

World Organisation Against Torture
P.O. Box 21 - 8, rue du Vieux Billard
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State Violence in Albania

AN ALTERNATIVE REPORT
TO THE UN COMMITTEE
AGAINST TORTURE

INCLUDING THE COMMITTEE'S CONCLUDING OBSERVATIONS

A project presented by



Albanian
Human Rights
Group



Centre for Legal Civic Initiatives



Children's Human Rights
Centre of Albania

and coordinated by



Director of Publication: Eric Sottas, Director
Coordinator of the Project: Patrick Mützenber

Contents

Foreword	7
Part I: State Violence	11
1. Historical Introduction	13
1.1 The Communist Regime (1945 - 1990)	13
1.2 The Post-Communist Regime (1991 - 2005)	16
2. Institutional Structures	17
2.1 Executive, Legislative and Judicial Structures	17
2.2 The People's Advocate	21
3. Legal Framework	23
3.1 International Instruments on Human Rights	23
3.2 Constitutional and Criminal legislations	26
4. Prohibition of Torture and Other Ill-treatment	29
4.1 Legal Framework	29
4.2 Practice	31
5. Prohibition of Justifications of Torture	36
5.1 Exceptional Circumstances	36
5.2 Superior Orders	37
6. Arrest and Interrogation	38
6.1 Legal Framework	38
6.2 Practice	39
7. Custodial Detention and Detention	50
7.1 Legal Framework	50
7.2 Practice	50
8. Complaint, Investigation, Prosecution, Compensation and Rehabilitation	54
8.1 Complaint	54
8.2. Investigation	55
8.3 Prosecution	55
8.4 Compensation and Rehabilitation	56
Appendices	57
1. The Situation of Roma	57
2. The Situation of Former Political Prisoners	58
3. The Situation of Homosexuals	61

STATE VIOLENCE IN ALBANIA

Part II: State Violence against Women	65
1. General Background	67
2. Legal and Institutional Issues with regard to Torture and Ill-treatment of Women	71
2.1 Legal and Institutional Issues with regard to Sexual Violence	72
2.2 Legal Issues and Practice Regarding Trafficking in Women and Girls	75
2.3 Legal Issues and Practice Regarding Prostitution in the context of Trafficking in Women and Girls	81
3. Legal Protection of Women in Pre-Detention (police station)	85
4. Medical Examination	88
5. Prisons and Conditions of Imprisonment	88
 Part III: State Violence against Children	 91
1. Introduction	93
2. Definition of a child	94
3. Torture	95
3.1 Practice	95
3.2 Complaint Procedures	105
4. Children in Conflict with the Law	106
4.1 Structure, Organisation of the System	106
4.2 Legal Procedures	107
4.3 Deprivation of Liberty	110
5. State institutions	122
5.1 Schools	122
5.2 Boarding Schools	123
5.3 Correctional Institutions	123
 Recommendations of the coalition	 125
General Recommendations	125
Recommendations with Regard to Women	126
Recommendations with Regard to Children	127
Account of the Dialogue between the CAT and the Albanian	131
Delegation	
Conclusions and recommendations of the CAT	151

Foreword

Writing alternative reports is one of the primary activities of the World Organisation Against Torture (OMCT) and a vital source of information for the United Nations Treaty Bodies including the Committee Against Torture (CAT). This activity is complementary to the OMCT's direct assistance to the torture victims.

These alternative reports are a valuable source for the Independent Experts who analyse the implementation of the United Nations Human Rights Instruments. With these reports, it is possible to see the situation as objectively as possible and take a critical look at government action to eradicate torture and other cruel, inhuman or degrading treatment or punishment.

Under the aegis of the European Union and the Swiss Confederation, the "State Compliance" programme presented this report on State violence and torture in Albania at the 34th session (2-21 May 2005) of the Committee Against Torture, during which the official Albanian State Report was reviewed.

This report was jointly prepared by three national human rights non-governmental organisations (NGOs) in collaboration with OMCT:

- THE ALBANIAN HUMAN RIGHTS GROUP (AHRG)
- THE CENTRE FOR LEGAL CIVIC INITIATIVES (CLCI)
- THE CHILDREN HUMAN RIGHTS CENTRE OF ALBANIA (CRCA)

Representatives from these NGOs attended the session briefed the members of the Committee on the Human Rights situation in Albania, and presented the alternative reports and highlighted their main concerns,

This analysis is divided in three parts (i) a general overview on the state violence in Albania; (ii) state violence against women and (iii) state violence against children. The list of issues used for the dialogue between the State delegation and the Committee, the conclusions and recommendations of the Committee against Torture as well as the summary of the relevant meetings are also included in the document.

Presentation of the coalition

- THE ALBANIAN HUMAN RIGHTS GROUP (AHRG)

The Albanian Human Rights Group (AHRG) was established in September 1996 as a non-governmental and not-for-profit organisation. Its purpose is to protect and promote freedoms and human rights in Albania. AHRG endeavours to promote human rights in many ways including publishing reports regarding the human rights situation in the country. (AHRG has paid special attention to the situation of convicts and detainees on the premises where they serve.) These reports deal with statistics and prison conditions, and focus at the same time on specific cases of human rights violations. At the end of each report, AHRG gives recommendations for improvements and solutions.

This report outlines the investigative work of AHRG, as well as the monitoring and investigative procedures that are used to uncover human rights violations. The Complaints Centre constitutes a source of information that is included in this report. The Complaints Centre activities include: complaints related to violations of human rights by various Albanian state departments; specific investigations; mediation, monitoring of different judicial proceedings; initiation of judicial processes; publication of reports, etc.

Main objectives

- To reveal and investigate specific cases of human rights violations;
- To promote the freedom of the press and the rights of journalists;
- To recognise and defend minority rights;
- To defend the rights of children and women;
- To investigate the conditions in Albanian prisons and police stations and to promote the recognition of prisoners' rights and the assignments of respective organs;
- To educate Albanian society about human rights through various publications.

Overall objectives

- To promote awareness on human rights;
- To promote the rule of law;
- To enhance the protection and defence of human rights;
- To promote the recognition, respect, protection and fulfilment of economic, social and cultural rights.

Since its establishment, the Albanian Human Rights Group has monitored prisons in Albania, and investigated the situation of convicts and pre-detainees in particular complaints that have been lodged at the Complaints Centre.¹

STATE VIOLENCE IN ALBANIA

1 Activities include the following projects:

“The Albanian Media and Investigation of Cases of Violations of Journalists’ Rights” June 1997, supported by Article XIX - London & Het Parool -The Netherlands; “*The Situation of the Press on the Threshold of Drafting a New Press Law*” April - July 1998, financed by the Albanian Civil Society Foundation; “*Women behind Bars*” September 1999, supported by SNV-The Netherlands; Monitoring of courts, police stations and prisons, February - March 1999; “*Functioning of the Execution Office and its Effects in the Field of Human Rights*”, January 1999 - June 1999, supported by the European Community - Phare Program; “*The Situation of Kosova refugees in Albania*” March 29 - June 1999: The Project for assistance for Kosovar women, in collaboration with “*Women for Women*” (USA) April - December 1999; “*Kosova Mission*” June - December 1999, supported by ICCO- the Netherlands; The Project “*The Complaints Centre*”. 1999, supported by OSI – SOROS “*Police Order in Tirana and Elbasan*” December 1999 - May 2000, supported by the Swedish Helsinki Committee; “*Monitoring of Courts, Prosecutor’s Office and Bailiff’s Office*” 2000, supported by Europe Desk/ICCO and CORDAID-The Netherlands; “*Albanian Media Observer*”, May - October 2000, financed by SOROS Media Foundation in Tirana; “*Practical Access to Information and the Reducing of the Laws Dealing with Defamation in Central and Eastern Europe*”, in collaboration with European Studies Centre and Albanian Women Centre under the guidance of Article XXI-London, August 2000 which was supported by European Union; “*The Campaign to Foster Public Awareness about the Abolition of the Death Penalty*”, in collaboration with the Women Centre and the Albanian Helsinki Committee, October 2000; “*Problems, and Social Deviations of the Emigrant Minors*”, carried out in collaboration with ARCI Toscana - Italy, September 2000 and financed by DAS - (Department of Social Issues at the Italian Government); “*The Monitoring of the Media on the Framework of Electoral Campaign*” April - August 2001, financed by Press Now-the Netherlands; “*The Monitoring of the Parliamentary Elections and Other Activities*”, supported by the American Embassy; “*Albanian Media and Minorities*” March 2002, supported by the Canadian Embassy in Tirana; “*Study on Minorities in Albania*” December 2002, supported by the Swedish Helsinki Committee; “*Media and Minorities*”, 2002, supported by CIDA and the Canadian Embassy; “*Homosexuals’ Situation in Albania*” 2003, supported by COC-the Netherlands; “*Women Across the Border*” (regional Project) 2002, supported by the French Ministry of Foreign Affairs, the European Union, and the Charles Stewart Mott Foundation; “*Situation of Handicaps in Albania*” 2003, supported by the Finnish Embassy in Bulgaria; “*TV Debates for Fostering of Initiatives for the Development of Civil Society*” 2003, supported by the American Embassy in Tirana; “*Complaints Centre in Korça and Shkodra*”. 2004, supported by OSI-Budapest; “*Disclosing Hidden History-Lustration in Western Balkans*” 2004 (regional Project lead by The Centre for Democracy and Reconciliation in Southeast Europe (CDRSEE)) Thessalonica, supported by European Union and USAID; “*Train-the-Trainers*” (ToT), seminar on the European Convention on Human Rights (ECHR), supported by the Council of Europe 2004; “*Documentary Film on Roma Minority*” 2004, supported by the Swedish Helsinki Committee and “*Initiatives on Capacity Building of the Minority NGO-s in Shkodra, Korça and Gjirokastra*” 2004, supported by the Swedish Helsinki Committee.

STATE VIOLENCE IN ALBANIA

- THE CENTRE FOR LEGAL CIVIC INITIATIVES (CLCI)

The Centre for Legal Civic Initiatives (CLCI)² is an Albanian non-profit organization that was established in November 1997 and is based in Tirana. CLCI provides legal and psychosocial services for abused or poor women, which are based on feminist principles. The centre aims to increase the access that women and girls have to the legal and judicial system.

Since 1997, CLCI has provided the following: legal and psychosocial assistance, education, studies, research, monitoring, participating in drafting laws and governmental policies to incorporate gender equality, mediating for democratisation and improvement of the justice system, monitoring and summarising best legal practices. CLCI offers: expertise in civil, family law, and penal law; provides a gender perspective on legal issues, and works towards the prevention and an end to family violence. CLCI held two legal education sessions for the public and training on how to implement legislation. CLCI's priorities include improving legislation and the operation of judicial bodies.

CLCI participated in the drafting of legal guidelines for the establishment and operation of non-profit organisations. It has provided training for judges, attorneys and the staff of the Academy of Public Order in Tirana regarding the penal offence of trafficking human beings as well as providing information on family violence. CLCI has monitored the activity of the judicial administration of the low level court and of the court of appeal in Tirana, and has presented respective recommendations to improve the situation, etc.

- THE CHILDREN HUMAN RIGHTS CENTRE OF ALBANIA (CRCA)

The Children's Human Rights Centre of Albania (CRCA) is a non-governmental, non-political, non-religious and non-profit organisation. The mission of CRCA is the protection and development of children's rights in Albania according to the standards and principals of the UN Convention on the Rights of the Child.

CRCA was established in March 1997 and approved by Tirana District Court in June of the same year. Members of CRCA are young and well-known lawyers, physicians, journalists, and sociologists who are all experts on children's rights and issues. CRCA consists of two main boards: the Board of Directors and the Board of Advisers. Members of the Board of Advisers are well-known personalities and activists for children's rights.

2 In December 2004, Women Advocacy Centre (WAC) changed its name to the "Centre for Legal Civic Initiatives" and its mandate was also enlarged.

PART I

STATE VIOLENCE IN ALBANIA

1. Historical Introduction

1.1. The Communist Regime (1945 - 1990)

From 1945 to 1990, the Albanian State was governed by a dictatorial communist regime led by the Albanian Communist Party (ACP). This party aggressively sought power through the use of any means to gain authority. It used the National Liberation War as an opportunity to take power and establish a communist regime.

The period between 1944 and 1948 was characterised by violence and the suppression of political opponents. Large-scale methods of coercion were used including executions, torture, internment, and imprisonment. Torture in particular was used as a mechanism for capturing fugitives. Other methods used to consolidate power included: eliminating all forms of resistance, disarming the population, and collecting extraordinary taxes and other commercial assets. There were numerous political trials whereby generations of Albanian intellectuals, considered threats to the communist system, were convicted. In 1947, a total of 4,749 people were incarcerated as a result of their political convictions. Religious institutions were also persecuted and in 1948 alone hundreds of clerics were imprisoned. The imposition of custodial sentences, and the arbitrary murders of opponents and their families, occurred frequently. Prisons were overcrowded with political prisoners who were subjected to torture, hunger and illness.

From 1948 to 1954, the communist dictatorship was consolidated. Persecution and torture of political opponents increased. In 1950, there were 836 executions (with or without trial), 7,168 convictions and about 2,000 people were interned. Prisoners were exploited for hard labour and, in order to facilitate this, parts of the prisons were transformed into labour camps. Prison conditions were very harsh often resulting in the torture of and death of prisoners in these facilities. In 1954, 77 people died in prison and 53 people died in the internment camps.

Although the communist regime became slightly more liberal during the period 1955 to 1959, as was reflected in a decrease of convictions based on political beliefs, the situation in prisons remained very serious. Convicts continued to do hard labour, to suffer from malnutrition and to be subjected to various forms of torture. All escape attempts were punished with the harshest sanctions including death in some instances.

STATE VIOLENCE IN ALBANIA

Between 1960 and 1973, the regime reverted to Stalinist methods whereby convictions and death penalties based on political beliefs increased. During this period, a total of 193 executions were carried out. Meanwhile, torture and other human rights violations intensified considerably. In addition, the regime totally isolated the country in order to prevent its citizens from obtaining and exchanging information. The State Security service increased its control over the population through prohibiting the discussion of political beliefs and through the use of advanced surveillance. In fact, the security service had open dossiers on the majority of the population, in particular there was an increase in the surveillance of anti-communist elements.

The period from 1973 to 1981 was defined by brutal assaults on senior economic and military party officials. These people were subjected to severe torture. Some of them were executed while the remainder were sentenced to lengthy prison terms. Other professions that were targeted included: artists, writers, and composers. In 1987, 48 individuals were serving sentences in internment camps, 130 convicts perished and there were 74 executions.

The period between 1981 and 1985 was shaped by a disruption in relations with China, which resulted in widespread terror. Building on signs of decline, the communist system gradually collapsed between 1985 and 1991. Despite the collapse of the regime, internments, imprisonments, torture and executions continued. 88 people were executed during this period.

The dictatorship used the following methods and techniques to coerce the public:

- Instilling fear: imperialism, revisionism, class struggles sabotage, etc. were deemed the main enemies.
- Gold collecting campaign: traders were burdened with excessive taxes. Torture was used in order to force them to pay and failure to pay resulted in incarceration. The campaign was aimed at instilling a sense of disgust for trading as a profession.
- “Voluntary” labour: celebrations and rallies continued. Many people chose to attend while many others were coerced into taking part.
- Propaganda campaigns.
- State loans: there was competition between villagers and people from the cities as to who would give more. If a person did not voluntarily donate, an amount was determined for them.

STATE VIOLENCE IN ALBANIA

- Declaration of kulaks: the richest peasants and workers were declared kulaks, which meant that their possessions, including land and cattle, were expropriated, and fines were imposed on them.
- Labour departments were established: “reactionaries” were assembled separately and they carried picks and shovels and carried out forced labour in the military, stone quarries, new arable lands, swamps, and for land development.
- Political internment: all families of fugitives and people suspected of fleeing were removed from areas close to the border and placed near the swamps. They were originally sentenced for 5 years and this was later extended to 10-15, 25 and even up to 40 years. There was no trial or hearing for extensions but people were just notified of the extension.
- Economic internment: this affected people who had worked privately without permission.
- Internment for moral problems: those interned included prostitutes, gamblers, and priests. People were interned to poorer. Dossiers were opened for the majority of the adult population as well as for boys and girls. The number of spies watching their neighbours exceeded most expectations and a popular slogan declared that *one out of every three people is a spy*. This was not necessarily true, however, it was used to create insecurity among the population.

Numerous testimonies by convicts and prisoners from the communist regime reveal that security services and prison administration personnel used a very wide range of torture methods including:

- Beating with wood sticks until wounds are created and flesh falls
- Scratching of suppurated wounds with wood pieces
- Flesh piercing with hot items
- Electric shocks on the ears
- Insertion of salt into the flesh
- Starvation to death
- Hours without food
- Forcing victim to stay naked in the cold
- Straight jackets
- Dynamite on the body
- Finger squeezing with pincers
- Excrements in the mouth
- Hanging victim upside down

STATE VIOLENCE IN ALBANIA

- Tying victim to trees
- Piercing wounds with a bayonet
- Forcing victim to walk barefoot on ember
- Preparation of graves
- Guns in the mouth
- Attempts to dishonour daughters
- Use of beehives on naked prisoners
- Tying and exposing victim to the sun
- Dental tortures
- Dog-biting for those attempting to escape
- Pouring of hot oil on naked body parts
- Rape of family members in front of the detainees

The following were methods of psychological torture, which were also used to destroy the victim's personality and morale:

- Deprivation – related to depriving the victims of the ability to feel through the senses: lights, sleep, contact with people, withholding food, etc.
- Humiliation – this sought to humiliate the victim maximally by way of insults and ridicule of all kinds.
- Threats – the victim was exposed to threats of different kinds: threats of torture, murder of family members or relatives, etc.

1.2. The Post-Communist Regime (1991 - 2005)

The collapse of the communist dictatorial State in Albania was followed by the emergence of a regime based on private property, market economy, respect for individual rights and freedoms, and on free and democratic elections. During this period, substantive changes were made in to domestic legislation in order to ensure the democratisation of the State.

All political prisoners were released. Some measures were put in place to ensure their social rehabilitation. Restrictions on freedom of speech and of political assembly were removed allowing for the formation of political parties, which held democratic views.

At present, the Albanian State is considered a democracy as it adheres to a series of international conventions and acts that guarantee democracy nationally. However, Albania remains a poor country, where living standards,

education, health, environment, etc. are lagging behind and are further exacerbated by corruption, illegal trafficking of drugs and people, organised crime and social exclusion.

2. Institutional Structures

2.1. Executive, Legislative and Judicial Structures

Article 7 of the Constitution establishes that “the system of government in the Republic of Albania is based on the separation and balancing of legislative, executive and judicial powers”.

Under Part Four of the Constitution, the President is the Head of State and represents all citizens (Article 86). He may not exercise powers besides those recognised expressly in the Constitution and granted by laws issued in compliance with it (Article 94). He is not responsible for acts carried out in the exercise of his functions and may be discharged from serious violations of the Constitution, and for the commission of a serious crime. In these cases, a proposal for the discharge of the President may be made by not less than one-fourth of the members of the Assembly and must be supported by not less than two-thirds of its members. The decision of the Assembly is sent to the Constitutional Court, who then verifies the guilt of the President, and then declares him discharged from duty (Article 90).

Part Five of the Constitution provides that the Council of Ministers consists of the Prime Minister, the Deputy Prime Minister and the ministers. The Council is responsible for performing those State functions that are not delegated to other State bodies or to local governments (Article 95). The Council also defines the principal points of the general State policy and makes decisions on proposals from the Prime Minister or the other ministers. Acts of the Council of Ministers are enacted when signed by the Prime Minister and the proposing minister. The Council also issues decisions and instructions (Article 100).

In cases of necessity and emergency, the Council of Ministers is authorised to purpose temporary measures. These measures are immediately submitted to the Assembly, which if not in session, is convened within 5 days. These acts are revoked retroactively if the Assembly does not approve them within 45 days (Article 101).

STATE VIOLENCE IN ALBANIA

Part Three of the Constitution provides that the Assembly of the Republic of Albania, which consists of 140 members and is elected for a 4-year term, exercise legislative power. Its mandate may only be extended in special cases, such as during wartime (Articles 64 to 66). Only political parties, coalitions of parties and voters can nominate deputy candidates (Article 68 §1). Deputies represent the people and are not bound by any obligatory mandate; however, they may not simultaneously exercise any other public duty except as a member of the Council of Ministers. Article 70 §1 and 2 specify other instances of incompatibility. The Assembly is organised and functions according to regulations approved by the majority of its members. It elects and discharges its chairman (Article 75). It also elects standing committees from its ranks and may also establish special committees. The Assembly has the right and, upon the request of one-fourth of its members, the obligation to establish an investigation committee to review a particular issue. Although, a committee's conclusions are not binding on the courts, they may be provided to the Office of the Prosecutor, which evaluates them according to legal procedures (Article 77 §1 and 2). Lastly, the Assembly requires a majority (more than half of its members) to vote in favour of legislation in order for it to be passed. There is an exception regarding constitutional legislation, which requires a qualified majority (Article 78 § 1).

Part Nine of the Constitution assigns judicial power to the High Court, the Courts of Appeal and First Instance, which are all established under the law. The Assembly may set up courts for particular fields. The activities of the judicial power are regulated by law no. 8436 dated 28 December 1998, "On the Organisation of the Judicial Power in the Republic of Albania," amended by law no. 8546, of 5 November 1999 and by law no. 8656, 31 July of 2000.

The High Court is both a Court of First Instance and an Appellate Court. It acts as a Court of First Instance when adjudicating criminal charges against the President of the Republic, the Prime Minister, members of the Council of Ministers, deputies, judges of the High Court, and judges of the Constitutional Court (Article 141 §1). It consists of civil, criminal and military courts. 17 judges belong to the High Court and are appointed by the President, with the consent of Parliament, for a non-renewable 9-year mandate.

Appeals Courts are Courts of Second Instance, which consist of three judges who hear appeals from the Courts of First Instance. They adjudicate all aspects of cases not just the issues mentioned in the complaint. The courts

STATE VIOLENCE IN ALBANIA

are organised in districts selected by the President of the Republic, which are based on proposals from the Minister of Justice. These proposals are in turn based on a recommendation from the High Council of Justice. There are six Appeal Courts, which are located in the districts of: Tiranë, Durrës, Shkodër, Korçë, Gjirokastër, and Vlorë. Based on nominations from the High Council of Justice, the President of the Republic appoints judges to the Appeal Courts.

Courts of First Instance are located in every judicial district and have jurisdiction over their respective districts. Although, the majority of hearings are presided over by one judge, there are some cases that are heard by a panel of three judges.

Under Part Eight of the Constitution, the Constitutional Court is responsible for ensuring that the Constitution is complied with. They have the exclusive authority to make final constitutional interpretations, however, their decisions must be in compliance with the Constitution (Article 124). The Constitutional Court renders decisions on: the compatibility of laws with the Constitution or with international agreements as provided in Article 122 (Article 131 a); conflicts of competences between branches of power, and as between central government and local government (Article 131 d) and makes final decisions on individual complaints regarding violations of due process rights but only after all legal means for the protection of such rights have been exhausted (Article 131 i). The decisions of the Constitutional Court are final and generally binding. The Constitutional Court only has the right to invalidate the acts it is asked to review. The decisions of the Constitutional Court come into force the day of their publication in the Official Gazette (Article 132).

According to Article 134(1): “the Constitutional Court operates only at the request of: a. The President of the Republic; b. The Prime Minister; c. Not less than one-fifth of the deputies; d. The Chairman of the High State Control; e. Every court according to Article 145, paragraph 2 of the Constitution; f. The People’s Advocate; g. Organs of the local government; h. Organs of religious communities; i. Political parties and other organisations; j. Individuals. (2) The subjects provided for in subparagraphs ‘f’, ‘g’, ‘h’, ‘i’, and ‘j’ of paragraph 1 of this article may make a request only for issues related to their area of interest.”

STATE VIOLENCE IN ALBANIA**The division of powers in the context of the judicial system**

Although the Albanian judiciary enjoys a sound constitutional, legal, institutional and organisational foundation, and is equipped with the necessary procedures and mechanisms to function in accordance with international standards, difficulties remain.

AHRG has devoted special attention to the situation of human rights within the justice system. AHRG reports, dating back to 2003, highlight deficiencies in the justice system that directly or indirectly result in abuses of human rights and fundamental freedoms.

There are some major elements that not only have a negative impact on the exercise of the duties of these institutions but also openly violate individual human rights and freedoms and the principle of a legal and democratic state. The Albanian justice system is influenced by the role of politics and by the two other branches of power, which causes widespread distrust among the majority of Albanians.

Judicial institutions are treated as inferior to that of the executive and legislative branches. The Albanian executive branch largely ignores most judgments, especially those passed by Courts of First Instance. This is done to such an extent that the lack of balance and independence is blatant. Furthermore, judicial proceedings in which the executive or legislative branches are involved tend to be biased towards the latter.

Courts openly discriminate against private parties by dragging proceedings out or postponing them using absurd and/or unlawful claims in order to give parties that are prominent in the Albanian State more time. The courts also have the power to determine who is a legitimate private plaintiff and they use this as another method to fight demands or lawsuits.

Monitoring by AHRG shows that judicial proceedings, involving State officials as plaintiffs, are dealt with expeditiously. Very often, the decision of the courts is issued without notifying the parties that the trial has commenced.

A flagrant example of political pressure faced by the judicial branch is the fact that payments to the latter are often blocked and every year the State budget is subject to limitations during its process of approval. This not only damages the independence of the judiciary but also clearly violates the Constitution, which guarantees and recognises the judiciary's right to request the necessary budget in order to meet its needs. According to Article 144, "The courts have

STATE VIOLENCE IN ALBANIA

a special budget, which they administer themselves. They propose their budget according to law”.

The lack of normal infrastructures for the conduct of judicial activities, evident in the substandard facilities of the Serious Crimes Courts and those of many district courts in Albania, is also an example of the lack of recognition and respect shown towards the judicial branch from the executive and legislative branches.

AHRG also highlights the fact that provisions of some laws, such as the law “On the High Council of Justice” and the law “On the Ministry of Justices,” directly violate the constitutional principles of the division of powers and the independence of the judiciary from the executive. There is a tendency by the executive branch, the government and the Ministry of Justice, to view the judiciary as an instrument to be controlled. All three bodies use relevant legislation and the veto power prescribed to them to justify their control of the judiciary.

2.2. The People’s Advocate

The People’s Advocate (Ombudsman) (Part Two, Chapter Six of the Constitution) was established in 2000 to protect individual rights and freedoms from unlawful activities or acts by the public administration. The authority and functions of the People’s Advocate are defined in the Constitution, the Law on the People’s Advocate, as well as in the Internal Regulations of the Code of Ethics.

Article 60 of the Constitution states: “1. The People’s Advocate defends the rights, freedoms and lawful interests of individuals from unlawful or improper actions or failures to act of the organs of public administration. 2. The People’s Advocate is independent in the exercise of his duties. 3. The People’s Advocate has his own budget, which he administers himself. He proposes the budget pursuant to law.”³

3 Article 63 of the Constitution states: “1. The People’s Advocate presents an annual report before the Assembly. 2. The People’s Advocate reports before the Assembly when asked to, and he may ask the Assembly to hear him on matters he deems important. 3. The People’s Advocate has the right to make recommendations and to propose measures when he observes violations of human rights and freedoms by the public administration. 4. Public organs and officials are obligated to provide the People’s Advocate all documents and information requested by him”.

STATE VIOLENCE IN ALBANIA

Law No. 8454, of 4 February 1999, "On the People's Advocate", regulates the right to complain⁴, the initiation of the proceedings⁵, the procedure after admission of complaints for review⁶, the obligation of organs of state administration to respond to recommendations of the People's Advocate⁷ and case follow-up⁸.

According to the People's Advocate, of all complaints addressed to this institution, those dealing with the mistreatment of citizens receive the most attention. This is because when they are proven to be true, they are viewed as serious violations of Article 25 of the Constitution of the Republic of Albania, which prohibits torture and other cruel, inhuman or degrading treatment or punishment.

There is an agreement of cooperation between the People's Advocate and the domestic courts but the implementation of this agreement is still in its first phase because of the partiality and lack of independence of the domestic courts from the executive and legislative branches.

4 Article 12, §1, Right to Complain. "Every individual, group of individuals or non-governmental organisation, claiming that his/her/their rights, freedoms or lawful interests have been violated by the unlawful or improper actions or failures to act of the organs of the public administration shall have the right to complain or notify the People's Advocate and to request his intervention to remedy the violation of the right or freedom. The People's Advocate shall maintain confidentiality if he deems it reasonable as well as when the person submitting the complaint, request or notification so requests."

5 Article 13, Initiation of the Proceedings. "The People's Advocate, upon finding or suspecting that a right has been violated, shall initiate an investigation of the case, upon the complaint or request of the interested or affected person, or on his own initiative if the particular case is in the public domain and provided the interested or injured party consents."

6 Article 18, Procedure After Admission of Complaints for Review. "Following admission of a complaint, request or notification, the People's Advocate shall proceed in one of the following ways: a) shall conduct an investigation; b) shall request explanations from the organs of public administration, as well as from the public prosecutor in cases of custodial detention and arrest; c) shall make a recommendation to the High State Control to exercise its powers."

7 Article 22

8 Article 23

3. Legal Framework

3.1. International Instruments on Human Rights

Dates of Ratification and Entry into Force

The Republic of Albania has signed and ratified many of the international human rights conventions and protocols from the United Nations and the Council of Europe.

	Date of ratification	Date of entry into force
ICERD ⁹	11-May-94	10-Jun-94
ICCPR ¹⁰	04-Oct-91	04-Jan-92
ICESCR ¹¹	04-Oct-91	04-Jan-92
CEDAW ¹²	11-May-94	10-Jun-94
OP – CEDAW ¹³	23-Jun-03	23-Sep-03
CAT ¹⁴	11-May-94	10-Jun-94
OP – CAT ¹⁵	01-Oct-03	
CRC ¹⁶	27-Feb-92	28-Mar-92

9 International Convention on the Elimination of All Forms of Racial Discrimination.

10 International Covenant on Civil and Political Rights.

11 International Covenant on Economic, Social and Cultural Rights.

12 Convention on the Elimination of All Forms of Discrimination against Women.

13 Optional Protocol to the Convention on the Elimination of Discrimination against Women.

14 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

15 Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

16 Convention on the Rights of the Child.

STATE VIOLENCE IN ALBANIA

Due, received, examined and overdue reports

ICERD	Due report	Received	Examined	Overdue report
Initial report	10-Jun-95	11-Feb-02	04-Aug-03	-
Second periodic report	10-Jun-97	11-Feb-02	04-Aug-03	-
Third periodic report	10-Jun-99	11-Feb-02	04-Aug-03	-
Fourth periodic report ¹⁷	10-Jun-01	11-Feb-02	04-Aug-03	-
Fifth periodic report	10-Jun-07			
Sixth periodic report	10-Jun-07			
Seventh periodic report ¹⁸	10-Jun-07			

ICCPR	Due report	Received	Examined	Overdue report
Initial report	03-Jan-93	02-Feb-04	19-Oct-04	-
Additional information	01-Nov-05			
Second periodic report	01-Nov-08			

ICESCR	Due report	Received	Examined	Overdue report
Initial report	30-Jun-94	05-Jan-05		
Second periodic report	30-Jun-99	05-Jan-05		
Third periodic report	30-Jun-04			

CEDAW	Due report	Received	Examined	Overdue report
Initial report	10-Jun-95	20-May-02	16-Jan-03	-
Second periodic report ¹⁹	10-Jun-99	20-May-02	16-Jan-03	-
Third periodic report	10-Jun-03			

17 The initial, second, third and fourth periodic reports were submitted together as one document.

18 In its concluding observations adopted on 20 August 2003, the Committee on the Elimination of Racial Discrimination recommended that the fifth, sixth and seventh periodic reports be submitted together in one document, by 10 June 2007.

19 The initial and second periodic reports were submitted together as one document.

STATE VIOLENCE IN ALBANIA

CAT	Due report	Received	Examined	Overdue report
Initial report	09-Jun-95	13-Jun-03	[pending May 05]	-
Second periodic report	09-Jun-99			1
Third periodic report	09-Jun-03			1

CRC	Due report	Received	Examined	Overdue report
Initial report	27-Mar-94	24-Sep-03	12-Jan-05	-
Second periodic report	27-Mar-99			
Third periodic report	27-Mar-04			
Fourth periodic report	27-Mar-09			

Total number of overdue reports: 3

	Concluding Observations
CERD²⁰	CERD A/58/18 (2003)
HRC²¹	CCPR/CO/82/ALB (2004)
CEDAW²²	CEDAW A/58/38 part I (2004)
CRC²³	CRC/C/15/Add.249 (2005)

Status of international law

Article 5 of the Constitution establishes that, “the Republic of Albania applies international law that is binding upon it”.

And Article 122 states: “1. Any international agreement that has been ratified constitutes part of the internal juridical system after it is published in the Official Journal of the Republic of Albania. It is implemented directly, except

20 Committee on the Elimination of Racial Discrimination.

21 Human Rights Committee.

22 Committee on the Elimination of Discrimination against Women.

23 Committee on the Rights of the Child.

for cases when it is not self-executing and its implementation requires issuance of a law. The amendment, supplementing and repeal of laws approved by the majority of all members of the Assembly, for the effect of ratifying an international agreement, is done with the same majority. 2. In cases of a conflict of law, an international agreement that has been ratified by law has superiority over domestic. 3. In cases of conflicts, the norms issued by an international organisation have superiority over the domestic laws if the Republic of Albania has ratified the agreement as ratification expressly contemplates their direct applicability.”

3.2. Constitutional and Criminal legislations

As already mentioned, Parts 3 to 6 of the Constitution deal with the legislative and executive powers and Parts 8 to 9 deal with the power of the judiciary.

Part 1 (Articles 1 to 14) outlines the basic principles of the Republic of Albania, and Part 2 (Articles 15 to 63) outlines fundamental human rights and freedoms.

Basic human rights and freedoms are guaranteed, as follows:

Chapter I - General Principles, Chapter II - Personal Rights and Freedoms, Chapter III - Political Rights and Freedoms, Chapter IV - Economic, Social and Cultural Rights and Freedoms, and Chapter V - Social Objectives. Chapter VI provides for an ombudsman (People's Advocate).

Criminal Code (Entry into force on June 1, 1995)

The Criminal Code (CC) of the Republic of Albania No. 7895 of 27 January 1995, amended by Law No. 8204 of 10 April 1997, Law No. 8279 of 15 January 1998 and Law No. 8733 of 24 January 2001, defines “criminal acts, sentences and other measures taken against the persons who committed them” (Article 1 CC).

Chapter I outlines the jurisdiction of the court, Criminal Law and its Application. In particular, Articles 5 to 8 outline the territorial jurisdiction and the jurisdiction of the court over Albanians who commit crimes abroad. Article 7 is the *aut dedere aut judicare* principle.²⁴

STATE VIOLENCE IN ALBANIA

Chapter II establishes criminal responsibility, Chapter III responsibility for attempting to commit a crime,²⁵ Chapter IV collusion,²⁶ Chapter V punishments, Chapter VI the determination of punishments,²⁷ Chapter VII

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- 24 **Article 7 The Applicable Law on Criminal Acts Committed by Foreign Citizens**
 "(...)The criminal law of the Republic of Albania is also applicable to a foreign citizen who, outside of the Republic of Albania, commits one of the following offences against the interests of the Albanian State or an Albanian citizen:
 a) crimes against humanity;
 b) crimes against Albanian independence and its constitutional order;
 c) terrorist acts;
 d) Organisation of prostitution, illegal trafficking of persons, children and women, illegal production and trafficking of weapons, drugs, other narcotic and psychotropic substances, nuclear substances, pornographic materials, as well as the illegal trafficking of works of art and items of historical, cultural and archaeological value;
 e) hijacking airplanes or ships;
 f) falsifying the Albanian state seal, Albanian currency, or Albanian bonds or stocks;
 g) crimes which affect the life or health of Albanian citizens, to which the law provides for a punishment by imprisonment of five years or any other heavier punishment."
- 25 **Article 23 Responsibility for the Attempt**
 The person attempting to commit a crime shall be held responsible. Considering the stage until the realization of the consequence, as well as the causes due to which the offence remained an attempt, the court may mitigate the sentence, and may lower it under the minimum provided for by law, or may decide for a kind of punishment milder than the one provided for by law.
- 26 **Article 27 Responsibility of Collaborators**
 Organizers, instigators, and helpers bear the same responsibility as the executors for the criminal act committed. In deciding the sentencing of collaborators, the court should consider the level of participation and the role played by everyone in committing the criminal act.
- 27 **Article 48 Mitigating Circumstances**
 The following circumstances mitigate the punishment:
 a) When the act is committed due to positive moral and social values;
 b) When the act is committed under the effect of a psychiatric disorder caused by provocation or the unfair acts of the victim or some other person;
 c) When the act is committed under the influence of wrong actions or instructions of a superior;
 d) When the person who has committed the act shows deep repentance;
 e) When the person has compensated for the damage caused by the criminal act or has actively helped to eliminate or decrease its consequences;
 f) When the person gives himself over to the competent authorities after committing the criminal act;
 g) When the relationship between the offender and the victim has turned to normality.

alternatives to imprisonment and Chapter VIII cessation of criminal prosecution, punishments and their non-execution.²⁸

Suite 27

Article 50 Aggravating Circumstances

(Letter “b” amended, letters “h” and “i” added by Law No. 8733, date 24 January 2001, article 5)

The following circumstances aggravate the punishment:

- a) When the act committed is based upon weak motives;
- b) When the act is committed for the purpose of making responsible or hiding the criminal responsibility of a third person, or for avoiding the sentencing for another criminal act; or to accomplish, or to gain for him/herself or for the third party property profits, or any kind of material profit;
- c) When the criminal act is committed savagely and ruthlessly;
- d) When an offence is committed after a sentence was decided for a previous offence;
- e) When actions which aggravate or increase the consequences of a criminal act are committed;
- f) When the act is committed by abusing duties which derive from a state or religious function or service;
- g) When the act is committed against children, pregnant women, or other people who, for different reasons, cannot protect themselves;
- h) When the act is directed against representatives of other states;
- i) When the act is committed by taking advantage of family, friendship, or hospitable relations;
- j) When the act is committed in collusion;
- k) When the act is committed more than one time;
- l) When the offense is committed using arms; military munitions; exploding, combustible, poisoning and radioactive substances.

28 Article 66 Prescription of Criminal Prosecution

Criminal prosecution shall not be conducted if, from the moment the act was committed until the moment that the person is held defendant, have elapsed: a) twenty years on offences for which the law provides sentences of no lower than ten years of imprisonment or other heavier punishment. b) ten years on offences for which the law provides sentences between five and ten years of imprisonment; c) five years on offences for which the law provides sentences up to five years of imprisonment or fine; d) three years for criminal contraventions which provide sentences up to two years of imprisonment; e) two years for criminal contraventions which provide fines.

Article 67 Non prescription of Criminal Prosecution

There is no statute of limitations for the criminal prosecution against war crimes and crimes against humanity.

Article 68 Prescription on the Execution of Sentences

The sentence is not executed if from the day it became final have elapsed: a) twenty years for imprisonment sentences between fifteen to twenty-five years; b) ten years for imprisonment sentences between five to fifteen years; c) five years for imprisonment sentences of up to five years or other lighter sentences.

STATE VIOLENCE IN ALBANIA

With respect to the special part of the Criminal Code, Chapter I outlines crimes against humanity, Chapter II outlines criminal acts against the person and crimes against life, Chapter III criminal acts related to property or the economic sphere, Chapter IV criminal acts against the environment, Chapter V crimes against independence and the constitutional order, Chapter VI offences encroaching relations with other States, Chapter VII terrorist acts, Chapter VIII crimes against State authority, Chapter IV criminal acts against justice, Chapter X criminal acts affecting free elections and the democratic system of elections, and Chapter XI criminal acts committed by an armed group or a criminal organisation.

Criminal Procedure Code (Entry into force on August 1, 1995)

The main roles of criminal procedural legislation is to provide a fair, equal and due legal process to protect the individual freedoms, the rights and the legal interests of citizens, to contribute to the strengthening of the rule of law and to the application of the Constitution and laws ruling the country. (Article 1 CPC). The Criminal Procedure Code is based on the Constitution of the Republic of Albania, general principles of international criminal law, and international treaties ratified by the Albanian state. The criminal legislation is composed of this Code and other laws that provide criminal offences (Article 1a CPC).

4. Prohibition of Torture and Other Ill-treatment

4.1. Legal Framework

Pursuant to Article 25 of the Constitution, “No one may be subjected to cruel, inhuman or degrading torture, punishment or treatment.”

Chapter II of the special part CC “Criminal Acts Against the Person, Crimes Against Life” criminalises torture and other ill-treatment:

According to Article 86: “Torture, as well as any other degrading or inhuman treatment, is punishable by five to ten years of imprisonment”.

According to Article 87: “Torture, like any other degrading or inhuman treatment, when it has resulted in handicap, mutilation or any permanent harm to

STATE VIOLENCE IN ALBANIA

the well-being of a person, or death, is punishable by ten to twenty years of imprisonment”.

The Criminal Code also prohibits:

Serious intentional injury, non-serious intentional injury, other intentional harm, causing suicide, having sexual intercourse with persons unable to protect themselves, intercourse under threat of gunpoint, heterosexual or homosexual intercourse through abuse of office, heterosexual or homosexual intercourse with extended family members or while custody and use of violence during investigation.²⁹

29 Article 88 Serious Intentional Injury

Serious intentional injury resulting in handicap, mutilation or any other permanent detriment to the health, or inflicting interruption of pregnancy or that which is dangerous to life at the moment of birth, is punishable by three to ten years of imprisonment. When the same act is committed against a group of people, or causes death, it is punishable by five to fifteen years of imprisonment.

Article 89 Non-serious Intentional Injury

Intentional injury that results in a temporary work incapacity of no longer than nine days, constitutes criminal contravention and is punishable by a fine or up to two years of imprisonment.

Article 90 Other Intentional Harm

Assault as well as any other violent act, constitutes criminal contravention and is punishable by a fine. The same act, when causing temporary work incapacity of up to nine days, constitutes criminal contravention and it is punishable by a fine or up to six months of imprisonment.

Article 99 Causing Suicide

Causing a person to attempt or complete a suicide due to systematic maltreatment or other systematic misbehaviors which seriously affect the dignity [of the person], committed by another person under whose material dependence or any other dependence the former person is subject, is punishable by a fine or up to five years of imprisonment.

Article 103 Sexual and Homosexual Intercourse with Persons Unable to Protect Themselves (Amended by Law No. 8733, date 24 January 2001, article 19)

Commission of heterosexual or homosexual intercourse, profiting from the physical or mental incapacity of the victim or from putting him into an unconscious state, is subject to five to ten years imprisonment. If the heterosexual or homosexual intercourse is committed in collusion with others, or repeatedly, or if it results in serious harm to the health of the victim, it is subject to seven to fifteen years imprisonment. If the offense results in the death or suicide of the victim, it is punishable by ten to twenty years imprisonment.

Article 104 Intercourse under Threat of Gunpoint (Amended by Law No. 8733, date 24 January 2001, article 20)

Commission of heterosexual or homosexual intercourse by threatening the victim with the use of arms, is subject to five to fifteen years of imprisonment.”

Article 105 Sexual or Homosexual Intercourse through an Abuse of Office (Amended by Law No. 8733, date 24 January 2001, article 21)

STATE VIOLENCE IN ALBANIA

Moreover, Chapter I of the special part the Criminal Code³⁰ criminalises acts, which in their essence contain actions or omissions that result in the criminal act of torture.

Finally, pursuant to Article 5§2 CPC, “No one may be subjected to torture, punishment or cruel treatment”.

Although a definition of torture, including all the elements of Article 1 of the Convention Against Torture, is lacking in Albanian legislation, the penalties assigned to the crime of torture are appropriate.

4.2. Practice

Numerous reports by non-governmental organisations, for the period of 1991-2004, show that Albania continues to experience flagrant cases of torture and other cruel, inhuman or degrading treatment or punishment committed by specialised State institutions.

Although print and broadcast media, often under State pressure, have played a positive role in increasing awareness about such cases, there are still very few cases involving torture and other cruel, inhuman or degrading treatment or punishment in which the Albanian State and justice system have handed down punishments commensurate to the criminal offence.

Torture victims of the post-communist period are mainly individuals from the marginalised sections of the population, including the poor,

29 (*suite*)

Commission of heterosexual or homosexual intercourse through abuse of a subordinate or office relationships is punishable for a period of up to three years imprisonment.

Article 106 Sexual or Homosexual Intercourse with Extended Family Members or Under Custody (Amended by Law No. 8733, date 24 January 2001, article 22)

Commission of heterosexual or homosexual intercourse between a parent and child or between siblings or between other extended family members, or with persons who are in custody or adoption relationships is punishable for a period of up to seven years imprisonment.

Article 314 Use of Violence during Investigation

Use of violence, by a person in charge of an investigation, to force a citizen to make a statement, give testimony or confess his guilt or somebody else's, is punishable by three to ten years imprisonment.

30 **Article 73 CC genocide, Article 74 CC crimes against humanity, Article 75 CC war crimes.**

STATE VIOLENCE IN ALBANIA

pre-detainees and convicts, political opponents, and journalists who have openly rejected the State policies. Members of minority groups are particularly exposed as discrimination and intimidation persist in Albanian society.

Most complaints are made against police officers, prison police officers, judicial police officers and against the public prosecutor's office. In this regard, AHRG draws attention to the increase in cases of unsubstantiated violence, inflicted by police forces especially agents of the criminal police, towards citizens.

Cases of Mistreatment by Police Officers

a. The Case of Kujtim Duri (2000)

Kujtim Duri declared to AHRG:

“On June 19, 2000, while returning home on a public bus, a police officer hit me and told me to get off the bus. I got off and walked to police station no. 3 to denounce him. When I denounced him, he hit me brutally and kept me in isolation until nine o'clock.”

Complaint by Mr. Kujtim Duri with regard to his mistreatment by police:

On Wednesday, June 21, 2000, Mr. Kujtim Duri and his wife went to the Complaint Centre (CC). Mr. Duri had evident bruises on his face, especially on his upper jaw. He also had a broken tooth. These findings were documented in a medical report from Pathologist Izedin Çela's, carried out June 21 2000, at the Albanian Centre for Rehabilitation of Torture Survivors and kept in a file. Due to the plaintiff's poor health, his claims were recorded in a handwritten statement, which is also to be found in the file.

b. The Case of Naim Pulaku (2001)

In December 2001, near the Qafëkuqe Police Checkpoint, close to the Metallurgical Plant, Mr. Naim Pulaku was coming back from Durrës to Elbasan with two other people in a Benz car. According to Pulaku, a

STATE VIOLENCE IN ALBANIA

Volkswagen carrying the Elbasan Police Chief (Director of Police Order) Edmond Koseni, and his driver approached them from the opposite direction, blocked their path, and attempted to force them off the road. However, they kept on driving. Police at the checkpoint stopped Pulaku, and Koseni's car arrived there at the same time. Koseni's bodyguard Xhafer Elezi hit Pulaku with his fist and another policeman joined in on the beating, causing Pulaku to fall on the ground. Koseni then kicked Pulaku behind the head and he fell unconscious. Pulaku came to his senses in the commissariat where he had water poured on his face and a police van took him first to the emergency medical facility and then to a hospital.

Relatives of the victim alerted AHRG about this case at midnight on Friday 21 December. The next day, the executive director of AHRG, Ms. Elsa Ballauri and the Deputy Director, Mr. Premto Gogo, went to Elbasan to investigate the case. Following the investigation, AHRG published a press release, demanding the attention of all police forces and calling on them to respect and guarantee the rights of all citizens.

Naim Pulaku sued Koseni and his brother-in-law, Elezi, under Article 87 CC "Torture Resulting in Serious Consequences". The Prosecutor's Office started an investigation against Koseni and his brother-in-law, which revealed that violence had been exercised against Pulaku. Koseni denied the events and claimed that he had not mistreated Pulaku. A few days later, Koseni was suspended from his job and the prosecutor's office issued an arrest-warrant for Koseni and Elezi. AHRG offered Pulaku legal assistance to file a complaint against the former Police Director and his bodyguard. A penal case (no. 2098) was initiated against them. They were charged with "torture with grave consequences."

In April 2002, the Prosecutor's Office in Tirana decided to dismiss the case against former Elbasan Police Director, Edmond Koseni, without notifying the advocate at AHRG. AHRG strongly protested to this decision and publicly denounced what it called a prosecutorial and judicial farce. AHRG asked the General Prosecutor's Office, and in particular the Chief Prosecutor, Mr. Dhori Sollaku, to get involved in the case and exercise his authority to enforce the law. AHRG also asked for that the "Koseni" case be re-opened and a regular judicial process be initiated. The General Prosecutor's Office did order the case be re-opened because there was evidence, which showed that Koseni had

STATE VIOLENCE IN ALBANIA

carried out several criminal acts while he was Director of Elbasani Police.

In March 2003, Elbasani District Court began hearings in the Koseni case. 12 legal sessions were held. The prosecutor in the case, Elio Mazreku, asked the court to sentence Koseni to 6 years, and Xhaferr Elezi for 7 years. The prosecutor based his sentence recommendations on Article 86 of the Criminal Code, under which “torture, as well as any other degrading or inhuman treatment, is punishable by five to ten years of imprisonment”. On 10 November 2003, the court declared Koseni innocent and sentenced his brother-in-law to 10 years. The main concern of the prosecutor in the case was the absence of eyewitnesses in the legal proceedings and the change of testimony by one of the eyewitnesses. The prosecutor has nevertheless appealed the decision of the Elbasani District Court.

c. The Case of Bledar Mane (2002)

On January 5, 2002, Mr. Bledar Mane entered into a conflict with unknown persons in the vicinity of Tirana International Hotel. During the course of the argument, Mr. Mane received severe blows to his head and body. Police officers from Police Station No. 1 in Tiranë arrived at the site and took the latter to the station’s detention rooms. While on the way to the detention facility, Mr. Mane was abused in the police van to the point of losing consciousness. The victim asked for a doctor but his request was denied. Furthermore, according to him police kept an amount of money, his mobile phone, and his wallet. A check of the personal items log showed that the above-mentioned items were not listed.

d. The Case of Veladin Çela (2004)

Veladin Çela (Roma) was the target of mistreatment by railroad police officers due to an incident, which occurred on a train travelling from Vlorë to Fier. Veladin Çela had been working on his property when some children threw stones at a passing train on the Vlorë – Fier line. The service policemen on the train caught Veladin Çela and used

STATE VIOLENCE IN ALBANIA

violence against him, claiming that he was responsible for the incident. He was then taken to the police station in Fier and the necessary verifications were done. Mr. Çela was cleared of any involvement in the incident and he has since been released.

He complained about the mistreatment he suffered to the Prosecutor's Office. The Complaint Centre (CC) contacted the Director of the Police in Fier as well as the Chief of the Fier police station regarding the mistreatment. A meeting was held with the head of police station no. 3 who provided the necessary explanations in the case. During the meeting with the head of police station no. 3, the CC asked that the offending police officers be punished in order to prevent reoccurrences.

e. The Case of Roland Dhëmbi (2004)

Roland Dhëmbi, a citizen of Ersekë, denounced traffic police officer Robert Ibrahimimi after the latter had mistreated him and fined him 2,000 leks for "failure to put on the seat belt."

Following signals from the media regarding the case, the Complaint Centre (CC) contacted the Director of Police for Korçë District, Mr. Ylli Shazivari, as well as the Head of the Ersekë police station, Mr. Vangjel Xhavera. The CC requested that measures be undertaken against the persons responsible for the unlawful actions carried out against Mr. Roland Dhëmbi. Following the intervention of the CC, the relevant institutions undertook measures concerning the police officers responsible for the abusive actions.

f. The Case of Bajram Sharra (2004)

Bajram Sharra was severely mistreated by the Head of the Peqin police station for no reason.

The former filed a complaint against the Police Station Chief. The Complaint Centre (CC) contacted the Police Director of Elbasan who provided some details on the events. Furthermore, the Head of Peqin police station was suspended until the case has been heard.

5. Prohibition of Justifications of Torture

5.1. Exceptional Circumstances

Article 17 of the Constitution regulates restrictions: “1. The limitation of the rights and freedoms provided for in this Constitution may be established only by law for a public interest or for the protection of the rights of others. A limitation shall be proportional to the situation that has dictated it. 2. These limitations may not infringe the essence of human rights and freedoms and in no case may exceed the limitations provided for in the European Convention on Human Rights.”

Article 170 of the Constitution regulates derogations: “1. Extraordinary measures can be taken due to a state of war, state of emergency, or natural disaster and last for as long as these states continue. 2. During the existence of such situations that require extraordinary measures, the principles for actions of public organs, as well as the extent to which limitations can be placed on human rights and freedoms, are defined by law. 3. The law must define the principles, the areas, and the manner of compensation for losses caused as a result of the limitation of human rights and freedoms during the periods in which extraordinary measures are taken. 4. Acts taken as a result of extraordinary measures must be in proportion with the level of risk and must aim to re-establish the conditions for the normal functioning of the state, as soon as possible...”

Law No. 8194 of 2 March 1997 entitled «On Extraordinary Measures in Cases of Severe Violations of Constitutional and Public Order» also regulates derogations.

An emergency situation involving severe violations of the constitutional and public order, is defined as a situation where, in part of all of the Republic of Albania: efforts are made to violently overthrow the constitutional order; where there is a violent interruption of the activity of State structures; where the weapon depots of the Armed Forces are looted; weapon production facilities are attacked; where national and local state institutions are attacked, and when, due to the likelihood of criminal acts committed against public order and safety, there is a severe threat to the economic life and to individual freedoms.

Article 4 of Law No. 8194 of 2 March 1997 specifies that when an emergency situation has been declared, constitutional rights and freedoms are restricted,

with the exception of those mentioned in Article 41 of Law no. 7692 of 31 March 1993, amending Law no. 7491 of 29 April 1991, "On Main Constitutional Provisions". This amendment specifies that constitutional rights and freedoms are partially restricted.

In 1997, there were numerous cases where student protests in different districts of Albania, primarily in the districts of Vlorë and Tiranë, resulted in the widespread use of violence by police forces. Hundreds of students, protesting against the Democratic Party government, were barbarically beaten in custodial detention facilities of the police commissariats in Tiranë, Vlorë, etc.

5.2. Superior Orders

In some situations, Albanian law ambiguously prohibits the invocation of orders from a superior officer or a public authority as a justification for torture. In particular, Law No 8291 of 25 February 1998, "On the Code of Ethics of the Police" provides that while accompanying, detaining and arresting a person involved in a crime, police officers must strictly follow the legal norms and are categorically prohibited from committing any acts of torture or any other act that damages the personality and dignity of the person (Article 6 §2). Police officers must never use force in a manner contrary to the law. They must take and give clear-cut instructions regarding the way and circumstances under which they can use force and firearms (Article 10).

Article 8 provides that police officers are criminally, administratively and civilly responsible for the acts or omissions, committed on their own initiative or against orders, or for carrying out an order other than in the form provided by the law or the regulation, or for carrying out orders given by persons or organs that are not competent.

Police officers are responsible for executing orders that are clearly against the law. In cases where an illegal order is given formally and according to the rules, the executing police officer will be held responsible for the act if previous to executing the order he had a chance to notify superior bodies and did not do so or if after the completion of the act he does not notify the superior bodies of his concerns. According to Article 12, when a police officer is asked to perform an order or duty that is openly against the law, he is obliged to refuse and to inform the higher chain of command.

STATE VIOLENCE IN ALBANIA

Articles 6 and 7 of Law no 8321, dated 02 April 1998, “On the Prison Police” provides that prison police officers are obliged to execute the orders conveyed by their superiors. Orders must be given in accordance to the authority vested in the official and with respect for the law and the dignity of the individual.

Written orders, even those that could be considered unlawful, must always be executed. This is unless they are blatantly unlawful. When verbal orders are issued, the executing officer has a right to request that they be written out. This must be complied with and preferably in advance of the order being executed. Superiors are always responsible for unlawfully issued orders and share responsibility with the inferior officer if the procedure has not been followed. Executors are always responsible if they carry out clearly unlawful orders.

AHRG’s analysis of cases has revealed that most violations have not been caused by instructions or directions from superiors rather they are the result of individual actions of certain officers, performed on their own initiative. Therefore, violence carried out by officers is not institutional or committed as part of a plan from central institutions.

However, AHRG reiterates that detainees must be informed of their human rights and liberties defined in the law “For the Rights and Liberties of Imprisoned” and should not be afraid to complain about irregular actions by administrative or prison staff.

6. Arrest and Interrogation

6.1. Legal Framework

Article 27 of the Constitution states: “1. No one’s liberty may be restricted except in the cases and in accordance with the procedures provided by law. 2. A persons freedom may not be limited, except in the following cases: a. when he is sentenced to a term of imprisonment by a competent court; b. for failure to comply with the lawful orders of the court or with an obligation set by law; c. when there are reasonable suspicions that he has committed a criminal offense or to prevent the commission by him of a criminal offense or his escape after its commission; d. for the supervision of a minor for purposes of education or for escorting him to a competent organ; e. when a person is the

STATE VIOLENCE IN ALBANIA

carrier of a contagious disease, mentally incompetent and dangerous to society; f. for illegal entry at state borders or in cases of deportation or extradition. 3. No one may be deprived of liberty just because he is not in a condition to fulfil a contractual obligation.”

Article 32 of the Constitution prohibits statements obtained under torture: “1. No one may be obliged to testify against himself or his family or to confess his own guilt. 2. No one may be declared guilty on the basis of data collected in an unlawful manner.”

The Criminal Code criminalizes statements obtained under torture (Article 312 CC “Use of Coercion or Threat to Obtain False Testimony, Expertise or Translation”, Article 314 CC “Use of Violence During Investigation”) and the Criminal Procedure Code prohibits the use of statements obtained under torture (Article 151 CPC “The Taking of the Proof” and Article 316 CPC “Cases of Custody of Evidence”).

6.2. Practice

6.2.1. Arrest

a. The Case of Ilir Duka (2002)

On February 8, 2002, police forces from Police Station No. 1 in Tiranë inspected the house belonging to Mr. Ilir Duka (Roma). This inspection occurred late at night and without a warrant for a house inspection. Mr. Duka was subsequently taken to the police station where he was mistreated by a police officer whose last name was Armelis. Based on information obtained by AHRG, there is evidence that this officer has used violence in other cases. The mistreatment and violence used against Ilir Duka, resulted in bruises all over his body, vomiting, and dizziness. The police officer also used psychological pressure by threatening to kill him.

b. The Case of Fotjon Guxholli (2003)

According to investigations in the City of Pogradec, on 24 June 2003, the Complain Centre (CC) observed the mistreatment of Mr. Fotjon Guxholli, 20 years old, at the city’s police station. The CC made

STATE VIOLENCE IN ALBANIA

contact with the victim as well as with other eyewitnesses. According to the victim, Fotjon Guxholli, “They treated us very badly there, whereas the next day, police inspector Melsi hit us with a handheld radio and the rubber stick several times. In the meantime, he called us names and offended us. The next morning, we were forced to sign a statement claiming that the police had not mistreated us...»

c. The Case of Gazmend Tahirllari (2003)

AHRG expresses its concern over an incident that occurred in the village of Goskova, District of Korça, in which Gazment Tahirllari, a 35-year-old man, lost his life following mistreatment by police forces at the Korça Police Station.

Based on collected information, AHRG found out that on January 3, 2003 Gazmend Tahirllari was asked by police forces to accompany them to the police station after his wife had accused him of hitting her. Following the refusal by Gazment Tahirllari to follow, the group on duty began to use violence against him including the use of hard objects to hit him on his head and body. According to family members, the mistreatment continued for several minutes until the victim fell to the ground unconscious. A police van brought him to the district hospital where doctors failed to save his life.

Although the victim’s body showed apparent injuries, the initial statement from hospital forensics stated that the cause of Gazment Tahirllari’s death was excessive use of alcohol. His autopsy file stated, “Alcoholic acute intoxication coma and undefined trauma”. The members of the victim’s family were not allowed to look at the corpse until police forces left the hospital one day later.

Whether or not it was the actual cause of death of Mr. Tahirllari, the battering in itself is a grave and open violation of human rights by police forces. Relatives of the victim confirmed the injuries to his skull, face and limbs.

By the end of 2002, AHRG has observed an increase in violence incidents, particularly in Korça, Pogradec and Vlora. Furthermore, in all cases that were reviewed the mistreatment was very grave.

AHRG asks:

STATE VIOLENCE IN ALBANIA

The Ministry of Public Order to stop being indifferent and take this issue into consideration and bring the perpetrators to justice;

The Korça District Prosecutor's Office to conduct a fair investigation in order to clarify the events and prosecute the perpetrators;

That the public be made aware of such grave incidents as they cause severe repercussions to Albanian society, such as fostering a sense of mistrust of the police and creating an atmosphere of fear and intimidation.

AHRG will continue to follow the investigation of this case until it has been fully dealt with and the perpetrators are publicly known.

d. The Lazarat Event (2004)

After being notified of an event that occurred in Lazarat on Thursday 28 October 2004, AHRG immediately sent a Monitoring Group to Lazarat for investigation. The group contacted the inhabitants of Lazarat, local authorities, journalists and doctors of the Gjirokastër hospital.

According to the information that was obtained, on Wednesday 27 October 2004 at around 9.15 p.m., Special Forces of the RENE unit, backed by Gjirokastër police forces, organised an operation to seize several wanted individuals in Lazarat. The operation focused on two bars in the centre of the village, the belonging to D.A. and Altin Bejko, where many villagers were watching a football match.

Police forces entered the village centre in an armoured white van with Shkodra license plates and in a brown Mercedes Benz, type 240D. They were wearing dark clothes and hoods and had black paint on their faces. On the way to the village centre, they picked up a villager called M.K. in order to keep their police operation secret.

Police forces entered Altin Bejko's bar and immediately opened fire without warning. When this happened nine people were at the bar, three of who were minors. The police officers were equipped with automatic weapons and laser snipers. They shouted names and asked that these people raise their hands in the air at which time they pushed them out of the bar and up against a wall. The others were asked to sit on their knees and were then forced to lie down with their heads toward the wall, while being hit and insulted.

STATE VIOLENCE IN ALBANIA

While the bar owner, Altin Bejko, had his hands in the air and was facing the wall one of the special force policemen, using very harsh language, asked him to sit on the ground. Altin turned his head to look at him when a special force policeman, just one metre away from him, hit him with his weapon and wounded him in the abdomen. After forcing the victims to lie down, four of the men kicked them and dealt severe blows with their weapon butts. Some of the mistreated people are I.A., M.M., and G.T.

Meanwhile, a few of the policemen went up to the other bar, located on the second floor where there were about twenty people. Upon entering the bar, they opened fire and also threw a blinding grenade, which slightly wounded Abaz Rrapi and Shkëlqim Basha. Police blocked both entrances of the bar and asked all the people to lie down. Razip Mahmutajin was taken into custody, as he was wanted by the police. Some of the other individuals were mistreated. One of them was Gentjan Pollo, an algebra teacher at the village high school, who was taken away by the police along with the Razop Mahmutakin and Feruz Hiri.

According to the information that was obtained, at the same time a white Mercedes Benz was driving by the village centre and the driver of this car stopped when asked to do so by the police but he exited the car and ran away. Police forces fired repeatedly in his direction, which caused severe damage to the car. Other bullets penetrated the iron gate of Tafil Skëndi's house, damaging his car that was in the courtyard as well as the first floor of his house.

While transferring the arrested individuals to the police commissariat, the police officers used violence against Gentjan Pollo, which caused severe wounds. The victims were released after the District Prosecutor, Fredi Agolli, had interrogated them. Razip Mahmutaj was sent to Tirana.

Altin Bejko, was born in 1974 and married with two children. His friends took him to the hospital. The hospital's diagnosis was "Vulnus sklopetarum torako-dominal" – wounding by fire weapons at which point he underwent surgery. Gentjan Pollo's hospital diagnosis was "Fractur anasi contusio toraksi" – fracture in the nose. Gentjan Pollo was born in 1977 is a teacher of algebra and physics at the village high school. Other people who were treated in the hospital include: Çlirim

STATE VIOLENCE IN ALBANIA

Proko suffered broken fingers, cuts to his head and other haematomas to his body and Abaz Rrapi was treated for a thigh wound.

AHRG contacted local police official, officials from the Ministry of Public Order, who had arrived in Gjirokastër, and the serious crimes prosecutors who were investigating the case. Based on these contacts the Group noted:

Although the RENE special forces were meant to conduct a regular and lawful police operation to arrest wanted individuals, they unnecessarily and without any warning opened fire inside the bars (bullet traces clearly show that the individuals inside the bar did not fire any weapons), used very harsh and insulting language when talking to the patrons, mistreated the individuals lying on the ground, unnecessarily used their weapons outside the bars, which created a situation of panic and endangered the lives of the citizens in the house nearby the site, and unlawfully used violence against the detainees during the transfer to the police commissariat both while in the white van as well as when they were in the police commissariat yard.

According to the official version from police:

There were no armed individuals and nobody escaped from Altin Bejko's bar. The official release of the ministry states that Altin Bejko fired a weapon at the police. However, no measure was undertaken to detain him and no weapon was located. In fact, he was hit without any reason while he was standing with his hands in the air and left wounded. In addition, the lack of an arrest warrant or any other charge against him refutes the official version provided by the Ministry.

AHRG declares:

The leaders of the operation and the members of the special forces showed a lack of professionalism and went beyond their authority as prescribed by law and threatened the lives of innocent individuals. Furthermore, they used unjustified force against the detainees.

The Ministry of Public Order should acknowledge their responsibility and truthfully investigate the events. They must hold the guilty persons responsible for their actions and do so without making inflammatory statements that antagonise the relationship between the community and the police.

STATE VIOLENCE IN ALBANIA

Furthermore, AHRG calls on the Prosecutor General of the Republic to exercise his authority and hold a full and objective investigation of the event so that the perpetrators are brought to justice. The Albanian Prosecutor's Office should demonstrate professionalism and independence, in order to avoid misinterpretations and abuse regarding this event. The results of which would be an increase in the level of public trust, particularly of the Lazarat community.

AHRG urges media outlets and reporters to show objectivity, neutrality and farsightedness in handling such events; in particular they should avoid making generalisation about specific groups.

AHRG also calls on all political parties not to politicise these events nor use them for their own interests but rather have focus on respect for human rights and freedoms and the enforcement of national legislation, such as the Constitution and International Conventions.

6.2.2. Interrogation

The interrogation of defendants by judicial police officers continues to give rise to violations of individual rights and freedoms, in particular to acts of torture and other cruel, inhuman or degrading treatment or punishment. These violations occur under the guise of investigating crimes, carrying out official duties and fulfilling much wanted objectives. With support from the police forces, investigators, from the first contact with defendants, tend to investigate in a manner that often violates procedural guarantees. For example, during interrogations defendants do not always have access to a lawyer. While during legal proceedings, defendants who cannot afford a lawyer are assigned a lawyer by the State. The majority of the State-assigned lawyers do not execute their assigned duty rather, they tend to help the prosecution, which further damages the defendant.

These procedural violations often give rise to other violations such as torture and other ill-treatment. During monitoring missions in 2003-2004 of Albania's police commissariat's detention facilities, AHRG was informed that judicial police officers use violence and a variety of psychological tactics in order to force defendants to testify.

According to the cases submitted to its offices, by way of individuals, specialist investigators and victim testimonies, AHRG discovered that in addi-

tion to procedural violations, other abusive practices employed by the judicial police predominately include the use of violence.

a. The Case of Gentian Zera (2001)

Gentian Zera (from Korça) was an emigrant worker in Greece since 1991. He returned to Albania in 1997 to visit his mother who was in hospital. Afterwards, he returned to his work in Greece. He returned to Albania in the beginning of 2004 to visit his family and was arrested for a criminal offence under Article 141 CC (Robbery in Cooperation with Others). The Prosecutor's Office in Korça claimed that the crime had taken place while Mr. Gentian Zera was in Albania to visit his mother (i.e. between 1997-1998). Although friends of his have been found guilty, and sentenced to a prison sentence of seven years imprisonment, Mr. Zera stated that he had nothing to do with this crime. (His friends have since been released.) The prosecutor claimed that another person was involved in this crime, namely Mr. Gentian Zera, but did not provide any evidence or witnesses to support his accusation.

In 2001, AHRG met with Mr. Zera at Prison 313 in Tirana when he was detained with some other men during a routine police operation in Korça. While in the pre-detention cells, he was tortured and mistreated for three hours including being tied to a metal bed. He was forced to sign a statement in which he acknowledged his presence at the scene of the crime and was armed and ready to participate in the robbery together with the other perpetrators. At the beginning, he resisted signing this statement because he had nothing to do with the crime but then the policemen punched and hit him with the leg of a chair for more than an hour. He only recognised one of the policemen, named Adi, who was the inspector of the area. He stated that he had been psychologically tortured by Korça police forces and was threatened by the police not to tell anyone about the mistreatment. The policemen used violence to force him to sign the statement and promised him that this statement was only a procedural matter, which would not result in anyone being charged. The policemen then used the statement to arrest Mr. Zera. Mr. Zera notified the authorities, which were transferring him to the Court of Grave Crimes in Tirana, of the events surrounding the taking of his statement. Although the case was within the jurisdic-

STATE VIOLENCE IN ALBANIA

tion of the District Court of Korça, Mr. Zera was held in the pre-detention cells in Korça. Despite attempts by the prosecutor to get the statement admitted as evidence, Mr. Zera's lawyer successfully objected to its admission. The case is pending and AHRG is continuing to monitor the court sessions.

b. The Case of Gjon Gjonaj (2001)

On March 11, 2001 at 00.40 a.m., Mr. Gjon Mirash Gjonaj, a 48-year-old teacher, residing in Laç was found dead in the interrogation area at the Rreshen police station.

This event shocked the public and as a result representatives of AHRG visited both the LaËi and Rreshen Police Stations and contacted the chiefs at both police stations who provided the following official version of events:

At 4 a.m. on 10 March, Gjon Gjonaj was brought to the LaËi Police Station for verification regarding the murder of a policeman named Astrit Balozi who was a member of the Special Forces. Zef Ndre MalËi was brought to the station along with him. At 5 p.m. on March 10th, Gjonaj and MalËi were taken to Rreshen Police Station, under the pretext that there was no room in the interrogation area of the LaËi Commissariat. At 9 p.m., the Chief of the Criminal Police interrogated Gjon Gjonaj for about 20 minutes. At 4 a.m., Gjon Gjonaj's body was found in one of the rooms of the police station. It appeared that he had committed suicide.

After receiving this information, checking register for people brought into the police station on March 9th and 10th, and investigating the area where the victim's body was found, AHRG concluded:

Regardless of the reasons that led to the death of Gjon Gjonaj, the fact that it happened in a police station means that they are responsible for his death. As a person brought in for questioning, Gjon Gjonaj should not have been held for more than 10 hours, rather the questioning should have only lasted from 4.00 to 14.00 on March 10, 2001. In total, Gjon Gjonaj was kept for around 20 hours without a court order for a prison arrest.

STATE VIOLENCE IN ALBANIA

In violation of the guidelines for questioning people, Gjon Gjonaj was sent to Rreshen Police Station at 7.00 p.m. A review of the register of people brought into LaËi police station on March 9-10 reveals that 15 people were released a few hours beforehand. Therefore the claim that his transfer was necessary because the interrogation rooms were overcrowded was without basis. An examination of the registers from both police stations showed noticeable irregularities, mainly regarding changes to when they left LaËi police station and when Gjonaj's body was found. The official records of the personal searches performed on Gjon Gjonaj by staff at both police stations could not be located. In addition, there is no record of the interrogation session carried out by the Chief of Crimes at 9.00 p.m. on March 10, 2001.

AHRG found that there were serious procedural violations committed when the police transported Gjonaj to the police station. There are serious questions about the work of police employees at both Rreshen and LaËi police stations. AHRG calls on the Military Prosecutor's Office to carry out detailed, rapid and professional investigations into this case. It also calls on all parties to present the facts to the competent organs in order to assist in the resolution of this case.

c. The Case of Sabaudin Çela (2002)

Sabaudin Çela, a 34-year-old from the city of Vlora, was tortured a number of times by Criminal Police Chief, Alnor Hasa.

On February 12, 2002, Sabaudin Çela was brought in as a suspect in a crime against the Vlora police station. He was kept in a cell for over ten hours, which is in violation of the Rules of Procedure. During his interrogation, the Chief of the Criminal Police, Alnor Hasa, and three other police officers physically abused him by hitting him on his palms and feet.

On March 5, at around 8.30 p.m., the victim was kidnapped at gun-point once again by the Chief of the Criminal Police Hasa and three other persons. They dragged Çela into a white car with private license plates and were accompanied by another car to the outskirts of the city. Çela's face was covered during the car-ride. After arriving in the outskirts, Sabaudin Çela was threatened and beaten by the Chief of Crimes and the other five people. For four consecutive hours, he was

STATE VIOLENCE IN ALBANIA

hit with hard items including a pistol butt and batons, and six cigarettes were extinguished on his body. Afterwards, he was left unconscious near his house where a neighbour found him and took him to the city hospital.

On March 6, Alnor Hasa went to hospital and threatened Çela that if he reported him, he would kill Çela and his family.

On March 7, AHRG representatives travelled to the City of Vlora where they contacted the injured man, members of his family and the head of the local police. The following injuries were noted: cigarette burns on his chest and left arm (six marks were noticeable) and serious injuries to the central part of the back, his head and on both legs. The victim could not move his left leg. According to the forensic examination, the diagnosis was *contuzio corporis* – grave body contusions.

Based on their investigation, AHRG concluded:

The Chief of Crimes, Alnor Hasa, not only violated Albanian law by torturing Sabaudin Çela, but also violated international conventions that have been ratified by Albania. Immediately afterwards, Vlora Police Director, Mr. Gj. Loka, suspended Alnor Hasa from his job and the District Prosecutor's Office initiated investigations.

AHRG sent a letter to the General Director of Police, Mr. Bilbil Mema, the Commission of Discipline and Inspection at the Ministry of Public Order, the Minister of Public Order, Mr. Stefan Çipa, and the General Prosecutor, Mr. Arben Rakipi, notifying them that this case involved a Judicial Police Officer and asked them to dismiss Alnor Hasa from the post of Chief of Crimes. They also asked the court that had jurisdiction over this case to resist corruption and try this case fairly.

AHRG expressed its concern over such extreme instances of the use of violence against citizens and asked the Ministry of Public Order to be more attentive and take stronger disciplinary and administrative measures towards those who violate the law and human rights in order to deter future incidents. Meanwhile, it also called on police officers to be responsible while enforcing the law as they were in the service of the State and its citizens.

AHRG asked judicial police officers to cease using intimidation to obtain evidence and instead demonstrate professionalism in accomplishing the duty they have undertaken to carry out.

STATE VIOLENCE IN ALBANIA

d. The Case of R.Z. (2002)

On February 15, 2002, R.Z., a student at the Harry Fultz School, was taken by two civilian police officers from Police Station No. 1 Tiranë, in the vicinity of the dormitory belonging to the artistic lyceum “J. Misja.” The civilian police officers asked R.Z. for information about the robbery of a mobile phone from the dormitory where he lived. They threatened him and then took him to the police station where he was questioned in one of the offices on the third floor. During this time he suffered blows with a rubber stick on his back, palms and legs. He was detained at 9.00 in the morning and was not released until 22.30 in the evening, which is in violation of detention guidelines. Even after AHRG had asked the senior officers of the police station about this case, two police officers returned to the dormitory where R.Z. was staying, called him names and threatened to beat him again, unless he provided the names of the people who had committed the robbery. These actions forced R.Z. to seek alternative shelter for fear of repeated mistreatment.

e. The Case of Festim Bajrami (2004)

Festim Bajrami was arrested in April 2004 for robbery that may or may not have taken place (as supposedly the stolen object was found close to a waste bin and had been there for quite a few days).

QANK³¹ visited F. Bajrami in the pre-detention cell at Korca Commissariat. He complained that he had been mistreated by the police during his arrest and beaten during interrogations.

f. The Case of Besnik and Petrika Kosturit (2004)

The Kosturit brothers (Roma) were severely mistreated by the Head of the Criminal Police in Korçë, Oltion Agolli, who wanted them to become informers. The Complaints Centre contacted senior officers of the Korçë police. The Director of AHRG also made a public statement denouncing this mistreatment. Several days later, the Criminal Police Chief was suspended from his duties pending hearing of the case. The

31 Part of AHRG, which deals with the monitoring and documentation of Human Rights Violations.

Internal Control Service continues to investigate the case. The injured men filed a complaint against police officer Oltion Agolli and the Prosecutor's Office is currently dealing with this.

7. Custodial Detention and Detention

7.1. Legal Framework

Article 28 of the Constitution states: “1. Everyone whose liberty is taken away has the right to be notified immediately, in a language that he understands, of the reasons for this measure as well as the accusations, which have been made against him. The person whose liberty has been taken away shall be informed that he has no obligation to make a declaration and has the right to communicate immediately with a lawyer, and he shall also be given the possibility to exercise his rights. 2. According to Article 27 (2)(c), a person whose liberty has been taken away must appear before a judge within 48 hours of receiving the accusations against him. Within this time period, the judge will decide whether to detain or release. 3. A person in custodial detention has the right to appeal the judge's decision. He has the right to be tried within a reasonable period of time or to be released on bail pursuant to law. 4. In all other cases, the person whose liberty is taken away extra judicially may address a judge at anytime, who shall decide within 48 hours regarding the legality of this action. 5. Every person whose liberty is taken away pursuant to Article 27 has the right to humane treatment and respect for his dignity.”

7.2. Practice

AHRG has conducted various monitoring missions to the police commissariats detention facilities located in all districts of the country and to the institutions where sentences are served. These facilities are often where Albanian or foreign citizens have been subjected to torture and other cruel, inhuman or degrading treatment or punishment.

Standards in custodial detention and detention facilities remain far below the minimum international standards. The missions revealed qualitative and quantitative problems with regards to the food served to detainees and other

STATE VIOLENCE IN ALBANIA

services such as personal hygiene, fresh air, etc. Overcrowding of detention facilities, mainly due to the numerous delays in the processing of cases by courts or the Prosecutor's Office, obviously contributes to the poor detention conditions.

7.2.1. Police Commissariats Detention Facilities

In the majority of cases, it has been evident that police officers use violence against citizens right from the start of their detention.

According to the records of the Durrës Police for 2003, 150 disciplinary measures were imposed. Five of them were at the highest levels while five others involved the dismissal of police officers. Of the latter group of five, three were caught in the act of committing abuses.

A Report prepared by the Complaint Centre (CC), covering the period of August-October 2003, highlighted numerous problems in the way police operate in detention facilities in Tiranë police stations and in the Police Directory of Durrës. Throughout the monitored time, numerous cases of mistreatment of detainees were observed as well as other serious legal violations by police officers. These violations were either intentional or caused by stress at the work place i.e. psychological pressure and long working hours. Juveniles were often not granted the right to be represented by a lawyer, and there were cases where individuals were detained longer than the maximum 10 hours stipulated by Albanian legislation. Furthermore, members of the CC encountered a series of problems. For example, often times the police did not allow them to check the Register of Detentions and Arrests.

AHRG has held a series of meetings with senior police officers in Tirana and other districts. In most cases, the senior police officers offered to cooperate to eliminate the maximum "episodes of violence" and abuse of the detainees' rights by the police officers. The majority of human rights violations occur in other districts and have been carried out by elite police forces referred to as Ready Groups. In some cases, local heads of police have highlighted the difficulty of controlling these groups within the police force.

a. The Case of Zef, Dodë and Gjokë Përgjini (2002)

In April 2002, the police at Lezhë Station mistreated Zef, Përgjini, Dodë Përgjini and Gjokë Përgjini (all residents of Lezhë), while they

STATE VIOLENCE IN ALBANIA

were held in the detention rooms at the station. Following the detention of the three men, the court decided to leave them in custodial detention indefinitely, thus classifying the detention as legal. Representatives of the Democratic Party claim that the Përgjini brothers are party activists and claim that they were detained and mistreated for political reasons. AHRG has attempted to contact the detainees but has been unsuccessful because of the absence of senior officers at the Police Station.

b. The Case of Andrea Kote (2003)

On June 18, 2003 several Korçë police officers while dressed in civilian clothes mistreated two people and escorted them to the nearest police station. According to an investigation by AHRG in Korçë, on 21 June 2003, Andrea Kote saw a friend of his being mistreated and asked for an explanation from the people detaining him. In response the police hit him, and then he was taken to the police station. Police mistreated Andrea Kote until he lost consciousness. Procedural information on this case indicates that he was kept secluded in isolation cells for about three days, under the justification that he was “considered to be under house arrest.” Four days after the mistreatment, a dark bruise was apparent on the left eye.

c. The Case of Astrit and Nazmi Kreka (2004)

Astrit and Nazmi Kreka, two brothers sentenced to 18 years of imprisonment for trafficking in human beings, were detained in pre-detention cell No.1 at the Korca Commissariat for more than a year and a half. They complained of mistreatment by Butrint Roshi and Erjon Bici, the police officers who interrogated them and of mistreatment by officer Ramadan Balliu while they were in the detention cells. QANK met the heads of commissariat to clarify the issue, however, they denied that their colleagues inflicted any mistreatment. One of the two brothers also complained about their transfer to the camps where sentences are served.

STATE VIOLENCE IN ALBANIA

d. The Case of Tom Gjon Zefi (2004)

Tom Zef Gjoni, born on 2 January 1961, was sentenced in absentia to five years imprisonment for “serious injury”. He had been in the detention cells at Lezha Police Directorate for 55 days when he complained: “about a month ago, when I was ready to start a hunger strike, mobile groups mistreated me, arguing that I should stop the hunger strike”. When asked about this case, the Chief of Crimes at the Lezha Police Commissariat said that in cases when the detainees or sentenced persons do not obey orders given to them force is used. They stated that the use of violence is always done in accordance with the regulations. However, AHRG has found that neither violence nor force was justified in this particular case.

e. The Case of Met Gjabri (2004)

Met Gjabri, a 26-year-old, was accused of “trafficking in narcotic substances”. His case is pending before the Court of Appeals and he has been held in the pre-detention cells at the Lezha Police Directorate for 13 months. According to Gjabri: “I and A.S. were seriously mistreated at 8 a.m. on August 5, 2003, in room No.11 by Deputy Commander, Pal Shkempi, of the Quick-Intervention Force. The policemen swore and offended me using really strong vocabulary. My cellmate, Arben Stojani, who has been transferred to the camps for serving sentences, attempted suicide, however, he survived thanks to medical intervention. I reported this mistreatment to my lawyer, but nothing happened. If I am not transferred 10 days after the final judgment, I will start an endless hunger strike.” As far as the living conditions inside the detention cells are concerned, M.G. said: “The meetings with relatives do not last longer than three minutes. We are only allowed to stay in the airing rooms for about one hour.”

f. The Case of Bashkim Mema (2004)

Bashkim Mema is currently being detained in the Pre-Detention Section at the Lezha Police Directorate on a charge of “theft in cooperation”. B.M. has leveled severe accusations against the police personnel that work in the pre-detention premises. “When asked to open the door for personal needs, policemen in general started to insult us...

STATE VIOLENCE IN ALBANIA

in this place the detainees are beaten every day by the pre-detention policemen. They have beaten all of us. It is useless to complain because they will continue to beat us.” The Chief of the Pre-Detention Section declared: “as a rule, in this commissariat, the doors of detainees are opened 6 times a day (twice in the morning, afternoon and in the evening) and the doors are opened again only if the detained person is sick.”

g. The Case of Gani Shehut (2004)

The victim claims that he was mistreated during detention by police forces of the District of Elbasan. The Complaint Centre (CC) contacted senior officers of the police station but they denied the mistreatment. The CC contacted the Director of Police of Elbasan requesting that an investigation be undertaken by the ICS (Internal Control Service) and that the culprits be punished.

7.2.2. Prisons

Although the situation in prisons is less problematic than the situation in detention facilities, there are still flagrant cases of violations of human rights and cases involving the use of violence against convicts.

Throughout the above-mentioned monitoring missions, it was apparent that Albanian prisons continue to suffer from overcrowding, related problems, and abusive treatment of prisoners by the prison personnel.

8. Complaint, Investigation, Prosecution, Compensation and Rehabilitation

8.1. Complaint

An individual whose rights have been violated may bring a complaint before the domestic courts, the constitutional court and the ombudsman.³²

32 See part on the institutional framework.

According to Article 48 of the Constitution: “Everyone, by himself or together with others, may direct requests, complaints or comments to the public organs, which are obliged to answer within the time periods and conditions set by law.”

8.2. Investigation

Based on AHRG’s monitoring of specific cases and the study of police violations in general, it has been observed that investigations into this kind of police abuse are conducted in the same manner as investigations into offences of a higher or even lower degree of severity. There is a lack of initiative, which is apparent from the beginning of proceedings, to investigate and conclude complaints of this nature.

The Prosecutor’s Office and the judicial police tend to not follow procedure for the collection of evidence or they neglect to initiate authentic proceedings that will result in the perpetrators being punished. This is primarily due to police officers closing rank in order to protect their own. It is also due in part to the fact that this penal offence is rarely punished in Albania. Apart from the process of evidence collection being prolonged, there are also marked irregularities and numerous procedural violations including the use of biased experts. Another aspect that has a negative impact on the investigation and dispensing of an offence is the fact that eyewitness evidence is usually incomplete because witnesses fear revenge by the perpetrators and the lack of protection for witnesses in the law. Considering the current conditions of the Albanian State, AHRG emphasises the need for an authentic witness protection law.

8.3. Prosecution

There is a range of criminal charges pertaining to police abuse and in fact torture is classified as a special crime. Despite this classification, prosecutions involving police torture are few in number. The failure to take measures against perpetrators, even when they are repeat offenders, is another factor that indicates State negligence. AHRG notes that only in cases where issues become public or where society applies pressure on senior officials, are measures taken regarding the perpetrators.

8.4. Compensation and Rehabilitation

Pursuant to Article 44 of the Constitution: “Everyone has the right to be rehabilitated and/or indemnified in compliance with law if he is damaged because of an unlawful act, action or failure to act of the state organs.”

A civil suit for compensation may be initiated either in the initial phase of an ongoing criminal trial (in cases of criminal proceedings initiated as a result of the commission of the criminal offence of torture) where evidence in the criminal trial may be used in civil proceedings or it may be initiated as a separate civil process whereby compensation or remuneration is requested for unlawful and punishable actions or omissions. Despite the existence of legislation to facilitate compensation, the delay in implementation caused by the inaction of the Albanian judiciary remains an obstacle to obtaining compensation.

For 45 years many Albanian citizens were accused, judged, sentenced and imprisoned for political acts, thus their civil, political, economic and cultural rights were continually violated. The first pluralist parliament of the Republic of Albania decided to create a fair and honest legal system to fully comply with the laws and rules that protect basic human rights. A program for national reconciliation, which has been approved and is currently under consolidation, guarantees all Albanian citizens the ability to exercise their rights in order to establish a free and democratic society. The People’s Assembly, making use of its competences, has recognised the innocence of those formerly imprisoned and prosecuted for political reasons, and has requested pardons for past political sentences and suffering. The government will take all necessary measures to compensate and rehabilitate all persons who have unjustly been accused of violence and thus ensure material and moral support for their total re-integration in society. Since 1991, several laws on innocence, amnesty and rehabilitation have been adopted in Albania.

Appendices

1. The Situation of Roma

a. The Case of Selim Selimi (2002)

AHRG is concerned about the case of the mistreatment of Roma citizen Selim Selimi by one of the police officers at the Police Station in Korça.

Through its Co-ordinator in Korça, AHRG immediately contacted the victim at the city's civilian hospital and collected the necessary information from the Chief of the Police Station, Mr. Fatmir Hoxha.

Following the investigation, AHRG notes:

On December 6, 2002, Selim Selimi, who was 50-years-old, went with three friends to a bar owned by the father of Sokol Burishta, a police officer in Korça. They ordered several times and paid either the owner of the bar or his son. When they got up to leave, the bar owner, unaware that they had paid his son, told them that they had not paid for their orders. After things were cleared up, Selim walked out of the bar and Sokol Burishta, the older son of the bar owner, dressed in civilian clothes approached Selim and said: "Why is it that you do not want to pay". Once the latter began to explain, the former punched him in the face and kicked his body and legs. After that, Sokol Burishta took out his handgun and hit the victim several times on the head with the butt of the gun. Selim fell unconscious.

His friends brought the victim to the civilian hospital. The doctor explained that as a result of the punches, Selim Selimi had suffered serious injuries to the head, a fracture and swelling on his face and bruises to his legs. He remained under intensive medical treatment for 48 hours. AHRG representatives observed the bruises and haematomas on his body, head and limbs were.

Despite receiving several threats by relatives of Sokol Burishta to withdraw the charges, the family members of Selim Selimi filed a suit with the Prosecutor's Office.

Sokol Burishta, while off duty on the day of the event, abused his powers as a police officer by severely mistreating Selim Selimi for personal

STATE VIOLENCE IN ALBANIA

reasons. The Chief of the Police Station in Korça dismissed him from his duties pending the hearing of the penal case against him, on charges of “abuse of duties”.

AHRG has dealt with the issue of mistreatment of the Roma community in Albania several times and has highlighted that this section of society continues to be humiliated or suffer discrimination from police service members. Noting that the Roma community in the District of Korça is one of the largest in Albania, AHRG notes with concern that this case speaks of recidivism in this district.

AHRG asked the Ministry of Public Order to denounce such grave acts and bring perpetrators to criminal justice, by supporting Korça Police Station Chief’s decision to dismiss his subordinate, Sokol Burishta.

The Ministry of Public Order should give priority to evaluating how its police forces feel about respect for and protection of citizens’ rights, especially involving minorities and also provide support for denunciations and measures taken by its local chiefs against the perpetrators of such violations.

2. The Situation of Former Political Prisoners

Political prisoners who suffered during the dictatorship and who are still in very poor condition represent one of the main human rights issues in the country.

At 11 a.m., on April 22, 2004 former political prisoners protested in front of the People’s Assembly against the Albanian parliament decision not to discuss the draft law on compensation for political prisoners for the time they spent in jail. Three associations representing formerly persecuted political opponents had obtained the necessary permit to stage this protest from the Police Directory of the Tirana District, in keeping with law No. 8773 of 23 April 2001, “On Rallies”.

The protest began peacefully but then confrontations broke out between protestors and the police. The physical violence employed by the police forces led to the mistreatment of some protesters. According to the Press Office of the Ministry of Public Order, 21 individuals were

STATE VIOLENCE IN ALBANIA

brought to Commissariats 1 and 4 in Tirana. According to the Chief of Commissariat No. 1, the 13 detainees were kept for about one hour, in compliance with normal detention procedure and were then released.

However, the Head of Former Political Prisoners of the Tirana Branch, Mr. Fatmir Hoxha, claimed: “he and eight other persons were forcefully taken by the police and were mistreated in the police van on the way to the police station and where then kept at the station for about five hours”.

After the protest had ended, the Tirana Police Directory considered the rally in violation with the law “On rallies” and asked the Prosecutor’s Office in Tirana to initiate criminal proceedings against four of the organisers of the rally: Adem Allçi 60-years-old, Afrim Hançi 58-years-old, Kurt Kola 80-years-old and Fatmir Hoxha 45-years-old, on charges of committing criminal offences under Articles 262 and 223 of the Criminal Code, “Organisation of and Participation in Illegal Rallies and Manifestations” and “Public Appeals for Violent Acts”.

The former political prisoners organised another protest on 26 April 2004 at 6 p.m., in front of the parliament building, where they called for the approval of the draft law “On the Compensation for Unjust Imprisonment of Formerly Politically Imprisoned and Executed of the Republic of Albania”. The protest remained peaceful.

AHRG has followed the issue of politically persecuted persons for a long time. In fact, by means of an Open Letter one year ago, the Leading Institutions of the Albanian State were called on to fulfil their obligation under Article 44, namely resolving the problem of the politically persecuted, Chapter II “On Personal Freedoms and Rights”, of the Constitution of the Republic of Albania.³³ The request for compensation for former political prisoners is a legal obligation of the Albanian State, as established by the Constitution, by Article 57 of the Criminal Code “Calculation of Detention” and by Article 268 of the Code of Criminal Procedure “Compensation for Unjust Imprisonment”.

33 Article 44 of the Constitution, “Everyone has the right to be rehabilitated and/or indemnified in compliance with law if he is damaged because of an unlawful act, action or failure to act of the state organs”.

STATE VIOLENCE IN ALBANIA

AHRG expresses its concern over the scarce interest displayed by the Albanian State and the postponement of achieving a final solution to the issue of formerly persecuted political opponents. Despite the existence of an entire legal package that could facilitate the rehabilitation and integration of former political prisoners, Albanian institutions have demonstrated an obvious lack of political will to act in this area.

The draft law “On Compensation for Unjust Imprisonment of the Formerly Politically Imprisoned and Executed Persons in Albania” was drafted on the basis of the work done by the Inter-Institutional Working Group on Pursuing Progress in the Rehabilitation of Former Political Prisoners, which was established by Prime Minister’s order No. 79 of 23 May 2003. At the end of its work, this working group deemed that the costs of this bill were outside of the State budget and consequently suggested that an intermediate solution be adopted. However, they did not present any alternatives.

In spite of the sizeable financial value of the compensation, AHRG argues that a more serious and complete engagement of the Albanian State, in collaboration with the associations of the formerly politically persecuted, would lead to feasible alternatives for the recognition and provision of compensation. The postponement of this issue and the addition of unnecessary steps in order for the draft law to be approved, such as the requirement of an opinion from the Venice Commission with regard to the constitutionality of the draft law, is simply a manoeuvre to protract and transfer responsibility to institutional organisations outside of Albania. Openly avoiding this issue demonstrates the irresponsibility and lack of respect for human dignity that the governing majority has towards these people who suffered severely under the communist regime.

AHRG views the protests by former political prisoners as legitimate and denounces the use of violence by police. Furthermore, AHRG considers the criminal cases against some of the leaders of the above-mentioned associations, as a continuation of State violence and a denial of victims’ rights.

3. The Situation of Homosexuals

Even though a law prohibiting discrimination against homosexuals has been in place since 1994, rights of homosexuals continue to be violated by racist groups and by the police.³⁴

Below is an event, which AHRG investigated in 2003:

On August 30, 2003, AHRG received information that a group of homosexuals had been detained in the police station no. 3 in Tirana overnight and had not been informed of the reason(s) for their detention.

AHRG immediately contacted the officials of police station no. 3, who confirmed that a group of homosexuals had been brought for “verifications”. At 11.30 a.m., the AHRG Co-ordinator went to the police station and the individuals were released immediately. The Co-ordinator observed that the police officials of this police station, including policemen, an Inspector of Crimes, and the Chief of Public Order, Mr. Sullaj, used vulgar language towards the individuals and openly displayed prejudicial attitudes.

According to the records of these police stations, “At 10.40 p.m., on August 29, 2003, 11 individuals, who were in the vicinity of a Park close to the Ministry of Defense, were taken to the police station no. 3 in Tirana for “verifications”. They were released the next day at 11.30 a.m.”.

AHRG concluded:

The arrest and detention of these individuals were in violation of the law. They spent thirteen hours in the detention centre when the maximum permitted by law is 11 hours.³⁵ They were threatened and insulted by the police officials and excessive force was used against them.

34 Police actions turn to be "homophobia", Report on the accompanying to the police stations of a group of homosexuals, Tirana, September 2003.

35 According to Article 45 of the law no. 8553, the accompanied persons, who are not suspects of any criminal act should be treated differently from those being arrested or detained, and in any case they should not be held more than 10 hours.

36 See the AHRG report on the police and detention cells (August 2003).

STATE VIOLENCE IN ALBANIA

Their treatment was far from meeting the minimum standards. For example, they were not allowed to use the toilets.³⁶

AHRG expresses its concerns regarding the situation of homosexuals in Albania, specifically the way that they are treated and discriminated against by the police forces. During meetings with police officials and spokespersons, AHRG asked for a greater level of professionalism from the police, especially in high ranks, with respect to the treatment and ethics that police display for citizens rights and the law.

AHRG is deeply concerned with violations of the law and the way in which the Chief of the Police reacted. AHRG considers the reason for their arrest, i.e. “verification”, was unjustified. Although identity checks are sanctioned by the Albanian legislation, this power is not to be exercised in a manner that would cause the public to question the professionalism of the police. Abuses of this power will not increase the efficacy of police work towards fighting crime and safeguarding public order.

Some statements from people and police officials involved this case:

Student O. B., from Tirana, who was among the arrested stated:

“I was passing there (the park behind the Ministry of Defense) by chance. Ten police officials surrounded us. They took custody of 11 people and brought us to police station no. 3. The police officials smelled of alcohol. We were not informed of the reason why we were being held in the cells until early in the next morning. The reasons given were that I was passing through an area frequented by homosexuals. The police took our mobile phones so that we were unable to contact our relatives until the middle of the next day. We had to spend the night standing on our feet in a cell that smelled of urine.”

E. C. (accompanied by Q. C) explained:

“We were passing through the public garden close to the Ministry of Defense at 10.40 p.m., when we saw two police cars. Some policeman approached us and ordered us to get into the cars. One policeman, who was the driver of the car, hit me several times in the leg, and in the stomach [marks were visible]. While I complained and asked why he was hitting me, he stated: “you homosexual, shut up”. We were brought to the police station and kept all night long in a cell. We were five gays in the detention room. Still, I do not know how they

STATE VIOLENCE IN ALBANIA

recognized that we were all gay. The conditions in the cells were terrible. The mattresses were torn. We were not given bread or water. At 5.00 a.m., we gave 5.000 leks to one policeman and asked him to buy some drinks for us. He did not give us the rest of the money. They took our fingerprints and our pictures as if we were criminals. At 9.30 a.m., a police official interrogated us. He asked questions such as: “who are you? Are you active or passive? Why were you in that area, do you know that it is forbidden? etc.” He also ironically asked me if Q. C. was active or passive. One of the policemen also asked me “do you get paid for having sexual intercourse?” I replied “no”. He told me: “do not answer like that if you don’t want to stay here for 6 more hours”. When we were going downstairs, one policeman said to his colleague: “are the whores leaving?”

Although, the General Secretary of the organization “Gay Albania”, Naser Almanak, was not brought to the police station, he came to the AHRG premises and complained about the case:

“I learned by chance that some homosexuals had been brought to police station no. 3 in Tirana. The Public garden in question has been known for a year and a half as the “homosexuals place”. This is the third or the fourth time that the police carried out a “blitz” operation in this area to catch homosexuals. Sexual intercourse is forbidden in the public areas, but is not forbidden for homosexuals to meet there. The police mistreat homosexuals, use vulgar language, discriminate against them and physically mistreat them. The police explanation of “identity checks” is not legitimate, as all the arrested individuals had identification documents.”

Adrian Shipa, the Crime’s Inspector categorically stated: “We arrested them and brought them to the police station for identity checks and then we released them”. After this explanation, he used vulgar language and stated that they were homosexuals who stayed in the company of a Jordian guy, Naser.

AHRG contacted Chief of Public Order, Pandeli Sullaj, and inquired about the detention of the above-named persons, his response was: “Are you talking about those homosexuals. They were arrested because they were performing sexual intercourse in a public area.” He admitted the fact that there were only 4-5 homosexuals among the whole group and that the others had nothing to do with them. He added that they

STATE VIOLENCE IN ALBANIA

could establish an association and not have sexual intercourses in public areas.

A policeman from this police station, who did not want to be identified, stated that the law on homosexuality was not approved and added ironically that they had arrested them because they were screaming in the middle of the park and were thus breaking public silence.

Beqir Beqiraj, who was the official in charge of Detention Unit, denied the allegations made by the arrested individuals and added that they had been detained in very good conditions and that they had been treated equally. He also stated that according to the law, individuals brought to police station could not communicate with outsiders until identity checks were completed.

(Cases included in this report have been investigated by AHRG and other human rights organizations. In particular, AHRG is collaborating very closely with Amnesty International in investigating and denouncing violations.)

PART II

STATE VIOLENCE AGAINST WOMEN

1. General Background

The length of the communist dictatorship in Albania has made the fight against torture and other cruel, inhuman or degrading treatment or punishment a very sensitive issue not only for lawmakers and various institutions, but also for the population as a whole.³⁷ Without going into detail about the situation of torture and other forms of ill-treatment during the communist regime, we should emphasise that issues of torture and other forms of ill-treatment of Albanian women and girls will be considered as part of the general use of torture and other forms of ill-treatment, in particular torture that was suffered while in prisons and internment camps.

Until the 1990's, Albania was not a party to any international instruments or European Conventions. As a result, the basic rights provided for in the European Convention, especially those in Article 3, were continually violated. Women were persecuted to the same extent as men, and if their spouse was found guilty and sentenced because of differing ideologies, they too suffered deportation and internment together with their children. Hundreds of women and children were kept in internment camps where their freedom was restricted, shelter was lacking, and the economic situation was miserable. Survival without an adult male was extremely difficult. Isolated cases of attempts to avoid persecution resulted in undesired divorces and the separation of wives and children from their husbands and fathers. At present, the situation is radically different.³⁸

37 Albania has experienced a long period (46 years) of dictatorship. Not only the members of the opposition were persecuted, sentenced, imprisoned and executed but also members of their families. During the period of dictatorship, there were 34,135 political prisoners who were sentenced on average to 8.9 years. Over 59 thousand people were deported from their homes and families, another 6027 were executed, 7022 died in the prisons, and a further 308 persons suffered mental problems while in prison. In addition, distant relatives were persecuted. While only some of the persecuted persons suffered physical torture, all of them still suffer the effects of psychological torture. At present, most of the politically persecuted persons are considered by civil society as victims of physical and psychological torture. Their social and economic rehabilitation remains an acute problem of the Albanian society. (taken from the "ALTERNATIVE REPORT ON THE STATE OF HUMAN RIGHTS OF VICTIMS OF TORTURE AND ISSUES OF IMPLEMENTATION OF LAW ON MENTAL HEALTH", Prepared by the Albanian Centre of Rehabilitation of Trauma and Torture, Tiranë 2004.

38 See Arben Puto, Ban of Torture or Inhuman or Humiliating Treatment or Punishment, in the "European Convention on Human Rights and Approximation in the Constitution of Albania", Albania, Tirana, 2002.

STATE VIOLENCE IN ALBANIA

Embedded in Albanian customs are forms of discrimination against women both within the family and society. Blood feuds, revived after the 1990's especially in some areas of the country, caused problems and created obstacles in day-to-day life of women as men and children were shooting and killing each other. The traditional code, named "Kanun", is still in practice in Albania and especially in Northern Albania. Unfortunately, after a decrease in this practice, it was revived in the 1990s;³⁹ however, the government has made some attempts to eradicate this practice.

Violent sexual relations are still considered "shameful" for a woman and in some cases (in rural areas in particular) they lead to forced marriage with the perpetrator in order to "achieve redemption"⁴⁰. Although the situation has changed in urban areas, women in most rural and sub-urban areas are subjected to a patriarchal mentality.

The first decade of transition, 1990-2000, saw the introduction of trafficking in women and girls for the purpose of prostitution. A regional conference of the Network against Gender Violence and Trafficking held in Berat, Albania on May 18-19, 2002, examined this phenomenon and made some recommendations regarding improvements that should be made to Albanian legislation. The focus of these improvements was to strengthen procedural guarantees for abused and trafficked women, to provide compensation to trafficked women and to enact legislation that criminalised the act of putting a person in conditions of slavery.

For the first time, in January 2003, the Albanian government presented a Report on the Implementation of the Standards of the "Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)", which was ratified by Albania in November 1993. The most sensitive issues presented included the prostitution and trafficking of women and girls. After examining the report during its 28th session (January 13-31, 2003), the Committee on the Elimination of Discrimination Against Women made a

39 Such a case was identified last year in Shkodra however.

40 Article 37 of the Family Code foresees that in case marriage occurs as a result of coercion, without which the marriage would not have occurred, it is declared null and void. Article 38 of the Family Code provides that a petition for the invalidity of marriage is allowed as long as there has been a continuous cohabitation for 6 months from the time that intimidation has ended.

STATE VIOLENCE IN ALBANIA

few recommendations.⁴¹ These recommendations have guided the activities, not only of State mechanisms, but also of non-profit organisations that are providing support and assistance to abused women and girls.⁴²

According to research undertaken by a number of such civil society organisations, violence against women occurs mainly within the family. Few cases have been reported in which women have suffered violence by State institutions or organized political groups. Unfortunately, the number of charges laid by women in domestic violence situations is low. There are many reasons why women do not divorce their abusive husbands such as fear from societal pressures, religious beliefs, psychological issues and economic dependence.

Monitoring of the press between 2002-2003 revealed that 56 women and girls throughout Albania have lost their lives as a result of domestic violence, while 74 others have been gravely injured. However, only about 5% of abused women and girls have filed complaints against the perpetrators of domestic violence.⁴³ This low percentage of reported cases can be explained by a lack of awareness. Although there is no specific provision on domestic violence in the

41 Only recommendations relevant to this report will be mentioned here:

-It is recommended to better use existing laws to rebuke acts of discrimination against women and to identify court decisions to this end.

- It is recommended to strengthen mechanisms promoting effective achievements in the development of women and gender equality.

- It is recommended to implement measures aiming at improvement of economic state of women, emphasising as priority the fight against trafficking of women and girls.

- To undertake a legal initiative on domestic violence and collect regular data on use of violence against women and on domestic violence in particular.

-To ensure indemnity, protection and access to legal assistance for abused women and girls.

42 A number of non-profit organisations dedicate a large part of their activity to preventing and supporting abused women:

The Centre "Hearth of Vlora Women", which is based in Vlora, the "Shelter" for abused women and girls in Tirana, established by the Association "Refleksione".

The Counselling Centre for Women and Girls, with its seat in Tirana and branches in Shkod[c, Pogradec, Berat.

"Shelter" in Tirana for Albanian and foreign trafficked women and girls, established and managed by ICMC and IOM.

Women's Advocacy Centre, based in Tirana with a branch in Shkodra, established by the Association of Women Lawyers, etc .

43 Monitoring press, by Women's Centre, 2002-2003.

STATE VIOLENCE IN ALBANIA

Criminal Code, victims of violence in the family are presently protected through the general provisions of the Criminal Code including physical mistreatment, affront, injury, murder, etc. A crime that is committed against family members is seen as an aggravating circumstance.⁴⁴

The low number of legal charges brought by the victims of family violence indicates that violence in the family continues to be considered a private issue by the public and also by the judicial police, who pressure victims not to file complaints. Courts are also a party to creating apathy towards family violence as they choose not to impose strict sentences against the perpetrators. In many cases, the perpetrators are only ordered to pay a fine. These fines only cause further pressure on the family.

The new Family Code, which entered into force last year, includes stronger anti-violence measures against women.⁴⁵ The law entitled “On an Equal Gender Society” (2004), improving the framework of non-discrimination, was also approved. The 2003 law entitled “On Reproductive Health” guarantees women’s reproductive rights. However, these improvements have yet to fill the legal vacuum completely. An anti-discrimination law is still lacking and so is a specific law on domestic violence.⁴⁶ As it stands, there is no specific provision on domestic violence or sexual harassment in the Criminal Code.

Although there is a process for compensating women who have suffered torture, sexual violence or other forms of ill-treatment, in practice, like the initiation of criminal proceedings, it remains rare. Although the main reason for both is the belief that “no money can buy honour”, there are other factors, which contribute to both of these phenomena.⁴⁷

44 Kodi Penal i Republikes se Shqiperise, Neni 50/g.

45 Family Code contains in its Article 61 urgent measures.

According to this Article, if one of the spouses does not evidently perform his/her obligations and endangers in this way the interests of the family, the court, upon the petition of the other spouse, can impose all the urgent measures connected to them. The duration of these foreseen measures should not exceed three years.

46 Article 62 of the Family Code provides for the spouse who is the victim of violence to be entitled to approach the court with a petition to impose urgent measures for taking the spouse who exercises violence out of the spousal house.

A new draft is being prepared by some NGOs, while earlier drafts have not been approved. WAC is participating in the new drafting group.

47 Other factors explaining this fact are:

- Prosecutors do not explain to the victims of domestic violence about their right to take civil legal action in the criminal proceedings.
- There is lack of experience in the courts for calculating the compensation.

Victims are, in the case of compensation in the court, under the pressure of violence.

2. Legal and Institutional Issues with regard to Torture and Ill-treatment of Women

The definition of torture in Articles 86 and 87 of the Criminal Code is the same provision contained in the Constitution and it does not make specific reference to women. No definition of torture is given in the Albanian legislation and no distinction is made regarding the protection of citizens according to their gender, age, religion, etc. The exception to this is cases in which certain groups are recognized as being vulnerable such as the increased protection required by pregnant women.

The definition of torture in the Albanian Criminal Code does not preclude Albanian courts from classifying violence against women, exercised either by a non-official person or within the family, as torture. Though such a meaning is recognised, Articles 86 and 87 are very rarely applied in jurisprudence and have almost never been invoked with respect to women and domestic violence. This conclusion is based on a review of the cases from our centre and by monitoring judicial decisions from the courts in Tirana, Vlora, Shkoder for the years 2000 – 2003.⁴⁸ However, torture by official subjects and family relations is classified as an aggravating factor in Article 50 of the Criminal Code.

Related Issues

Judicial institutions hesitate to accuse people who have official powers, i.e. police officers or other civil servants, of criminal offences contained in Articles 86 and 87 of the Criminal Code, which include torture and other cruel, inhuman or degrading treatment or punishment.

Generally, the punishment of people responsible for ill-treatment is based on Article 250 of the Criminal Code, which prohibits arbitrary acts.

48 An analysis of data from monitoring court decisions of the first instance in Tiranë, Shkodër, Vlorë shows that domestic violence takes many forms: murder (N.76); premeditated murder (N.78); serious intimidation (N.84); light injuries (N.89); other intended injuries (Neni.90), and beating and other violent acts. There were no cases that classified violence against women as torture (research on domestic violence, made at WAC). According to the 2003 Annual Report of the Ministry of Justice, only two people were sentenced for the crime of torture.

The hesitation of the judiciary to apply Articles 86 and 87 of the Criminal Code is also evident during the classification of criminal offences relating to ordinary people. Even though domestic violence, primarily exercised by men, can in practice sometimes be considered as torture, prosecutors and judges face an evidentiary difficulty in classifying it as torture.

2.1 Legal and Institutional Issues with regard to Sexual Violence

In Albania, sexual crimes are traditionally considered grievous offences, which violate the honour, morale and respect of women.

Albanian criminal legislation specifically protects sexual freedom and human health and therefore has harsh punishments for rape and other sexually related crimes. At present the Criminal Code⁴⁹ provides for nine penal felonies related to sexual offences. These offences are considered crimes against life and the health of a person and consequently aggravating punishments are prescribed.⁵⁰ Sexual crimes are contained in the Section VI of the Criminal Code, which is one of the ten sections of Chapter II of the Code, "Offences Against the Person, and Crimes Against Life". Sexual offences, involving both heterosexuals and homosexuals, are contained in the same section. However, there are separate provisions, such as provisions 102 and 102/a, which both pertain to violent sexual relations with minors and where the only difference is in the sanction.

On 24 January 2001, law no. 8733 was enacted. This law provides for parity in criminal responsibility between heterosexual and homosexual offences, on which basis the latter can now be defined as an unlawful intentional act against sexual freedom and against male or female health⁵¹.

From a contemporary point of view, and in comparison with the previous codes, the current Criminal Code can be viewed as the most comprehensive in terms of combating sexual offences. All specific circumstances, during which

49 The Criminal Code of the Republic of Albania entered into force in 1995 and has been amended on several occasions.

50 Sexual offences are listed in section IV of the Chapter II "Offences against the Person. Crimes against Life" of the Criminal Code.

51 At the same place.

STATE VIOLENCE IN ALBANIA

violent sexual relations can occur, including immoral acts, are classified as separate criminal acts and not simply as aggravating factors during the commission of the crime⁵².

All the above-enumerated acts are classified as offences, the commission of any of them results in harsh punishments. The punishments are more severe if the act was carried out under aggravating circumstances. Sexual intercourse in public places is exempted from the above acts.

Such offences are generally within the jurisdiction of ordinary courts. The newly established Court on Grave Crimes (2004) only has jurisdiction over cases considered to be the most grievous (as listed in Articles 100 and 101 of the Criminal Code), which include sexually based offences with minors.

The lives and health of women or girls (except for minors, who enjoy special protection) are protected from sexual offences under the some provisions.

Sexual intercourse with mature women without consent is considered a separate criminal act in the Criminal Code⁵³. In order to be a criminal act, there has to be evidence that violence was used in order for intercourse to have occurred. Although the use of violence constitutes the major element of the criminal act, the opposition of the victim is an imperative requirement. Jurisprudence recognises physical violence (beating, knocking, fastening, etc.) and psychological violence. However, psychological violence is accepted as evidence only in cases of threat to kill or seriously injure the victim. However, intimidation does not include the use of firearms, which constitutes a separate criminal act (Article 104). This criminal act is viewed as an attempt as long as the assailant has not defeated his victim.

52 Sexual offences in the Criminal Code are classified as follows:

- Sexual or homosexual intercourse with minors (Article 100);
- Sexual or homosexual intercourse with minors between fourteen to eighteen (Article 101);
- Sexual or homosexual intercourse with handicapped persons unable to protect themselves (Article 102);
- Violent homosexual intercourse with adults;
- Sexual or homosexual intercourse under threat of gunpoint (Article 104);
- Sexual or homosexual intercourse through abuse of office (Article 105);
- Sexual or homosexual intercourse with persons in direct gender or under custody (Article 106);
- Sexual intercourse in public places (Article 107), and;
- Immoral acts (Article 108).

53 Article 102 of the Criminal Code.

STATE VIOLENCE IN ALBANIA

Under ordinary circumstances, sexual intercourse with an adult woman without her consent carries a sentence of three to ten years' imprisonment. However, the sentence increases when the criminal offence is committed in collaboration with others, occurs repeatedly or when the health of the victim is seriously impaired. The most severe punishment for this offence is ten to twenty years' imprisonment and is invoked when the act leads to the death or suicide of the victim. Likewise, Article 102 of the Criminal Code is enhanced by the addition of Article 102/a, which provides similar sentences for homosexual intercourse with mature persons without consent.

Article 105 of the Criminal Code is another provision for the protection of mature women and girls. It prohibits the sexual intercourse through abuse of office or power. This offence carries at term of imprisonment up to 3 years. This Article is a typical provision, naming and sentencing for the sexual abuse of persons through misuse of office. A fiduciary relationship is presumed in situations involving employer and employee and in the relationship between teacher and pupil. This provision also pertains to sexual abuse involving a minor who is 14 years old and as a result is presumed to be sexual maturity. Even though this provision is supposed to be very efficient, it has rarely been the subject of complaints and it has been invoked even less before courts⁵⁴.

There have also been cases involving special circumstances, which were not explicitly contemplated by the above provisions.

In a case brought before Albanian courts, Emanuela M., Chief of Finance of a Greek company in Albania, filed a complaint against B.N. for attempting to rape her in her office. B.N. was a driver working for the Albanian parliament and who frequented the premises of the company during the course of his private business. The victim testified that B.N. had been taking advantage of his access to the premises for a long time, sexually harassing her and damaging her reputation with company's managers⁵⁵.

54 From the statistical yearbook of 2003 it results that there were 19 claims for violent sexual intercourse with mature women before the offices of the prosecution. 12 of these cases were invoked before the courts, holding accountable and penalising 20 persons. During the same year no denunciation was made and thus no case taken up as regards Article 105 of the Criminal Code, i.e. sexual or homosexual intercourse in the abuse of office.

55 See "Gazeta Shqiptare", Tuesday, 1.02.2005.

STATE VIOLENCE IN ALBANIA

Identified problems

Women are the majority of the victims of sexual violence. They are further burdened by being required to prove that the sexual abuse happened. Although evidence is collected through a simple medical report, there is often no prompt and thorough investigation. Moreover, psychological violence is very difficult to prove, which means that the perpetrators often go unpunished.

Violence constitutes the major element of the criminal act and when the victim cannot show evidence of violence, the crime cannot be proved.

- In practice, the victim is also required to show whether or not she is partially to blame for the incident.
- Sexual abuse, due to a power imbalance or during duty, very often remains unreported. Official positions are often misused even in cases when there is no direct dependence.
- The issue of compensation through civil law suits within criminal proceedings generally fails to receive proper attention. An immense commitment and the financial means to hire an attorney are required. However, even though it is provided for by procedural legislation, up to now judges have tended to deny considering civil lawsuits within criminal proceedings.

Although sexual violence is often the cause of divorce, there are no reported cases of sexual violence between spouses. In the Criminal Code, there is not a separate provision for sexual violence between spouses. However, if a female spouse decides to report the sexual violence from her spouse, she can use Article 102 of the Criminal Code for the protection.

2.2 Legal Issues and Practice Regarding Trafficking in Women and Girls

a. General View - Statistical Data

Over the past fifteen years, the causes of trafficking in women and girls have been numerous and have also been exacerbated by the failure of the new democratic State to respond to problems such as trafficking. Between 1990-2000, a number of problems such as poverty, unemployment, emigration, free movement of people, etc. gripped Albanian society. Motivated by the profit,

STATE VIOLENCE IN ALBANIA

traffickers use different forms of fraud, such as promises of employment, fake marriages, to trick women into being trafficked. There are also cases where relatives arranged for a family member to be trafficked because of economic hardship. Most victims of trafficking are women and girls⁵⁶ and the average age is 21.⁵⁷

Meanwhile, among international and national organizations and local and international non-governmental organizations, awareness about trafficking human beings has continuously increased. Consequently, the response of the legal system to trafficking has also improved. The Albanian government has established a Strategy for Fighting against Trafficking in Human Beings and has established mechanisms for its implementation. An Anti-Traffic Unit was established at the Ministry of Order, which collaborates with the Border Police, the General Police Department and other similar structures and agencies in other countries.

Between 2000-2004, there was an intensive initiative to stop the smuggling of people by speedboats from Italy, which succeeded in minimising the flow of trafficking in human beings.

The Ministry of Public Order's judicial police have been successful in returning trafficked women to their families. However, the women are only returned after they provide information about the identity of the perpetrators. This information enables the public prosecutor and the courts to efficiently deal with the matter.⁵⁸

Decision no. 589, dated 28.08.2003, "On the Establishment and Making Functional the Reception Centre of Trafficking Victims", provided for a State shelter to be opened in Linza. This shelter provides support for victims of trafficking and helps in the fight against trafficking and re-trafficking.

56 Referring to data from the Ministry of Order, the following are facts relating to the trafficking in women during 2001-2003:

In 2001, there were 113 reported cases of trafficking in females for prostitution.

In 2002, there were 203 reported cases and 298 perpetrators were identified.

In 2003, there were 126 reported cases and 223 perpetrators were prosecuted.

57 See: Valentina Leskaj & Edmond Dragoti & Theodhori Karaj & Fiona Thodhri, "Albanian Society in Front of Challenges of Women's and Girls's Trafficking", Tirane, 2004, pp. 8-19.

58 See: Thoma Tutulani, Review "Ligji mundësi zhvillimi për gratë", Article "Prostitucioni, karakteristikat e hetimit dhe gjykimit të tij", Tirane 2003, p. 33.

STATE VIOLENCE IN ALBANIA

International and national non-governmental organizations have also contributed to helping victims of trafficking by offering shelter, rehabilitation assistance and legal assistance. To this end, the activities of the international organisation IOM and of various shelters, especially “Vatra” in Vlora, have provided crucial support. The activities of such shelters have been possible thanks to foreign financial support.

b. Legal Framework

The Republic of Albania has ratified a number of international conventions and other related acts. These instruments should be directly implemented or, in the alternative, force the country to adopt new criminal laws to punish those who traffic in human beings⁵⁹.

Albanian legislation only provides for the general crime of trafficking in human beings (Article 110/a).⁶⁰ However, changes have been made regarding this provision through amendment law no. 8733, of 24 January 2001 and later by law no. 9188, of 12 February 2004.

59 International Convention on the Ban of Trafficking in Women and Girls, concluded in Geneva, 1921 and amending Protocol.

- Convention on the Ban of Trafficking in Adult Women, concluded in Geneva, 1933 and amending Protocol.

- Convention on the Ban of Trafficking in Persons and Use of Prostitution of Others, concluded in Geneva, 1950 and amending Protocol.

- United Nations Convention against International Organised Crime, 2000.

- Protocol against Trafficking in Migrants by Land, Air and Sea, complementing United Nations Convention against International Organised Crime.

- Protocol on Prevention, Prohibition and Punishment of Trafficking in Human Beings, Women and Children in Particular, complementing United Nations Convention against International Organised Crime.

- Convention on Elimination of all Forms of Discrimination against Women, 1979.

60 Trafficking includes recruiting, transporting, transferring, hiding, threatening to use force or other forms of coercion, kidnapping, fraud, misuse of duty or profiting from a person’s social, physical or psychological state, benefiting from obtaining the approval of a person controlling another person for prostitution or other forms of sexual exploitation, work or compulsory services, for slavery or forms similar to slavery, for provision or transplantation of organs or any other forms of exploitation.

STATE VIOLENCE IN ALBANIA

Aggravating factors in the offence of trafficking include the following: committed in complicity⁶¹; when the perpetrator reoffends; when accompanied by the use of physical violence resulting in severe damage to the victim's health or results in death; and (since last year) when committed in the course of official or public service duties. In these cases, it is considered a qualified crime and the law provides for a heavy penalty.⁶²

Approved by the Albanian Parliament in 2004, an expansion to the Criminal Code made the use of an official or public service office for the trafficking of human beings an aggravating circumstance. The intent of the amendment was to deter official persons from committing this crime in the future. Prior to 2004, this was only viewed as an aggravating factor to the crime of prostitution.

The "Protocol of Palermo to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children supplementing the United Nations Convention against Transnational Organised Crime"⁶³, was ratified by Albania. Article 2 of the Palermo Protocol is aimed at "preventing and fighting against international trafficking in human beings, paying a special attention to women and children". On this basis, the Albanian criminal legislation was amended with particular attention being paid to protecting women and girls from trafficking. In 2001, a special provision was added to the Criminal Code that details the crime of trafficking in women for prostitution (Article 114/b).⁶⁴ Trafficking for prostitution means bargaining in conspiracy over women, repeatedly or forcibly,⁶⁵ to ensure illegal profits from traffickers, inside or outside the country.⁶⁶

61 In the case of defendants H.A. and A.C., who were accused of the crime of trafficking females for prostitution, the Court of Serious Crimes took into consideration that the crime was committed in complicity and sentenced each of the defendants to seventeen years imprisonment (Tiranë, 2004).

62 See Criminal Code, Article 110/a, changed by law 9188, of 12.2.2004.

63 Law no. 8920, of 11.7.2002.

64 Amendment law 9188, of 12.2.2004 to the Criminal Code, changed the title of Provision 114/b "Trafficking in women for prostitution" has changed to "Trafficking in women".

65 In its decision no. 26 of 29.09.2004, the Court of First Instance of Serious Crimes, in the case "Trafficking in females for prostitution" against B.G., found the defendant guilty of having trafficked the victim for prostituting using physical and psychological violence. On the basis of Article 114/b-2 of the Criminal Code, the Court sentenced the defendant to 16 years imprisonment.

STATE VIOLENCE IN ALBANIA

History proves that women and girls have not only been used for prostitution but have also suffered from other forms of exploitation. This observation led the legislature to the conclusion that the provision should be more general in nature, such as “Trafficking in women”.

Although this definition is similar to the one contained in the provision about general trafficking in human beings, it is specific to women thus facilitating a legal procedure that better corresponds to the reality that women are the majority of people who are trafficked. Improvements to procedure came with the establishment of the Court of Serious Crimes (Created by law no. 9110, 2004 and seated in Tirana) in 2003.⁶⁷ In addition, the Criminal Code also provides a heavier sentence of up to life imprisonment when the crime results in the death of the victim.

Considering the fact that trafficking in women is one of the most severe forms of organised crime, the Criminal Code provides equally severe sentences for perpetrators involved in the organisation, management and financing of trafficking in women.⁶⁸

c. Review of Judicial Practice

Observations from a review of cases:

First, trafficking of human beings often involves the crime of smuggling, which consists of assisting someone to illegally cross the border. However,

66 The Court of First Instance of Serious Crimes, per ceshtjen me object “Trafficking of females for complicity to prostitution”, against H.A. and A.C., by its decision no. 3, of 18.01.2005, declared the defendants guilty, for trafficking in complicity using fraud for alleged marriage and sentenced each of them to 17 years imprisonment.

67 During 2003, 10 cases of trafficking in women for prostitution under Article 114/b1 were heard by Courts of First Instance that resulted in 13 charges for which 21 people were convicted. Meanwhile, the courts examined 4 cases of trafficking in women for prostitution based on Article 114/b2 of the Criminal Code. This resulted in 4 charges for whom 5 people were convicted.

During 2004, 18 new cases involving Article 114/b were presented to the “Court of Serious Crimes”, of which 15 are yet to be concluded.

68 Practice shows that criminal offences of trafficking in women for prostitution and exploitation under aggravating circumstances are committed by Albanian organised crime groups in collaboration with foreign criminal organisations. This is because of the potential profit to be gained from prostitution and trafficking.

STATE VIOLENCE IN ALBANIA

these two crimes should not be confused. Article 2 of law no. 9188 deals with provision no. 114/b of the Criminal Code “Trafficking of Women for Prostitution” and defines the trafficking of women as being similar to the trafficking of persons (110/a) whereas provision no. 114/b “Trafficking of Women” is more extensive. In addition to the elements for trafficking in persons, provision 114/b also includes trafficking of women for the purposes of prostitution. Furthermore, it is also connected to the criminal offences against morale and dignity while the provision on trafficking of persons is only linked to section VII of the Criminal Code, “Criminal Offence Against the Freedom of Person”.

Second, investigation, collection of evidence and court proceedings should be done on an expedited basis, as a drawn out process places the victim in constant danger and threats⁶⁹.

Third, in practice initiating penal suits for damages within criminal proceedings is problematic. For example, victims are hesitant to ask for compensation because they are under threat from trafficking organisations. However, if victims wait to file separate civil judicial proceedings, decisions from these hearings cannot be enforced because the trafficker’s property has already been seized as a result of the criminal proceeding. There have been very few cases where victims have received monetary compensation. This is unfortunate because the victims require this money in order to pay for rehabilitation and preliminary assistance.

Fourth, many cases have been identified where victims of trafficking are not only Albanian women and girls, but foreign citizens as well. Both Albanian and foreign groups participate in trafficking. The latter groups use Albania as a transit country.

In Sh., a town in northern Albania, a lawyer from the Women’s Advocacy Centre (Albania), S.K., provided legal assistance to two foreign girls (M.G. and F.S.) during the investigations phase of their case. The Albanian police detained them, after they were trafficked for the purpose of prostitution through Albania in January 2002. The girls have since been repatriated following the laying of charges of exploitation against two Albanian policemen. What is of concern is that neither the prosecution nor the court concluded that these girls were

69 A law for the protection of witnesses was approved in March 2004 and has contributed to the fight against trafficking.

STATE VIOLENCE IN ALBANIA

trafficked for prostitution purposes. The two policemen were simply sentenced for being involved in prostitution, while the girls were repatriated to their own countries.

Fifth, from judicial decisions and daily statements in the media, it appears that women are also perpetrators of trafficking in human beings, especially of other women. They tend to either work in pairs or collaborate with others.

There have also been cases where women, charged with trafficking for prostitution, have accused members of the police of ill-treatment and pressure:

Merita Kola, 22 years old, was arrested on 23 July 2004 for trafficking for prostitution. In a letter addressed to the Attorney General and Ombudsman she claimed that she maintained her innocence. After her claims were published in the press, she was released and the charge against her was dropped.⁷⁰

In August 2004, Merita Lala and her fiancée, Arben Lala, were detained on the charge of trafficking in people for prostitution. They were held for three weeks and released due to lack of evidence. They complained about the violence that was used against them.⁷¹

2.3 Legal Issues and Practice Regarding Prostitution in the context of Trafficking in Women and Girls

a. General View - Statistical Data

Although prostitution is considered a criminal offence in the Criminal Code, the law does not contain a definition of prostitution (Article 113). The offence of prostitution includes:

1. Exertion of prostitution
2. Use of prostitution
3. Trafficking in females for prostitution
4. Keeping bars for prostitution.

70 The Albanian Gazette, 6 August 2004, taken from the Amnesty International Report, 2005.

71 Gazeta Shqiptare, 12 August 2004.

STATE VIOLENCE IN ALBANIA

According to research and interviews conducted by the Albanian Centre for Population and Development,⁷² the majority of prostitutes in Albania are minors aged between the ages of 13-14⁷³ (the most preferred age-groups in this business), whereas the average age of sex workers is 20-40 years old. It is important to note the difficult moral, health and economic circumstances faced by these groups.

The majority of Albanian women involved in prostitution do so outside Albania (Italy, Greece and to a lesser extent Germany, Britain, France or USA).

It is also important to note that only about 30% of women who are working as prostitutes do so by choice while the other 70% are forced as victims of illegal trafficking for prostitution. Most Albanian women are forced, or are under various forms of pressure, to be involved in prostitution and therefore they are not only victims of prostitution, but are also victims of trafficking.⁷⁴

Albania is not only a transit country, but also a country in which Albanian females are targeted for use by criminal organisations.⁷⁵

72 Study: "Albanian Society in front of Challenges of Trafficking of Women and Girls", realised by the Albanian Centre for Population and Development and KEGME (Greek association).

73 70% of female minors in rural areas are tricked by traffickers into engagements or marriage abroad, who profit from their difficult economic situation, social and educational level.

74 During the trial of defendants H.A. and A., who were accused of trafficking in women for prostitution, the Court of Serious Crimes found that the crime had been committed collaboratively and therefore decided to sentence each of the defendants to seventeen years of imprisonment (Tirana, 2004).

75 According to the data from the Ministry of Justice for 2003, the Albanian courts examined 22 cases of exploitation for prostitution under Article 114 of the Criminal Code, which resulted in 26 charges and 22 persons being convicted. Albanian courts also examined 58 cases of exploitation for prostitution in aggravating circumstances under Article 114/a of the Criminal Code, in which there were 61 charges and 73 persons were convicted.

According to the statistical data from the First Instance Court of Serious Crimes for 2004, there have been 18 new cases for the penal offence of trafficking females for prostitution, out of which 5 cases have been examined and the perpetrators found guilty.

STATE VIOLENCE IN ALBANIA

b. Legal Framework Related to Prostitution

Criminal legislation has undergone repeated amendments since 1995 in order to recognize crimes which are related to prostitution.⁷⁶

The national legislation (provisions of the Criminal Code, section VIII “Penal Offences against Morale and Dignity”, Articles 113 - 115), defines 4 kinds of penal offences directly related to prostitution: practicing prostitution (Article 113); exploitation of prostitution (Article 114); trafficking in women for prostitution (“Trafficking in Women” Article 114/b); and keeping premises for prostitution (Article 115).

In the case “*Practising prostitution against P.B. and R.SH.*”, Decision no. 1232 dated 16 December 2004, the Tirana Court of First Instance found the defendants guilty of voluntarily practising prostitution on the premises of a hotel and fined them 150.000 leke each, their fines were reduced to 100.000 leke as per Article 406 of the Criminal Procedure Code.

The Judicial Police and the Public Prosecutor’s Office have been attentive in cases involving women who voluntarily participate in prostitution. Both have emphasized the role they can play and their legal attitude regarding those who exploit prostitution. In cases where the women provide information on their clients, their fines have been canceled (under Article 284/b).

Furthermore, Article 114⁷⁷ “Exploitation for Prostitution” provides for a fine or 5 years imprisonment for encouragement, facilitating or exploitation of prostitution.

Aggravating factors specified in Article 114\ a include: the prostitution of a minor;⁷⁸ repetition of the same offence; use of family relations; use of physical or psychological violence and organisation of prostitution, individually or in

76 Law no. 7895 , amended 27 January 1995, Regarding Penal Offences Related to Prostitution, Law no. 8279, dated 15 January 1998, Law no. 8733, dated 24 January 2001, and finally Law no. 9188 , dated 12 February 2004.

77 Amended by Law no. 8279, of 15 January 1998 (the title changed and the second paragraph was abrogated).

78 According to statistics, from 1998 onwards about 90% of Albanian females have been exploited for prostitution in the following circumstances: by their teachers under aggravating circumstances, such as minority, family relationship, husband-wife relationship, relation of relatives or other relationships, psychological violence, fraud, etc.

STATE VIOLENCE IN ALBANIA

complicity, inside or outside the territory of Albania, by common individuals or persons carrying State or public functions. All are seen as having a severe affect on society and thus any charges involving these factors are liable to receive heavier sentences.

After the 1990's, there is evidence that various people have retained or used locals for prostitution. This offence is listed as Article 115 in the Criminal Code.⁷⁹ This is in recognition of the fact that both prostitution and trafficking for prostitution are penal offences that involve huge economic profits.

Emerging problems

The Advocating Centre for Women is concerned that to date the people who have been found guilty of exploiting for the purposes of prostitution, have received very light sentences.

The Case M.S. and A.P. vs. Sh.U. and N.K.

On 15th January, two foreign girls, M.S. and A.P., who entered Albania illegally, contacted two persons, Sh.U. and N.K., police officers in the city S.H. The police officers were charged for having exploited prostitution and were tried under Article 114 of the Criminal Code, which provides a fine or up to 5 years of imprisonment. Although the Court acknowledged the fact that both defendants were previously police officers as an aggravating factor, this was not reflected in the sentences that were issued. They were sentenced to 14 months and 24 months respectively.⁸⁰

Another concern is the fact that there are no reported cases involving the exploitation of persons for prostitution by persons holding public and State powers.

79 The Court of First Instance in Tirana, in the case "Retaining local for prostitution" against R.I. decision no. 1232 of 16 December 2004, found the defendant guilty of having enabled the use of a hotel for prostitution while working there as a barman. On the basis of Article 115 of the Criminal Code, the court sentenced the defendant to 15 months imprisonment, which was reduced, according to Article 406 of the Criminal Code, to 10 months.

80 See the Shkoder Judicial District Court decision dated 2 May 2002, the final verdict was rendered on 24 June 2002.

“Bisht i Pallës” Case

An incident occurred in spring 2003, in the military installation Bisht-Pallë, in the Albanian city of D. O.L., an 18-year-old girl, was used as a prostitute for about two consecutive months at one of the military premises. Despite the fact that all the defendants are servicemen at the installation, the criminal proceedings have yet to be concluded. The perpetrators who held State military positions were not criminally charged in connection with this case. Instead, they only faced administrative measures (referring to the respective judicial file, from the D. City Court).

Women, who have been exploited for prostitution, should be shown understanding, encouragement and remuneration.

During 2003, courts heard 22 cases involving exploitation for prostitution under Article 114 of the Criminal Code, involving 26 offences for which and 21 persons were convicted. 58 cases of exploitation for prostitution under aggravating circumstances (Article 114/a) were examined. These cases involved 61 charges and resulted in the conviction of 73 persons. There is another indictment for exploitation for prostitution under aggravating circumstances based on Article 114/a/5 from 2004, which is still pending.

3. Legal Protection of Women in Pre-Detention (police station)

The following general laws provide for the legal protection of women in police stations: the Criminal Procedural Code, Regulation no. 1075 (1999) of the Ministry of Public Order and Regulation no. 3750/2 of 23 July 2003 of the Ministry of Justice. It should be noted that the jurisdiction of the Ministry of Justice Regulation only extends to a few pre-detention facilities in police stations, as the majority of the police pre-detention facilities are under the jurisdiction of the Ministry of Public Order. The latter are governed by the Regulation of the Public Order (1999), which was adopted after the abrogation of the 1994 Regulation. WAC believes that these regulations have to be unified in order to standardise pre-detention conditions and standards.

STATE VIOLENCE IN ALBANIA

Based on monitoring and information from the WAC, it is apparent that women are being interrogated in the presence of at least two people. Occasionally, this rule is not observed and they are interrogated in presence of one male. There are no legal guidelines, which require that one of the interrogators be a woman. Therefore there are many cases where women are interrogated by males only.

- There is no legal obligation to carry out the interrogation in presence of at least one woman.
- The number of female police officers within the judicial police serving in police stations is considerably smaller than the number of male police officers.

Article 38 of the Criminal Procedural Code⁸¹ provides some general rules for interrogations. These rules do not provide special rules for the interrogation of women. According to these rules, nobody can be forced to take their clothes off during interrogation. To date, no reports have been received by the prosecuting bodies, or any allegations from the press, regarding sexual harassment. In order to improve the situation of women in pre-detention, it is necessary to amend the new Regulation from the Ministry of Public Order regarding police stations.

Although in principle, the right of the detainees to complain is recognised, there are no clear procedures for filing complaints regarding rights violations that occur at police stations. Regulation no. 1075 of the Ministry of Public Order, which applies to police stations, is not in compliance with the law “On the Rights and Treatment of Prisoners”. Detained women are not able to have

81 Article 38 CPC “General Rules Applying to Interrogation”

1. Even when isolated by precautionary measures or when deprived from liberty for any other reason, the defendant shall be interrogated without the use of restraints, except when necessary to take measures to prevent escape or violation.
2. Even if the person being interrogated consents, methods or techniques that alter or modify the capacity of the memory related to the evaluation of the facts, may not be used.
3. Before an interrogation begins, the defendant receives an explanation of his/her right to silence and is also informed that even if he/her fails to speak, the proceedings shall continue.

STATE VIOLENCE IN ALBANIA

their complaints dealt with unless they have access to an attorney, they are not allowed to have books, daily press, paper sheets and pencils.⁸²

The conditions in pre-detention premises in Albania are in violation of international standards. The shower-bath premises, the toilets and airing premises are shared between men and women. In addition, the pre-detention centres suffer from overpopulation.⁸³

Despite these criticisms, the situation at pre-detention facility no. 313 in Tirana can be viewed as a positive example of the special treatment and attention provided to women's education and other day-to-day activities.⁸⁴

Recommendation

Albanian institutions and press have been debating the need for the unification of pre-detention facilities under the jurisdiction of the Ministry of Justice and the adoption of a new legal and regulatory framework for the police stations for a long time. If implemented, these measures would considerably improve the conditions for women in pre-detention facilities.

82 See: Sokol Berberi, "Comparison of Article 3 of the European Convention on Fundamental Human Rights and Freedoms with the Albanian Law and Practice", contained in "The Report on the Study of Approximation of the Albanian Legislation with the European Convention on Fundamental Human Rights and Freedoms", Tirana, June 2003.

83 Upon visiting the Durres Police Station, A.N., an attorney from the Advocating Centre for Women, observed that there were 230 persons being held in that facility when the capacity of the building was 80 persons. One of the detainees was a woman and due to overpopulation, she was only allowed out for 15 minutes per week for airing, instead of the 30 minutes provided by the abovementioned Regulation of the Ministry of Public Order.

84 Albanian Helsinki Committee, "Presentation of Data from the Observations of AHC, with regard to the Respect of the Rights of Detainees and Prisoners", Tirana, 9 February 2005.

4. Medical Examination

According to legal provisions, a gynaecological examination must be carried out in the presence of a female nurse or physician.

The victim may be required to pay a visit to the coroner when she brings a complaint about sexual intercourse with a police officer. When a victim visits a physician, the latter is obliged to file a complaint at the police station and provide the victim with a copy of the examination record. When necessary, the physician is summoned before court as an expert. The examination report can be admitted as evidence. The court should summon only those physicians who have been approved as experts by the head of the court.

According to Albanian criminal procedure, the victim is not a party to criminal proceedings unless she files a civil lawsuit within the criminal process. If the court decides to separate the civil lawsuit from the criminal proceeding, the victim is not a party in the trial. This means that during the criminal proceedings the victim is not entitled to legal counsel and cannot intervene with procedural requests. Consequently, the victim is not entitled to choose an independent physician during the trial.

Article 61 of the Criminal Procedure Code allows for compensation, “The one, or his successors, who has undergone material damage as a result of a criminal offence, may bring a civil lawsuit in the criminal proceedings against the defendant to ask for the restitution of the property and compensation for the damage”.

5. Prisons and Conditions of Imprisonment

After receiving a final verdict from the Albanian courts, female inmates serve their sentences in a separate section from male inmates in either the Institution for the Execution of Imprisonment no. 325 in Tirana or Prison no. 313.

At present, there are 58 female inmates who have received a final verdict that they are serving in Prison no. 325. There are 39 female detainees awaiting sentencing in Prison no. 313. In general, the conditions and the treatment of

STATE VIOLENCE IN ALBANIA

female inmates are better than that of male prisoners. This is due in part to legislation, which mandates that they be offered special treatment and more attention.

In recent years, female inmates have reported cases of ill-treatment or abuse. By comparison, there have been no reported cases of physical violence or sexual harassment by prison personnel.

Female personnel conduct the internal management, security and treatment of female prisoners. Male staff is only present for the external management of the facility. The majority of the women have been sentenced or stand accused of homicide. As a result, many of these inmates are completely abandoned by their families and therefore receive no economic assistance. Their treatment constitutes a particular priority, which is reflected in the up-to-date practices of the prison system.⁸⁵

Living conditions have also improved. Rooms are equipped with the necessary furnishings, special premises for religious worship, and a library. With respect to their well being and particular domestic, social and economic conditions, women have the opportunity to attend various courses, such as computer literacy, foreign languages – English or Italian, and also vocational courses, such as tailoring and hairstyling. Thanks to financing from the Albanian Autocephaly Church, a greenhouse for flowers has been constructed in the female section of prison no. 325, which employs some of the women prisoners.

Pursuant to the provisions of the law “On the Rights and Treatment of Prisoners”, pregnant or breastfeeding mothers live in special conditions. Women are entitled to keep their children with them up to the age of 3, during which time they are housed in separate premises. In addition, a crèche has been established within the female section. Three children currently live there with their mothers.

There is an onsite physician who provides treatment, especially in cases of more serious health problems. When a medical examination is necessary, the prosecutor must approve the request.

85 For more see: Albanian Helsinki Committee, “Conditions of Pre-Detention and Prisons in Albania”, Tirana, 2002.

STATE VIOLENCE IN ALBANIA

The legislation provides that when female inmates violate the rules, they are always subject to the following measures:

Warnings are given in presence of the other convicts including pregnant or breastfeeding mothers. Other disciplinary measures include: 1) Expulsion from specific group activities for up to 10 days; 2) Expulsion from group airing up to 20 days; 3) Expulsion from all group activities up to 20 days. For women, it is only for 10 days. When subjected to these measures, the female inmates are kept under close medical care. Based on the special treatment that women require, isolation has never been invoked.

PART III

STATE VIOLENCE AGAINST CHILDREN

1. Introduction⁸⁶

Although Albania ratified the UN Convention on the Rights of the Child in February 1992, the lack of political initiative from the government together with the lack of knowledge about the convention by staff at local and central levels means that the convention has not been implemented. Consequently, the rights of the child are frequently violated and have, in many cases, not been guaranteed or adequately protected.

The failure by the national authorities to recognise the rights of children means that governmental initiatives in this area are just separate acts of intervention, rather than being part of a co-ordinated plan. Although, there has been increasing pressure from NGOs for the establishment of a body to oversee government action in this area, the Albanian government has resisted the idea for absurd reasons. For example, although children make up 40% of the Albanian population, the government's budget, both at the central and local levels, does not specifically cover children.

The failure by the government to establish a system to protect children has contributed to an increase in cases of violence and abuse of children. The existence of a General Administration of Social Services at the national level has not translated into radical changes regarding the protection of children. In many cases, a lack of defined standards for child protection has been noted.

Children in conflict with the law and child abuse are striking trends in Albania. Although the government has implemented a series of measures to improve the situation of children's rights in Albania, such measures have only been partially implemented and for the most part remain ineffective.

Due to a lack of resources, NGOs pressure on the government has been limited and insufficient regarding the implementation of the Convention on the Rights of the Child. Although many training sessions have taken place in towns throughout Albania, the awareness of members of government and of NGOs, about the Convention on the Rights of the Child, remains limited. The government refusal to grant funds has reduced the ability of NGOs to protect the rights of the Child and to aid in the implementation of the convention.

86 This section on children's rights has been prepared thanks to several fact finding missions carried out by CRCA staff between 2000 and 2004 to police stations and juvenile detention centres.

With respect to torture and other cruel, inhuman or degrading treatment or punishment, OMCT considers the situation of children in Albanian police stations, custodial detention centres and prisons as cruel, inhuman and degrading.

There is more than one case where torture and other cruel, inhuman or degrading treatment or punishment has been used against a child. These acts are carried out during the arrest of children both in public and inside police stations. The police officers use torture and other cruel, inhuman or degrading treatment or punishment as a means to gather evidence about offences committed by children. None of the children have filed lawsuits against the police who have tortured them because they are afraid of being tortured again. Physical and psychological violence has been used by investing or regular police officers against juveniles in police stations and at custodial detention centres. Officials of the Police stations maintain that no forms of torture are or have been used in their facilities.

2. Definition of a child

Although there is no clear definition of the term “Child” in Albanian legislation, the minimum age for employment, as defined in the Work Code of the Republic of Albania, is over 16 years of age.

In terms of an age for criminal culpability, the Criminal Code of Albania distinguishes between a criminal act and a criminal contravention. Article 12 of the Criminal Code states:

“A person bears criminal responsibility if, at the time he or she commits an offence, has reached the age of fourteen. A person who commits a criminal contravention bears responsibility at the age of sixteen.” In other words, a juvenile who commits a petty crime at the age of 14 or older will be held responsible whereas a juvenile who commits a more serious crime will be held responsible at 16 years of age.

The Ministry of Justice is in the process of reforming legislation regarding the administration of juvenile justice. Among many other changes, a new proposal was put forward in November 2004 by the Department of Juvenile Justice of the Ministry of Justice, which if approved by the Albanian parliament, will

increase the age of criminal responsibility from 14 to 16 years old for all offences committed by juveniles.

3. Torture

As already mentioned in Part I of the report, Article 25 of the Albanian Constitution of 1998, prohibits the use of torture, cruel, inhuman or degrading treatment or punishment. The same prohibition can be found in Articles 86 and 87 of the Criminal Code, Article 4 of the 1995 Criminal Procedure Code and in other regulations in Albania such as those for the treatment of detainees or prisoners.

However, the Albanian Criminal Code does not contain a specific provision on the use of torture against children. Moreover, there is no provision that defines torture and who can be classified as a perpetrator.

3.1. Practice

In reality, torture and other cruel, inhuman or degrading treatment or punishment of children in police stations and custodial detention centres is an every day occurrence.

All juveniles who were interviewed stated that they were subjected to torture and other cruel, inhuman or degrading treatment or punishment during their arrest. Few juveniles said that they were subjected to torture or other ill-treatment while in custodial detention centres. On the whole the treatment of juveniles by police in custodial detention centres was positive. In most cases, the police showed respect and tolerance towards the children in their care. Nevertheless, there was a common understanding among the juveniles that if they passed what the police officers considered a certain behavioural limit, violence would be used against them at any time.

STATE VIOLENCE IN ALBANIA**3.1.1. Cases of Torture and Other Forms of Violence against Children by Police Officers**

M.C., a 16-year-old boy, was arrested in Vlora during the summer 2002 and later charged with murder. M.C. never confessed to committing the murder and insisted during the interview that he was charged without legal grounds. M.C. told CRCA team his story:

“They put me in the police van and didn’t tell me where we were going. After some 20 minutes of driving we stopped in this place and they took me out. Then they kept asking me whether that was the place where I committed the murder. I kept saying that I hadn’t committed any murder and they kept slapping and punching me. I started to cry. Then they told me to take my clothes off. One of the police officers came from behind and started beating me on my backside with a baton. Then another police ordered me to bend over and he put the baton inside me...”

Throughout the interview with M.C., ARGH observed that he showed clear signs of post-traumatic stress disorder. No psychosocial help was provided to M.C. during his stay in the custodial detention centre in Vlora.

In July 2004, Erigert Ceka, a 17-year-old boy, was injured in the Reshen Police Station. A few days later he was charged with the robbing a British citizen. Erigert died in a Tirana Hospital two days after the police had sent him there for medical treatment. The Police Authority has not provided a clear version of events that led to the death of Erigert Ceka. It is still not clear whether the boy died because he had a fight with one of the inmates or due to force used by police officers. A criminal investigation was immediately opened by the Prosecutor’s Office and two police officers were charged with violating the rules of service. None of the inmates who were housed with Erigert Ceka were investigated or charged with his murder.

S.T., a 17-year-old boy, and his younger brother E.T., 15-years-old, were arrested for armed robbery in 2004. They have been kept in the custodial detention centre of Gjirokastra for three months without trial. S.T. has been sharing a room with a 52-year-old man, and two young people who are 19 and 26 years old respectively.

STATE VIOLENCE IN ALBANIA

“The police arrested us at home and brought us to the police station. They took us to the office of one of the investigating police officers. There were four guys with uniforms present. They kept me and my brother separated. The police kept asking where we were hiding the gun and the money. First, one of them slapped me, and then a second one kept punching me in my face and chest. Then the third one got a baton and kept beating me on my legs and back. The fourth punched me too, when the other ones were tired. This situation went on for some four hours. I told them at the beginning where I had put the gun and the money, but they didn’t believe me. Then a few hours later, at nighttime as I remember it, they sent me to the office of the Head of Public Order Police, where I met their boss. They punched and beat me again. There was blood on my face but they didn’t care. They did the same things to my younger brother as well...”

T.R. explained: “I was bundled into the back of a police van where the chief of the local police plus three others beat me. They used their fists and continued to beat me with the leg of a chair for hours”.

L.X. stated: “When I was arrested I was frightened the police were very violent when beating and punching me; they said they wanted to teach me a lesson”.

On July 10, 2000, Deje Malko went to the Complaint Centre (CC) and complained about the beating of her son, Fatmir Malko, by police forces the previous day. According to her:

“On Sunday July 9, her 16-year-old son, Fatmir Malko, who worked as a guard at the “Three Poplars” (Tre Plepat), was in the vicinity of “Petro Nini Luarasi” high school. Around 7 p.m., the police forces observed a friend of Fatmir stealing a stereo player from a car. He ran away immediately leaving it in Fatmir’s hand. Fatmir noticed that the policemen were coming in his direction from a police van. He ran away in fear, even though he had nothing to do with the robbery. The policemen caught him and proceeded to beat him. The beating continued in the police van, in which he was taken to Police Station no. 2 and while he was inside the police station cells. He was detained from the moment of his capture and a penal case was initiated against him.”

STATE VIOLENCE IN ALBANIA

On March 9, 2002, I.S., a 12-year-old, was detained by police officers and taken to Police Station No. 1 in Tiranë and charged with stealing a car tool. I.S. was placed in detention together with adult detainees for more than 8 hours. The police failed to notify the parents of the juvenile thus violating procedural rules. The police officers used violence against the victim.

On April 25, 2002, after receiving information about the mistreatment of the minor F.A. in the isolation rooms of the Berat Police Commissariat, representatives of AHRG visited the city of Berat, where they managed to contact his defence lawyer, Mr. Argjir Çuko. According to him, F.A. was stopped by the police and accused of committing a theft, which happened three months before. The police did not have any proof that the child was involved. The police staff used force against him, demanding that he confess to the theft. From the time he was first stopped the police violated the procedures in the Code of Penal Procedure for interrogating a minor. F.A. requires the assistance of a defence lawyer. AHRG is assessing the denouncement by the district Prosecutor Kozma Ziu regarding the mistreatment of the juvenile.

AHRG called on the Ministry of Public Order, the title-holders of the Police Directorate in Tirana, and the leaders of the commissariats in Berat and Lezha, to examine these flagrant cases of rights violations, to address similar cases, and to take immediate measures against those people who are responsible. Also, AHRG has asked the public to openly complain and condemn such acts.

The Case of A. Serjani, Petrika and Mariglen Babani (2004)

Police in this case interrogated and hid the children for several days, while their families searched for them. Their testimonies were coerced through the use of violence and consequently the evidence gathered was rendered invalid. Police also employed psychological pressure on the children by stating that their families would be imprisoned or punished if they did not provide information. They were beaten and kept away from their families for several days.

Testimony of Albano Serjani (during the process of evidence gathering):

STATE VIOLENCE IN ALBANIA

Albano Serjani attested that he was kept in the Police Commissariat for some days (five days) during the investigation process.

Testimony of Agim Serjani (father of one of the children):

Agim Serjani attested at the hearings that his son, Albano Serjani, had been beaten and mistreated by the police, and furthermore, that he was kept away from his family (without the knowledge of the latter) for 40 consecutive days. When his son returned home, he told them that he had been pressured to provide information in favour of the Prosecutor's Office.

Testimony of Ruzhdie Serjani (mother of Albano Serjani):

She said that when she went to the police she saw Albano Serjani was in shock.

Testimony of Vasilika Babani (mother of Petrika and Mariglen Babani):

Vasilika Babani said that her children were taken by the judicial police officer (Genci) and were kept in the Police Commissariat for some days.

On March 2, 2004, the GSHDNJ staff organised a meeting with the witnesses to help in the collection of evidence. Albano Serjani, Petrika and Mariglen Babani participated in this meeting.

According to Albano Serjani, the two police officers abducted him from school and kept him at the police station for a few days. There Genci (one of the judicial police officers) told him to "say in the court what I tell you, otherwise I will send your parents to jail". Albano Serjani also said, "I was kept at the police station, and there was a policeman whose name I cannot remember, who hit me with a wooden rod, although I made no noise or any thing. He hit me on the head and everywhere he could. They left me in the room for some time, but I cannot remember for how long. It was very bad there. When I wanted to go to the toilet I knocked on the door, but the police hit me and did not allow me to go in most cases. Genci, the policeman, came and threatened me saying that I needed to speak about Gjergji Bedulla in the court to say that he had taken me to Greece and that he had exploited me, and even asked me questions regarding who I was with in Greece. I got frightened and mentioned the names of two of my friends (Petrika and Mariglen). Later he brought them to prison as well. I know Petrika and Mariglen because we worked together loading iron, etc. They knew nothing of this case, but got frightened when

STATE VIOLENCE IN ALBANIA

they saw me there. Afterwards I was told (by Genci) that we would go to Elbasan, and I did not object because I was afraid that I would be beaten and sent to prison. Genci kept me away from home for more than a month; he treated me well and gave me food to eat. I was coerced into signing a statement, as Genci told me that if I did not sign he would not allow us to have any food and that he would imprison my parents forever. I did not speak to my parents at all during the time I was away. Genci told me not to tell anyone where I had been. In court I said only the words, which I was told to by Genci, because I was afraid.

Asked about how he was treated by the police, Petrika Babani said:

They, the police (Genci and Vangjushi), took us to the Commissariat and kept us there for two weeks, together with my brother. There we first met with Alban, but we knew nothing about what the police (Genci) were speaking about. He sent us to the isolation room, where we stayed for two weeks. They treated us badly. Although we did nothing wrong, the police hit us. The police beat me several times during the two weeks I was in prison. They hit me with their fists and hands for no reason at all. I cannot remember the names of the police officers. My family knew nothing regarding how we were being treated. We were violently beaten, and coerced into accepting what Genci told us. He told us to speak about Gjergji Bedulla, that had exploited us in Greece, and that otherwise he would keep us in prison. We do not know how to write or read; he wrote something and we signed with the finger. After two weeks we were released.

Asked about the treatment by the police during the time he was in the Police Commissariat, Mariglen Babani says:

The police beat me several times during the two weeks of my stay in the commissariat. I do not know the names of the police officers that beat me. They hit me while I did nothing. I was hit with hands and fists. There was another police there that hit me with a wooden rod. We were so badly beaten and so frighten that we accepted what the police (Genci) told us to.

STATE VIOLENCE IN ALBANIA

The case of Eriguert Ceka (2004)

On July 8, 2004, Mr. Eriguert Ceka, born 10 June 1987, was detained in the cells at the Rrëshen Commissariat and later died at the Tirana Military Hospital. The victim had been arrested one month earlier, together with four other peers, and charged with “Stealth in Collaboration with Others”. Immediately after receiving information of this event on 9 July 2004, AHRG representatives travelled to the Rrëshen Police Commissariat to investigate. They met with officers of the Commissariat and with detainees. AHRG representatives also established contact with the prosecuting lawyers in the case, as well as with the Rrëshen hospital.

According to official information from the Rrëshen Police Commissariat, on July 5 at 5.10 p.m., a fight occurred between E. Ceka, 17 and detainee K. Medja, 19, which resulted in a fistfight. Internal Service Guard, Gjon Reçi, alerted the Operative Office. The latter, together with Information Responsible Officer, Viktor Shtefaragu, entered room no. 6 where the fight had occurred and took the two detainees to a nearby investigation room. After getting the two to reconcile, he took them back to their room. On the way back, Mr. Ceka slipped in the corridor, fell and hit the back of his head. His brother heard the fall and immediately ran to ask him if he was feeling ok. Room no. 6 was open as Officer Shtefaragu was still there. At 5.25 p.m., the Head of Order in the Commissariat Pashk Përvata and the Commander of the Escort Platoon, Pjetër Prendi, summoned the two detainees Ceka and Medja back to the investigation room. At that moment, the Head of Order realised that Eriguert was sweating; Eriguert himself had complained of dizziness and low blood pressure. Ceka was taken urgently to the Rrëshen Hospital where he was checked by intensive care nurse P. Simoni and was given two serums. According to the minutes of July 6, at 2.07 a.m., an Information Officer and an officer in charge of the detention cells declared that there were no problems in any of the rooms. At 3.05 a.m., Internal Guard, M. Ndreu, notified the operative hall that E. Ceka was sick. After finding him in a situation of asphyxia, the station took the detainee immediately to the Rrëshen Hospital. Following consultations with doctors and an X-ray at 5.30 a.m., it was decided that Ceka be sent to the Tirana Military Hospital urgently. Around 3.00 p.m. on July 8, 2004, Eriguert Ceka was declared to have died as a result of cerebral coma.

STATE VIOLENCE IN ALBANIA

After receiving information, establishing the necessary contacts, and based on their observation of the site, AHRG noted:

The victim Eriguert Ceka, together with his twin brother E. Ceka and three of their friends, all of them high school students, were arrested on June 5, 2004, and charged with “Stealing in Collaboration with Others”. The court imposed unlimited detainment as a security measure. The victim, although a juvenile, was in the same detention cell as an adult, Mr K. Medja, with whom he entered into a fight. K. Medja was charged with “Violent Sexual or Homosexual Relations with Juveniles under 14 years of age”. According to information acquired by AHRG, there was only a verbal exchange between the two, no fistfight or any other form of violent interaction occurred. This account contradicts the official version of events. Up to the time of his transfer to the investigation room, at 5.10 p.m. on July 5, the victim Ceka had been in good health. Following their return to the cell, it was apparent that Eriguert Ceka been mistreated. It was also stated that around 5.30 p.m., noises of slapping and other blows had been heard. When Erigent Ceka arrived around 6.00 p.m. at the Emergency Section of the Rrëshen Hospital, he appeared to be in a state of asphyxia. His situation later worsened and at 3.00 a.m. on July 6th, 2004, he reappeared in Rrëshen Hospital with a cerebral coma (contusio capido). According to sources at the Rrëshen Commissariat, on July 9, the Mirdita District Prosecutor dismissed Service Officer, Gjon Reçi, and subordinate Information Officer, Viktor Shtefanaku, pending complete clarification of the event.

With regard to this serious event, AHRG declares:

Regardless of what caused Eriguert Ceka’s death, AHRG holds the police responsible as the event took place on police premises.

Reliable sources observed members of the Rrëshen Commissariat inflicting the injuries, which caused Ceka’s fatal injury. This incident calls into question the professionalism, responsibility and the role of the State Police.

With regret, AHRG discovered once again that the Rrëshen Commissariat continues to use violence which results in the death of detainees, such as the serious event that took place on March 11, 2001 involving Gjon Gjonaj.

STATE VIOLENCE IN ALBANIA

Eriguert Ceka remained in detention in this Commissariat together with adult persons accused of severe criminal offences, which is in contravention with International Conventions ratified by Albania and domestic law, which clearly provides for the separation of juvenile detainees or convicts from other categories of persons in these facilities. UN recommendations clearly establish, “detained juveniles must categorically be kept separate from adult persons”. Article 9 of the Rules “On the Organisation and Functioning of the Detention System” also establishes this.

In spite of sensitisation and requests by the Ministry of Defence and of Public Order, no serious measures have been undertaken. This inaction results in a weakening of the Albanian State reputation with respect to guaranteeing individual fundamental rights and freedoms.

In connection with the above, AHRG publicly:

Requests that Minister of Public Order, Mr. Igli Toska, undertake immediate measures against those responsible for this event. The Prime Minister should seriously assess the problem of the use of violence by State Police forces and ensure that relevant authorities provide access to information and facts, and take harsh measures against any official or officer of the State Police who violates human rights.

Requests the Prosecutor, General Mr. Theodhori Sollaku, to use his authority and ensure that those responsible are brought to justice.

Also requests that the Minister of Justice, Mr. Fatmir Xhafa, undertake immediate measures to address the situation in detention facilities, devoting particular attention to juveniles, and do so according to the prevalent legislation and International Conventions.

3.1.2. Cases of Rape and Sexual Abuse of Juveniles

A.SH. and G.M. were both 17 years old when they were sexually abused in the Saranda Custodial Detention Centre in June 2002. They shared their cell with seven other male detainees: one juvenile, who was 16 years old, and six adults between 20 and 27 years of age. Both victims were 18 years old when the CRCA team interviewed them. A. SH. told the team that he was raped continuously during a 3-4 months period, whereas G.M. denied the fact that he had been sexually abused.

STATE VIOLENCE IN ALBANIA

The abuse was also confirmed by F.S., who was in the same cell during the time of the abuse.

F.S. told his story to the CRCA Team:

“I have never been sexually harassed or abused during my six month stay in custody. However, two other guys, A.SH. and G.M., were raped in my presence. I remember that we had these two new guys in the cell, one 20 and the other 27. We were nine people in the cell. One night they got both boys, took their clothes off and had sex with them. Although both of them were crying no one came to help them. The older guys asked me whether I wanted to have sex with them, but I never did. All the other guys (6 adults) in the cell had sex with them. This continued for some two or three months. The police officers knew about this, but they did nothing. Only when a new Head of Police Station came here, the police changed the cells for A. SH. and G.M.”

Meanwhile A. SH. told CRCA:

“There were these two guys one 20 and the other one 27. One night, maybe around one or two o’clock in the morning they forced me to have sex with them. I told them to stop, but none of them did. They will see what happens to them when I get out of here... I never made a complaint to the police, because that would have been shameful for me.”

CRCA presented this case to the Police Authorities in Saranda, including the police officers serving in the Custodial Detention Centre. There is no record that any of the police officers were served with a sexual abuse or rape complaint from a juvenile. Asking whether they had received any information that juveniles were having sex with adults, they answered “No”. When the team asked the police officers why they had removed A. SH. and G.M. from their cell, their answer was because both juveniles had complained that they could no longer stay in that cell. The removal of the juveniles from the cell did not take place until three months after the sexual abuse had started. There was no action taken against the offenders by either the juveniles or the police authorities, until the CRCA lodged a complaint. In 2004, the Ministry of Interior launched an internal investigation after CRCA had made the case public but neither the statements nor the outcome of this inquiry were published.

STATE VIOLENCE IN ALBANIA

To the contrary, the review revealed no cases of sexual abuse of juveniles by the staff in police stations or custodial detention centres. However, it is very difficult to get accurate data on this as most juveniles feel embarrassed or somehow ashamed to talk about these issues.

One of the questions that CRCA put to the police authorities and the juveniles is, whether juveniles are sexually active while in the Custodial Detention Centre. The police officers denied this possibility. One of the Police Officers in Gjirokastra said:

“We have to monitor the cells every ten minutes. It would be very difficult for a juvenile to engage in a sexual act with himself or someone else in the cell. Many of these guys do not even know what sex is about...”

Moreover, no information materials are made available to juveniles in custodial detention centres, concerning sexuality or sexually transmitted diseases (STD), including AIDS.

3.2. Complaint Procedures

Although the Criminal Procedure Code allows for a person to complain if she/he is victim of State violence, these procedures are complicated and difficult for a child to follow without appropriate assistance. This is especially the case when torture and other cruel, inhuman or degrading treatment or punishment has occurred in police stations or at custodial detention centres. The procedure is not sensitive to children when it comes to torture or other forms of violence in public institutions. Children's complaints are treated the same as adult complaints.

Albania does not have an independent body (such as an ombudsman who exists in many other European countries) to investigate complaints of torture and ill-treatment. This makes it difficult for anyone, especially children, to file a complaint against the authorities. It is almost impossible for a child to request legal protection without the assistance of a proper child protection official or of an adult. Although the government is responsible for offering legal assistance to those who cannot afford it, in many cases such legal assistance is only reserved for children who are in conflict with the law.

It should nonetheless be mentioned that human rights organisations and media have often played a major role in bringing cases to the attention

of the public, the courts and the government. Nevertheless, the fact that independent commissions have never followed up on these cases of torture and other cruel, inhuman or degrading treatment or punishment, shows that there is a lack of political will on behalf of the authorities to stop the use of torture and other cruel, inhuman or degrading treatment or punishment.

4. Children in Conflict with the Law

As no juvenile justice exists, it is difficult for the institutions to understand what their respective roles are in the administration of juvenile justice. There is a conflict and a lack of coordination between the Ministry of Public Order and the Ministry of Justice. Either at the ministerial level or that of the courts, there is a coordination unit that could take responsibility for juvenile issues within the legal system. This lack of coordination and exchange of information among all actors makes for a very complicated process that is drawn out and hard for many juveniles to comprehend.

Below is a short description of the institutions and facilities that directly deal with juvenile justice.

4.1. Structure, Organisation of the System

4.1.1. Ministry of Justice

The Ministry of Justice (MoJ) is responsible for overall policy-making and management of the prison system in Albania. The MoJ is also responsible for the custodial detention centres in Tirana and Vlora. Since April 2003, the MoJ was assigned the responsibility of managing the whole custodial detention system but due to a lack of resources, a transfer of this responsibility has yet to happen. As of April 2005, the only custodial detention centre that MoJ had assumed control over is the one located in Vlora. A new Directorate of Juvenile Justice was established within the MoJ, but its mandate remains unclear.

The General Directorate of Prisons, which is part of the MoJ, is responsible for the overall management of prisons in Albania, including those for juvenile

offenders. Every prison has a Director, which is a position that is supposed to be a civilian position. However, many of the directors and prison staff have a background in the military or police.

4.1.2. Ministry of Public Order

The Ministry of Public Order (MPO) is responsible for overall policy-making, internal security of the country, including the borders, and the management of police stations and custodial detention centres. These powers fall within the authority of the General Directorate of Police. Recently, a Children's Section was established in the Ministry. Its mandate is to monitor the situation of juvenile crime in the country and provide care and protection for adolescent who are victims of crime. This section is in its infancy and therefore it is too early to review the work that has been carried out thus far. The main aim of this section for 2005 is to establish twelve Children's Sections in every Police Directorate.

4.1.3. Police Officer Training on Children's' Rights Issues

Very few of the police officers that CRCA met with have participated in CRC or HR Training. Although many training courses have been provided by NGOs, including CRCA, there has been no transfer of knowledge from senior staff to the lower levels of the police forces. Although HR training is part of the formal training in the School of Police, courses on the CRC are wanting. As a result, police officers lack the sensitivity and respect towards children and their rights.

As the police force does not provide any internal training sessions, police officers have few chances to improve their knowledge on the CRC and HR, communication skills, behaviour etc.

4.2. Legal Procedures

4.2.1. During the Arrest

- a) According to Article 28(2) of the Albanian Constitution, "the person whose liberty has been taken away, according to Article 27(2)(c), must appear before a judge within 48 hours, who shall decide upon his custodial

STATE VIOLENCE IN ALBANIA

detention or release him not later than 48 hours from the moment he receives the documents for review”. This rule applies to everybody, including children.

More precisely, every police station has one or more cells where offenders are kept for a maximum of 96 hours. Within this time frame, the Court of First Instance has to decide whether the juvenile will be kept in custody or be released. The normal procedure is that, within 48 hours of the arrest, the court shall make a decision on what is often called the security measure. In cases, where the court decides not to send the person to a custodial detention centre, three other measures can apply (Article 28(2) of the Albanian Constitution):

- a) Freedom (the criminal investigation continues),
 - b) Obligatory presence (the person has to appear on a given day at the local prosecutors office),
 - c) House arrest (a police officer is normally assigned to stay at the door. In some cases, the whole house is under police surveillance).
- b) According to Article 28(1) of the Albanian Constitution: “Everyone whose liberty has been taken away has the right to be notified immediately, in a language that he understands, of the reasons for this measure, as well as the accusation made against him. The person whose liberty has been taken away shall be informed that he has no obligation to make a declaration and has the right to communicate immediately with a lawyer. He shall also be given the chance to exercise his rights.”

None of the juveniles, that CRCA met with in police stations and custodial detention centres, were informed of their rights. In all of the cases reviewed for this report, none of the juveniles were informed of their rights by the appropriate authority even at the end of the legal process.

According to Article 35 of the CPC on assistance to the juvenile defendant, the police are required to immediately and throughout the process provide the child with the assistance of a lawyer and notify his/her family. Once again, the families of the juveniles that CRCA interviewed were not notified nor did the children benefit from the assistance of legal counsel. In many cases, police officers would only contact a defence lawyer when a child was required to appear before the court to be remanded as he/she is viewed as a threat.

STATE VIOLENCE IN ALBANIA

- c) For juveniles, whose mother tongue is not Albanian, they have the right to speak, be interviewed and be defended in their own language. Indeed, Article 8 of CPC with respect to the use of Albanian language states, “in all stages of the proceedings the Albanian language shall be used” and that “the persons who do not know Albanian shall use their mother tongue and, through the assistance of an interpreter, enjoy the right to speak and to be informed of the evidence and acts and of the conduct of the proceedings”. None of the juveniles interviewed by CRCA required such assistance; therefore no violations were reported. Regardless, the CRCA noticed that in practice the police are not prepared to deal with this issue. Furthermore, they do not have the resources to make translators available from the moment of arrest.
- d) Article 41 of CPC pertains to the verification of the defendant’s age and the importance of doing this when children are involved in the criminal system. This article requires authorities to make the necessary verifications and, if necessary, order an expert, at any stage of the proceedings where there is reason to believe that the defendant is a juvenile. It also states: “when, even after the verification and the expertise, there are still doubts regarding the age of the defendant, it is presumed that he is a juvenile”.

In practice, the police face difficulties with respect to verifying the age of juveniles because juveniles feel threatened by the police officers in many cases and so they refuse to state their age and home address. CRCA found more than one incident where police officers used violence against juveniles in order to promptly obtain this information.

4.2.2. Trial Process

There is a contradiction between the guidelines for juvenile trials in the Criminal Procedure Code (CPC) and the reality of how juvenile trials take place. Article 13 (4) of CPC states that trials of juveniles shall be dealt with by special sections, which are established at the Courts of First Instance, and decided by a decree from the President of the Republic. However, the President has yet to call for the establishment of such sections. Consequently, juvenile cases continue to be heard by ordinary courts/judges, and using the same methods that are used to decide adult cases. In early 2004, a Court for Serious Crimes was established in Albania. Its mandate is to hear trials involving charges, which have sentences exceeding 15 years of imprisonment. To date, two juveniles have been tried in this Court. This is problematic as the

judges lack the sensitivity and training on the CRC or other child rights standards. This lack of sensitivity is a widespread problem among judges in Albania. In several cases, courts have sentenced juveniles to 6 years imprisonment for the theft of a mobile phone.

As part of the National Strategy for Children in Albania announced in 2001,⁸⁷ the government specifically promised to establish a Juvenile Court, however, this institution has yet to be established. Furthermore, it is not clear whether such an institution will be established in the near future or whether the government will choose to break their promise. It seems that the Ministry of Justice would prefer the establishment of a juvenile section within the Courts of First Instance.

A major concern that arose in October 2004 was the appointment of barristers by the Prosecutor's Office. According to the CPC, the government is required to offer legal assistance to every individual that cannot afford to pay for legal aid. The procedure requires that the barristers register themselves on a list of available barristers, which is located in the prosecutor's offices. Then, if a case appears before a prosecutor, he/she will call one of the barristers on the list to act as counsel for the defendant. Unfortunately, in several cases reviewed by CRCA, many of the barristers negotiated all the procedures and other important legal matters with prosecutors, without meeting or interviewing the juveniles. CRCA and OMCT strongly believe that this is an irregular activity carried out between prosecutors and barristers, in order to quickly dispense with investigations and trials of juveniles. The largest problem with this is that juveniles are denied the chance to present their evidence.

4.3. Deprivation of Liberty

4.3.1. Custodial Detention

The custodial detention centres are managed by either the Directorates of Police or by Police Stations as part of the Ministry of Public Order. There is a custodial detention centre in almost every district⁸⁸ of Albania. The Public Order Police are responsible for security and day-to-day operations.

87 This institution does not exist anymore.

88 District is a form of the administrative organisation in Albania. Albania has 36 districts (74 cities / towns and 2962 villages) and 12 Prefectures.

STATE VIOLENCE IN ALBANIA

Managing the custodial detention system is a rather huge undertaking for the Police authority. Most of the senior police officers that CRCA spoke with stated that running the custodial detention centre is a very difficult job compared to the daily tasks carried out by police. As police officers are not trained to offer social services, the standards of respect, care and protection were lacking in almost all of the custodial detention centres that were visited.

a) Length of Custodial Detention

Although international standards require that juvenile detainees be put before the courts as soon as possible, every interviewed detainee confirmed that the legal process in Albania is a long drawn out affair. The fact that the legal processes for children take a long time, that children are sent and kept in custodial detention centres for minor offences, and the occasional use of alternative measures collectively show how little consideration is paid by the justice system to the best interests of the child.

Juveniles interviewed complained of the length of time it took to have their case heard. In many cases, the courts depend on the work of the local prosecutors' office and because most of these offices are overrun with criminal investigations and trials, little attention is given to offences committed by juveniles. CRCA found that juveniles are waiting for a period of more than three months for trial and most of them have never met with prosecutors or the investigating police.

I.F., a 17-year-old from Devoll, was accused of collaborating with four others to commit armed robbery, injury to a person and the theft of 1800 Lek (approximately 15 USD). Since his arrest on April 29, 1999 until the end of March 2000, a few court sessions have been held regarding his case. The police have not arrested the other four persons accused of the offence. I.F. has been waiting 11 months for trial in the Korça Custodial Detention Centre.

"I was on the mountain collecting wood for fire when I found an injured young man. I helped him and we took a minibus together to the hospital in Korça. When I returned to the village, the police were there. They arrested me and I was accused of armed robbery, injury of the young man and theft of 1800 Lek. Since then 12 court sessions have happened, but no decision has yet been taken. I met with the

STATE VIOLENCE IN ALBANIA

prosecutor, Niko Shipska, only once during the past 11 months. I told my lawyer, the prosecutor and the judge that I haven't committed any offence and that I don't have any connection with what they accuse me of."

L.S. was arrested seven months ago and is still in the Pre-Trial Detention centre in Korça. He stands accused of theft and although he retained a lawyer this has made little difference, as the legal system is overworked and inefficient.

There are too many cases waiting to be heard and not enough courts or trained personnel to hear them. As a result, many of the persons being held in the pre-trial detention centres feel that the system has forgotten about them.

The legal and internal procedures of the custodial detention centres provide that a person shall be transferred to a prison when his trial has ended. However, in more than one case, CRCA found that juveniles are being kept in custodial detention centres months after the court has sentenced them, which is in violation of Albanian laws and international standards.

b) General Living Conditions in Detention Centres

None of the police stations or custodial detention centre visited by CRCA had proper heating, lighting, water supply, changing rooms, rest areas, showers or toilets.

Conditions in the cells varied greatly from facility to facility. For example, in Korça the rooms were quite large but the walls were dirty and the windows quite small. The paint inside the cells was peeling and the plaster was crumbling because of the dampness. The electric lights were kept on 24 hrs a day in all of the custodial centres that the Team visited. By contrast, in Elbasan there were only three mattresses even though there were four juveniles in the room. The detainees complained that it was cold during the night. Each institution provided blankets and extra ones were brought by the detainees' families. Although blankets were provided, they were often unclean and used to cover the floor during the day. The cells at Elbasan recently had their wooden floors replaced which has greatly improved the general appearance. However, severe overcrowding was witnessed at this custodial detention centre.

STATE VIOLENCE IN ALBANIA

In Gjirokastra, the rooms were a lot smaller and much darker. Plastic bottles and buckets were used as makeshift toilets and these were kept inside the cell. In Shkodra, the cells were of varying sizes. Some rooms had 30 people crammed into them whereas the smaller ones held six to ten persons.

It should be noted that because of a lack of ventilation, and the fact that all of the detainees smoke, the quality of air inside the cells is generally substandard.

The personal hygiene areas were a major concern in all of the facilities visited by CRCA. Little if anything has changed over the past two years. All the washing areas were substandard as the showers and toilets were cracked or more seriously damaged. Only cold water was running in the sinks and they were often encrusted with dirt and stuffed with toilet paper. Soap was not provided but rather was obtained from relatives. In all the facilities, the showers were open therefore there was no privacy. There seemed to be a complete lack of effort to maintain the cleanliness of the toilets. The staff blamed this on a lack of investment from the State and the inability of detainees to keep the facilities clean. Although it was the duty of the detainees to keep the washing areas clean, it seems difficult for them to do without the provision of cleaning materials and tools. Toilet paper was not used nor made available to the detainees in any of the toilets in the custodial detention centres.

Gjirokastra, Elbasan and Shkodra are severely overcrowded, which puts a great deal of pressure on the washing facilities, which in turn leads to blockages that are seldom cleared out.

Juveniles are responsible for supplying their own soap, shower gel, shampoo etc. Although showers are supposed to be allowed twice per week, many juveniles reported that they were lucky if they got a few minutes in the shower once every ten days.

c) Gender Perspective

During discussions with the police officers in police stations and custodial detention centres, CRCA discovered that gender was a sensitive issues. Female juveniles need extra care and protection during their stay in these institutions. With the exception of Tirana custodial detention centre where there is a female section and appropriate staff, none of the other police stations or custodial detention centres has either appropriate cells or staff to deal with young girls and women.

STATE VIOLENCE IN ALBANIA

During the mission, CRCA came in contact with the only female juvenile in custody, a 15-year-old, who was being held at the Custodial Detention Centre in Korça. There were only male police staff working in this centre and it was CRCA's understanding that none of them had received training regarding gender issues or women's rights. C.B., a 15-year-old girl, was kept in her cell, and for security reasons, her door was locked with two padlocks. The Officer in Charge of the cells held one of the keys and the Officer in Charge (whose office was on the upper floor) had the second key. It was impossible for the custodial centre to provide the most basic services to C.B. such as shower, toilets, etc. It was the same situation at all of the police stations that CRCA visited. CRCA and OMCT consider this failure to provide basic conditions as inhuman and degrading treatment, especially with respect to girls.

d) The Right to Maintain Contact with Family

Although the detainees had opportunities to talk with someone from their family, and to receive food parcels or other items required for showering etc., these meetings are always strictly supervised and the parcels are inspected. The rooms where meetings between detainees and their families take place are often no more than a wall separated by bars, which are covered with mesh to prevent the two parties from touching or passing items. Visits are permitted once every ten days and each visit lasts a maximum of 15 minutes. In some places, such meetings are restricted to five minutes because of overpopulation.

e) Food and Nutrition

At all the pre-trial detention centres, there were complaints about the quality and the quantity of the food served. The menu in all places visited consisted of the following:

Breakfast:	Tea and bread
Lunch:	Soup and bread
Dinner:	Beans and bread

Basic rules of food hygiene were not observed in any of the facilities. The daily supply of bread was found piled and uncovered on a table near to where adult detainees were sweeping the floor. In the Gjirokastra Pre-Trial Detention Centre, one of the adult detainees was observed putting the instruments that he had used for cleaning on top of the bread. Lunch and dinner were served

STATE VIOLENCE IN ALBANIA

from large plastic or aluminium buckets, which again remained uncovered and often stayed in the halls for long periods of time.

It should be noted that the food provided by the pre-trial detention centres was often supplemented with food brought in by the juvenile's families. Due to a lack of facilities, this extra food was never refrigerated, and instead was kept either in the detainees' cells or in storage rooms. In Shkodra, each detainee had a locker situated in the hall of the main detention block, which he could use to store food from his relatives.

Food was eaten on top of a blanket on the floor. No tables or chairs were provided at mealtime. In Elbasan, food that was kept in the cells was stored directly beside buckets and bottles that were used as toilets.

f) The Right to Education and Other Leisure Activities

Except for the facility in Korça, the facilities lacked educational provisions. The education provided at Korça was basic. A teacher visited Korça on an informal basis for a maximum of 1 hour every two days and there were no visits on weekends or on public holidays. According to the boys that were interviewed, the education was basic and the facilities were substandard. CRCA observed that mathematics was the most commonly taught subject.

In Korça, classes for the three juveniles took place in the room used for visiting lawyers. This room was small with one chair and table for the teacher and two other chairs that the detainees used. No desks were provided for the detainees and there are no blackboards for the teacher to use.

There is little if any form of recreation in the pre-trial detention centres. In these facilities, all forms of literature are forbidden, such as newspapers and books. Thus detainees have little to do to occupy their time.

F.T. told us, "We are supposed to be allowed access to the airing room, a small outside yard enclosed on all sides but with a roof covered with bars. We are allowed to stay there for one hour each day. Many days we don't have access to this room because our time is spent cleaning the corridors of the Pre-Trial Detention Centre".

The rooms get very overcrowded because the guards cram as many people into them as possible. TVs and electronic broadcasts are not available, nor are there any organised sports.

STATE VIOLENCE IN ALBANIA

g) Medical Assistance

Like education, the provision of medical assistance is somewhat erratic. None of the facilities had a designated area for medical treatment. Medical examinations were held either inside the cell or in a waiting room doubling as a doctor's room.

Detainees complained of extreme delays in doctors' visits. Complaints were also made against doctors who failed to give proper treatment in the form of painkillers when requested by detainees.

In the interviewing room in Gjirokastra, the following drugs were found lying on top of a table along with a blank book of medical prescriptions:

- Lorazepam
- Mebhidroline
- Amitriptiline

When detainees were questioned, CRCA found that the most commonly dispensed drug was an anti-depressant. Generic drugs were always used and these were not always dispensed before their expiry date. As a result, some detainees complained of feeling worse after they had taken medication.

A major concern at every station is the lack of professionalism and awareness of human rights of the medical staff. As ill-treatment is widely used in police stations against juveniles, the medical staff often comes into contact with and should treat children abused by the police. Doctors have the professional obligation to report all cases of torture and other cruel, inhuman or degrading treatment or punishment. To date there has not been any reports or complaints of torture or abuse made by a physician. The main reason for this is that doctors are employed and considered staff of the police station, rather than of the local Health Authority.

h) Psycho-social Services for Juveniles

No provisions have been made to allow psychosocial treatment providers to enter custodial detention centres. However, NGOs are on the list of approved institutions/persons allowed entrance into custodial detention centres.

Through its Child Legal Protection Office, CRCA provides experts free of charge to assist children who are in conflict with the law. Psychosocial assistance is also offered by qualified social workers in Tirana. The main aim of

STATE VIOLENCE IN ALBANIA

this centre is to lessen the physical suffering and mental anxiety of children, to improve the status of the child in the legal and judiciary system, and to offer psychosocial assistance. Since its establishment in January 2000, the Child Legal Protection Office has helped a large number of juveniles in their quest for fair justice.

4.3.2. Imprisonment

Although Albania does not have any juvenile prisons, the Vaqar Prison (10 km from Tirana) has established a small section consisting of three rooms for male juvenile offenders. There are currently 24 juveniles, between 14 and 18, who reside in this Section. Juveniles whom have received a final court decision are sent to this prison. Female juvenile offenders serve their sentences in Prison no. 325 (inside Tirana), where there is no juvenile section. At present, there are no juvenile females in this prison.

Article 51 of the Criminal Code provides for custodial detention, which can be used against juveniles. There is nothing in the Code, which instructs the Court to use imprisonment as a last resort in cases involving juveniles. Article 51 “Imprisonment Sentencing of Minors”, states: “For minors, who at the time they committed the criminal act, were under 18 years old the imprisonment sentence may not exceed half of the term of punishment provided by law for the criminal act, which was committed”.

a) Alternative Measures

The Criminal Code of Albania has a separate chapter dealing with alternative measures, however, none of them relates to juveniles. A short list of alternative measures includes:

- **Fragmentation of Imprisonment** Article 58 states that for sentences up to one year, if the court notices grave family, medical, professional, or social circumstances, it may decide to allow the sentence to be served not less than two days per week.
- **Suspending the Execution of a Sentence** Article 59 states that if the person, and the circumstances under which the criminal act was committed, are of little danger the court, while able to give a sentence of up to five years, may rule in favour of probation. The sentence is suspended provided that the defendant agrees not to commit any other criminal act that is as or

STATE VIOLENCE IN ALBANIA

more serious than the previous one. Probation can last between eighteen months and five years.

- **Suspension of Imprisonment and Compulsion to Perform Labour in favour of Public Interest** Article 63 states that the court may suspend imprisonment if the sentence is under one year, and replace it with an order to perform labour in the public interest. This is only if the person and the circumstances under which the criminal act was committed are of little danger. This punishment can last between 40 to 240 hours and consists of compelling the convicts to perform unpaid labour in favour of public interest or to the benefit of an organisation named in the verdict of the court.

b) Physical Abuse

The last reported cases of prison abuse date back to 2000. This means that CRCA has not received any other complaints of physical abuse. It is important to recognise that this does not mean that no physical violence has occurred since 2000. CRCA thinks that juveniles probably have not felt comfortable to talk about such events, or that they have feared repercussions from prison authorities.

Although there have been no recent reports of torture or violence against juveniles in prison, juveniles often declare that the prison staff do not treat them fairly.

In 2000, a juvenile, A.S., declared to CRCA:

“Once we decided to organise a peaceful protest because of the conditions in the cells and because of the food. When the director heard about our protest he called in the Special Forces immediately, something that should happen only in cases of revolts. That night was a nightmare for all of us. They beat us for hours, one by one and threatened us. I want to forget that night.”

A.S. is one of the juveniles who claimed he was a victim of physical abuse by one of the officers at the cells.

STATE VIOLENCE IN ALBANIA

c) Living Conditions in Prisons: Sharing Space with Adults

In 2001, the Vaqar Prison, hosting approximately 150 male inmates, created a juvenile section in its upper section. The establishment of this new section has resulted in juveniles being partially divided from adults. However, juveniles often meet adults in the washing areas and sports facilities. Although there have been no recent cases of sexual abuse of juveniles in prisons, the fact that juveniles are in contact with adults predisposes them to being both physically and sexually abused.

d) Sexual Abuse

In 2000, D.I. told CRCA that adult prisoners sexually abuse juveniles during times when the prison officers do not have as much control over the cells, such as during airing times or shower times. These cases were reported to the prison administration in Vaqar and the abusers were put in isolation cells. No further criminal investigation or other legal action was taken.

“One of our friends was having a shower when an older guy appeared beside him in the shower room. He threatened him with his life if he didn’t let him have sex with him. The guy did not tell us for such a long time what happened, because he was afraid. Then all of us we met the director and told him to protect us from the adults. They just put the abuser for a few days in a special cell and that’s all. We still see him around.”

Although, Albania does not have any special prison for juveniles, two prisons in Tirana host juvenile prisoners (one for males and the other for females). The male prison called Vaqar prison is situated 10 Km from the capital, whereas the female prisoners reside at Prison no. 325. At present, there are only 21 juvenile male prisoners and no female prisoners. Please note that only the conditions at the Vaqar Prison have been described. There were about 21 juveniles between 14 and 18 years of age at the Vaqar prison.⁸⁹ The juveniles were divided between three rooms with six to eight persons in each room. The juvenile’s section is on the second floor, where there are 18 other rooms for adult prisoners. Another 150 persons between 19 to 50 years of age are living in the prison. Although the juvenile section is a separate section of the prison, contact often occurs between juveniles and adults, especially in toilets and sports areas.

STATE VIOLENCE IN ALBANIA*e) Contact with Their Families*

Meetings with families are allowed four times a month. The juveniles in this prison did not have the right to special meetings with their parents. Each meeting lasts 30 minutes. When the number of visitors is larger, the length of visits is reduced.

A.C., who was 17 years old at the time CRCA interviewed him in May 2000, had not seen his family for six months because they live far away and his parents could not afford the trip to Tirana.

f) Food

Most juveniles do not eat the food provided in prison. The juveniles declared that they are not satisfied with the quality of the food that is provided in prison. It is left to the families to provide their children with adequate food. Usually families are permitted to bring dry food such as pasta, biscuits and fruit juices etc. Juveniles have also expressed the need to have a private kitchen.

On the day of the visit, the menu in the prison consisted of:

- Breakfast: tea
- Lunch: soup or rise, pasta
- Dinner: beans

Meat was sometimes served together with vegetables at dinner. The doctor and an officer checked the food. In the kitchen, there were two cooks and an assistant.

g) Education and Leisure Activities

Formal education was just introduced at Vaqar Prison in early 2001 while Prison no. 325 is still without a formal education system. Although, female juveniles (or adult ones) are prohibited from receiving any education, several NGOs, including CRCA, offer informal education and leisure activities to juvenile detainees. The major activities include: children's and human rights education, sports, card games, dominoes, reading etc.

When the team visited Vaqar Prison, most of detainees were playing cards and watching TV. A police officer sometimes organised football matches, or discussions. Due to a lack of staff, they were allowed in the washing area

STATE VIOLENCE IN ALBANIA

for 30 minutes each time but not on Saturdays and Sundays or special occasions.

Juveniles who could read and write were using the books from the Library. Most of the books are religious books that are gifts from the Orthodox Church. There were other books from different NGOs about children's rights and some were simple methods for learning English. Overall, the Library is rather poor and more resources are needed.

h) Psycho-Social Treatment

The teacher in this institution has a special juvenile programme but he/she refused to provide any details. Juveniles felt that they did not have the support of the social workers. The only persons who were very close to the juveniles were the police officers who played and spoke with them.

“We know the teacher as a person who delivers the post but he doesn't do anything for us. We do not speak with him and he does not help us. He is not interested in us. Most of the time they were scared to talk, they didn't believe that talking with specialised people like social workers, psychologists etc is very important for them.” – said one of the juveniles in May 2000.

i) Contact with Adult Prisoners

Older prisoners did nothing to protect juveniles from abuse. They were in contact with older prisoners in the shower and in the garden. Due to a lack of resources, division between juveniles and adults was not possible.

j) Room Conditions

Juveniles, adults and older people were housed on the same floor in the main building. On the first one, there are twelve rooms, and each one housed four to six persons, and there are four toilets and six showers.

On the second floor, there are eighteen rooms, three of which are for juveniles. On this floor, there are three toilets and six showers. In every room, there is a TV and some posters. The rooms are big and quite bright. Curtains were previously allowed but are not any more.

“The Director doesn’t like that. He did not want us to use the heaters in the winter or the ventilators in summer. We should even use prison blankets and not ours he said once.”

Each room has four beds with sheets and pillows from the prison and blankets that belong to the prisoners. Every room has four cupboards, which the juveniles use to keep their clothes and food in. The doors of the rooms are made from steel with a very small opening space, which is used by the police for control. The room is about 40m².

k) Personal Hygiene

Although in theory the juveniles can shower whenever they like (shower facilities have been installed in all the rooms of juveniles), they cannot be used, as there is a lack of water. The prison is currently working to ensure a 24-hour supply of water. At present, the juveniles can use the toilets installed in their rooms.

The juveniles are responsible for cleaning their own clothes. The sheets are cleaned in the prison laundry every ten days.

5. State institutions

5.1. Schools

Violence against children is a concept widely accepted by society, as it is seen as a means to educate and discipline a child. Although there have never been any reported cases of torture against children in school, the teachers frequently physically and emotionally abuse the children.

One of the most common forms of child abuse in schools is emotional. Abuse often takes place during classes. Teachers verbally abuse children who are not prepared for lessons or fail to answer the teacher’s questions. In some cases, the verbal abuse turns into physical abuse if the child complains about the teacher and the names she/he has been called. Due to periodic checks from the Educational Authorities and an awareness of the effect of violence on children, abuse of children in schools is lower in larger cities.

Neither the Ministry of Education nor the Regional Educational Authorities have a body that handles complaints of degrading treatment or abuse of children. There are no procedures in place, which makes it almost impossible for a child file a complaint. As a result, parents are responsible for reporting any case of degrading treatment or abuse by teachers. The lack of data makes it difficult to acknowledge the spread of this phenomenon. Neither the Ministry of Education nor the Albanian government have programmes aimed at preventing the ill-treatment of children by teachers.

5.2. Boarding Schools

Children in public boarding schools live under very difficult conditions, which OMCT and CRCA also consider detrimental to the well being of children. Boarding schools accept only children between 14 and 18 years of age and are spread throughout Albania. They are located wherever there is a trade school. Boys and girls are kept in separate buildings. The shower and toilet facilities are inadequate and the rooms are not heated during the winter. There have been cases of rape and sexual abuse reported in one of the boarding schools for girls in Shkodra.

A male boarding school, located in Gjirokastra, was temporarily closed because it failed to pass the test administered by the health authority. Currently, the Albanian government has no plans to improve the conditions in boarding schools.

5.3. Correctional Institutions

Although Albania does not have correctional institutions as such, prisons are considered by the Albanian legislation as correctional institutions.⁹⁰

Due to governance traditions, dating back to the communist regime, Albania remains a highly centralised country, where the central government and ministries control policies, legislation and the budget. Although decentralisation is under way, many services still remain under the management of the central government.

90 See above section 4.3. General Living Conditions in Detention Centres.

RECOMMENDATIONS OF THE COALITION

General Recommendations

The relevant State authorities should:

1. Amend the relevant provisions of the Criminal Code (Articles 86 and 87), in order to include a definition of torture that is in compliance with Article 1 of the Convention against Torture.
2. Take the necessary measures to establish an effective, reliable and independent complaints system responsible for prompt and impartial investigations into allegations of torture and/or ill-treatment by police and other public officials, and to punish the offenders.
3. Undertake measures to ensure the implementation of law 9205 dated March 15, 2004 “On the Protection of Witnesses” in order to encourage future complaints about the use of violence or torture and other cruel, inhuman or degrading treatment or punishment.
4. Adopt a code of ethics for law enforcement personnel and ensure that it is implemented so as to guarantee the rights of individuals who are arrested and interrogated.
5. Amend interrogation rules and procedures, such as introducing audio or videotaping in order to prevent torture and ill-treatment.
6. Guarantee the rights of detainees to be treated humanely and with respect for their dignity. Detention should be viewed only as a last resort, and a provision should provide for alternative measures. Rehabilitation programmes should be implemented for detainees and convicts.
7. Provide regular medical consultations in all detention institutions and guarantee access to medical treatment upon request.
8. Take measures to remove all detainees from isolation rooms in prisons as they result in a decrease in the quality of life for those persons serving sentences.
9. Independent organisations or institutions investigating acts of torture and ill-treatment should be given enough access to allow for collaboration

STATE VIOLENCE IN ALBANIA

with official institutions in order to ensure efficiency and completion of their work.

10. Approve the draft-law that has been submitted to the parliament, which provides for compensation, including fair and adequate compensation, to victims of torture or, in the event of the victim's death, to their families.
11. Establish special centres for the rehabilitation of all victims of torture or ill-treatment.
12. Develop and promote training with regard to human rights, especially activities aimed at preventing torture and ill-treatment, particularly for law enforcement institutions.

Recommendations with Regard to Women

The relevant State authorities should:

1. Ensure that Albania is in better compliance with the international human rights law through agreeing to undertake positive actions to protect women and girls from torture and other forms of cruel, inhuman or degrading treatment or punishment.
2. Implement measures to eliminate the practice of customary law and traditional codes of conduct, which discriminate against women.

With Regard to Legislation

3. Draft specific legal provisions to guarantee the right of mothers and girls in police custody to have access to a doctor of their choice upon request. In addition, allow detained women to exercise the right to immediately inform their families or friends of their arrest and the place where they are being detained.
4. Ensure that Albanian laws provide adequate, accessible and affordable enforcement procedures and legal remedies for violations of women's human rights.
5. Draft a bylaw act, or at least a Code of good conduct, for the police interrogations and body searches and ensure that it is in accordance with inter-

STATE VIOLENCE IN ALBANIA

national human rights standards and that it provides special requirements for women.

6. Review the acts, which regulate the information required in forensic reports pertaining to injured women or girls.
7. Commit, by way of legislation and policy-based activities, to the prevention of trafficking and for the provisions of assistance to victims of trafficking. Ensure that trafficked women and girls have the protection and support they need in order for them to testify against their traffickers.

Training of Police Officers, Prosecutors, Judges and Forensic Experts

8. Raise awareness about existing laws that protect women's rights, institute mechanisms to encourage women to report rights violations, establish protections for women who report rights violations, and train police and judicial personnel, and any other government official having contact with women whose rights have been abused, to handle cases of violations of women's rights in a gender sensitive manner. Domestic law should, with a special provision, require responsible people, such as police officers and health personnel, to receive training on *gender*. This would qualitatively boost ethics and professionalism.
9. Implement all provisions of the Convention on the Elimination of All Forms of Discrimination against Women, the Beijing Rules and Platform for Action and the Declaration on the Elimination of Violence Against Women, as they are the most relevant international instruments dealing with all forms of violence against women.

Recommendations with Regard to Children

The relevant State authorities should:

State child-care facilities

1. Establish a Child Care and Protection Office, with the final aim of building a contemporary system of services for child-care and protection throughout the country.

STATE VIOLENCE IN ALBANIA**Conditions for Children in Public Institutions**

2. Organise monitoring missions to review the conditions of schools and boarding schools and prepare a National Plan for the improvement of living conditions of children in boarding schools. When possible, these missions should be carried out by independent experts.

Complaint, Investigation and Punishment

3. Establish a Commission of Experts, which will review all cases of ill-treatment and abuse reported by children and their families against teachers.
4. Enact a national law and a Code of Behaviour that prohibits teachers from using any form of violence or cruel, inhuman or degrading treatment or punishment against children.

Legislative Reforms

5. Take immediate and appropriate steps to take under its management the custodial detention centres, including the preparation and approval of standards of care and protection of juveniles in custodial detention centres and prisons.
6. Improve and implement legislation and policies regarding juveniles in custodial detention centres and prisons, with the final aim of building a child-friendly juvenile justice system.
7. Establish an Independent Commission to monitor all complaints and reports of torture and other cruel, inhuman or degrading treatment or punishment against juvenile offenders in prisons.

Torture in Police Stations and Custodial Detention Centres

8. Establish an independent complaints body to ensure that torture and violence against children does not occur in police stations and custodial detention centres, and take appropriate steps to follow up on claims and reports of torture and other cruel, inhuman or degrading treatment or punishment against juveniles.

STATE VIOLENCE IN ALBANIA

9. Take appropriate measures to improve training of police officers, especially investigating police, on how to deal with children.

Juvenile Justice System Reforms*Practical Measures*

10. Issue a Memo to staff at police stations and custodial detention centres, including investigating police, that prohibits the use of torture and other cruel, inhuman or degrading treatment or punishment against detainees, especially against children and juveniles. This memo should also provide consequences for what will happen if they use torture and other cruel, inhuman or degrading treatment or punishment against children.
11. Take immediate and appropriate steps to prepare and approve standards of care and protection of juveniles in police stations and custodial detention centres, in partnership with the Ministry of Justice.

Establish a Mechanism for Registration of Complaints

12. Establish a National Commission that can monitor all complaints and reports of torture and other cruel, inhuman or degrading treatment or punishment against juvenile offenders in custodial detention centres.
13. Employ psychologists and social workers to work in police stations and custodial detention centres as part of the Police organisational structure.

Establish a Mechanism of Control.

14. Organise monitoring missions to review the conditions of juveniles in police stations, custodial detention centres and prisons.
15. Organise public hearings every year with relevant Ministers, Ministries and NGO representatives, in order to review the situation of juvenile justice and education in Albania.

Reform of the Health Care System for Detainees and Prisoners

16. Reform the health care systems in custodial detention centres and prisons.

Criminal Procedures for Children

17. Issue timelines, based on the articles of the Constitution, Criminal Procedures Codes, and the Convention on the Rights of the Child, for how long criminal procedures against children can take.
18. Issue a Memo to all Prosecutors in Albania, advising them to use custodial sentences as a last resort for children.

COMMITTEE AGAINST TORTURE

THIRTY-FOURTH SESSION

11 MAY 2005

**CONSIDERATION OF THE INITIAL REPORT
OF ALBANIA SUBMITTED UNDER
ARTICLE 19 OF THE CONVENTION**

**ACCOUNT OF THE DIALOGUE BETWEEN THE CAT
AND THE ALBANIAN DELEGATION**

SUMMARY RECORD CAT/C/SR.652

Questions raised by the Committee

The Committee started the session by acknowledging that Albania's report is evidence that Albania is fully engaged in the process of implementing the provisions of the Convention. The Committee recognised that Albania is in the process of transition to a democratic society and, although it had started this process from a difficult position, it is now making progress in its efforts to build a democratic society. However, the Committee also acknowledged that "beautiful laws" should be implemented, citizens should be able to use them on a daily basis, courts should be able to resolve conflicts through the use of laws with the aim of maintaining the rule of law and defenders should be able to perform their work through the application of the existing laws.¹

With regard to the reform of the judiciary², the Committee asked how judges were appointed and if they were protected from arbitrarily removal. They also asked how the independence of the Supreme Court was guaranteed, who was appointed and what the criteria was for being appointed as a judge to the Supreme Court. It was said that in addition to the independence of the judges, the use of juries could strengthen the justice system while also allowing citizens to participate in the legal system. Likewise, providing further training to sitting judges would lead to improvements in the quality of their work. They also asked how the lawyers' profession was organised in the country and if the lawyers were officials of the Ministry of Justice. The Committee reiterated that lawyers should be independent.

With regard to the definition of torture,³ the Committee's concern was that the legal system containing the definition of torture should be within the context of article 1 of the Convention. A general definition such as causing bodily harm, for example, could not truly define torture.

The Committee asked for further information on the provision of free legal services to ensure victims can defend themselves and they also asked about what the requirements are to obtain free legal service.⁴

1 Comments made by Mr Yakovlev, country rapporteur for Albania.

2 Questions raised by Mr Yakovlev.

3 Comments made and questions raised by Mr. Yakovlev

4 Questions raised by Mr Yakovlev.

STATE VIOLENCE IN ALBANIA

The Committee declared that a number of cases of torture had been reported and therefore their discussion with the delegation concentrated on how to prevent these acts from re-occurring.⁵ The Committee asked if all complaints of torture satisfied the definition of torture in Article 1 of the Convention and whether public officials were involved in the incidents.⁶ The Committee highlighted that obtaining confessions through the use of coercion remains a problem within the police interrogation system. While referring to a case in which an individual was harmed while in police custody, they asked if arrested individuals had access to the medical doctor of their choice.

Addressing the issue of detention⁷, the Committee declared that basic guarantees should be respected and that all investigations of all complaints should be guaranteed. The Committee inquired about the procedures for visits and inspections of places of detention and police stations. They also asked what was the average duration of arrest before a suspect was brought before a court to determine his detention. The Committee acknowledged that, according to the law, an administrative detention of 10 hours and a police detention of 24 hours were permissible. However, the Committee felt that it was unclear how detention times were calculated and inquired whether the two categories of detention could be combined. Through a reference to an incident in which a child was tortured, the Committee recognised that there seemed to be widespread use of torture against juveniles in Albania and that more safeguards were needed before, during and after police custody. The Committee asked questions about the medical examinations conducted upon arrival at prison, on access of detainees to forensic experts, on the obtaining of medical certificates to start legal proceedings and on the qualifications required to designate doctors as forensic experts.

The Committee⁸ recommended that police should avoid wearing masks during interrogation and that the law allowing this practice should be repealed. Police should easily be identifiable through the use of a visible badge that listed their number or name. They asked for further information on the implementation of the obligation to conduct prompt and impartial

5 Comments made and questions raised by Mr Rasmussen, country co-rapporteur for Albania.

6 Questions raised by Mr Rasmussen.

7 Questions raised by Mr Rasmussen.

8 Questions raised by Mr Rasmussen.

STATE VIOLENCE IN ALBANIA

investigations, on the right to complain and on the right of torture victims to obtain redress. Furthermore, they wanted to know what actions and measures are taken against judges and police officers who either fail to perform their duties or who are actively involved in violations and what power did the public prosecutor have, i.e. if prosecutors could decide whether or not to pursue cases of torture.⁹

The Committee stated that the prohibition of the use of statements obtained under torture in court proceedings was not concise enough in Albanian law. For example, the use of torture is not specifically mentioned and consequently is not always respected in practice.

With respect to the prohibition of other cruel, inhuman or degrading treatment or punishment, which do not amount to torture as defined in Article I¹⁰, the Committee asked for further information on psychiatric institutions, police facilities, and prisons. Referring to a recent hunger strike in prisons due to psychological constraints, the Committee said that there were reports of prisoners sleeping on the floor and not being allowed to participate in any recreational or productive activities. There were also reports of children being abused in prisons including sexually. Moreover, the Committee was concerned about the lack of an effective juvenile justice system.

The Committee said non-governmental organisations had indicated that there was also a lack of adequate training for police and prison staff and the absence of proper prosecution of those who perpetrate torture. It recommended that this situation should be corrected.¹¹

Turning to the issue of expulsion and refoulement¹², the Committee asked for more information on expulsion for reasons of public interest and national security. They asked if such measures were executed in accordance with the Convention's condition not to return people to countries where they are at risk of being tortured. They asked the delegation to provide the names of those persons subjected to expulsion based on reasons of national security threats. The Committee also asked whether an accelerated procedure for

9 Questions raised by Mr Rasmussen and Chairperson, Mr Marino Menendez.

10 Questions raised by Mr Rasmussen.

11 Questions raised by Mr Grossman.

12 Questions raised by Mr Grossman.

STATE VIOLENCE IN ALBANIA

admitting asylum seekers existed.¹³ Referring to the fact that the Albanian government had signed a number of readmission agreements with many European countries, the Committee wanted to know whether these agreements have been implemented.

With respect to connections to the past regime¹⁴, the Committee asked if the police force remained the same and, if so, whether training is provided in order to comply with the new standards for policing. It was reported that 330 police officers have had criminal charges laid against them. Among those officers, 50 had been caught committing a criminal act. The Committee enquired about whether these and other police officers have been convicted and sanctioned and whether anyone, apart from the victims, are entitled to compensation.

The Committee wanted to know what was being done to respond to the extensive reports of abuse at all levels, who were the actual State officers, i.e. if they were the same officers as in the past regime, and if they are adequately trained and qualified.¹⁵

With respect to the integration of females, Roma and other minorities into official state positions¹⁶, the Committee wanted to know what percentage of the police force they are and what, if any, steps were being taken to ensure their integration.

With respect to the issue of trafficking in human beings¹⁷, the Committee asked for further information about the training and supervision of border guards, investigations and prosecutions of border guards and about reported cases of complicity by police officers. They asked whether recommendations adopted by the Ombudsman had been implemented, especially regarding impunity.

With regard to sexual violence and rape¹⁸, the Committee asked what measures were in place for monitoring detention centres, prisons and psychiatric centres to protect against sexual violence and rape, what are the results and

13 Questions raised by Chairperson, Marino Menendez.

14 Questions raised by Ms Gaer.

15 Questions raised by Ms Gaer.

16 Questions raised by Ms Gaer.

17 Questions raised by Ms Gaer.

18 Questions raised by Ms Gaer.

STATE VIOLENCE IN ALBANIA

what safeguards are in place to prevent future incidents and protect detainees who have previously been victimised.

The Committee asked for further information on the whether state agents had been convicted under Article 87 of the Criminal Code. In addition, the Committee reiterated the importance of maintaining statistics.¹⁹ They also requested more information on the process of transferring responsibility for isolation cells from the Ministry of Justice to the Ministry of Health.

Citing reports of widespread arrests²⁰, the Committee said that the delegation should clarify why such arrests were carried out. They also wanted to know if there were improvements with respect to the number of cases of torture in custody, use of coercion to obtain confessions during interrogations and about the lack of independence of the ombudsman.

With respect to the jurisdiction of the military courts²¹, the Committee wanted to know whether military courts had the jurisdiction to deal with cases in which a soldier had committed torture against civilians or if these cases are dealt with in civilian courts.

Answers given by the Albanian Delegation

On the question of the judicial system, the Albanian delegation²² stated that detailed information had been included in the written replies including an overview of the courts and judiciary.

On the question of inspections within the judicial system, the delegation stated that the Ministry of Justice conducted inspections of the courts and was responsible for identifying cases of violations, which constituted an omission of duties. Inspections of the prosecutors' offices have also been conducted, with a focus on the observance of detention and investigation deadlines, human rights and fundamental freedoms, the accuracy of investigation procedures, the obligation of the prosecutor to initiate criminal proceedings and the advancement of criminal and sentencing policy.

19 Questions raised by Ms Gaer.

20 Comments made and questions raised by Mr Wong.

21 Questions raised by Chairperson, Marino Menendez.

22 Answer given by Mr Nina, Albania.

STATE VIOLENCE IN ALBANIA

Inspections of bailiffs' offices, detention centres and prisons have occurred. As a result of court inspections in 2004, disciplinary proceedings were initiated against nine judges and the High Council of Justice handed down eight disciplinary measures, four of which were dismissal. The delegation assured the Committee that disciplinary proceedings were ongoing. In addition to disciplinary measures, concrete recommendations have been adopted regarding problems relating to the improvement of court administrative procedures. Further inspections were planned for the following year.

On the question of the courts, the Albanian delegation emphasised that the Constitution outlined the requirements that must be met in order for the Supreme Court to be vested with powers and independence. Members of the court were appointed by the President of the Republic, upon the approval of the Assembly and held office for a term of nine years without the right of reappointment. Other judges were appointed by the President based on the nomination by the High Council of Justice and according to the conditions and procedures for their selection as defined in law.

Although there have been some attempts to introduce the jury system, the prevailing opinion of the preparatory commission, led by a Council of European experts, was that the Albanian system should follow its historical roots, i.e. the Italian model, which Albania adopted in the 1990s.

With respect to the training of officials, the Albanian delegation stated that the Higher School of Magistrates was a government-subsidised institution, which enjoyed administrative, academic and financial autonomy. Its professional training programme included the mandatory initial training of prospective magistrates, the further education of magistrates and the professional training of judicial administration officials. The European Commission Community Assistance for Reconstruction, Development and Stabilization Programme is currently assisting the school of Magistrates. Similarly, the Ministry of Justice organises ongoing training for judges and prosecutors through the school regarding national and international human rights. In terms of improving court services to citizens and respect for human rights, a study on the reorganisation of district courts and a plan on judicial infrastructure have been drafted.

The prison staff training college provides two-week courses for new employees as well as ongoing training for other employees. The prison system's education service also organises regular seminars on the treatment of prisoners and issues periodic anonymous questionnaires to prisoners. In cooperation

STATE VIOLENCE IN ALBANIA

with local NGOs, two training sessions for officials and jurists within the prison system took place in 2004. In 2004, long-term training of police officers, educators and administrators commenced in two prisons, which included training on the rights of the child in the penitentiary field. This training will be extended in 2005.

The Directorate-General of the State Police, in cooperation with NGOs, international police missions and other organizations, organised various local and national training and education in 2004. The curriculum of the Academy of Public Order and the Police Academy includes specific courses on domestic legislation and international instruments. Seminars, short training courses, workshops and institutional and regional courses have been held on the subject of human rights, with the participation of judges, prosecutors and judicial police officers.

Responding to questions about the legal aid system²³, the Albanian delegation said that the advocacy system had been re-established in 1990, some 23 years after its abolition during the communist era. Although Chambers of advocates are independent, the Ministry of Justice can review their work and advocates are granted licences and they can also be subjected to disciplinary measures, including being disbarred. The delegation added that in order to obtain an advocate's licence, a person must hold a law degree, have work experience in a law firm, State institution or juridical body and have passed the chamber's bar examination. Although, in theory the independence of advocates is fully guaranteed, a 2004 report by the Organization for Security and Co-operation in Europe on the legal system in Albania stated that there were still concerns regarding the absence of a proper code of ethics and the failure of chambers to impose disciplinary measures.

On the question of violence within the family, the Albanian delegation recognised that statistics were scarce. In 2002, the Ministry of Health, in cooperation with a number of international organizations, conducted a survey on reproductive health. The findings of the survey represent the first available data on the issue of violence against women at the national level. Further details have been submitted in writing for the Committee's consideration.

Responding to the question on legal aid, the Albanian delegation said it was guaranteed by law but was only available for criminal cases. Apart from the

23 Answer given by Mr Bele, Albania.

STATE VIOLENCE IN ALBANIA

fact that it was difficult to control cases in which lawyers were violating their client's rights, the delegation maintained that the legal profession functioned well. The Albanian government is aware that there is still room for improvement in terms of the quality of legal assistance.

Regarding the definition of torture as a criminal offence in the Criminal Code, the Albanian delegation acknowledged the Committee's concern that the definition of torture in the Criminal Code does not comply with Article 1 of CAT. However, they drew attention to the fact that Article 86 on torture and Article 87 on torture causing serious damage to a person's health were constructed as blanket provisions. The legislation was aimed at punishing all kinds of ill-treatment, which amounted to torture regardless of whether it was carried out by public officials or by private individuals. Articles 248, 250 and 314 of the Criminal Code and Article 70 of the Military Criminal Code were available for other violent acts, which do not amount to torture. The protection of the legal interests of all citizens, including physical and psychological protection in cases involving abuse by State employees, is guaranteed. Furthermore, a detailed definition of torture could be derived from Albanian jurisprudence and from the definition contained in the Convention for cases in which public officials were involved. Under the Constitution, ratified international treaties were part of the internal judicial system and were automatically implemented. In theory, such norms took precedence over domestic legislation in the event of a conflict, this is only if the treaty expressly provided for its direct applicability. Conflicts in domestic and international laws in practice, however, are not as straightforward. The delegation added that there was an increasing awareness among state officials about international instruments, such as the European Convention on Human Rights. Overall, the government remains open to the introduction of amendments to the Criminal Code relating to torture or to the possibility of drafting a specific law on the subject.

Although Albania had some difficulties implementing the Convention against Torture, acts of torture are punishable by law and the government expressed appreciation for the NGO reports regarding the criminal investigations of torture cases. The delegation was unable to verify the status of the case mentioned by Mr. Rasmussen, which was also included in the Amnesty International report of February 2005, because the identities of the victim and the perpetrator were unknown. With respect to other cases, the Klodian Yzeiri case has been closed, as the allegations of torture were unsubstantiated, investigations into the Merita Kola case have been stopped due to a lack

STATE VIOLENCE IN ALBANIA

of evidence and allegations in the Beqir Kaba case have been substantiated by photographic evidence of physical abuse and the case is currently before the courts. The investigations of such cases gave the public prosecutor an insight into the importance of conducting thorough investigations of all allegations of violence involving police officers. Recently, some closed cases have been reopened for further investigation.

With respect to extradition²⁴, the Albanian delegation said that the Albanian Constitution and domestic legislation on extradition were in line with international norms. In cases of conflict, the international norms may be invoked directly. Although Albania was a party to the European Convention for the Compensation of Victims of Violent Crimes, the full and proper implementation of that Convention was problematic due to the need to update domestic legislation and difficulties in calculating the funds required. Requests for compensation can be filed by way of a civil suit, which can be initiated during criminal proceedings.

Between 1997 and 2003, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited Albania five times and approved Albania's report on the implementation of its recommendations. The Albanian authorities continued to cooperate with the CPT on specific priority issues. The CPT will conduct its sixth visit to Albania in 2005.

Since 2001, due to legislative reforms and personnel changes, there have been considerable changes in the conduct of police officers towards detainees. Since 2003, the majority of district chiefs of police have been replaced by better-qualified police officers. Prior to 2004, there was insufficient legislation on investigative techniques and confessions were the only form of evidence. The amended Code of Criminal Procedure provides for a greater range of investigation methods and fewer situations in which police could use force against suspects.

The Albanian delegation referred to the annual report of the Ombudsman, which stated that the alleged cases of violence were sporadic and they were not representative of the institutional policy of Albanian law enforcement agencies. Furthermore, Albania had accepted the general principle that an unlawful order does not exempt a person from individual criminal liability.

24 Answer given by Mr Nina, Albania.

STATE VIOLENCE IN ALBANIA

Examples of unlawful orders include an order to open fire against an unarmed person or the torture or rape of civilians.

The Albanian delegation stated that Article 109 of the Criminal Code dealt with kidnapping. This article was recently amended in 2001 in response to an increase in the number of kidnapping cases. Article 109 states that kidnapping or holding hostage a child under the age of 14 is punishable by a minimum sentence of 15 years imprisonment and a fine of 3 to 7 million leks. Kidnapping accompanied by physical or psychological torture carries a more severe sentence.

With respect to the principle of universal jurisdiction, it was stated that torture was punishable under the Albanian Criminal Code regardless of whether it is committed by Albanians or foreign citizens.

With respect to detention, the Albanian delegation highlighted that new detention regulations were approved in 2004 and are currently being implemented. Although the delegation agreed that there should be no impediments to meetings between detainees and lawyers, they acknowledged that overcrowding and a lack of facilities within detention centres results in shortened visits. All detainees at Tirana prison must submit to a medical examination performed by a doctor or nurse and medical files are opened for each prisoner. Although doctors had access to all detainees, lack of medical supplies continues to be a serious problem.

Detainees are allowed family visits three times a month for 30-minute periods. As stated above, the only obstacle to such meetings is overcrowding in detention facilities. Detainees have daily access to written and visual media and literature. Although, legal deadlines for bringing detainees to court hearings are generally respected, problems can arise such as the unavailability of the necessary vehicles and personnel at the time specified by the court. Albanian judges and prosecutors generally respect procedural deadlines and defendants and their counsel are particularly sensitive to detention deadlines. The court has not identified any cases of prolonged pre-trial detention. The criteria for arrest and pre-trial detention periods is outlined in detail in the Code of Criminal Procedure.

With respect to the independence of the Ombudsman, it was stated that the Albanian Constitution guaranteed the Ombudsman's independence. In April 2004, a children's department was established within the Ombudsman's Office, which has the authority to investigate cases of

STATE VIOLENCE IN ALBANIA

violence against children and to recommend compensation for victims. The office reported that no cases had been filed in 2004. The department receives financial support from the Swedish International Development Cooperation Agency and is focused on capacity building, proposing changes in legislation pertaining to children, raising public awareness about the rights of the child and establishing regional offices.

According to Albanian legislation, the Albanian delegation²⁵ said that the right to due process included the right to go before the court and kept in pre-trial detention within a reasonable amount of time, as stated in the European Convention on Human Rights. The maximum period of pre-trial detention was three years. Any person who claimed to have suffered injuries was permitted, on request, to undergo an independent medical examination. In some cases, this right has been abused. The medical reports of general practitioners or other doctors are admissible as evidence before the courts. The delegation reiterated that Albania has ratified the Optional Protocol to the Convention on 1 October 2003 and Albania has organised a series of seminars to raise public awareness of the Optional Protocol and to identify possible actors required to implement the national mechanisms.

With respect to the use of masks by police, the Albanian delegation said that police officers are prohibited from wearing masks while on duty. Furthermore, they can be identified by an insignia on the left arm of their uniform. The Law dated 25 February 1998 regarding Special Forces and Rapid Intervention Units, as amended by the Law of 26 March 2001, states that officers who worked in these units require special training and equipment. In addition, their identity is protected during and after such missions. These officers conduct a variety of missions including the release of kidnapped persons in circumstances calling for high security, the seizure, arrest and neutralization of members of criminal and terrorist organizations and armed criminal groups or of any other armed person who had committed a crime involving a weapon. In the event of criminal proceedings against Special Forces personnel, their identities can be revealed in the event of allegations of abuse committed while on duty.

With regard to human trafficking, it was said that Albania's geographical location meant that it was often used as the last country of transit for trafficking to western European countries. Thanks to determined action by the Albanian State police in October 2002, trafficking by sea to Italy has

25 Answer given by Mr. Beke, Albania.

STATE VIOLENCE IN ALBANIA

virtually stopped, a fact that has been acknowledged by the Italian Minister of the Interior. The Albanian police continue to cooperate with the police forces from Greece, Italy, Serbia, Montenegro, the former Yugoslav Republic of Macedonia, the United Nations Mission in Kosovo (UNMIK) and with the police forces of other countries in the region to prevent, detect and combat all forms of trafficking and terrorism.

In 2004, there were no reports of border police officers being involved in illegal activities. The border police are being trained within the framework of the European Union (EU) Integrated Border Management Strategy.

The Albanian delegation²⁶ said that in March 2003 the Ministry of Health, in cooperation with the World Health Organization, drafted a policy document on mental health services in Albania and an operational plan (2005-2009) for the development of those services. Detailed activities have been planned for the first two years.

Since 2001, an Internal Control Service Directorate has been operating within the Ministry of Public Order. Its mission is to investigate and detect illegal activities involving State police officers. In 2003, the law was amended to align the responsibilities of State police officers with those of the judicial police. In November 2004, separate telephone lines have been installed in 12 district police headquarters to enable members of local communities to report illegal or arbitrary acts by State police officers. Police inspectors are required to investigate all complaints and to collect data and evidence regarding the officers who are involved. Currently, there are no statistics available regarding the number of complaints filed.

Article 43 of the Law on the Rights and Treatment of Prisoners allowed the People's Advocate, or commissioners authorized by the Advocate, to visit pre-trial detention and prison facilities at any time. Police headquarters have issued a one-year access permit to human rights NGOs, such as the Albanian Human Rights Group and the Albanian Helsinki Committee.

With respect to the issue of minors in conflict with the law, details of cases were provided to the Committee on the Rights of the Child in Albania's initial report on implementation of the Convention on the Rights of the Child. In January 2005, the Committee had commended Albania for progress it had made since ratifying the Convention.

26 Answer given by Mr. Nina, Albania.

STATE VIOLENCE IN ALBANIA

With regard to the impartiality of police officers investigating misconduct involving their colleagues, separate provisions exist under the Judicial Police law, which governs such investigations. Police officers who conduct these investigations are appointed by the General Prosecutor and are under the administrative and procedural authority of public prosecutor's offices.

The right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, even in states of emergency, is guaranteed by Article 25 of the Constitution.

The health-care system is free of charge and therefore all victims of torture can access health care for rehabilitation at organisations, such as the Albanian Trauma and Torture Centre.

The Albanian delegation²⁷ said that the written replies that were circulated to Committee members at that meeting contained detailed comments on the transfer of responsibility for pretrial detention from the Ministry of Public Order to the Ministry of Justice. Members also received a list of actions taken in accordance with the plan to improve conditions for detainees in police custody.

In 2004, there progress was made on improving conditions in prisons. A large amount of money was invested in improving prison accommodation and alleviating overcrowding. New sections have recently opened in the Rogozhina and Burrel prisons and in-cell toilets have been installed in three other prisons. Sanitary facilities have been improved and meeting rooms now exist in almost all facilities for family visits and consultations with counsel.

People with mental disabilities on medication are treated in a separate sector of the prison hospital. In cooperation with the Ministry of Health, a draft agreement is being prepared for treatment at a specially equipped premise in Durres, the security personnel for the facility will be provided by the Ministry of Justice. Funds have been designated in the budget for conversion of the premises and the Directorate-General of Prisons has drafted a security plan.

The Albanian delegation²⁸ said that as of March 2005 a total of 3,319 persons, including 752 pre-trial detainees, are being held in Albanian prisons

27 Answer given by Mr. Bele Albania.

28 Answer given by Mr. Nina Albania.

STATE VIOLENCE IN ALBANIA

and other places of detention. As of 9 May 2005, 902 persons are being held at detention facilities run by the Ministry of Public Order.

Albania has ratified, without reservations, the Council of Europe Framework Convention for the Protection of National Minorities of 1999 and has substantially amended its legislation to comply with the applicable international standards. A working group that reviewed the legal framework for minorities in the light of EU recommendations has concluded that the level of incorporation of the Framework Convention into Albanian legislation was satisfactory.

The State Police Law does not prevent members of ethnic minorities from being recruited to the police force. The Minister of Public Order planned to issue a directive on quotas for the admission of members of ethnic minorities to the Police Academy and the Police Institute. There will also be a joint directive by the Minister of Public Order and the Minister of Local Government and Decentralization to obtain estimates about the number of ethnic minorities working at the regional and district levels in order to determine relevant quotas for State police forces.

With regard to progress in achieving the objectives of the strategy to improve the living conditions of the Roma minority, Decision No. 632 of the Council of Ministers dated 18 September 2003, which is a programme to promote the employment of women, gives priority, *inter alia*, to women aged over 35, Roma women and young mothers. In 2004, one hundred women belonging to the Roma minority were employed under this programme. The Minister of Labour and Social Affairs issued Order No. 394 (2004), which stated that vocational training for unemployed members of the Roma minority is to be provided free of charge. In 2004, fifty members of the Roma minority have benefited from this order measure. Minority groups participate in public life through their representatives in the legislative and executive bodies at the national and local levels.

Questions raised by the Committee

Paragraph 106 of the report, which states that “persons subjected to the provisions of this law can be expelled from the country without regard to the above procedures when the expulsion is necessary for the interests of public order or national security”, appeared to contradict the statements made in

STATE VIOLENCE IN ALBANIA

paragraph 64, to the effect that Albania respected the principle of non refoulement, and in paragraph 105, regarding important legal safeguards for asylum-seekers. If the procedures referred to in the latter paragraph could be set aside, the Committee wondered what safeguards exist against erroneous or abusive decisions, which might lead to expulsion in breach of the Article 3 of the Convention.²⁹

The Committee asked the delegation to clarify whether doctors were receiving appropriate training and whether a doctor examined prisoners within 24 hours of their arrival at the prison.³⁰

The Committee also wanted to know whether police officers were suspended from duty while allegations of torture were being investigated, whether the Public Prosecutor's Office carried out such investigations or delegated them to the police force itself, whether there had been any cases in which compensation was awarded for torture and whether any investigations have been opened into the hunger strike at Prison 202.³¹

Answers given by the Albanian Delegation

The Albanian delegation³² stated that each district prosecutor's office included a judicial police section. Administratively, the judicial police fall under the Ministry of Public Order and the Public Prosecutor's Office therefore the judicial police have the independence to carry out inquiries without the pressure of investigating colleagues from the same service.

Although every one is entitled by law to request civil compensation during a criminal trial, there have been no cases in which compensation has been awarded for torture.

Concerning the hunger strike, the Albanian delegation responded that it would try and provide official information, however, it is their understanding, based on reports at a recent Council of Europe Conference on Albania's justice reform, that the underlying reason for the strike was dissatisfaction about the actions of the serious crime squad.

29 Questions raised by Mr Yakovlev.

30 Questions raised by Mr Yakovlev.

31 Questions raised by Mr Yakovlev.

32 Answer given by Mr. Bele, Albania.

Questions raised by the Committee

The Committee wondered if there was an error on page 28 of the reply, where reference was made to the prohibition of extradition to a State whose “legislation provided for” cruel or inhuman treatment. Not many States make legal provision for such treatment. The question under the Convention was whether there was a risk of torture in a State.³³ The Committee emphasized that the principle of nonrefoulement was absolute and sought reassurances that return under such circumstances was not possible under the State party’s legislation. The report referred to certain persons who had been removed from the country. The Committee would like to know whom they were, where they have been sent and whether they continue to be monitored following expulsion.³⁴

The Committee³⁵, referring to paragraph 38 of the report, asked what justification could there be for the limiting the rights and freedoms referred to and also asked for clarification regarding the functioning and organisation of the military courts (report, para. 46).

The reply given regarding domestic violence (replies, p. 21) needs to be much more specific on the question of how to fill the gaps in the law in this area. On the question of violence against women, the Committee said that studies that had started in 1990 had not progressed very far and thus urged the Albanian authorities to clearly state what procedures existed in order to deal with violence against women and what compensation was available to them.³⁶

The Committee asked for a clarification of paragraph 114 (c) of the report, which implied that “military necessity” could be used as an excuse for a wide range of serious and violent crimes.³⁷

33 Comments made and questions raised by Mr Grossman.

34 Comments made and questions raised by Mr Grossman.

35 Comments made and questions raised by Mr Prado Vallejo.

36 Questions raised by Mr Prado Vallejo.

37 Questions raised by Chairperson, Marino Menendez.

Answers given by the Albanian Delegation

The Albanian delegation³⁸ admitted that the constitutional provision quoted in paragraph 38 might seem ambiguous. However, it added the Constitution was a modern document, drafted in consultation with a number of eminent experts, and it provided full guarantees for human rights and other judicial instruments. The delegation said that they would attempt to obtain a comment from a constitutional expert.

The military courts were organized as stated in paragraph 46 of the report and provided the same rights and guarantees as the civil courts.

The Albanian delegation declared that it had given the best information available on domestic violence; however, they acknowledged that, since it was based on a survey and not on statistical data, it could be flawed.

The Albanian delegation³⁹ said that police officers under investigation were suspended from duty during the investigation.

38 Answer given by Mr. Bele, Albania.

38 Answer given by Mr. Kaja, Albania.

COMMITTEE AGAINST TORTURE

THIRTY-FOURTH SESSION

2-21 MAY 2005

**CONSIDERATION OF REPORTS SUBMITTED
BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

**CONCLUSIONS AND RECOMMENDATIONS OF THE
COMMITTEE AGAINST TORTURE:**

ALBANIA

STATE VIOLENCE IN ALBANIA

1. The Committee considered the initial report of Albania (CAT/C/28/Add.6) at its 649th and 652nd meetings, held on 10 and 11 May 2005 (CAT/C/SR.649 and 652), and adopted, at its 660th meeting, the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes the initial report of Albania and the opportunity to establish a dialogue with the State party but it regrets, however, that the report, due in June 1995, was submitted with an eight-year delay.
3. The Committee notes that the report does not fully conform to the Committee's guidelines for the preparation of initial reports and lacks information on practical aspects of the implementation of the Convention's provisions. The Committee acknowledges in this regard the difficulties encountered by the State party during its political and economic transition and the efforts done in this respect and hopes that in the future it will comply fully with its obligations under article 19 of the Convention.
4. The Committee also welcomes the additional information provided in writing by the State party and by the delegation in the introductory remarks and in the answers to the questions raised, which demonstrates the State party's willingness to establish an open and fruitful dialogue with the Committee.

B. Positive aspects

5. The Committee notes with appreciation the ongoing efforts by the State party aimed at strengthening human rights in Albania. In particular, the Committee welcomes the following:
 - (a) The adoption of a democratic Constitution in 1998, which enhances protection of human rights, including the prohibition of torture, establishes a maximum 48 hour period detention before a person is brought before a judge as well as the direct applicability of ratified international treaties and their superiority over domestic laws;

STATE VIOLENCE IN ALBANIA

(b) The adoption of: (i) The Law “On Innocence, Amnesty and Rehabilitation of Ex-political Convicted and Persecuted Persons” in 1991, amended in 1993; (ii) The Law “On Migration” in 1995; (iii) The Criminal Military Code in 1995; (iv) The Law “On the Rights and Treatment of Prisoners” in 1998; (v) The Law “For the Ombudsman” in 1999; (vi) The Criminal Code in 1995, amended subsequently in 1996, 1997 and 2001; (vii) The Law “On the Organization and Functioning of the High Justice Council” in 2002;

(c) The ratification of: (i) The European Convention on Extradition and its additional Protocol in 1998 and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and its two Protocols in 1996; (ii) The Rome Statute of the International Criminal Court in 2002 as well as of most of the conventions and international protocols of the United Nations for the protection of human rights; (iii) The Optional Protocol to the Convention Against Torture in 2003;

(d) Specific measures for law enforcement personnel: (i) The adoption of the “Code of Police Ethics” in 1998; (ii) The organization of training for the police through a project of education in the field of prevention of torture, by the Ministry of Public Order in cooperation with NGOs.

6. Furthermore, the Committee would like to commend:

(a) The suspension, since 1992, of the death penalty;

(b) The separation of juveniles from adults in all detention facilities;

(c) The publication of the reports of the four first visits of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to Albania (CPT/Inf (2003)11) and of the Government’s response thereto (CPT/Inf (2003)12) as well as the assurance of the Government that it will soon authorize the publication of the report of the 2003 visit;

(d) The involvement of national NGOs in the preparation of the initial report of Albania.

C. Subjects of concern

7. The Committee expresses concern about the following:

(a) Non-conformity of the definition of torture of the Criminal Code, with the definition of the Convention, which does not cover all the elements contained in its article 1, especially regarding persons acting in an official capacity;

(b) Qualification of acts of torture by law enforcement personnel only as “arbitrary acts” and, therefore, the treatment of those acts as less serious criminal offences;

(c) A climate of *de facto* impunity for law enforcement personnel who commit acts of torture or ill-treatment considering: (i) Numerous allegations of torture and ill-treatment by law enforcement personnel, especially at the moment of arrest and interrogation, (ii) Limited number of complaints regarding torture and ill-treatment, in particular to the Peoples’ Advocate, (iii) Lack of prompt and impartial investigation of allegations of torture and ill-treatment committed by law enforcement personnel, and (iv) Absence of convictions in cases of torture, under article 86 of the Criminal Code, and limited number of convictions of torture with serious consequences, under article 87 of the Criminal Code, of law enforcement personnel, all of which may also indicate that there is a lack of victims’ awareness of their rights and that there is a lack of confidence in the police and judicial authorities;

(d) Difficulties for victims of torture and ill-treatment to file a formal complaint with public authorities, to obtain medical evidence in support of their allegations and to present that evidence;

(e) Allegations of cases of lack of independence of the judiciary;

(f) No universal jurisdiction of the Albanian courts in cases involving torture;

(g) Lack of clear legal provision prohibiting the use of any statement obtained under torture as well as of any clear legal provision stating that an order from a superior may not be invoked as justification of torture;

(h) Failure to ensure fair and adequate compensation, including rehabilitation for all victims of torture, including ex-political convicted and persecuted persons;

STATE VIOLENCE IN ALBANIA

- (i) Lack of implementation of the fundamental legal safeguards for persons detained by the police, guaranteeing the right to inform a relative, of access to a lawyer and a doctor of their own choice and to be provided with information about their rights and, in addition for juveniles, the presence of their legal guardians during interrogation;
- (j) Poor conditions of detention and long pre-trial detention period, up to three years;
- (k) The existence of an additional 10 hour administrative detention period for interrogation before the maximum 48 hour period is calculated for a person to be brought before a judge;
- (l) Absence of visits to police stations by the Office of the Ombudsman on a regular and unannounced basis;
- (m) Absence of systematic medical examination of detainees within 24 hours of their admission to prison, poor medical care in detention facilities, lack of training for medical personnel and medical personnel of prisons not under the authority of the Ministry of Public Health;
- (n) Legal possibility of *refoulement* of persons without any procedures in cases of interests of public order or national security;
- (o) The reported prevalence of violence against women and girls, including sexual and domestic violence, and the reluctance on the part of the authorities to, *inter alia*, adopt legislative and other measures to counter this phenomenon.

D. Recommendations

8. The Committee recommends that the State party:
 - (a) Amend the Criminal Code in order to adopt a definition of torture that covers all the elements contained in article 1 of the Convention;
 - (b) Ensure strict application of the provisions against torture and ill-treatment, adequately qualifying, prosecuting and punishing perpetrators in a manner proportionate to the seriousness of the crimes committed;
 - (c) Investigate all allegations of ill-treatment and torture by law enforcement personnel, by carrying prompt and impartial investigations to bring

STATE VIOLENCE IN ALBANIA

the perpetrators to justice, in order to eliminate the climate of *de facto* impunity of law enforcement personnel who commit acts of torture and ill-treatment;

(d) Improve mechanisms to facilitate submission of complaints by victims of ill-treatment and torture to public authorities, including to obtain medical evidence in support of their allegations;

(e) Take all appropriate measures to strengthen the independence of the judiciary as well as to provide adequate training on prohibition against torture to judges and prosecutors;

(f) Amend domestic legislation to ensure that acts of torture are considered universal crimes;

(g) Adopt clear legal provisions prohibiting the use of any statement obtained under torture and establishing that orders from a superior may not be invoked as a justification of torture;

(h) Implement the established legal mechanisms for victims of torture to obtain redress and fair and adequate compensation;

(i) Implement the fundamental legal safeguards for persons detained by the police, guaranteeing their rights to inform a relative, of access to a lawyer and a doctor of their own choice and to be provided with information about their rights and, in addition for juveniles, the presence of their legal guardians during interrogation;

(j) Improve conditions in places of detention, ensuring that they conform to international minimum standards, adopt necessary measures to reduce the pre-trial detention period and continue to address overcrowding in places of detention;

(k) Take the necessary measures to abolish the 10 hour administrative detention period for interrogation prior to the 48 hour period to bring a suspect before a judge;

(l) Allow visits to police stations by the Office of the Ombudsman, as well as by other independent bodies, on a regular and unannounced basis;

(m) Provide systematic medical examination of detainees within 24 hours of their admission to prison, improve medical care in detention facilities, establish training for medical personnel and transfer all medical personnel of prisons to the authority of the Ministry of Public Health;

STATE VIOLENCE IN ALBANIA

- (n) Amend its legislation in order not to allow the *refoulement* of persons without a legal procedure with all required guarantees;
 - (o) Adopt measures to combat sexual violence and violence against women, including domestic violence, and promptly and impartially investigate all such allegations of torture or ill-treatment, with a view to prosecuting those responsible;
 - (p) Transfer the responsibility for all pre-trial detainees to the authority of the Ministry of Justice;
 - (q) Take all necessary measures to ensure effective implementation of the provisions of the Convention and of the adopted legislation, disseminate the relevant legislation to detainees and law enforcement personnel and provide adequate training to the latter;
 - (r) Provide in the next periodic report detailed statistical data, disaggregated by age, gender and origin, on complaints related to torture and other ill-treatment allegedly committed by law enforcement personnel, as well as on related investigations, prosecutions, and penal and disciplinary sentences;
 - (s) Consider making the declarations under articles 21 and 22 of the Convention.
9. The Committee also recommends that the State party disseminate widely the Committee's conclusions and recommendations, in all appropriate languages, through official web sites, the media and non-governmental organizations.
 10. The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 8 (c), (d), (i) and (l) above.
 11. The State party is invited to submit its next periodic report, which will be considered as the second, by 9 June 2007.

