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Extract from the IHF report

***Human Rights in the OSCE Region: Europe, Central Asia and North America,
Report 2005 (Events of 2004)***

Albania¹

IHF FOCUS: elections; freedom of expression, free media and information; freedom of assembly; judicial system and independence of the judiciary; torture, ill-treatment and police misconduct; conditions in prisons and detention facilities.

During 2004, Albania underwent several important institutional and legislative reforms. The reforms included, in particular, steps to bring Albanian law closer in line with European standards in various areas of human rights, including the judicial system; to combat more efficiently organized crime; and to improve the election law. The adoption of laws – including amendments to the Criminal Code and the Criminal Procedure Code – and the ratification of some international conventions in the area of criminal justice required institutional changes, which, in turn, helped strengthen professionalism and expertise in many sectors, for example, the fight against organized crime.

The election law underwent amendments and improvements during 2004 in order to ensure better legal infrastructure for the parliamentary elections scheduled for 2005.

The political developments in 2004 were marked by a continuous but weak process of democratization. Infighting, irresponsibility and immaturity on the part of political actors put at risk the political stability of the country. Public institutions remained fragile, eroded by corruption and other phenomena such as trafficking and organized criminality, which also damaged Albania's image and its economic development.

Negotiations on the Stabilization and Association Agreement process which continued between the Albanian government and the European Commission Task Force were also affected by the political situation. These negotiations are expected to be concluded during 2005, but the outcome depends on, *inter alia*, whether Albania will be capable of carrying out effectively the necessary political and economic reforms. One of the central tests for the country's integration into Europe and, specifically, for the signing of the Stabilization and Association Agreement, is the holding of free, fair and democratic parliamentary elections in mid 2005.

Despite some improvements in the field of human rights, numerous problems still remained. The Albanian Helsinki Committee (AHC), reported excessive use of force by the police and

¹ Based on a report from the Albanian Helsinki Committee to the IHF, 2005.

other forms of police misconduct, corruption in the judicial system, failure to execute final court decisions, unjustified delays in court proceedings, and problems related to pre-trial detention facilities and prisons.

Elections

The October 2003 local government elections were assessed by the OSCE/ODIHR, the European Commission and the AHC as generally free and democratic. Despite these positive statements, the elections nevertheless fell short of some important international standards. The two main defects of the elections were incomplete and inaccurate voter lists and the fact that a considerable number of electoral commissions at lower levels were placed under political pressure and influence. Consequently, the pressure on electoral commission members led to them violating the provisions of the Electoral Code, which, again, resulted in delays in the announcement of the final official results.

In April 2004, OSCE/ODIHR and the Council of Europe Venice Commission recommended that a number of urgent changes be made to the Electoral Code and the election process. Of major concern regarding the old code were the provisions regulating the formation of electoral commissions and establishing qualified majority voting requirements in commissions on significant issues. These provisions gave the two main political parties an extremely dominant role at every level of the election administration. Other concerns included, for example, the appointment of members of election commissions, including the Central Electoral Commission (CEC); ambiguity in registration provisions; lack of sufficient provisions for the timely and accurate compilation and updating of voter registers; extremely complex rules for the allocation of parliamentary mandates; unnecessarily complicated counting procedures; and vague provisions for the invalidation of election results.²

However, several months after the publication of the recommendations the Albanian political parties had made no moves to indicate that they were committed to taking the necessary steps to guarantee that the next elections would be free, fair and democratic. The AHC appealed several times during the first half of 2004³ to both governmental and opposition political parties, the government and all responsible state bodies to take legal, technical, and administrative measures to guarantee that the parliamentary elections scheduled for the summer of 2005 would be in line with OSCE and European election standards. It asked that all Albanian political actors cooperate in improving the electoral legislation and that they show the necessary political will and consensus to vigorously promote democratic standards in the spirit of the Constitution and international human rights standards.

As a result of continuous pressure from home and abroad, the Assembly of the Republic of Albania (parliament) – although very late – set up a bipartisan parliamentary commission to carry out an electoral reform based on the joint recommendations by the OSCE/ODIHR and the Venice Commission. However, the aggravating political situation delayed the results of the work of the parliamentary commission, whose mandate was changed three times. The main political disputes were related to the composition of the CEC and the division of electoral zones. Following several political debates, the OSCE Presence in Albania offered its assistance to set up a working group of experts, which would work on electoral reform.

² OSCE/ODIHR, *Joint Recommendations and the Electoral Law and Electoral Administration in Albania, Adopted by the Council for Democratic Elections at its 9th meeting (Venice, 17 June 2004) and endorsed by the Venice Commission at its 60th Plenary Session (Venice, 8-9 October 2004)*, http://www.osce.org/documents/odihr/2004/11/4311_en.pdf.

³ For more information, see public statements and press releases of the AHC of 26 February, 5 April, 3 May, 20 September and 14 October 2004, www.ahc.org.al.

The main concern voiced by the opposition Democratic Party was the composition of the CEC, which it found to be unbalanced. Following long debates between the Democratic Party and the ruling Socialist Party, a consensus was reached that one of the members of the CEC should resign and, based on a ruling of the High Council of Justice, the mandate was given to a Democratic Party representative.

The other disputes between the two largest political parties concerned the division of electoral zones, a dispute that almost resulted in the extension of the deadline of December 2004 by which all amendments to the Electoral Code were due to be completed and approved by parliament. With OSCE intervention and assistance, consensus was reached only during the last days of December. The parties agreed that the division of election zones should be based on the recommendations of the 2002 Venice Commission Code of Good Practice in Electoral Matters.⁴ One of the possible criteria mentioned in that code regarding the division of electoral zones is the number of people who go to the polls. On 7 January 2005, the Albanian Constitutional Court, which was put into motion by the Social Democratic Party, decided that the criteria to be used in dividing the constituencies was the approximate number of names on voter lists as envisaged in article 64 of the Constitution and not the actual number of participants in the voting process. The issue of the division of the electoral zones will be discussed and approved by the parliament in March 2005.

Another issue of concern raised by the AHC in one of its press conferences in September was the need to take urgent measures to ensure that voter lists are updated and made accurate. Consequently, local governments took steps to improve the lists, a process that was scheduled to be completed by the end of February 2005.

Freedom of Expression, Free Media and Information

Article 22 of the Constitution guarantees freedom of expression and this right was generally recognized and observed. Censorship was prohibited. The 1997 Press Law remained in force, containing only one article, which states: "Press is free. Freedom of the press is protected by law." However, a more elaborate law on the press was under discussion in the parliamentary media commission in 2004 and early 2005.

The central aim of the proposed draft law is to provide clear legal guarantees for the freedom of the press and to provide adequate protection to journalists to carry out their work (article 1). The proposed provisions also deal with the relationship between the media and the general public on the one hand, between the media and state bodies, and the relationship between journalists, steering bodies and the publishers, on the other. However, article 10 of the draft law, which deals with some basic issues regarding freedom of the media, has been subject to controversies. It deals, among other things, with the financing of media outlets, taxation, and state subsidies. The draft was still under discussion in early 2005.

While media freedoms were largely respected, some publishers complained that, due to their criticism of the government, they had been subjected to additional – punitive – financial audits.

- In May, a group of journalists and editors-in-chief issued a declaration voicing their concern about alleged efforts of the government to limit the freedom of the press. They argued that the arbitrary use of financial audits and legal defamation suits by government officials against journalists limited the freedom of the media. For

⁴ The recommendations are posted at [http://www.venice.coe.int/docs/2002/CDL-EL\(2002\)005-e.asp](http://www.venice.coe.int/docs/2002/CDL-EL(2002)005-e.asp).

example, from March to May and in September, tax officials carried out several audits of the independent newspaper *Koha Jone*. The government countered the claims stating that it had only used effective measures to enforce tax collection.

- On 26 August, K.Kokedhima, the president of the construction company 2K and of the daily newspaper *Shekulli*, stated that threats from Prime Minister Fatos Nano had forced his paper to tone down criticism of Nano's political activities. This happened after the paper had denounced the illegal import of foreign garbage to Albania. It appeared, however, that financial interests were also intertwined in the case.

The standard of journalism remained low. Much of the reporting failed to be objective and was primarily aimed at protecting the interests of political parties and their members.

In addition the level of professional ethics was low among most journalists. Inadequate interference in the private life of well-known individuals was commonplace. On the other hand, government officials and politicians frequently sued journalists for legitimate criticism of their political activities, labelling it unacceptable interference in their private lives. While Albanian legislation provides for imprisonment for defamation, no journalist was known to have been incarcerated for what they had reported. However, a journalist of Top Chappen was held in detention for a short time in January for secretly filming Prime Minister Nano in a public place.

- In January, Prime Minister Nano sued MP Nikolle Lesi for allegedly disseminating false information about him in *Koha Jone* owned by Lesi. The District Court of Tirana decided in favour of the prime minister, but Lesi appealed; the case was pending as of the year's end.
- In May, Nikoll Lesi was again sued for libel and violation of the right to privacy, this time by the prime minister's wife, for reports about her in *Koha Jone*. This gave rise to heated debate in political circles and the case resulted in a request by the Supreme Court to the parliament to lift Lesi's parliamentary immunity. However, the majority of parliamentarians refused to do so. Lesi was supported by journalists and several journalist associations. The AHC issued a public statement⁵ highlighting the principle of tolerance that should be demonstrated by high-ranking state officials with regard to media reporting, also in cases in which media reports went beyond the accepted limits. The AHC pointed out that the ECtHR has stated on several occasions that politicians must endure a higher level of criticism than ordinary people.
- In November, the Tirana District Court convicted four editors-in-chief of newspapers for publishing false information about Mr. Xhani, president of a sports clubs. The editors complained that during the investigation into the case, they had been interviewed as witnesses, but later their status had been changed to that of defendants – a practice in violation of due process standards.⁶

The AHC received no information on cases of physical violence against journalists.

Journalists complained that they faced problems accessing information of public interest or importance from state bodies. Time and again, journalists were excluded from press conferences.

- In August, the AHC criticized the Democratic Party for not allowing journalists from News 24 TV to participate in press conferences organized by the party, citing their

⁵ AHC press release, 25 September 2004, www.ahc.org.al.

⁶ *Gazeta Shqiptare*, 4 November 2004.

lack of impartiality.⁷ The AHC stated that the party's media policy bordered on censorship and discrimination and urged the party to review its attitude.

Judicial System and the Independence of the Judiciary

According to the Constitution, the judicial power is exercised by the High Court, the courts of appeal and district courts. In 2003, the Serious Crimes Court was established. There have been many efforts and proposals to set up juvenile courts and administrative courts, but nothing concrete was accomplished during 2004 to this effect. The High Council of Justice and the Judiciary Budget Administration Office administered the budgets of the courts and supervised the performance of the judges.

Judicial Reform

Reforms in the field of the judicial system and harmonization of legislation in this field with European standards were among the priorities of the Albanian government in 2004. The Criminal Code and the Criminal Procedural Code underwent some changes, including the adoption of provisions to prevent and combat organized crime, corruption and activities of criminal organizations, and to confiscate properties originating from criminal activities of organized groups. In addition, tougher punishments for crimes such as trafficking in women and juveniles were approved. Further, provisions of the Criminal Code on passive and active corruption, misuse of official position, counterfeiting official documents, and protection of witnesses of serious crimes, were defined more accurately.

The Criminal Procedural Code chapter on surveillance by law enforcement agencies was amended, aiming at more efficiently combating criminality in general and organized crime in particular. The law now better defines the cases in which the use of various surveillance techniques is allowed and provides for avenues for citizens to complain against illegal surveillance.

The Civil Code and the Civil Procedure Code will undergo reforms in the near future.

Remaining Problems

Despite legislative improvements and the multi-faceted reforms that the judicial system has already undergone, the AHC continued to receive a considerable number of complaints from citizens who claimed that their rights during a judicial process were violated or the services offered to them by courts were not adequate. Further, judicial proceedings especially in civil cases were often unduly long, and court rulings were executed with delays (one to two years) or not at all. The European Court of Human Rights (ECtHR) also ruled against Albania in a case in which a court ruling was not executed promptly.

The AHC monitoring of appeal courts, and of the district courts in Elbasan, Kukes, Korce, Fier, Gjirokaster, Vlora and Shkodra found that significant improvements had been made in the operation of district courts but there was still need for better management. The principle of public judicial hearings was generally observed in all monitored district courts with regard to criminal proceedings, however, this was not always the case with civil lawsuits. Due to a lack of court rooms in some district courts, civil lawsuits were held in judges' offices, making it impossible to hold all those wishing to attend the proceedings.

⁷ AHC, "The freedom of media and information shall be respected," 26 August 2004.

The lack of independence of both the monitored district courts and alleged corruption within the judicial system continued to be a matter of concern. Influence on courts by political actors, corruption of judges and other judicial personnel, unjustified delays (between several days and several months) and adjournments of judicial proceedings have shaken the faith of citizens in the judiciary and resulted in numerous complaints against judges and requests for their removal. However, no steps were taken to redress the situation.

The AHC noted that proper operation of the judicial system also depended on the adequate functioning of the public administration, especially at the level of local government bodies. The poor organization of basic information such as residents' home addresses, the failure of citizens to register at their place of residence, and even non-registration of street names, were often the causes for the failings in the operation of the judicial system.

Public access to court information was generally granted as well as their access to officials of the district courts. The media was usually granted access to court information and hearings but more needed to be done to provide them with timely information.

Free Legal Defense Service

Article 31(c) of the Constitution and article 49(7) of the Criminal Procedure Code guarantee free legal council for defendants who cannot afford a private lawyer. In addition, legal defense service is regulated by the 2003 Law No. 9109 "For the Profession of Lawyers in the Republic of Albania," which is generally in line with international standards. The legal defense service, which was initiated in its present form in 1990 after the fall of communism, is organized into legal defense chambers. The chambers are established and supervised by the National Attorneys' Chamber (the Bar Association).

The AHC conducted a survey on the performance of judges, prosecutors, lawyers and defendants in cases involving free legal defense services. While, by law, free legal defense lawyers were appointed to cases according to a list drawn up by the National Attorney's Chamber, the AHC found that in several cases this list was not observed by courts or prosecutors who had their own preferences in appointing free legal defense lawyers.

Despite many positive legislative developments in the area of free legal defense, it did not always provide timely and qualitative legal assistance. This could largely be attributed to the fact that lawyers appointed to free legal defense cases were young, inexperienced and poorly paid. This resulted in numerous complaints about their performance. According to the AHC's findings, free legal defenders often failed to consult their clients adequately or to provide counsel until the very end of a case, they lacked professionalism, failed to show up at court hearings (which led to adjournments of the cases), and generally showed little interest in the cases. In some cases the lawyers were accused of taking bribes.

Half of the detainees and convicted persons interviewed by AHC stated that they had not been informed about their right to have a legal defense lawyer from the moment of arrest/detention.

There was also a lack of NGOs able to provide free legal services to a wide range of individuals who did not have the financial means to pay for a lawyer. Some NGOs offered free legal defense to limited target groups such as women or juveniles, and the AHC offered free legal counseling to all individuals who claimed that human rights had been violated but it did not represent them before courts.

Torture, Ill-Treatment and Police Misconduct

Article 25 of the Albanian Constitution forbids the use of torture and other forms of ill-treatment by the police, and article 28(5) of the Constitution guarantees humane treatment to and the respect for dignity of all those deprived of liberty. The adoption of Law No. 7227 of 1993 “On the Adherence of Albania to the Covenant against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment,” Law No. 7510 of 1991 “On the Adherence of Albania to the International Covenant on Civil and Political Rights” and the ratification of the European Convention on Human Rights and Fundamental Freedoms (ECHR) were important formal measures by which Albania committed itself to guarantee freedom from torture and ill-treatment and to promote better respect by the police of the rights of individuals dealing with them.

In addition, article 37 of the Law “On the State Police” states that when performing their duties, police officers are not allowed to carry out activities, which are not based on laws, or to resort to torture, ill-treatment and other inhuman or degrading treatment. Article 46 of the same law defines clearly the limits for the use of force. By law, those who violate these provisions are to be prosecuted. Also the Criminal Code prohibits the use of torture and foresees severe sanctions for those who breach it. In addition, article 314 of the Criminal Code forbids the use of coercion during interrogation. A violation of this provision can be punished with three to ten years imprisonment.

In practice however, police brutality was a widespread phenomenon. The AHC received numerous reports of unjustified use of violence during police procedures, mainly at the moment of arrest or during arbitrary house searches, but also in local police stations.

- L.V. was arrested on 5 April and put in a pre-trial facility on 8 April. He told the AHC that at the moment of arrest, law enforcement officers kicked him and hit him with gun butts. The same treatment reportedly continued on the way to a police station in Shkodra. At the station, he was allegedly tied to iron bars and hit by police officers. When an AHC representative met him, he was in a serious condition. The AHC encouraged L.V. to initiate a penal prosecution and contacted the prosecutor to report the case. Following up on the case, the AHC was informed that the prosecutor had contacted the victim at the police station and the victim had dropped the charges.
- In October, an AHC representative in Lazarat interviewed G.P., who had been wounded in a bar and claimed that a police officer had hit him and, using violence, put him in a police car where he was again ill-treated. The bar owner stated that G.P. had been shot in the back with a gun. The Ministry of Public Order insisted that the “Renea” Special Forces had acted according to the law as they had been tasked to arrest individuals who were wanted, accused of or convicted for committing crimes that were of major social danger. The ministry’s press statement also claimed that the Special Forces had been shot at both from inside and outside of the bar.
- On 11 October, S.L, was ill-treated in Korca by three plainclothes police officers and the chief of the Severe Crimes Unit of the Korca Police Department.
- On 14 October, AHC monitors verified on the spot that A.P. had been ill-treated in the pre-trial detention facility of the Durres Police Commissariat. The defendant appeared in court with bandages on his head, and his mother claimed that her son had been maltreated. A.P. himself told the AHC observers that he suffered from epilepsy, and that he had fainted and fallen, thus hurting his face. AHC urged the prosecutor to investigate the case.

Police violence remained a serious problem, despite the fact that the Ministry of Public Order in 2004 enhanced measures to combat police misconduct and corruption among the police

force. An independent body investigated several cases of alleged police misconduct, initiated proceedings against abusive officers, and some officers were finally imprisoned.

In addition, high-ranking officials of the Ministry of Public Order violated the principle of the presumption of innocence of detainees facing trial by making public statements announcing their guilt before courts had ruled on their cases.

Conditions in Prisons and Detention Facilities

Pre-Trial Detention

According to article 6 of the Law No. 8678, of 2001 “On the Organization and Operation of the Ministry of Justice,” the General Prison Directorate, the institution under the authority of Ministry of Justice, is responsible for the organization, management and supervision of the pre-trial detention system. The decision of the Council of Ministers No. 327 of 2003 “On Transferring the Pre-Trial Detention System under the Authority of the Ministry of Justice,” foresees the transfer of pre-trial detention facilities to under the Ministry of Justice. The deadline for the transfer was April 2004.

In practice, however, apart from the Vlora pre-trial detention facility that was formally under the authority of the General Directorate of Prisons, the remaining facilities continued to be supervised by the Ministry of Public Order, despite the efforts taken by of the Ministry of Justice to gain control over them. This means that all deadlines set for the transfer were ignored. Moreover, even the transfer of the Vlora facilities remained incomplete and theoretical. The failure to move the control of pre-trial detention facilities to the Ministry of Justice created many problems in the observance of the rights and treatment of pre-trial detainees.

The main problems with the prison system and pre-trial facilities were the failure to separate, on the one hand, pre-trial detainees from convicted prisoners, and on the other, juvenile delinquents from adult offenders; overcrowding; poor overall conditions in pre-trial facilities; access to free legal assistance; and inadequate treatment of mentally unbalanced or ill inmates.

Convicted prisoners were still kept in pre-trial detention facilities, in contravention of Albanian law and international standards. Despite measures taken in July 2004 by the Ministry of Justice to transfer them, a considerable number of these convicts still remained in pre-trial detention facilities as of the end of 2004.

Overcrowding continued to be a serious problem at every police station monitored by the AHC, even after the transfer of some sentenced convicts to prisons. As a result, in some police stations, the number of individuals held in one cell was about two times higher than the authorized cell capacity. AHC also criticized the poor sanitary standards, lack of exercise in open air, inadequate medical checks and treatment, and insufficient family visits. Many of these problems stemmed at least in part from the large number of inmates at police stations. On several occasions, pre-trial detainees and convicted prisoners staged protests and even violent revolts to draw attention to the appalling conditions in the facilities.

- On 7 May, pre-detainees took police administration staff hostage in Lac, and on 1 July in Vlora, to draw attention to their living conditions.

Juvenile delinquents were not always kept separate from adult offenders, again in violation of national and international law. Even worse, authorities appeared not to be interested in taking measures to prevent conflicts that could lead to serious injuries or even death. Despite AHC

initiatives and concern expressed by other NGOs, no measures were taken to separate juveniles from adult inmates.

- In the Fieri police station, 12 minors were held from January through March in a common pre-trial detention space together with adult detainees accused of serious crimes.
- On 8 July, E.C., a minor, was ill-treated in a detention cell of Rreshen and later died in the Military Hospital of Tirana. It was believed that the cause of his death was a hit to his head during a dispute with an adult detainee he shared the cell with.

In addition, pre-trial detainees and arrestees did not have access to newspapers, magazines or books and they were not allowed to have stationary to send letters. This practice violated article 75 of the Law No. 8328 of 1998 "On the Rights and Treatment of Prisoners."

Both the Constitution and the Criminal Procedure Code stipulate that a defendant has the right to defend him/herself in person or through a legal defender of his/her own choosing. The AHC found, however, that in detention facilities in Korca, Elbasan and Vlora some pre-trial detainees had been denied this right, several of them on a number of occasions. The same problem was raised in many other interviews with pre-trial detainees during the monitoring carried out by the AHC in 16 pre-detention facilities during October to December 2004.

The AHC also focused on the treatment of mentally disturbed prisoners. AHC monitoring of nine Albanian prisons disclosed that mentally disturbed convicts were not offered special treatment in specialized psychiatric institutions but were kept in the prison hospital in Tirana, amounting to a violation of international standards regarding the treatment of prisoners and national penal legislation. Thanks to pressure from Albania and abroad, the Ministry of Justice transferred in December prisoners of this category to a specialized psychiatric hospital in Durres.

Another group of prisoners held in the prison hospital in inadequate conditions were paralyzed, mentally ill convicts, who did not pose any danger to society but needed very specialized treatment. The AHC appealed to the president of Albania to extend pardon to such prisoners.