiently trained, which resulted in procedural deficiencies, lack of professionalism, biased conduct and occasionally in an unacceptable politicisation of their role.

According to the electoral code (article 64/2, point 2) the preliminary voter lists were due to be published no later than 31 March. In the districts monitored by the AHC, the preliminary lists were published a few days after the deadline. Local governments managed, however, to inform the voters about their right to vote and to draw up the voters' lists before the elections, although some shortcomings and inaccuracies were reported.⁸

The CEC stated that some signatures collected for the candidates to be able to stand for election were forged and some candidates were registered under a wrong party. While the candidates conducted their electoral campaign to the most part with propriety, some of them resorted to ethically questionable publicity activities and hate speech. In addition, destruction of election posters and clashes between opposing candidates' teams were reported.

The new electoral code stipulates in detail how the election campaign is to be financed, but these provisions can easily be circumvented, and the lack of transparency remained an issue in the July elections.⁹ Huge expenditures on the election campaigns particularly by the leading political parties were a striking feature of these elections. The ACH urged that the sources of these funds be made transparent to ensure that they comply with the law.

On election day, some polling stations were moved at the last minute to another place, and in some regions (e.g. Elbasan, Gjirokastra and Kukës) no voting centers were established. In addition, several polling stations were located in inappropriate places, seriously limiting voters' movements and the presence of observers.

The AHC observers also reported irregularities regarding identification of voters¹⁰ mainly due to confusion at polling stations whether a birth certificate no older than three months with a photo would be a sufficient ID, as provided by CEC instructions. This was all the more serious considering that many registered voters were prevented from voting by court order because they did not possess birth certificates.

Other irregularities included family voting; the failure to provide persons with disabilities an opportunity to vote; inadequate assistance given to elderly voters by commission member or other voters; and violations of secrecy of the ballot.

The delay of more than one month in the announcement of the final result of the elections gave rise to concern about misuse of legal provisions to appeal the regional results by the political parties.

Judicial System

In spite of reforms undertaken in the judicial system in the past few years, the operation of courts and the work of other judicial professionals remained subject to criticism by political parties, domestic and

foreign monitors and also by the judicial staff themselves. Reforms continued in 2005 to enhance the fight against corruption and organized crime, also affecting the courts and the judiciary. Steps were made *inter alia* to speed up the execution of final court decisions - especially those on civil cases - and to develop the juvenile criminal justice system.

Juvenile Justice

During 2005, the Ministry of Justice worked intensively to reform the juvenile justice system but the results remained insufficient.

Despite the good will and efforts taken by state institutions and judicial professionals, the criminal justice system for juveniles remained not only far from international standards but also fell short of Albanian legislation.

While Albanian legislation aims at guaranteeing special protection for juvenile delinquents, there was no special legislation pertaining to juveniles: provisions concerning juveniles were found in different laws. These include a number of special procedural guarantees for juveniles such as the right to free legal aid, verification of age and the role of the psychologist in this process, and the prohibition of the publication of indictments on juveniles, among other things.

By law, juvenile sections of courts and specialized judges must conduct adjudication of juveniles, but none of these had been established by the end of 2005. Positively, the School of Magistrates, with support from UNICEF and the OSCE, conducted training programs for prosecutors, judges, psychologists, and social workers in the area of juvenile criminal justice.

In addition, many provisions of the criminal code and the criminal procedure code concerning minors were yet to be implemented. Numerous legal amendments had been adopted and were in

force, but it appeared that many of them had been enacted for the sake of change only, without proper consideration of practical capabilities and the necessary infrastructure.

In practice, the rights of juveniles were not respected from the moment of escort to a police station or arrest. Free *ex officio* legal aid offered to them was usually not professional¹¹ and, by law, this aid was not provided at all to convicted persons to file an appeal. Young offenders were placed in detention and penitentiary institutions where the living conditions did not meet the requirements for their reintegration into society. No distinction was made in the way final verdicts or other court orders were executed for juveniles and adults. In the majority of judicial proceedings involving juveniles, courts offered no psychological assistance, and only NGOs active mainly in Tirana provided such psychological support.

Moreover, court orders concerning medical treatment and educational measures that juvenile offenders should enjoy were rarely executed. Especially groups such as young drug addicts did not receive the special treatment they needed, mainly because by-laws were not in place and relevant institutions had not been established for this purpose.

The people's advocate (ombudsman) and civil society actors made the rights of the child part of their agenda. For example, in January a round table¹² was organized to discuss the reform of the juvenile justice system in Albania and in December the ombudsman organized a conference to discuss this issue with various governmental bodies and local organizations.

Ill-Treatment and Police Misconduct

Police Violence

According to Amnesty International (AI), a gap continued to exist between law and practice with regard to torture. It stat-

ed that it believed there was a pattern of police ill-treatment of detainees, which at times amounted to torture.¹³ AI reported in 2005 that it had received information about approximately 35 torture cases annually since 2002 and estimated the true number to be much higher. Most incidents took place during, or in the hours immediately following, arrest. Victims complained of punches, kicks and beatings - some of them suffered injuries so severe that they required medical treatment or even hospitalisation.¹⁴

Official figures showed that prosecutors were reluctant to bring charges of "torture or other inhuman and degrading treatment," except in the most extreme cases which resulted in "handicap, mutilation, permanent injury or death" (article 87 of the criminal code). If charges were brought at all, the defendants were usually accused of the vaguely formulated crime of "arbitrary acts," a lighter offence, which in practice often resulted in the imposition of a mere fine.¹⁵

AI especially criticized violations of the rights of detainees which facilitate torture and ill-treatment; failure to investigate promptly, thoroughly and impartially complaints of torture and ill-treatment and to bring those responsible to justice; the fact that articles 86 and 87 of the criminal code (dealing with torture) do not correspond with the definition of torture given in the UN Convention against Torture; and the lack of state reparation, including fair and adequate compensation, for victims of torture and ill-treatment.¹⁶

Conditions in Prisons and Detention Facilities

Prisons

In the course of 2005, several positive measures were taken to improve prison conditions. Most importantly, authorities began to enforce a law that requires that convicted prisoners with a final court ver-

dict be transferred from pre-trial detention facilities to prisons. Other important steps included a revision of laws and by-laws concerning the holding of prisoners, institutional developments such as preparations for the opening of an institution for mentally unstable or ill prisoners as well as measures to ameliorate the poor physical conditions in prisons.

Furthermore, overcrowding in police stations was reduced by the opening of the Lezha pre-trial detention facility, a high security section in the Peqin prison, and a new prison with a capacity of 850 inmates in Lezha, as well as the transformation of prison no. 302 into a pre-trial detention facility under the General Directorate of Prisons (GDP).

Some of the priority programs of the new government also affect the prison system. They include combating corruption at public administration level, legislative reforms to strengthen the rule of law, and strict implementation of the law by public officials, including the prison administration. Albanian civil society was invited to contribute to drafting regulations to improve the pre-trial detention system. Further, disciplinary measures against and even dismissals of prison staff that did not abide by regulations or were corrupt were taken during 2005.

The GDB also invested in capacity building of its staff at the high and middle management level. The AHC contributed to this training by providing expertise on good management from the human rights perspective.

Despite positive developments, the year 2005 was also characterized by hunger strikes organized in several prisons with different aims, in most cases in order to criticize the judiciary and court decisions. While the GDP reported that these strikes, revolts and other incidents were dealt with in a professional manner by prison personnel, prisoners and their fami-

lies claimed that prison guards in some cases used excessive force to gain control of the situations. The AHC and the ombudsperson carried out investigations into these claims: the AHC was unable to confirm the use of violence while the ombudsperson's office did not make public the outcome of its investigations.

The transfer of convicted prisoners previously held in pre-trial facilities to penitentiaries was slow and, in the end, many remained in police stations in violation of the law on the execution of court sentences.¹⁷

Overcrowding, combined with poor hygienic conditions, lack of adequate medical care and regular check-ups, and the absence of psychological support made life in pre-trial facilities extremely difficult.

◆ On 15 July, the AHC visited the Krujë special institution after having received complaints from its inmates claiming that their right to correspondence was being violated, that transfers to other prisons were not carried out in an objective manner, and that iron nets had been installed on cell windows, hindering access to natural light and fresh air. The AHC asked the GDP to remove the nets as soon as possible and to allow correspondence to prisoners, as guaranteed by laws and standing regulations.

The AHC also found that penitentiary institutions were seriously short of medicine stocks necessary for adequate care and asked Albanian authorities to increase the budget line for medical care in prisons and detention facilities.

The Tirana prison hospital was the only institution to offer treatment to seriously ill convicted prisoners. It also treated mentally disturbed and ill inmates as there was no specialized institution available for them, although they would have needed professional psychiatric care, as prescribed by law.¹⁸ The Ministry of Justice and the GDP agreed to open a special medical institution in Durres to treat prisoners with

mental disorders - the AHC urged that its opening be accelerated and appealed to authorities to consider amnesty for prisoners suffering from incurable diseases.

Positively, during 2005, the Ministry of Justice and the GDP took initiatives to put in place by-laws regarding the conduct of labour in penitentiary institutions and the remuneration of prisoners. As a result, the code of conduct¹⁹ for penitentiary officials and house rules for a medium security prison were adopted, among other things. In practice, however, only very few prisoners were offered work in 2005 and remuneration for those who did work remained a problem: this was based on a decision made during the communist era and was therefore very low. The inability to offer prisoners labor not only had a negative impact on their reintegration process, but also affected their psychological and physical condition. Those who did not work had the right (with some exceptions) to at least two hours' exercise in the open air, which could, however, be reduced to one hour under "extraordinary conditions." The AHC found that even this legal minimum was not always observed, with prison administration citing problems of overcrowding, limited spaces for open air activities or the absence of such places.²⁰

Police Stations

Despite reforms in the pre-trial detention system undertaken by the Albanian government with the support of many donors, especially the European Commission, most pre-trial detention facilities still operated under the Ministry of Interior - in flagrant violation of the law because they were officially transferred under the authorization of the Ministry of Justice as of 2003.²¹ The actual process of transferring detention facilities under the supervision of the Ministry of Justice made no progress until late 2005 when first modest steps were taken to that end.²² By the end of

2005, only two facilities, Vlora and Shkoder pre-trial detention centers, had been moved to the supervision of the Ministry of Justice.

The continued operation of many detention facilities under the authority of the Ministry of Interior also meant that their inmates - including those already convicted but not yet transferred to penitentiaries due to overcrowding - were also treated according to the regulations of the Ministry of Interior. In practice, Regulation No. 1075²³ provided for far fewer rights for detainees than did the law On the Rights and Treatment of Prisoners observed in prisons. The AHC on several occasions requested that the regulations be commuted because they were in violation of the law but it was not aware of any measure taken to this effect.

Seriously substandard living conditions of arrestees and detainees were another cause of concern. Many police stations were old, run-down and not designed to serve as places of detention for longer than a short period of time, and police personnel was not trained to act as virtual prison guards. Detainees were held in rooms that were humid and otherwise unfit for accommodation, including lacking basic sanitary facilities (neither showers nor running water) and heating. The quality of food was so poor (partly due to lack of refrigerators) that detainees usually had to rely on food brought by their families or friends. Sick detainees did not receive adequate medical treatment. In addition, all literature was banned from pre-trial detention facilities.

Pre-trial detainees were not always informed about their rights, including the right to legal counsel and free legal aid, from the moment of their arrest. This was a serious violation of article 41 of Law No. 8328 of 16 April 1988 On the Rights and Treatment of Persons Convicted to Imprisonment.

Further, juveniles and women were not always separated from other detainees.

A special cause for concern was the treatment of mentally unstable or ill pre-trial detainees and those suffering from chronic diseases who continued to be held together with other inmates and did not receive adequate medical care. This was in violation of the law, which prescribed that they should be transferred to specialized institutions.²⁴

Overcrowding continued to be a serious problem in police cells, despite some improvements since the opening of the Peqin and Lezha prisons, where many detainees were transferred.

◆ In January, 35 detainees held in the police station of Malësi e Madhe went on hunger strike to protest the poor conditions in the detention facility, and the failure to transfer eight convicted inmates to prison. The convicted inmates were later transferred to prisons to serve their sentences.

A master plan for the Albanian pre-trial detention system has been developed by the Ministry of Justice in cooperation with its Austrian counterparts to improve the pre-trial detention system, but it was not yet implemented. In the framework of this plan, the AHC especially called for improvements in the infrastructure of police stations, which would result in better living conditions in pre-trial detention and a better observance of the rights of detainees.²⁵

National and Ethnic Minorities

Albania has ratified the Council of Europe Framework Convention for the Protection of National Minorities and the UN Convention on the Elimination of All Forms of Racial Discrimination. Article 20 of the Albanian constitution *inter alia* guarantees members of national minorities the exercise of their human rights and freedoms in full equality before the law; the right to express their ethnic, cultural, reli-

gious and linguistic affiliation; to preserve and develop their culture and language; and to unite in organizations and associations for the protection of their ethnic interests and identity. No specific law on minorities was in place: minority rights were dealt with in various legislative acts.

Traditionally, national and ethnic minorities living in Albania have been categorized as “national minorities” (Greek, Macedonian, Serbian-Montenegrin) “linguistic minorities” (Vlach/Arumun and Roma), and “communities” (“Egyptians”). These definitions were based on facts such as individuals speaking another language than Albanian, having a kin state, following other customs and specific cultural differences to those of the majority population etc. The categorization does not, however, vest different communities with different rights or privileges.

Roma Minority

The Roma were recognized as a linguistic minority in 2003. The group is poorly integrated into society and clearly in a disadvantaged situation compared to the majority population, especially with respect to employment and living conditions. In addition, general awareness about their own rights as a minority was low.

In 2003 the Albanian government approved the national strategy for the improvement of the conditions of the Roma. A coordination agency was set up at the Ministry of Labor and Equal Opportunities to pursue and coordinate the work of various agencies for the implementation of the strategy. Since 2003, measures have also been taken by the government to improve legislation and its enforcement in practice with the aim of preventing and combating open and hidden forms of discrimination. These measures have, however, been insufficient and appear to lack a general strategy of prioritization and adequate funding.

There have also been positive initiatives at the local level toward improving the infrastructure in areas inhabited by the Roma minority, increasing their access to the local media, and sensitizing Roma children about trafficking.

While Roma organizations and Albanian civil society welcomed the adoption of the strategy and have taken numerous efforts to implement it, they have faced numerous problems. According to Roma minority representatives, state assistance both in terms of funding and practical measures has not been efficient, and the minority itself has not been adequately involved in the implementation of the strategy. Roma have also criticized state institutions involved in the activities taken within the strategy for lack of coordination.

A myriad of problems, however, remained in 2005. Unemployment was widespread among Roma, and many children were not registered in the civil reg-

istry, which caused problems with schooling and facilitated problems related to trafficking in children. Some NGOs and legal service centers were actively involved in helping registration of Romani children.

The Ministry of Labor, Social Affairs, and Equal Opportunities has since 2001 organized three programs to encourage employment of Roma women and girls and provided for the employment of 500 women and girls experiencing special social problems. However, due to the lack of information, only few women and girls have attended professional training courses.

At the local level, local government bodies made efforts to increase the qualification of Roma youth and to encourage their education. Efforts have also been made to protect cultural values and encourage talents in areas where Roma have excelled. Nevertheless, the limited budget has prevented the realization of these objectives.

Endnotes

¹ "Mega Dushk" refers to the manipulation of the elections results during the 2001 parliamentary elections, helping a Socialist Party ally to overcome the 3-percent hurdle to solidify the Socialist majority. During the 2005 elections, the same strategy was used in a larger scale by both major parties to help again their small allies to gain a disproportional number of seats in parliament. "Mega Dushk" undermines the constitutional objective of proportionality in the election system and paves the way for abuse.

² For details, see *OSCE/ODIHR Report Election Observation Mission, Final Report - Albanian Parliamentary Elections, July 2005*, 7 November 2005, p. 1, at www.osce.org/odihr-elections/14376.html.

³ Article 18(4) of the electoral code.

⁴ Article 95(2) of the electoral code.

⁵ This concern was expressed during the roundtable organized by the Albanian Helsinki Committee on 2 March 2005.

⁶ *OSCE/ODIHR Report Election Observation Mission, Final Report - Albanian Parliamentary Elections, July 2005*, 7 November 2005, p. 1, at www.osce.org/odihr-elections/14376.html.

⁷ *AHC Preliminary Report on the Progress of the General Elections Process*, July 2005, p. 3, at www.ahc.org.al/kshh/eng/def.html.

⁸ *Ibid.*

- ⁹ OSCE/ODIHR Report Election Observation Mission, Final Report - Albanian Parliamentary Elections, July 2005, 7 November 2005, p. 1, at www.osce.org/odihr-elections/14376.html.
- ¹⁰ AHC Final Report for Monitoring Missions for the Albanian Parliamentary Elections, 3 July 2005, at www.ahc.org.al/kshh/eng/def.html.
- ¹¹ For more information on problems related to free legal aid, see IHF, *Human Rights in the OSCE Region: Europe, Central Asia and North America, Report 2005 (Events of 2004)*, at www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=4057.
- ¹² The round table was held on 18 January 2005 and was organized by the Ministry of Justice, UNICEF and the AHC. During the event, the AHC and UNICEF were able to present the conclusions of the legal critique of the package prepared by the Ministry of Justice.
- ¹³ Amnesty International's Statements to the 2005 OSCE Human Dimension Implementation Meeting, 25 September 2005, at <http://web.amnesty.org/library/Index/ENGIOR300142005?open&of=ENG-ALB>.
- ¹⁴ Amnesty International, *Albania: No to impunity for torture and ill-treatment*, EUR 11/006/2005, 1 February 2005, at <http://web.amnesty.org/library/Index/ENGEUR110062005?open&of=ENG-ALB>.
- ¹⁵ Ibid.
- ¹⁶ Ibid.
- ¹⁷ See AHC statement of 13 April 2005.
- ¹⁸ Article 16 of the Law No. 8328, dated 16 April 1988, on "The Rights and Treatment of Prisoners" determines the type of institutions where ailing or handicapped prisoners shall serve their sentence. They should be special institutions, hospitals or special sections inside and outside the prison system specialized in treating ill or mentally disordered prisoners.
- ¹⁹ The code was initiated by the AHC and approved by the Ministry of Justice. It is now applied in all these institutions.
- ²⁰ AHC, *Observance of Prisoners and Pretrial Detainees' Rights*, December 2005, at www.ahc.org.al/kshh/eng/def.html.
- ²¹ Decision of the Council of Ministers No. 327 of 2003.
- ²² Part of the Lezha prison was opened in February 2005, after which authorities began transferring there detainees from the Shkodra district and prison no. 302 was transformed into a pre-trial detention centre for perpetrators of serious crimes.
- ²³ Chapter V, "Internal Regime and Life in Detention Rooms," item 2, states that "Detainees are allowed to use the rest room three 3 times a day, between 06.30 a.m. and 20.00 p.m. and only under extraordinary circumstances they shall be allowed to use the rest room beyond these hours."
- ²⁴ AHC, *Observance of Prisoners and Pretrial Detainees Rights*, December 2005, at www.ahc.org.al/kshh/eng/def.html.
- ²⁵ For more information, see AHC, *Observance of Prisoners and Pretrial Detainees Rights*, December 2005, at www.ahc.org.al/kshh/eng/def.html.