

The Minnesota Lawyers International Human Rights Committee Report Series

**TRIMMING THE CAT'S CLAWS:
THE POLITICS OF IMPUNITY IN
ALBANIA**

March 1992

**Minnesota Lawyers
International Human Rights Committee**

400 Second Avenue South, Suite 1050

Minneapolis, MN 55401

USA



**TRIMMING THE CAT'S CLAWS:
THE POLITICS OF IMPUNITY IN
ALBANIA**

March 1992

A report of the
Minnesota Lawyers International Human Rights Committee
Minneapolis, Minnesota

MINNESOTA LAWYERS INTERNATIONAL HUMAN RIGHTS COMMITTEE

The Minnesota Lawyers International Human Rights Committee, founded in 1983, is a nongovernmental organization of 1,000 members that works to promote and protect international human rights. The Committee advocates against individual human rights abuses, works to strengthen institutions and laws that protect human rights, researches and investigates human rights conditions in the U.S. and other countries, and educates the public about human rights issues. The Committee has published reports about human rights conditions in over 15 different countries.

Copies of this report are available for \$8.50 from:

Minnesota Lawyers International Human Rights Committee
400 Second Ave. So, Suite 1050
Minneapolis, MN, 55401
Telephone: (612) 341-3302
FAX: (612) 341-2971

ISBN: 0-929293-00-2

Copyright 1992 by the Minnesota Lawyers International Human Rights Committee

Printed in the U.S.A.

PREFACE	vi
I. SUMMARY AND RECOMMENDATIONS	viii
SECRET POLICE	viii
POLITICAL PRISONERS AND INTERNEES	viii
UNIDENTIFIED COMMON GRAVES	ix
TELEVISION AND RADIO	x
PRISONS	x
CONSTITUTIONAL AND INTERNATIONAL LAW	x
LEGAL EDUCATION	xi
COURTS	xi
RIGHT TO COUNSEL	xii
PROSECUTOR	xii
POLICE AND JAILS	xii
GENERAL INVESTIGATOR	xiii
II. BACKGROUND OF RECENT REFORMS	1
A. <u>Popular Unrest</u>	1
B. <u>Elections Promised</u>	2
C. <u>National Elections Held</u>	2
D. <u>Nongovernmental Organizations Formed</u>	5
1. Forum for the Defense of Human Rights and Fundamental Freedoms (Forum).	5
2. The Society of Ex-Political Prisoners.	5
3. The Research Centre for Human Rights and Fair Elections.	5
III. TRIMMING THE CAT'S CLAWS: THE POLITICS OF IMPUNITY	7
A. <u>The Secret Police</u>	8
B. <u>Access to Information</u>	10
1. <i>Sigurimi</i> files.	10
2. Political Prisoners and Internees.	10
3. Unidentified common graves.	17
4. Television and Radio.	18
C. <u>Prisons</u>	19
1. General Overview.	19
2. Conditions in the Past.	21
3. Tirana Reeducation Camp.	22
IV. THE ALBANIAN LEGAL SYSTEM	25

A.	<u>Constitution</u>	25
B.	<u>International Human Rights Instruments</u>	26
C.	<u>Legal Education</u>	27
D.	<u>The Courts</u>	28
E.	<u>The Role of Defense Lawyers</u>	31
F.	<u>Prosecutors and Court Administration</u>	35
G.	<u>The Police and Jails</u>	37
H.	<u>General Investigator</u>	41



Empty pedestals stand as silent testaments of political upheaval in Albania. Here is the pedestal which formerly held Lenin's statue.



Concrete military bunkers stand idle, overgrown with weeds. Late President Enver Hoxha built the bunkers to protect Albanians from foreign invasion.

PREFACE

This report is a sequel to the January 1990 report of the Minnesota Lawyers International Human Rights Committee, Human Rights in the People's Socialist Republic of Albania. This report is based on research and on information obtained by a delegation of the Minnesota Lawyers Committee during a visit to Albania from October 8 through 15, 1991. The members of the delegation were Thomas Foley, Ramsey County Attorney; Barbara Frey, Executive Director of the Minnesota Lawyers Committee; Margaret Chutich, an attorney in the Minnesota Attorney General's Office; and Peggy Hicks, an attorney at Dorsey & Whitney. The purpose of the visit was to investigate the protection of human rights through the Albanian legal system in light of the dramatic political changes in the country in 1990 and 1991.

The Minnesota Lawyers Committee acknowledges the financial support of this report by the law firm of Dorsey & Whitney. Thanks also go to members of the Albania project, Lisa Schiltz, Andrew Staab, and Ken Cutler, and interns Jennifer Baum, Maya Diokno, Kim Sabo, and Gosia Wegrzyn.

We would also like to express our gratitude to the nongovernmental community in Albania for their tremendous assistance in arranging meetings and interviews within the country. We are especially indebted to the Society of Ex-Political Prisoners, and the Forum for the Defense of Human Rights and Fundamental Freedoms, as well as to members of the recently formed Research Centre for Human Rights and Fair Elections.

In writing its previous report, the Minnesota Lawyers Committee twice requested entry into Albania, but did not receive a reply. We would like to acknowledge the cooperation of the Albanian government in providing visas for the 1991 visit of the Minnesota Lawyers Committee delegation, as well as the openness of Albanian officials in meeting with members of the delegation.

The Minnesota Lawyers Committee sends its encouragement to future leaders of Albania in their efforts to establish the rule of law and to redress the history of profound human rights violations suffered by the people of Albania. This report is intended to assist the Albanian people with those urgent and momentous tasks.

March 1992

Margaret Chutich
Tom Foley
Barbara Frey
Peggy Hicks

I. SUMMARY AND RECOMMENDATIONS

Deteriorating internal economic conditions and the external pressure of drastic political reforms in Eastern Europe in 1990 and 1991 resulted in dramatic changes to all facets of Albania's political and social structure. The communist political system that dominated the country for over forty years has all but disintegrated, leaving indecision and inexperience in its place. While the current government and shifting power structures seek to address pressing day to day issues, voices never before allowed to speak within the political system are demanding justice for years of severe human rights violations. The situation is volatile and the commitment to protect human rights is still fragile. The following are the recommendations of the Minnesota Lawyers International Human Rights Committee based on its observations of the legal system in Albania.

SECRET POLICE

- (1) The Albanian Secret Police, formerly *Sigurimi*, now known as SHIK, should be abolished entirely. Investigation of crimes can be handled through the Office of the General Investigator. SHIK has no accountability to publicly-elected government officials or the public, answering only to the President.
- (2) The Albanian people do not trust in SHIK to serve as a crime-prevention agency. Its present and former officers should be investigated for serious past human rights violations including torture, ill-treatment, arbitrary arrest and detention, and arbitrary and summary execution.
- (3) Because of the lack of public trust and the dubious need for "investigative" agents to carry weapons during the course of their duty, SHIK agents should not be allowed to possess guns.
- (4) Whether or not the *Sigurimi* files should be opened is a question for public discussion in Albania. In any case, control over the files should not be left to SHIK, the successor to the *Sigurimi* which is controlled solely by the President. SHIK, its agents and collaborators have the greatest interest in keeping the files secret or even destroying the files to prevent inquiry into past human rights violations.
- (5) At a minimum, the files of the secret police should be placed under secure and impartial control until a constitutional government determines their fate.

POLITICAL PRISONERS AND INTERNEES

- (1) Former political prisoners and internees have been exonerated but can never be fully compensated for the deprivation, pain, and anguish that they suffered due to human rights

violations by the Albanian government. The government should make every effort to redeem past violations by providing economic, social, and cultural opportunities for persecuted persons.

(2) All former prisoners and internees should have full and immediate access to files concerning their criminal cases that are in the hands of the government.

(3) The certificates entitling persecuted persons to compensation should be distributed by a neutral agency instead of the Ministry of Public Order, which is in essence the same governmental agency that was admittedly responsible for their political arrest and persecution.

(4) Those persecuted in the past should be compensated through priority access to jobs, housing, education, and financial compensation for the years of suffering they endured.

(5) There is a great need for public acknowledgement of the government's responsibility for past human rights violations. While recent legislation declaring the innocence of political prisoners and internees is a start, more public discussion should focus on what is needed to mend the past. Punishment may not always be necessary but persons directly responsible for human rights violations at a minimum should not be in positions of authority.

(6) The People's Assembly should revise articles 26 and 27 of the Penal Code to eliminate exile and internment as criminal punishments.

(7) The People's Assembly should repeal Law 7388, which permits the use of "preventative means" against persons who "commit a criminal offense, which is not a crime, but is incompatible with proper behavior and social morality" or who "could" commit a crime.

UNIDENTIFIED COMMON GRAVES

(1) The government should thoroughly investigate mass prisoner graves. Prison and *Sigurimi* records should be used to identify the whereabouts of individuals who died in prison.

(2) The government should hold public hearings to hear the concerns and wishes of the families of these disappeared prisoners.

(3) If a family requests an exhumation to identify and claim the remains of a relative who died in prison, the government is responsible for carrying out the request. In these cases, the government should seek advice and assistance from international experts at the United Nations and other international forensic institutions in excavating gravesites.

(4) At a minimum, the government should publicly acknowledge the criminal nature of

the past practice of anonymous mass burial of political prisoners and should accommodate families of relatives in their need to create personal, private memorials for their deceased relatives.

TELEVISION AND RADIO

- (1) Individuals and private entities should have equal access to transmission of programming on television and radio. The government and government-owned stations should not control access to programming based on political content.
- (2) The government should encourage the free exchange of ideas through television and radio. Establishment of independent competitors to the existing TV and radio stations will ensure this free exchange.

PRISONS

- (1) The People's Assembly should repeal the "shoot on sight" law for escaping prisoners.
- (2) Prison conditions should comply with the U.N. Standard Minimum Rules for the Treatment of Prisoners, with special attention given to the provision of adequate food, exercise, medical services, contact with the outside world, education, and recreation. Material improvements should be made to the prison facilities and provision of food, clothing, and shelter.
- (3) Punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offenses.
- (4) The Albanian Supreme Court should undertake prompt review of all cases of those sentenced to prison prior to the November 1, 1990 Law on Advocacy under international human rights standards pertaining to due process, fair trial, and proportionate sentencing.
- (5) No juveniles under the age of 18 should be held in adult prisons.

CONSTITUTIONAL AND INTERNATIONAL LAW

- (1) The People's Assembly should convene a Constitutional Convention as soon as possible after the March election to adopt a new Albanian Constitution. The nation desperately needs the legal stability that would result from a national consensus on a constitutional document. The Convention should represent the wider interests of the Albanian people and prevent the People's Assembly from sitting in constitutional session with the power to amend fundamental rights too easily.
- (2) The new Constitution should incorporate the legal protections of human rights and fundamental freedoms contained in international human rights laws.

(3) The Albanian government should establish immediate and regular self-evaluations to the United Nations in compliance with the obligations recently assumed under the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights.

(4) The Albanian government should accede to all fundamental human rights instruments including but not limited to: The Optional Protocol to the Covenant on Civil and Political Rights, the Convention Against Torture, and the Convention on the Elimination of Discrimination Against Women.

LEGAL EDUCATION

(1) The University of Tirana should eliminate geographic-based selection for the Faculty of Law and implement selection based upon merit.

(2) The government should establish affirmative action programs for those whose education was undermined during the prior government because of an internationally-protected status such as race, sex, national origin, ethnic group, political or religious beliefs.

(3) Given the dramatic changes in Albanian law and procedure, the Minister of Justice should establish concrete programs to expand legal training for lawyers, especially in the area of criminal defense law.

(4) The Supreme Court should work with the College of Advocates and the Faculty of Law to establish a professional responsibility oversight committee to review credentials of all lawyers. Individuals of integrity and expertise should be selected to serve on this advisory committee.

(5) The College of Advocates and the Faculty of Law should encourage assistance from foreign lawyers, including legal texts and training.

COURTS

(1) The new Constitution should mandate separation of powers and effectuate this separation through the establishment of an independent Constitutional Court.

(2) The structure and functioning of the courts should comply with the United Nations Basic Principles on the Independence of the Judiciary.

(3) Judicial rules should insulate judges from political influences that will hamper their independence and impartiality. No judge, for example, should be permitted to hold elected office. The rules should provide for lengthy, if not lifetime, terms during which judges may be removed only for malfeasance. Judicial selection should be safeguarded from improper motives, and the selection process should ensure that only individuals of integrity and ability

with appropriate training or qualifications in law are appointed.

(4) Albanian courtrooms should be modified to guarantee the defense lawyer a place equal to that granted to the prosecutor and to permit the defense lawyer to have immediate, private access to the defendant. Except where there is no other means to protect public safety, defendants should not be brought into the courtroom shackled or required to sit with a police guard.

RIGHT TO COUNSEL

(1) The government should revise the rules of criminal procedure to provide an absolute and immediate right for a detained person to be represented by counsel and to meet in private with his or her counsel.

(2) The government should provide legal representation for those who are arrested and are unable to afford a criminal defense lawyer.

(3) All persons should have the opportunity to select their own lawyer without paying additional fees to the College of Advocates.

(4) The professional responsibility oversight committee should be charged with ensuring that clients receive fair and adequate representation, and have the authority to investigate complaints from clients about problems with their representation.

(5) The government should undertake a program of public education at all levels and through all mediums to ensure that people are aware of their right to legal representation.

(6) The College of Advocates must implement and adhere to the United Nations Basic Principles on the Role of Lawyers.

PROSECUTOR

(1) The ability of the prosecutor to appeal criminal decisions and sentences should be limited to extraordinary circumstances.

(2) The role of the prosecutor in the evolving criminal procedure law in Albania should be clarified to take into account the right of the defendant to competent counsel of his or her own. The prosecutor and the defense should have a more balanced role in the process.

POLICE AND JAILS

(1) As provided in the U.N. Standard Minimum Rules for the Treatment of Prisoners ("U.N. Standard Minimum Rules"), every detained person, on admission to the place of detention, shall be provided with written information about the regulations governing the

rights and treatment of detained persons, the disciplinary requirements, the authorized methods of seeking information and making complaints, and all such other matters necessary to understand his or her rights and obligations in the place of detention.

(2) The Albanian government should use pre-trial detention only if all other means of ensuring public safety and the participation of the defendant in the legal process are determined inadequate. The government should institute a system of release on recognizance for pretrial detainees who are not a danger to society.

(3) Until recently, criminal suspects in Albania could be held in jail for 72 hours prior to being charged. The government should reduce the number of hours that a suspect is held in jail before being charged with a crime.

(4) Jail conditions should comply with the U.N. Standard Minimum Rules, and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment ("Principles on Detention").

(5) The government must establish and adhere to a firm program of training for police recruits. All police personnel should, at a minimum, finish high school and undertake a period of special training, including instruction concerning a suspect's rights while detained.

GENERAL INVESTIGATOR

(1) The General Investigator should establish written guidelines in conformity with the U.N. Principles of Detention, and other international norms, setting forth the responsibilities of and the procedures to be followed by the investigators in carrying out all phases of the investigative process.

(2) According to the Principles on Detention, no detained person while being interrogated shall be subject to violence, threats, or methods of interrogation which impair his or her capacity of decision or his or her judgment.

(3) According to the Principles on Detention, the duration of any interrogation of a detained person and of the intervals between interrogations, as well as the identity of the officials who conducted the interrogations and other persons present, shall be recorded and certified in such form as may be prescribed by law.

(4) The General Investigator should establish a separate unit within the investigative office to monitor internal affairs and charges of abuse of authority.

(5) The Courts and the General Investigator should establish sanctions against investigators who abuse their authority, including sanctions against investigators who fail immediately to inform detainees of their right to counsel when the suspect is first apprehended. One method of enforcing the right to counsel is to establish prophylactic rules

disallowing the use of evidence secured before a suspect was informed of his or her right to counsel or confessions obtained by improper means.

(6) The government should also alter the structure of the interrogation rooms so that counsel may sit next to his or her client and advise the client during questioning.

(7) The Minister of Justice should discharge investigators who abused their authority under the former administration.

II. BACKGROUND OF RECENT REFORMS¹

A. Popular Unrest

A combination of snowballing events in Eastern Europe and domestic economic woes cracked the shell of Albania's isolation in late 1989 and led to minor concessions by Albania's communist government toward democratic reform. In early 1990, student demonstrations throughout Albania hurried the pace of reforms begrudgingly undertaken by the government. In May 1990, the government, seeking to maintain control through "democratization" of the existing power structure, enacted several new legal guarantees, including the freedom to travel abroad, freedom of religion, reduction of the number of capital crimes, and the reestablishment of the Ministry of Justice.

Albania sought to improve relations with the West through contacts with the European Community and membership in the Conference on Security and Cooperation in Europe (CSCE). The CSCE granted observer status to Albania in July 1990, though full membership was not granted until September 1991. In December 1990, contacts were reestablished for the first time since 1943 with the International Committee of the Red Cross. Albania furthered its international legitimacy through the May 1990 visit of U.N. Secretary-General, Javier Perez de Cuellar.

Despite these hopeful signs of change, thousands of desperate Albanians scaled the security fences of Tirana's foreign embassies in July 1990, seeking asylum. Initially, the elite forces of the *Sigurimi* beat some of the demonstrators, killing an estimated 23 to 30 persons.² But in the glare of world attention, the security forces retreated. On the heels of this embarrassing exodus, the Central Committee of the Albanian Party of Labor removed four Politburo members, including the Ministers of Defense and the Interior.

More student protests in December 1990 pushed the Central Committee into endorsing the establishment of independent political parties. The formation of opposition parties began immediately. In addition to political parties, a human rights organization, the Forum for the Defense of Human Rights and Fundamental Freedoms officially registered with the government in January 1991. On January 5, as a gesture of its sincerity, the Albanian government freed 202 political prisoners.

¹See NATIONAL DEMOCRATIC INSTITUTE OF INTERNATIONAL AFFAIRS, ALBANIA: 1991 ELECTIONS TO THE PEOPLE'S ASSEMBLY, (April 30, 1991), hereinafter cited as [NDI REPORT], for a helpful chronology of recent political events in Albania.

²See *id.* at 19.

B. Elections Promised

Coming to grips with the inevitable, the Albanian government scheduled elections for February 10 but, under pressure from the opposition, the election date was postponed until March 31, 1991. Six political parties and five political organizations registered for the March 31 elections including, among others, the Party of Labor (renamed the Socialist Party) which had ruled Albania since 1945,³ the Democratic Party, the Republican Party, and Omonia, or "Harmony" party, representing the Greek ethnic minority.

Tens of thousands more Albanians fled to Greece in late December 1990. The refugee flow into Greece continued well into January 1991, despite pleas from the Greek government to stop the exodus. Albanians continued to leave the country by land and sea throughout the winter. In March, another 20,000 refugees fled to Italy.

On February 18, 1991, student protests erupted again in Tirana. This time students held a hunger strike to force the government to remove Enver Hoxha's name from the national university's title. An estimated 60,000 people jammed into Skenderbeg Square on February 20, tearing down the giant statue of Hoxha that overlooked the center of Tirana. Two days later another government shakeup occurred when Fatos Nano replaced Adil Carcani as Prime Minister. In March 1991, the government suspended classes at the university and required students to complete their coursework by correspondence.

On March 30, 1991, one day before the elections, the Albanian government released another 258 political prisoners.

C. National Elections Held

There are 250 seats in the People's Assembly, or Parliament, representing 27 districts within Albania. Representatives do not have to reside in their districts to be elected. The March 31, 1991, elections to the People's Assembly resulted in 169 seats (67.6%) for the Socialist Party, 75 seats for the Democratic Party (30%), five seats for Omonia (2%), and one seat for the Committee of Veterans (.4%). Critics of the elections complained that the campaign was too brief for the opposition to organize and that, because of disparities in the population sizes of the districts, the election results were unrepresentative.⁴

The election results in favor of the Socialists provoked an angry response from some

³Originally called the Communist Party of Albania, the ruling party was renamed the Albanian Party of Labor in 1948.

⁴NDI Report, *supra*, at 3-4; U.S. State Department, Country Reports on Human Rights Practices for 1991, (FEBRUARY 1992), at 1042.

supporters of the Opposition. Major rallies took place in Tirana, Kazaje, Durres, Elbasan, and Shkodra. On April 2, 1991, students from a high school in Shkodra staged a sit-in protest. They refused to disperse at police request, and did so only at the request of Democratic Party officials. When about twenty persons remained in the protest, security forces hiding in the Socialist Party headquarters shot into the group, killing four and wounding 58. In response to the killings, townspeople torched the party headquarters, gutting the building. On April 26, 1991, a People's Assembly commission of inquiry found the security forces responsible for the deaths and announced that seven people, including the local chief of police, had been arrested.⁵ Despite these occurrences, the Socialist majority easily reelected Ramiz Alia as President of Albania.



Monument in Shkodra for those killed in April 2, 1991 protest. Behind the monument is the Socialist Party Headquarters that was gutted when townspeople torched the building in response to the killings.

On May 9, 1991, Prime Minister Fatos Nano announced the appointment of a 25-member all-Socialist Council of Ministers which was almost entirely composed of incumbent ministers.⁶ Nano divided the former Interior Ministry into a Ministry of Public Order responsible for uniformed police and a National Security Committee responsible for the

⁵AMNESTY INTERNATIONAL, 1991 Annual Report Update 4, (1991).

⁶N.Y. Times, May 10, 1991.

secret police, or *Sigurimi*. The former Interior Minister, Gramoz Ruci, was retained as chair of the National Security Committee, provoking vigorous protests from the opposition leaders, who held Ruci responsible for past *Sigurimi* abuses.⁷

Less than one month later, on June 2, 1991, the government announced plans to relinquish power "to make way for a multi-party caretaker government that will prepare new elections."⁸ The Party of Labor government had been forced out by a crippling general strike led by the miners' union. On June 6, 1991, Fatos Nano stepped down as Prime Minister and President Alia appointed Ylli Bufi, a 42-year-old economist to head the nonpartisan caretaker government. Bufi named a Council of Ministers of 22 individuals representing a rough balance between the Socialists and the Opposition. The new government was deemed the "national salvation" government. All council ministers agreed to give up their party affiliations and were barred from founding new parties.

On December 4, 1991, the Democratic Party and the Republican Party pulled out of the coalition government claiming that the Socialist leadership was hindering economic and political reforms and demanding new elections. Prime Minister Ylli Bufi and his government resigned on December 7, 1991.⁹

In December 1991, food riots erupted in northern Albania. In Tirana, police took control of bread distribution. In Fushe-Arrez, 30 people were killed when a fire broke out after a crowd rushed a storehouse. President Alia authorized the use of Army troops to restore order.¹⁰ In a further attempt to quell the rioting, Alia appointed a new Prime Minister, Vilson Ahmeti, on December 10, 1991. A new government, composed almost exclusively of technocrats without prior political experience was approved by the People's Assembly on December 17, 1991. Only three members of the Council of Ministers remain from the previous government. Responding to the major opposition parties' demands that general elections be held as soon as possible. President Alia initially scheduled elections for March 1, 1992. In February, however, President Alia pushed the elections back to March 22, 1992 because of shortages of time, money, and newsprint.¹¹ Food riots and looting broke out again in late February in several towns killing at least four.¹²

⁷*Id.*

⁸*Id.*, June 3, 1991.

⁹Reuters News Service, December 7, 1991.

¹⁰Reuters News Service, December 8, 1991.

¹¹Reuters News Service, February 11, 1992.

¹²Reuters News Service, February 26, 1992; New York Times, March 1, 1992; Reuters News Service, March 5, 1992.

D. Nongovernmental Organizations Formed

Albania has three nongovernmental organizations that are working in the area of human rights: The Forum for the Defense of Human Rights and Fundamental Freedoms, the Society of Ex-Political Prisoners and the newly formed Research Centre for Human Rights and Fundamental Freedoms.

1. Forum for the Defense of Human Rights and Fundamental Freedoms (Forum). The Forum was established on December 19, 1990 and registered with the Ministry of Justice on January 12, 1991 as an organization to work for the release and compensation of political prisoners. The Forum is composed of a central committee of eleven members including lawyers, journalists, doctors, and artists. Members of the Forum are not allowed to belong to political parties. The Chair of the Forum is Professor Arben Puto, a member of the Law Faculty at the University of Tirana. The Vice-Chair is Kujtim Cashku, a film director. Fatos Lubonja, a former political prisoner, is secretary. The Forum is a member of the Helsinki Federation. The Forum has sections in several towns in Albania, including Tirana and Shkodra.

The Forum's activities include transmitting material goods to former political prisoners and internees, documenting the number and fate of political prisoners, and pushing for international relief efforts. The Forum continues to be concerned about prison conditions and is urging the current Albanian government to release or, at a minimum, to review the records of those ordinary prisoners who were convicted without legal representation.

2. The Society of Ex-Political Prisoners. The Society was formed in 1991 to protect persons who have been persecuted, expelled, interned, and imprisoned for political reasons. The Chair is Osman Kazazi, who spent 40 years in prison for his political affiliation with Balli Kombetar, an anti-communist political movement active in the 1930s and 1940s.

The Society's goals include: (1) declaring Enver Hoxha and his collaborators criminals and sentencing them for political crimes; (2) destroying the *Sigurimi*; (3) reforming Albanian radio and television; (4) abolishing Communist Party symbols; (5) holding political trials of the former political elite; (6) declaring all former political prisoners innocent; (7) following international norms in compensating political prisoners; and (8) allowing the children of political prisoners the right to attend the school of their choice.

The Society sponsored a hunger strike in September 1991 to enforce their demands. The People's Assembly responded with legislation declaring all former persecuted persons innocent of any crime, and entitling them to compensation. See Law on the Innocence, Amnesty and Rehabilitation of Former Political Prisoners, Appendix 1.

3. The Research Centre for Human Rights and Fair Elections. On December 5, 1991, a new human rights organization, the Research Centre for Human Rights and Fair Elections, was formed by a group of law faculty who had previously been active members

of the Tirana Committee of the Forum for Human Rights. This new group is composed of seven members of the University of Tirana's law faculty, three other University of Tirana professors, and one student. According to its founders, the Research Centre is intended to function as a clearinghouse of information concerning human rights issues. The Research Centre will not, however, take on cases of individual human rights violations.



Members of the Minnesota Lawyers Committee delegation met with the Society of Ex-Political Prisoners: (l to r) Xhezair Zaganjori, Univ. of Tirana Law Faculty; Margaret Chutich, MLC; Osman Kazazi, Society; Tom Foley, MLC; Haki Bulku, Society; Ylli Selenica, Society; Islam Ileshi, Society; Maksim Haxhia, Law Faculty; Barbara Frey, MLC; and Luan Pirdeni, Forum for Human Rights.

III. TRIMMING THE CAT'S CLAWS: THE POLITICS OF IMPUNITY¹³

Albania is suffering a crisis in leadership. Many of the governmental agencies that have been restructured to appear to conform with the country's shift to democracy are still controlled and staffed with persons responsible for the draconian human rights abuses of past years. From the constitutional offices of the President, People's Assembly, and the courts, to government-controlled institutions such as television and radio, impunity abounds. The same individuals, now espousing new ideas, are still in charge. As one former political prisoner explained, the governmental reforms "are merely trimming the cat's claws;" the dangerous predator still remains.

The problem of impunity is pervasive in all facets of Albanian life. Even the fledgling human rights community suffers a lack of credibility because of the past associations of its leaders. Albanians have not been schooled to discuss differences of opinion openly; rather, the political atmosphere is heavy with distrust and acrimony.

Many agencies tried to address the problem of impunity by retiring employees early. The shorthand used by leaders to show how effectively they were "cleaning house" was to describe the youthfulness of their current personnel; an average employee age below 35 was viewed as acceptable, below 30 even better.

One former political prisoner described his view of the three categories of people in Albania from which leaders could theoretically be drawn: (1) the ex-communists, who have been condemned universally; (2) the intellectuals, who are discredited because they had to collaborate with the communist leadership to succeed; and (3) the persecuted, who have the moral authority to lead but do not necessarily have the training and expertise to exercise leadership.¹⁴ Albanians must address the abuses of the past without destroying the experience necessary to run the country on a day-to-day basis.

The following is a description of some of the institutions and issues affected by Albania's failure to address past human rights violations.

¹³Impunity, or exemption from punishment, is a serious problem in many countries where citizens suffer human rights violations at the hands of government authorities. The term "impunity" as used in this report refers to the failure to acknowledge or to punish present or past human rights violations of individuals acting as agents of the Albanian government.

¹⁴Interview with Fatos Lubonja, member of the Forum for Human Rights and Fundamental Freedoms, in Tirana, Albania, October 10, 1991.

A. The Secret Police

Albania's secret police, or *Sigurimi*, were notorious as ubiquitous and ruthless enforcers of the communist order under the governments of Presidents Enver Hoxha and Ramiz Alia. With the formation of the "national salvation" government in 1991, the *Sigurimi* force was nominally reorganized into the "S.H.I.K.", the Albanian Information Service Committee. SHIK's new mandate was to investigate seven crimes against the State: Espionage, diversion, sabotage, provocation to war, attempts to overthrow the constitutional order, breaking of diplomatic relations with other countries, and economic and political corruption.¹⁵ In 1991, the Council of Ministers created the Treasury Police under the control of the Minister of Finance, to investigate contraband, drugs, and counterfeiting. The Border Guards are now under the control of the Ministry of Defense.¹⁶

According to Irakli Kocollari, appointed director of SHIK in fall 1991, approximately 40% of *Sigurimi* officers have been retired, including most of those over the age of 45. Kocollari asserts that the average age of all SHIK employees is slightly over 30 and that the chiefs of the 27 district offices average less than 30 years of age.¹⁷ While Kocollari would not state how many officers were currently in SHIK, he estimated that there was only one officer for every 6,000 Albanian citizens.¹⁸ Kocollari stated that he established a "judicial bureau" of seven individuals designed to advise him on the legality of SHIK actions. He also stated that he had publicly requested persons to report information concerning improper actions by SHIK officers.¹⁹

Kocollari claimed that the reform of the *Sigurimi* meant that his officers no longer had authority to monitor a general list of suspects. He stated that the SHIK could only act to investigate one of the seven crimes listed above.²⁰ In response to an inquiry about whether any one of those crimes was currently under investigation, Kocollari said no. Yet Kocollari stated during his October 10 interview that the SHIK had assisted with the investigation of the Elez Biberaj incident in September 1991, an investigation that does not seem to fall

¹⁵Interview with Irakli Kocollari, Director of SHIK, October 10, 1991. The *Sigurimi* were previously authorized to investigate 30 different crimes; *See also id.*

¹⁶*Id.*

¹⁷*Id.*

¹⁸*Id.*

¹⁹*Id.*

²⁰*Id.*

within the SHIK's jurisdiction.²¹

Many individuals who met with the Minnesota Lawyers Committee's delegation were skeptical of the supposed reforms to the secret police, and openly argued that SHIK, ersatz *Sigurimi*, should be abolished entirely. Former political prisoners stated that they had been threatened by persons believed to be *Sigurimi* agents within the past three to six months. They also feared that *Sigurimi* agents were infiltrating opposition organizations. Several persons, including students and former political prisoners stated their belief that violent shootings and other crimes in residential areas were instigated by *Sigurimi* or former *Sigurimi* agents. Director Kocollari stated that SHIK officers now carry guns because of all the illegal arms being transported into Albania. He believes that guns are entering the country across the Greek and Yugoslavian borders.²² Others interviewed were skeptical of the claim that guns are being imported into Albania.

Recommendations:

- (1) SHIK, or *Sigurimi*, should be abolished entirely. Investigation of crimes can be handled through the office of the investigator. SHIK serves as the private police force of the President, and has no accountability to the other branches of government or the public.
- (2) The Albanian people do not trust SHIK to serve as a crime-prevention agency. Its present and former officers should be investigated for serious past human rights violations including torture, ill-treatment, arbitrary arrest and detention, and arbitrary and summary execution.
- (3) Because of the lack of public trust and the dubious need for an "investigative" office to carry weapons during the course of their duty, SHIK agents should not be allowed to have guns.

²¹Mr. Elez Biberaj, Director of the Albanian Service of Voice of America, his wife, Kadire, and two other passengers were injured on September 18, 1991, when their automobile was forced off the road by an unidentified vehicle just north of Tirane. Many persons have alleged that the incident was intentional, carried out by agents of the *Sigurimi* in light of Biberaj's work with Voice of America. The Director of SHIK claimed that SHIK assisted the police with the investigation of the incident and that a suspect had been located. The case was still under investigation at the time of the Minnesota Lawyers Committee's visit.

²²Interview with Irakli Kocollari, *supra*.

B. Access to Information

1. ***Sigurimi* files.** Many Albanians are concerned that SHIK, or *Sigurimi*, continues to maintain records on individuals. Director Kocollari admitted that files on individual Albanians are being kept for "archival purposes." According to Kocollari, one must get authority from the President and the Prime Minister to gain access to the *Sigurimi* files.

No consensus has emerged in Albania yet as to whether the *Sigurimi* files should be opened. Even former political prisoners are uneasy at the suggestion that *Sigurimi* files be made public. A former political prisoner in Shkodra stated his belief that persons persecuted by the prior government would not want to see their files because they understood that witnesses testifying against them were also abused by the *Sigurimi*. Another ex-prisoner said that there were at least 50 persons implicated in wrongdoing in connection with his eighteen years of imprisonment for political reasons. To open all political files might therefore uncover tens of thousands of collaborators in human rights violations, a revelation which could prove devastating to the fragile political system.

Some interviewees expressed their belief that many *Sigurimi* files have been destroyed already to protect the collaborators of the former government. The files are highly secret. Former diplomat Abdi Baleta said that even though he had been a member of the Party of Labor and part of the diplomatic corps he had never been allowed to see his own dossier.²³

Recommendations:

(1) Whether or not the *Sigurimi* files should be opened is a question for public discussion in Albania. In any case, control over the files should not be left to SHIK, the successor to the *Sigurimi* which is controlled solely by the President. SHIK and its agents and collaborators have the greatest interest in keeping the files secret or even destroying the files to prevent inquiry into past human rights violations.

(2) At a minimum, the files should be placed under secure and impartial control until a constitutional government determines their fate.

2. **Political Prisoners and Internees.** In the 45 years prior to 1990, tens of thousands of Albanians were sentenced to prison or interned in cooperatives for political crimes under the governments of President Enver Hoxha and President Ramiz Alia. Although all surviving political prisoners are believed to have been released, and internees no longer have to report each day to their keepers, these long-suffering individuals and their families have few options. Deprived of their homes, their jobs, and education, these prisoners are now part of "the big prison" -- worse off even than the remainder of Albania's poverty-stricken population. Because they have no housing or jobs to which to return, many internees remain

²³Interview with Abdi Beleta, in Tirana, Albania (October 12, 1991).

in their work camps in Plug, Gradisht, or Sara, far from their original communities.

On October 1, 1991, the Peoples' Assembly adopted a law declaring innocent all persons who had been interned or imprisoned for convictions involving agitation, propaganda, and anti-government activities under Articles 53, 55, and 57 of the Albanian Penal Code,²⁴ or for trying to escape the country. See Appendix 1.

²⁴Article 53 of the Albanian Penal Code of 1982 stated:

Sabotage

Activity or inactivity to weaken or undermine the operations of the state and the Albanian Party of Labor, the socialist economy, and the organization and administration of the state and society is punishable:

by deprivation of liberty for not less than ten years
or by death.

Article 55 provided:

Agitation and Propaganda Against the State

Fascist, anti-democratic, religious, war-mongering, and anti-socialist agitation and propaganda, as well as the preparation, dissemination, or possession for dissemination of literature with such content, in order to weaken or undermine the state of the dictatorship of the proletariat is punishable:

by deprivation of liberty for a period of from three to ten years.

If these acts have been committed in wartime or have caused particularly grave consequences, they are punishable:

by deprivation of liberty for not less than ten years or by death.

Article 57 provided:

**Creation of a Counterrevolutionary Organization or
Participation in it**

The creation of an organization with a fascist, anti-democratic, and anti-socialist character or participation in it to commit crimes against the state is punishable:

by deprivation of liberty for not less than ten years or by death.

An example of the way in which these crimes were prosecuted by the former Albanian government is as follows:

In 1978 three prisoners had written letters to the Central Committee of the Albanian Party of Labor urging them to disavow First Secretary Enver Hoxha because of his strange foreign policy relationship with China and the U.S.S.R. Two of the inmates urged the Central Committee to change the policy course toward the U.S.S.R. and the third inmate wrote urging them to move toward foreign relations with the United States.

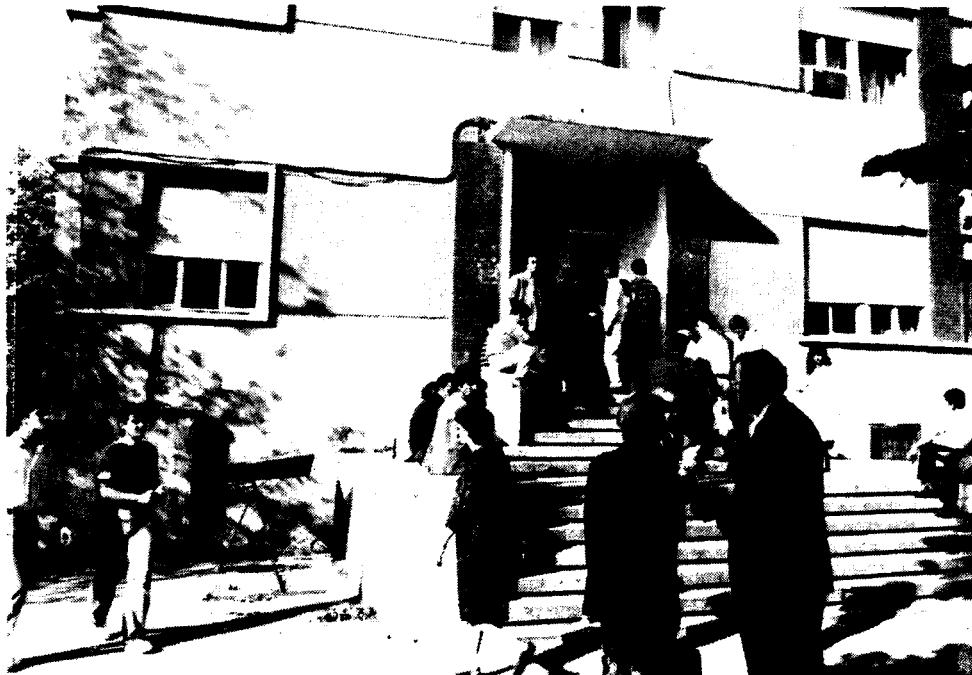
According to the person we interviewed, Albanian government officials wanted to be able to execute these three prisoners for the expression of their political beliefs. They decided to prosecute under Article 57 of the Penal Code under which it was a capital crime to create a "counter-revolutionary organization." To convict they needed a conspiracy, so officials fabricated a "revisionist" and "nationalist" organization and identified several friends of the letter writers to be members of this organization. The government held the trial at the Tirana Prison in 1979. The three persons who wrote the letters were sentenced to the death penalty. The interviewee was convicted of being a conspirator and resented to ten more years.²⁵

Persons persecuted by the previous government under these laws now may receive certificates acknowledging their innocence and entitling them to compensation, to the extent available, for property expropriated by the government. *See* Appendix 1. This legislation was the result, in part, of pressure from a hunger strike in September 1991 by 50 former political prisoners. The Society of Ex-Political Prisoners sponsored the hunger strike.

The amnesty declared in the October 1990 declares innocent only those individuals convicted under Articles 53, 55, 57 or for trying to escape the country, Albanian Penal Code, Article 47(g) and (j). Those persons unfairly convicted of other political crimes such as espionage, treason or diversion, have been pardoned but not declared innocent. Under the amnesty this group of political prisoners have been deprived the right to review their convictions. They are therefore not entitled to material and moral compensation for their false convictions.²⁶

²⁵B. Frey, Interview Notes (October 10, 1991).

²⁶Letter from the Forum for the Defense of Human Rights and Fundamental Freedoms to the Minnesota Lawyers International Human Rights Committee (February 9, 1992).



Albanians gather around the entrance to the government building where they applied for certificates entitling them to compensation for years of internment or imprisonment.

The Minnesota Lawyers Committee delegation accompanied former political prisoners and internees in their efforts to receive such certificates. The process was a cumbersome one, and intimidating for those who had spent years at the mercy of government officials. The following description about a former internee who tried to get her certificate corrected shows the inhospitable climate a petitioner still faces:

On October 11, I met with Zana concerning her attempt to have the papers concerning her internment changed. All people who had been interned may now request a certificate recognizing their status and entitling them to some government benefits. Zana had requested such a certificate for herself, her mother, and her two daughters. The certificates Zana received were generally accurate but Zana's certificate contained a significant error. Despite the fact that Zana had been interned for 16 years, the certificate listed the period of her internment as only five years.

Zana went to the Ministry of Public Order to have the certificate changed, and was told to return at 2:00 p.m. I accompanied Zana to this appointment. We did not go directly to the Ministry, but to a small building across the street in which a single official was working in a small office. We were told that the official responsible for the certificates could not see Zana that day, despite the fact that Zana had been told to go to the office at this particular time.

When we protested that fact, Zana was finally able to talk to the responsible official. The official told her that he would make the change and she should come back at a later time to pick up the corrected version. Zana requested that she be able to remain in the office and receive the correct certificate that day. While we waited in the corridor, we encountered an ex-political prisoner who was requesting information about the remains of a relative who died in prison. This man did not gain access to the Ministry official while we were at the office. We also encountered Xhevdet Sakaj, who had been the superintendent of one of the prisons in which Zana's husband had been held. After a half hour wait, an official returned (from across the street at the Ministry) with a new certificate for Zana which correctly listed Zana's period of internment as 16 years.²⁷



Former internee displays certificate entitling her to benefits in compensation for years of political persecution by the Albanian government.

Former political prisoners and internees also have a difficult time gaining access to their files and personal belongings:

Fatos explained to us that he had recently been to the Ministry of Justice to

²⁷Interview with Zana Lubonja, political prisoner, in Tirana, Albania, (October 11, 1991).

request that they give him the writings which had been seized by the police as the basis for his arrest in 1973. The Ministry of Justice sent him to the Court of Tirana. The Vice President of the Court of Tirana told him that the materials were not in the court but in the Ministry of Public Order. Fatos voiced concern that the writings may have been destroyed like the paintings of a fellow prisoner.

At approximately 8:30 a.m. on October 11, 1991, I accompanied Fatos to the Ministry of Public Order where he had been told to inquire about obtaining his writings. Fatos was supposed to ask for Spiro Budo, the Director of Administration for the Ministry. Fatos seemed wary of approaching the entrance to the Ministry directly. There were several armed guards, and we were told later that people are rarely permitted entry to the Ministry building. After several shouted inquiries concerning the party we were supposed to meet, we eventually spoke with several people across the street from the Ministry, including the Director of Prisons, Edmond Caja. Caja offered to assist Fatos. Fatos told me that Caja had been the superintendent in one of the prisons where Fatos had been held. He said Caja is one of the government officials responsible for the killings of three political prisoners in 1984 in Qafa e Barit Labor Camp.

A woman was sent inside to inquire about Fatos's file. After approximately a 15 or 20 minute wait, an official of the Ministry of Public Order came out of the building and talked to Fatos on the street outside the Ministry. Fatos introduced me. The official chided Fatos in Albanian and said that his bringing me showed he did not trust them implying that, in the past, officials had been constrained to fulfill orders but now acted independently. He said it was not good that Fatos brought me.

The official told Fatos that he would be able to receive a copy of his writings which were seized, but that the Ministry would keep the originals of these documents. Fatos was told that he could stop by to pick up the documents in several days. Fatos tried to convince the official that he should receive the original of his writings and that a copy could be kept in the file. The official did not seem receptive to this idea. The matter was left with Fatos agreeing to return in several days to see if the materials had been copied.²⁸

In addition, current law still permits internment or exile as a criminal punishment, although

²⁸P. Hicks, Interview Notes (October 11, 1991). Fatos later informed the Minnesota Lawyers Committee that he received only about 150 pages of his writings, which were typewritten. The handwritten notebooks had been destroyed.

the Minnesota Lawyers Committee was told that this provision is no longer used.²⁹ Under Law 7388, "preventive means" may be used against persons who "endanger public order". More specifically, the law provides that those who "commit a criminal offense which is not a crime, but is incompatible with proper behavior and social morality" or "whose behavior in society shows that they could commit a crime..." may be subjected to internment "in a district or a state farm or an agricultural cooperative." The delegation was told that law 7388 remains in effect but is not used by police, because it is counter to "democratic developments" in Albania.³⁰ The law's reference to crimes contrary to social morality was explained as including offenses such as public intoxication, verbal insults, and violating the "laws of good behavior".³¹

Recommendations:

- (1) Former political prisoners and internees have been exonerated but can never be fully compensated for the deprivation, pain, and anguish that they suffered due to human rights violations by the Albanian government. The government should make every effort to redeem past violations by providing economic, social, and cultural opportunities for persecuted persons.
- (2) All former prisoners and internees should have full and immediate access to files concerning their criminal cases that are in the hands of the government.
- (3) The certificates entitling persecuted persons to compensation should be distributed by a neutral agency instead of the Ministry of Public Order, which is in essence the same governmental agency that was admittedly responsible for their political arrest and persecution.
- (4) Those persecuted in the past should be compensated through priority access to jobs, housing, education, and financial compensation for the years of suffering they endured.
- (5) Articles 26 and 27 of the Penal Code, which permit exile and internment as criminal punishments, should be revised to eliminate such sentences.
- (6) Law 7388 which permits the use of "preventative means" against persons who "commit a criminal offense, which is not a crime, but is incompatible with proper behavior and social morality" or who "could" commit a crime should be repealed.

²⁹Interview with Bajram Yzeiri, Minister of Public Order, October 10, 1991.

³⁰Id.

³¹Interview with the Vice President of the Supreme Court, at Civil College (October 9, 1991).

3. Unidentified common graves. Prior to the amnesty of political prisoners in 1990 and 1991, the Albanian government rarely allowed prison officials to release political prisoners before the end of their sentences.³² Furthermore, the government forbade prison officials from notifying families about the death of a relative who was in prison.³³ Others interviewed said that they law prevented notification only until 24 hours after burial of the prisoner. Families therefore did not have the opportunity to give a proper burial to political prisoners who died during incarceration.

Before 1990, the government routinely buried the bodies of deceased prisoners with little or no identification in common graves alongside the prisons. In some cases, such as Ballsh prison, a slip of paper containing the deceased's name was enclosed in a glass bottle in the grave.³⁴ With the passage of time, water seepage likely has disintegrated many of the name tags. Ballsh had a large common grave because it had many elderly political prisoners who died during their period of incarceration.³⁵

Now that political prisoners have been released, many families are requesting that they be allowed to give a proper burial to their relatives. According to former political prisoners and human rights advocates, the government has attempted some excavations, but it has been very difficult to identify bodies.

Recommendations:

- (1) There should be a complete government investigation concerning the mass prisoner graves. Prison and *Sigurimi* records should be used to identify the whereabouts of individuals who died in prison.
- (2) The government should hold public hearings to hear the concerns and wishes of the families of these disappeared prisoners.
- (3) If the family requests an exhumation to identify and to claim the remains of a relative who died in prison, the government is responsible for carrying out the request. In these

³²In 1982, 1986 and 1989, the government declared amnesties releasing those prisoners considered "less dangerous," while reducing the sentences of others by one-fourth of the remaining time. Letter from Forum for Human Rights and Fundamental Freedoms (February 9, 1992).

³³Interview with Edmond Caja, General Director of Prisons Administration and Lek Ymeri, Director of the camp, in Tirana Reeducation Camp (October 10, 1991).

³⁴Interview with Forum for the Defense of Human Rights and Fundamental Freedoms, in Tirana, Albania (October 10, 1991).

³⁵*Id.*

cases, the government should seek advice and assistance from international experts at the United Nations, and other international forensic institutions in excavating gravesites.

(4) At a minimum, the government should publicly acknowledge the criminal nature of the past practice of anonymous mass burial of political prisoners and should accommodate families of relatives in their need to create personal, private memorials for their deceased relatives.

4. Television and Radio. Albanian radio and television is publicly operated and has limited programming. Television programming generally runs from 6:00 p.m. to 10:00 p.m. Many individuals interviewed by the delegation complained about the Socialist control of the television and radio stations. For instance, in January 1991, Professor Abdi Baleta participated in a series of programs on television with two other law professors regarding a draft Constitution proposed by the government of President Ramiz Alia. The professors were quite critical of the draft, suggesting that it was still written in the spirit of the previous communist Constitution. Because the television producers were not pleased with the course of the discussion, they stopped the programs.³⁶

The Opposition complained about its inability to gain access to the media, especially television and radio, during the March 1991 election campaign.³⁷ One of the objectives of the Society of Ex-Political Prisoners is to take television and radio programming out of the hands of the Socialist Party.³⁸

Albanians are now allowed to view foreign television openly, including Italian and Yugoslavian programs. Even the women prisoners at the Tirana Reeducation Camp were watching an Italian television program at midday during the delegation's visit. This opening in government policy provides some options for television viewing, but does little to provide fair coverage of Albanian issues and events.

Recommendations:

(1) Individuals and private entities should have equal access to transmission of

³⁶Interview with Abdi Baleta, Deputy of Parliament, in Tirana, Albania (October 12, 1991).

³⁷NDI REPORT *supra*, at 29-30; COMMISSION ON SECURITY AND COOPERATION IN EUROPE, REPORT ON THE HELSINKI COMMISSION DELEGATION VISIT TO HUNGARY, YUGOSLAVIA, AND ALBANIA (DeConcini), (March 22-28, 1991), at 19-22, hereinafter cited as [CSCE REPORT].

³⁸Interview with members of the Society of Ex-Political Prisoners, in Tirana, Albania (October 9, 1991).

programming on television and radio. The government and the public stations should not control access to programming based on political content.

(2) The government should encourage the free exchange of ideas through television and radio. The establishment of independent competitors to the existing TV and radio stations will ensure this free exchange.

C. Prisons

1. **General Overview.** Under the Albanian Party of Labor, Albania had a large network of prisons designed to hold thousands of political prisoners in addition to ordinary criminals. According to the Director of Prison Administration, in October 1991 there were 1,093 persons in Albanian prison.³⁹ Interviews confirmed that all prisoners convicted overtly for political crimes, such as crimes defined in articles 53, 55 and 57 of the Albanian Penal Code⁴⁰, have been released from prison. Human rights advocates and the Supreme Court are still reviewing convictions of those in prison for "ordinary crimes" to ensure that the convictions did not mask political persecution. These organizations are also reviewing whether convicted individuals had enough due process protections to justify their ongoing imprisonment. The government is also considering general amnesty for all prisoners sentenced before the Law on Advocacy.

There are eight operational prisons, the largest prisons being Lezha, with 233 prisoners, and Kazaje, with 250 prisoners.⁴¹ Burrelli Prison, which formerly held political prisoners, now houses approximately 30 ordinary prisoners.⁴² In mid-1990, the government closed Qafa e Barit Prison. In the beginning of 1991 it closed Batra and Ternova Prisons; in April 1991, it closed Spac Prison. The Tapelena and Tirani Prisons have also been closed.⁴³ There are seven juveniles between the ages of 14 and 18 who are in prison.⁴⁴ Under Albanian law, there is a school of reeducation for juveniles, but juveniles can also be sent to prison between the ages of 14 and 18. They are to be separated from adults. The maximum sentence for

³⁹Interview with Edmond Caja, General Director of Prisons Administration, in Tirana, Albania (October 9, 1991).

⁴⁰See footnote 24 *supra*.

⁴¹Interview with Edmond Caja, *supra*.

⁴²*Id.*

⁴³*Id.*

⁴⁴*Id.*

children is 12 and a half years, or one half the maximum adult sentence.⁴⁵

The Minnesota Lawyers Committee delegation met with Edmond Caja, General Director of Prisons Administration, who is in charge of the transitory period of reorganizing prisons. Caja was formerly the supervisor of Qafa e Barit, a political prison. Caja told the delegation that changes have been made to improve relations between prisoners and staff. According to Caja, the primary make-up of prison staff has shifted from military to civilian personnel.

Prison administrators claim that they have increased visits between prisoners and their families. They acknowledge, however, that prisoners are only allowed a 10- or 15-minute visit with family members every two weeks and a conjugal visit only once a month. Limitations on correspondence have been removed.⁴⁶

There are five labor camps operating in Albania, in which inmates may do agricultural and construction work. All mining camps have been closed because of the inmates' unwillingness to work in these dangerous jobs. According to Caja, the prisoners currently are choosing not to work because work has been deemed voluntary and there is little pay.

Caja stated that he is trying to restructure prisons to provide education to inmates, among other reforms, but little funding is available. Given the general situation of food shortages and poverty in the country, there is little commitment to improving conditions at the prisons.

Albanian law still provides that prisoners who attempt to escape should be shot on sight. The punishment for disciplinary infractions by inmates is to be placed in isolation cells approximately two by three meters. Prisoners in isolation have the same food as ordinary prisoners. They are also eligible for up to two hours outside each day, at times when the other prisoners are not outside. The approximate duration of isolation is ten days.⁴⁷

Caja and Ymeri are seeking to separate the prison system from the supervision of the Ministry of Public Order. They claim that the Ministry of Public Order is too centralized and has a vested interest in keeping people in prison. The Minister of Public Order is not a cabinet-level position and therefore remains insulated from public scrutiny through the People's Assembly. The prison officials claim they are more sympathetic to the prisoners, seeking case reviews or amnesty for those who were imprisoned without defense attorneys. The prison officials want their activities to be controlled by the Ministry of Justice.

⁴⁵*Id.*

⁴⁶*Id.*

⁴⁷Interview with Edmond Caja, *supra*.

2. Conditions in the Past. Before the political opening in 1991, prisons operated to punish the prisoners and keep them isolated from the public. There was no attempt to rehabilitate prisoners and severe oppression was common. The government did subject political prisoners to political reeducation; they received different lectures than the ordinary prisoners. All prisoners, however, were considered to be opposed to the government. The primary purpose of the detention of political prisoners was to make their conditions as uncomfortable as possible.⁴⁸

The line of authority under the prior government descended from the Albanian Party of Labor to the Minister of Internal Affairs to the prison directors.⁴⁹ There were no laws regarding the treatment of prisoners existed; the Minister of Internal Affairs promulgated some rules, but these were changed frequently. The rules were quite precise, giving no discretion to the prison directors regarding how many minutes were allotted for family visits, what food was given, or how many hours of daylight prisoners were to receive. Prison officials complained that they had to function as "robots", with no discretion. Prison officials were even afraid to acknowledge good behavior by a political prisoner for fear of retribution by the authorities.⁵⁰

3. Tirana Reeducation Camp. On October 10, 1991, the delegation visited with the warden and women's warden of the Tirana Reeducation Camp, and toured the facility. The Tirana prison houses 30 women and 103 men, who are apparently all prisoners convicted of ordinary crimes. The warden, Lek Ymeri, had served for three months. Ymeri had been in corrections for 17 years, working previously in the Ministry of Internal Affairs. Ymeri was one of the few older employees selected by Caja to remain in corrections. The women's warden is Tatjana Milo. According to Caja, all prison wardens have been changed since the 1991 elections. Most of the wardens and prison guards over age 30 were released or retired. Ymeri stated that the guards at the Tirana facility were no more than 26 years old.

Caja and Ymeri were reticent to allow the delegation into the facility, claiming that the prisoners had received so many visits from international observers that they "felt like cattle" on display. After some discussion the officials agreed to allow the delegation to see both the male and female sides of the prison.⁵¹ Despite the officials' protestations, Caja admitted that Tirana Reeducation Camp is one of the best prisons in the country.

⁴⁸Interview with Lek Ymeri and Edmond Caja, *supra*.

⁴⁹*Id.*

⁵⁰*Id.*

⁵¹Prisoners seemed eager to meet and talk to the delegation, contrary to the impression promoted by the prison officials.



Women prisoners, Tirana Prison.

All female prisoners in the country are currently being held in the Tirana camp. Their prison area consists of four large rooms surrounding a courtyard. The women sleep in one room in rows of bunk beds, each allotted a mattress, sheets, and blanket. A separate living area contains a small library. The kitchen has two stoves. Three female prisoners cooking in the kitchen showed us the inmates' noon meal -- some meat and dark noodles. The cooks told us that they gave each prisoner 4.5 grams of meat. The fourth room is a dining area with approximately 10 tables set with plastic tablecloths and folding chairs. The dining room has a television set which was tuned in to an Italian program when we were there. Laundry was hanging on lines in the open area. The women at the Tirana camp work for minimal wages by restuffing mattresses. One of the women prisoners had her infant daughter living with her. Prison officials said that the child would be able to live with her mother in prison until she was three years old.

We were able to speak briefly to the women who acknowledged quite freely that conditions had improved significantly under the new prison director. Their primary complaints were about the length of their sentences, which were all for non-political crimes such as murder and theft.

One delegate visited the men's side of the Tirana camp, and reported that conditions were similar to the women's side. The men's quarters were much more crowded and dirtier than the women's side, however. The kitchen area smelled like rotten food and flies covered the loaves of bread stacked in the kitchen.



Women prisoners at the Tirana Prison work for minimal wages by restuffing mattresses.

Recommendations:

- (1) The "shoot on sight" law for escaping prisoners should be repealed immediately.
- (2) Prison conditions should comply with the U.N. Standard Minimum Rules for the Treatment of Prisoners⁵², with special attention given to the provision of adequate food, exercise, medical services, contact with the outside world, education, and recreation. Material improvements should be made to the prison facilities and provision of food,

⁵² Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 30 Aug. 1955, approved by the United Nations Economic and Social Council resolution 663(C) (XXIV), 13 July 1957, amended by E.S.C. res. 2076 (LXII), 13 May 1977.

clothing, and shelter.

(3) Punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offenses.⁵³

(4) The sentences of all ordinary criminals still in prison who were convicted prior to November 1, 1990, should be reviewed to see if they comply with international standards of due process, fair trial, and proportionate sentencing.

(5) No juveniles under the age of 18 should be in adult prisons.



Kitchen, Tirana Women's Prison.

⁵³*Id.*, article 31.

IV. THE ALBANIAN LEGAL SYSTEM

Albania's legal system has changed dramatically in the past two years. These developments involve legal education, the role of lawyers in Albania and the court system itself. While fundamental improvements have already been made, investigation revealed a number of areas in which further change is recommended.

A. Constitution

As one of its first acts after the March 31, 1991 election, the new People's Assembly adopted the Emergency Basic Law which set forth principles designed to serve as an interim Constitution. *See* Appendix 2. The People's Assembly expressed its intention to adopt a new Constitution in the first quarter of 1992.

A constitutional drafting commission is working to draft provisions in six areas: 1) The President and the People's Assembly; 2) the Judiciary and the Constitutional Court; 3) Local Power; 4) Human Rights; 5) Administrative Procedure; and 6) Armed Forces. The draft Constitution contemplates the separation of powers and de-politicization of powers which has been impossible in Albania before now. The People's Assembly selected some of its own members, as well as lawyers, professors, and others to serve on the drafting commissions. Some have criticized the process, however, for not being sufficiently inclusive. The drafters also solicited international assistance, and the American Bar Association and other legal institutions have provided advice and criticism throughout the drafting process.

Several groups and individuals are calling for a Constitutional Convention to adopt Albania's new Constitution. Several people interviewed asserted that to promote stability and maximum protection for constitutional rights and freedoms, the People's Assembly should not be authorized to sit in constitutional session.

Recommendations:

(1) The People's Assembly should convene a Constitutional Convention as soon as possible after the March election to adopt a new Albanian Constitution. The nation is in desperate need for the legal stability that would result from a national consensus on a constitutional document. The convention would represent the wider interests of the Albanian people, and would prevent the People's Assembly from sitting in constitutional session, which would allow it to amend fundamental rights too easily.

(2) The new Constitution should incorporate the human rights and fundamental freedoms contained in international human rights laws.

B. International Human Rights Instruments

On October 4, 1991, Albania acceded to the two major international human rights treaties, the International Covenant on Civil and Political Rights⁵⁴, and the International Covenant on Economic, Social, and Cultural Rights⁵⁵. By becoming party to these important treaties, Albania must now regularly report to the United Nations on its progress in implementing the rights guaranteed in the two covenants. Albania has been a member of the United Nations since 1955.

Albania is obligated under the Covenant on Civil and Political Rights to protect many rights that have previously been violated, including freedom from arbitrary arrest and detention (art. 9), freedom of movement (art. 12), equal protection and due process (art. 14, 15, 16), right to privacy (art. 17) freedom of thought, conscience and religion (art. 18), freedom of expression (art. 19), the right to peaceful assembly (art. 21), and the right of ethnic minorities to enjoy their own culture (art. 27), among others.

Under the International Covenant on Economic, Social, and Cultural Rights, Albania is obligated to take steps to ensure the right to work and fair remuneration (art. 6,7), the right to form trade unions (art. 8), the right to an education (art. 13), and the right to take part in cultural life (art. 15), among others.

Albania has not yet taken action on several other major human rights instruments including the Optional Protocol to the Covenant on Civil and Political Rights, the Convention Against Torture, or the Convention on the Elimination of Discrimination Against Women.

Recommendations:

(1) The Albanian government should establish immediate and regular self-evaluations to the United Nations in compliance with recently assumed obligations under the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights.

(2) The Albanian government should accede to all fundamental human rights instruments including but not limited to: The Optional Protocol to the Covenant on Civil and Political Rights, the Convention Against Torture, and the Convention on the Elimination of

⁵⁴International Covenant on Civil and Political Rights, Dec. 16 1966, GA res. 2200A (XXI), 21 UN GAOR, Supp. (No. 16) at 52, UN Doc. A/6316 (1966) *entered into force* Jan. 3, 1976.

⁵⁵International Covenant on Economic, Social, and Cultural Rights, Dec. 16, 1966, GA res. 2200A (XXI), 21 UN GAOR, Supp. (No. 16) at 49, UN Doc. A/6316 (1966) *entered into force* Mar. 23, 1976.

Discrimination Against Women.

C. Legal Education

The University of Tirana is the only source of legal education in Albania. When the University of Tirana was established in 1957, the Faculty of Law was created out of a law institute which had been founded in 1954. After functioning for several years as an independent entity, the Law Faculty was merged into the University's Faculty of Political Philosophy in 1965. From 1965 until 1991, the Law Faculty was subordinate to the Philosophy Faculty, as evidenced by the fact that the Dean of the combined Philosophy/Law Faculty was invariably a member of the Philosophy department. On October 1, 1991, the Council of Ministers separated the Faculty of Law from the Philosophy Faculty.⁵⁶ The renewed emphasis on independent legal education symbolized by this development represents a significant step in reestablishing the rule of law in Albania.

Albania has a civil law system and the study of law is a four-year course at the University. After college, graduates may specialize in a particular area of law, but no additional formal study is required. Law students are admitted to the University of Tirana based upon an allotment of spaces to each city or village. Local government officials select among the applicants. In the past, applicants were reviewed based on their perceived political reliability. Applicants who had a tarnished political background, including all who had relatives in prison or interned for political reasons, were not selected. Ironically, applicants would sometimes first discover they had family members in prison for political reasons because their applications for college would be rejected for this reason.

Several important changes have been made recently in the college admissions process. First, the local governments now responsible for selecting students were elected in multi-party elections rather than through the one-party ballot previously used. In addition, the explicit political criteria previously employed are no longer used in reviewing applicants. Additional reforms are necessary, however. A nationwide merit-based selection process would eliminate the possibility of political bias or other types of favoritism by local governments. In particular, whatever system the University of Tirana implements must eliminate the privileges based on "correct politics" and, where appropriate, make allowances for those who suffered under the prior system. For example, the children of political prisoners were often denied the opportunity to attend the better schools and thus remain at a disadvantage in terms of college admissions. The Albanian government should establish an affirmative action program that attempts to compensate for this earlier discrimination.

The Law Faculty includes students who attend classes at the University of Tirana and those who study by correspondence. Of the 600 students now in the law program, approximately

⁵⁶Interview with Dean Kudret Cela, Dean of the University of Tirana Faculty of Law, in Tirana, Albania (October 8, 1991).

140 are correspondence students. The Law Faculty accepted more than 100 students for the first time this year, significantly increasing the pool of lawyers in the country. Given the recent establishment of a defense bar, there is an unmet need for lawyers in Albania. In addition, the Law Faculty must make changes in legal education to make today's graduates better able to meet the evolving needs of the Albanian society.

The lack of resources that impedes most of the formidable changes taking place in Albania also has a detrimental effect upon the legal education system. Textbooks are extremely scarce, hampering the ability to teach. Those texts available are outdated given the widescale reforms which have taken place in the Albanian legal system. Law students state that their classes are conducted entirely by lecture, without any written supplementation or reference materials. The need for proper instructional materials is obvious. Foreign legal organizations and individual lawyers could render substantial assistance to Albania simply through the provision of written materials. In addition, law students and lawyers benefit from training about the legal underpinning of democratic institutions, including due process, fair trial, and other civil and political rights.

Recommendations:

- (1) The University of Tirana should eliminate geographic-based selection for the Faculty of Law at the University of Tirana and implement selection based upon merit.
- (2) The government should establish affirmative action programs for those whose education was undermined during the prior government because of an internationally-protected status such as race, sex, national origin, ethnic group, political or religious beliefs.
- (3) Given the dramatic changes in Albanian law and procedure, the Minister of Justice should establish concrete programs to expand legal training for lawyers, especially in the area of criminal defense law.
- (4) The Supreme Court should work with the College of Advocates and the Faculty of Law to establish a professional responsibility oversight committee to review credentials of all lawyers. Individuals of integrity and expertise should be selected to serve on this advisory committee.
- (5) The College of Advocates and the Faculty of Law should encourage assistance from foreign lawyers, including legal texts and training.

D. The Courts

The Albanian court system has three levels including: 27 district courts; six appellate courts, and a Supreme Court. Cases are originally heard at the district court level by a judge and two lay assessors. Lay assessors are individuals without judicial or legal experience who are elected for two-year terms and serve as a lay assessor for approximately two weeks during

each year.

Cases may be appealed to the appellate courts, or in some instances, directly to the Supreme Court. The Supreme Court is composed of 15 judges, and is divided into a civil college, a criminal college, and a military college. Until recently, district and appellate court judges were elected, although the ballot included only members of the Party of Labor who were unopposed. Under the new system, the President appoints all judges at the district and appellate court levels. The Minister of Justice recommends judges for appointment by the President. The current members of the Supreme Court were elected by the Parliament after considerable debate.⁵⁷ Members of the Supreme Court are permitted to hold other elected offices; the Vice President of the Supreme Court is now also a member of Parliament, for example.

Local judges are appointed by the President, on recommendations from the Minister of Justice. Many judges have previously served as prosecutors or investigators. While it appeared that many judges who had served under the prior government remained in place, those interviewed again stressed the youth of the judiciary. For example, of the eight judges of the Shkodra court, three had served for lengthy periods (20, 18, and 15 years respectively) and the remaining five were described as "young" with only two or three years judicial experience. Of course, some of the top government officials in Albania are former judges, including the former Minister of Justice.

One of the most important innovations proposed in the draft Albanian Constitution is a provision requiring the separation of executive, legislative, and judicial powers. The new Constitution contemplates the establishment of a Constitutional Court which would be composed of five elected members and four members appointed by the President. Main political parties may also play a role in proposing members of the Constitutional Court. Unlike members of the current Supreme Court, members of the Constitutional Court would not be permitted to hold elected office. The term of office for members of the Constitutional Court has not been decided, but a term of at least eight years has been proposed. The constitutional drafting committee which is responsible for revisions to the judiciary system was scheduled to present its proposal to Parliament in February 1992.

Another constitutional proposal involves establishment of High Council of Justice which would oversee appointment and removal of judges. The High Council of Justice would include the Minister of Justice, the General Prosecutor, the President, the Chief of the Supreme Court, several elected members and other officials, for a total of nine members.

In the Supreme Court, three judges hear each case. Each member of the Court hears approximately 10 to 12 cases a month. Only capital cases are appealed directly to the

⁵⁷According to the Vice President of the Supreme Court, constitutional drafters have proposed that each new People's Assembly elect a new Supreme Court.

Supreme Court. The Supreme Court reviews other cases only if a protest is registered by the defendant, the family, the prosecutor, or the defense lawyer. An appeal from the defendant must be made within eight days. The prosecutor may request a higher sentence on appeal.



Courtroom in Shkodra.

The criminal college of the Supreme Court reviews the cases of prisoners who were sentenced. These prisoners were convicted and sentenced without legal representation. If a sentence was originally given by the Supreme Court, then the entire court must review the case. The President of the Supreme Court or the Prosecutor can request review of a sentence at any time. According to the Vice President of the Supreme Court (Criminal College), a plenum of the Supreme Court has reviewed numerous sentences, including 15 cases in which the Court found the defendant innocent.

Many of the civil procedures required to protect defendants' rights remain discretionary in Albanian courts. For example, the defendant has the right to object to the assignment of a particular judge or lay assessor to his or her case. Once such an objection is lodged, however, the decision concerning recusal rests solely with the judge and no appeal of that decision is apparently available. This problem is especially troubling given the complicity of judges in past human rights violations.

The judicial system obviously suffers from the same constraining lack of resources which is evident throughout the Albanian economy. The Tirana and Shkodra courthouses were in

disrepair, and, in fact, certain courtrooms were not considered "presentable." The courtrooms varied in size and lay-out. In Shkodra, the accused sits near the defense lawyer in a box with police; the Tirana court makes no provision for seating the defense lawyer near the defendant. Defense lawyers in Tirana claim that they are required to sit in the back of the courtroom, not near the prosecutor in the front of the courtroom as is apparently permitted in Shkodra.

Recommendations:

- (1) The new Constitution should mandate separation of powers and effectuate this separation through the establishment of an independent Constitutional Court.
- (2) The structure and functioning of the courts should comply with the United Nations Basic Principles on the Independence of the Judiciary.⁵⁸
- (3) Judicial rules should insulate judges from political influences that will hamper their independence and impartiality. No judge, for example, should be permitted to hold elected office. The rules should provide for lengthy, if not lifetime, terms during which judges may be removed only for malfeasance. Judicial selection should be safeguarded from improper motives, and the selection process should ensure that only individuals of integrity and ability with appropriate training or qualifications in law are appointed.
- (4) Albanian courtrooms should be modified to guarantee the defense lawyer a place equal to that granted to the prosecutor and to permit the defense lawyer to have immediate, private access to the defendant. Except where there is no other means to protect public safety, defendants should not be brought into the courtroom shackled or required to sit with a police guard.

E. The Role of Defense Lawyers

Until November 1, 1990, there was no defense bar in Albania. Defense lawyers were only permitted in a small fraction of cases (those involving minors, incapacitated persons, and foreigners). Legal counsel for these defendants was provided by the Office of Judicial Assistance. The scope of this Office's activities is illustrated by the small staff it maintained: In Tirana, for example, the Office employed a total of 7 lawyers.

Albania's legal system changed dramatically with the entry into force of the Law on Advocacy on November 1, 1990. Law 7382, adopted May 8, 1990; see Appendix 3. Under

⁵⁸Basic Principles on the Independence of the Judiciary, Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, September 1985, *endorsed by* GA res. 40/32, 29 November 1985, and GA res. 40/146, 13 December 1985.

the Law on Advocacy, a legal profession, with the duty of giving legal assistance to Albanian citizens and others, was established.⁵⁹ On December 18, 1991 a new Law on Advocacy was adopted by the People's Assembly. See Appendix 4. The new law substantially revised the structure of the legal profession in Albania and repealed Law 7382, the law on private practice of law by individuals, either alone or in partnerships or collectives of lawyers. In addition, the recently-adopted law significantly changes the system of lawyers remuneration previously in place. The following discussion addresses the situation of the Albanian Legal profession prior to adoption of the December 1991 Law in Advocacy, which apparently has not yet been fully implemented.

Throughout Albania, there are currently approximately 300 defense lawyers. These lawyers are employed almost exclusively through state offices entitled "Kollegji i Avokateve," or College of Advocates, which have been established in all large cities. The Minnesota Lawyers Committee Delegation met with representatives of both the Tirana and the Shkodra Colleges. In Tirana, for example, the College of Advocates currently employs 32 lawyers. An additional ten people in Tirana have received licenses to practice law, but are not employed by the College. The Shkodra College employs eleven lawyers. The newly-established legal defense system suffers greatly from lack of adequate resources. For example, the College of Advocates in Tirana has only five offices for its entire staff of 32 lawyers and 3 supporting staff. The supporting staff includes an accountant, a cleaning person, and one secretary. It is not uncommon to see 10 to 20 people in one office: five or six attorneys with their numerous clients.

The Colleges are governed by a Council of Supervisors which was elected by the members of the Colleges, according to College officials. The members of the Council include: The Minister of Justice, the Vice Minister of Justice, the Director of the Department of Advocates and four attorneys (Fatos Trebeshina, Franc Jakova, Tahir Novi, and Flora Dema). The role of the Council is to supervise the activities of all of the Colleges of Advocates in Albania. Elections of the Council are to occur at general meetings of all members of the Colleges. In addition to the Council of Supervisors, the Department of Advocates office within the Ministry of Justice maintains a supervisory role regarding attorneys. The staff of this office consists of the Director of Advocates and the Deputy Director of Advocates. There is also a Deputy Director of Advocates in each city. Under the December 1991 Law on Advocacy, the Council of Supervisors remains, but its membership is modified to include the director of the legal profession, an official in the Ministry of Justice, and six lawyers elected by a general meeting of lawyers.

One of the main functions of the Council of Supervisors, under both the May 1990 and the December 1991 laws, is to issue licenses to practice law. Under current regulations, licenses to practice law will be issued only to persons who have three years of experience as lawyers.

⁵⁹ The May 1990 Law on the Legal Profession in the People's Socialist Republic of Albania, see Appendix 3, article 1.

Lawyers may request exceptions to this rule and, in fact, the experience requirement may not be strictly enforced. The Deputy Director of Lawyers stated, however, that licenses will be granted to persons just graduating from law school only in "special cases." Recently, some law school graduates have begun to accept one-year positions as unpaid clerks for experienced lawyers. While those granted licenses to practice law include lawyers from all facets of legal practice as it existed in Albania prior to November 1990, such as staff of the Offices of Judicial Assistance and attorneys for enterprises, most defense lawyers were previously employed as investigators, prosecutors or judges.⁶⁰

The Director of each College of Advocates is also responsible for evaluating incoming cases. The Director decides whether the cases clients bring have merit; if a case is believed not to have merit, the College does not have to take the case. In such circumstances, the lawyer will try to convince the claimant to drop the case for lack of merit. If this attempt is unsuccessful, the lawyer will prepare the necessary papers but the papers will reflect that the case was prepared at the insistence of the claimant.

When the College of Advocates takes a case, the lawyer informs the client of the fee. If the client is unable to pay, the Director may take the case without payment. The Director of the Tirana College estimated that about 5% of all the College's cases involve clients who are unable to pay. The Director distributes these cases, like the cases of paying clients, among the members of the College. A client may request that a certain attorney be assigned to a case, but will be charged an additional fee of 20% above the normal rate.

Each member of the Tirana College currently receives about five new cases per month. About 80% of the Tirana College's cases are civil, including divorce, child support, property, and employment disputes; the remaining 20% of the College's cases involve criminal charges.

Based on these figures, the number of criminal cases that reach the Tirana College of Advocates seems surprisingly low. The Director of the Tirana College stated that in the ten days prior to our interview not a single new criminal case had been brought to the College. During the same period, the Director believed many arrests had occurred.

One possible explanation for the failure of the College to become involved in many criminal cases is the reliance that the system places upon investigators to inform defendants that they have a right to an attorney and to notify the College of criminal cases. The Director of the Tirana College noted that criminal cases are sometimes brought to the College two to three weeks after an arrest. Since that defense lawyers were not available in almost all cases until

⁶⁰For example, out of the 32 members of the Tirana College, 7 or 8 are former investigators; out of the 11 members of the College of Advocates in Shkodra, 3 are former investigators.

one year ago, many defendants remain unaware of their right to an attorney.

Lawyers working in the College of Advocates are paid a salary. Until recently, this salary was based on (1) seniority (with the lawyers being grouped into three categories reflecting years of experience) and (2) amount of work done during the month. Under a new order issued by the Minister of Justice in October 1991, the Colleges are no longer permitted to divide salaries according to categories based on seniority. This same prohibition has recently been applied to the payment of judges. Clients pay fees directly to the College which then subtracts a certain percentage for overhead and distributes the rest to the members of the College. The Director of the College of Advocates is responsible for distributing the monthly salary. As mentioned above, under the December 1991 Law on Advocacy, lawyers are privately employed. They are permitted to agree to fees with their clients as long as they do not exceed tariffs set by the Ministries of Justice and Finance.⁶¹

As mentioned above, there are currently 10 licensed lawyers who nominally belong to the College of Advocates in Tirana but do not work at the College or accept cases from the College. These "private lawyers" are a new breed in Albania and their role was largely undefined during our visit. Under the new Law on Advocacy, the status of the private practitioners is clarified. This group includes some lawyers with undesirable records under the prior government.

Under the December 1991 Law on Advocates, all defense lawyers are "private" and individual attorneys are able to accept cases and set fees.

Recommendations:

- (1) The government should revise the rules of criminal procedure to provide an absolute and immediate right for a detained person to be represented by counsel and to meet in private with his or her counsel.
- (2) The government should provide legal representation for those who are arrested and are unable to afford a criminal defense lawyer.
- (3) All persons should have the opportunity to select their own lawyer without paying additional fees to the College of Advocates.
- (4) The professional responsibility oversight committee should be charged with ensuring that clients receive fair and adequate representation, and have the authority to investigate complaints from clients about problems with their representation.
- (5) The government should undertake a program of public education at all levels and

⁶¹December 1991 Law on Advocacy, Appendix 4, Article 16.

through all mediums to ensure that people are aware of their right to legal representation.

(6) The College of Advocates must implement and adhere to the United Nations Basic Principles on the Role of Lawyers.

F. Prosecutors and Court Administration

The General Prosecutor is appointed by the People's Assembly. Thirty lawyers work in the General Prosecutor's office and the General Prosecutor also supervises prosecutors in 27 districts outside of Tirana. Under Albania's civil law system, the prosecutor is responsible for supervision and control of the investigative process. The prosecutor has ultimate authority over the criminal case, deciding whether to charge the suspect with a crime or to release the suspect. Both the investigators and prosecutors we interviewed noted that the prosecutor's involvement with the investigative process is the source of substantial tension between prosecutors and investigators. Local prosecutors are also responsible for visiting local prisons and investigating charges against the authorities.



Courthouse in Tirana.

A clear role for defense lawyers has not yet been defined within the new criminal procedure in Albania. The prosecutor still has broad control of the procedure in criminal cases. The

prosecutor is not only charged with protecting the State by presenting evidence of a crime at trial, but also with protecting the accused. For example, if the prosecutor at any point in the case becomes convinced the evidence is insufficient, he or she can dismiss the charges. As noted above, the prosecutor may appeal both the decision and sentence in criminal or civil cases.

In some courtrooms, the prosecutor is permitted to sit with the judges, while the defense attorney must sit with the public. While the broad authority granted prosecutors may have been necessary when defendants were not represented by counsel, the prosecutors' special status now may serve only to undermine the authority and role of the defense lawyer. A clarification of prosecutorial functions is therefore recommended.

The General Prosecutor's office has been involved in the Supreme Court's review of the files for people now held in prison who were convicted under the prior government (and without benefit of counsel). The General Prosecutor told us that in about 40 such cases, a decision has been made to "requalify" the act and reduce the sentence given.

The Minister of Justice is responsible for the administration of justice in Albania. All judges, except for the Supreme Court, are appointed by the President based on recommendations made by the Minister of Justice. While the People's Assembly elects district prosecutors, the Minister of Justice appoints all other prosecutors. Under the current system, the prosecutors' office is under the authority of the People's Assembly and the investigators' office is overseen by the Minister of Justice. The Minister of Justice also appoints the district investigators and their deputies. In addition, the responsibilities of the Minister of Justice include drafting new legislation and codes, and reviewing all laws.

On August 31, 1991 two prominent former government officials, Manush Myftiu (former Vice Prime Minister and Minister of the Interior) and Kino Buxheli (former Director of Economic Affairs), were arrested under charges of financial embezzlement and mismanagement issued by Petrit Serjani, the General Prosecutor. In early October 1991, two additional former officials, Hekuran Isai (former Vice Prime Minister of the Interior, responsible for the *Sigurimi*), and Qirjako Mikali (Minister of Finance) were arrested. The arrests were the result of an extensive investigation conducted by the Minister of Finance, which allegedly revealed financial abuses by the accused. The charges against the four, signed by the Minister of Finance and the Vice Prime Minister, included contributing to the current economic crisis and "causing class struggle." Many of the people interviewed noted that financial charges were brought because the government lacked the ability or the will to charge the former officials with human rights abuses. The General Prosecutor asserted, however, that documentary evidence allowed immediate prosecution on the financial charges, whereas prosecution for political crimes would be much more difficult. According to the General Prosecutor, the four officials will be tried as soon as the investigation of their alleged financial abuses is completed. In January 1992, at least two more former officials were arrested: Nexmije Hoxha (widow of former leader Enver Hoxha) and Rita Marko (a former Politburo member). Albania's chief prosecutor, Kristaq Ngjela, has announced that

twenty former officials, including the six already arrested, will be tried by the military on corruption charges.⁶²

Recommendations:

- (1) The ability of the prosecutor to appeal criminal decisions and sentences should be limited to extraordinary circumstances.
- (2) The role of the prosecutor in the evolving criminal procedure law in Albania should be clarified to take into account the right of the defendant to competent counsel of his or her own. The prosecutor and the defense should have a more balanced role in the process.

G. The Police and Jails

In criminal pretrial matters, the activities of the State in arresting and detaining suspects, preserving evidence and investigating crimes are currently carried out by the police and the General Investigator's office. No one Ministry oversees these criminal justice activities; the police report to the Minister of Public Order while the Minister of Justice oversees the General Investigator's office. The People's Assembly is considering proposals to alter some of the penal procedures described below. Additional changes must be made to the penal procedures to safeguard the rights of the accused prior to trial.

When a crime is committed in Albania, the police are the first to arrive at the scene. The police are charged with guarding the site of the crime, securing evidence, taking suspects into custody and recording the names of witnesses. The police are also responsible for calling the investigator to the scene of the crime. The police have the authority to detain a person for 72 hours in a local jail before any charges are brought.⁶³ The police do not have the right to question or to interrogate the detainee at this time -- the interrogation function belongs to the investigator. Nor do the police have the authority to release the suspect. The detained person does not have the right to consult an attorney during this 72-hour period until after charges are brought against him or her.⁶⁴

According to Bajram Yzeiri, Minister of Public Order, the police are organized by districts. Each district has a chief and two subordinates who supervise a public order division and a criminal division. The Minister of Public Order appoints the district chiefs. The Minister

⁶²Reuters News Service, January 7, 1992.

⁶³Interview with Bajram Yzeiri, Minister of Public Order, in Tirana, Albania (October 11, 1991); interview with Petrit Serjani, General Prosecutor, in Tirana, Albania (October 1991).

⁶⁴Interview with Bajram Yzeiri, *supra*.

maintained that approximately 90% of the police chiefs throughout the country have been replaced during the recent reforms. The Minister of Public Order asserts that new recruits are required to have finished high school. Moreover, Yzeiri stated that in the future the recruits must attend two years of the Academic Institute of Police. According to the Chief Investigator of Tirana, however, many police officers are poorly educated.

In the past, the police, like most institutions in Albania, had no ties with international organizations. Albania has recently become a member of Interpol. Both Yzeiri and SHIK Director Irakli Kocollari asserted that the police will benefit from this outside contact.⁶⁵

According to Yzeiri, Albanian citizens may complain to the authorities about excessive use of force by the police in arresting or detaining suspects. Petrit Serjani, the General Prosecutor of Albania, confirmed during an interview on October 9, 1991, that the prosecutor may arrest police who have mistreated the public. Serjani stated that such cases of police brutality are tried by the military courts. He noted that three policemen were recently arrested because they shot a woman bystander.

Yzeiri states that the police would like to expand their investigative duties and proposals have been made to allow the police to investigate less serious crimes. In addition to their investigative duties, the police guard the premises of Radio Albania and the Albanian television station.

A suspect to a crime may be detained for 72 hours without being charged with any crime. Every town or city has a detention center which holds suspects during this initial 72-hour period. Additionally, once charged with a crime, a suspect can be held in these jails for up to three months before trial.

The police continue to operate with little or no public scrutiny in detaining individuals in police stations and jails. Human rights advocates expressed concern about ill-treatment and poor conditions in jails. One ex-political prisoner singled out the Elbasen Police Station as an example of a location of violations, stating that detainees are beaten and do not have access to counsel. He told the delegation that detainees are held for up to two weeks with no bed, and only a blanket. By the time individuals had the chance to see a lawyer, a confession had often already been signed.⁶⁶

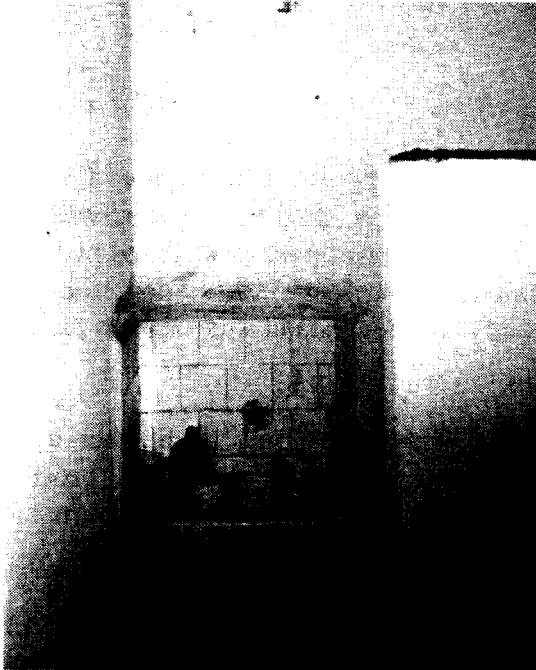
Albania does not have a system of bail, but the Minister of Public Order claimed that two-thirds of all detainees are freed after arrest. According to Yzeiri, only those charged with more serious allegations are detained until trial. The Minister also stated that a system of

⁶⁵Interview with Bajram Yzeiri, *supra*; Interview with Irakli Kocollari, *supra*.

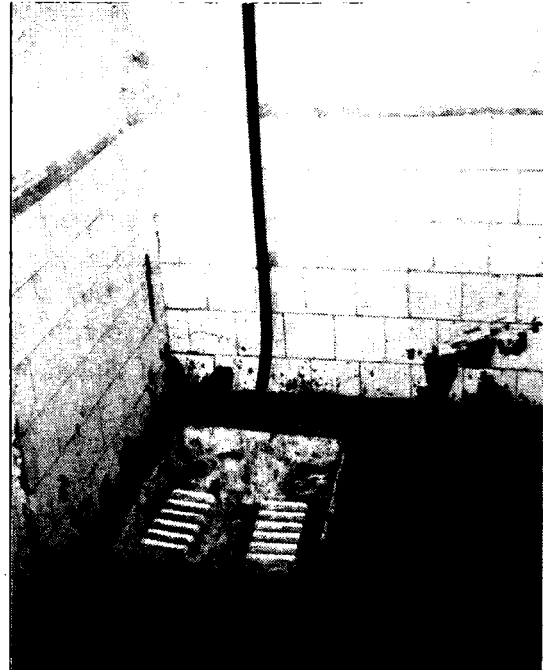
⁶⁶Interview with the Forum for the Defense of Human Rights and Fundamental Freedoms, in Tirana, Albania (October 10, 1991).

bail would not work in Albania because the people are too poor to afford it.

Two of the members of the delegation were allowed to visit the Tirana jail. Despite great difficulty in obtaining access to the cell area, delegates did view detention cells which were approximately seven feet by twelve feet. The cells had a wooden slat floor and no lights, except for one small window. The cells we viewed had a sink and a toilet, although some rooms had no toilet. According to a member of the Forum only a few cells have a sink and toilet. Most detainees must use a common sink and toilet to which they have access three times; before breakfast, before lunch, and before dinner. Access is occasionally granted at other times by knocking on the cell door. The director of the Tirana jail stated that each detainee is allotted a mattress with sheets and blankets to put on the floor. The delegation members were allowed to view an occupied jail cell and the one detainee did have a mattress, sheets, and a blanket. The jail director stated that officials make every effort to house one detainee in each cell, but that overcrowding sometimes results in placing more than one person in a cell.

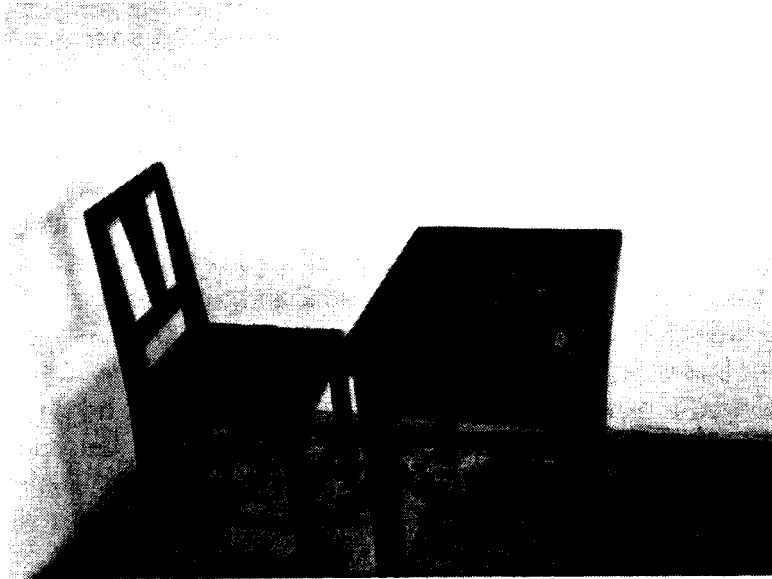


Sink inside cell at Tirana Jail. The small window is the only light in the cell.



Toilet inside cell in Tirana Jail.

The delegation members also viewed the rooms where suspects are interviewed by the investigators and prosecutors. Each room contained a desk and three chairs for the investigator, the prosecutor, and the defense attorney. The rooms also had a chair and a table that were cemented to the floor for the suspect. The Delegation was not allowed to talk to detainees in the jail.



Interrogation room inside Tirana Jail. The table and chair used by the detainee are cemented to the floor.

Recommendations:

- (1) As provided in the U.N. Standard Minimum Rules for the Treatment of Prisoners⁶⁷, every detained person, on admission to the place of detention, shall be provided with written information about the regulations governing the rights and treatment of detained persons, the disciplinary requirements, the authorized methods of seeking information and making complaints, and all such other matters necessary to understand his or her rights and obligations in the place of detention.
- (2) The Albanian government should use pre-trial detention only if all other means of ensuring public safety and the participation of the defendant in the legal process are determined inadequate. The government should institute a system of release on recognizance for pretrial detainees who are not a danger to society.
- (3) Suspects may be held in jail for 72 hours prior to being charged. The government should reduce the number of hours that a suspect can be held in jail before being charged with a crime.
- (4) Jail conditions should comply with the U.N. Standard Minimum Rules, and the Body of Principles for the Protection of All Persons under Any Form of Detention or

⁶⁷See footnote 47, *supra*

Imprisonment⁶⁸.

(5) The government must establish and adhere to a firm program of training for police recruits. All police personnel should, at a minimum, finish high school and undertake a period of special training, including instruction concerning a suspect's rights while detained.

H. General Investigator

The General Investigator is appointed by the Council of Ministers while his staff is appointed by the Minister of Justice. The Minister of Justice also appoints the Chief Investigators for each district and their subordinates. The office of the General Investigator contains three divisions handling economic crimes, military crimes and all other crimes. The General Investigator asserted in an October 12, 1991 interview that a special division which focused on political crimes has been abolished.

Currently, 210 persons are working in Albania as investigators. The General Investigator stated that he would like to hire more investigators, but he asserted that it is hard to find applicants because of the heavy case load and difficult working conditions. Informal discussions with law students and lawyers suggest, however, that the investigator's office may have a bad reputation because of past abuse of detainees and that few law graduates desire to work as an investigator.

According to Albania's General Investigator, the functions of the investigators are regulated by the criminal code and by internal rules. The Minnesota Lawyers Committee was unable to procure any written guidelines for the investigators. The Chief Investigator in Tirana noted that while there were many rules governing investigative procedures, more were needed. Additionally, there is no separate unit within the investigator's office to examine charges of abuse of power by the investigators.⁶⁹ The investigator's work without close supervision and there does not appear to be any sanction for investigative misconduct.

In an October 12, 1991 interview, the Minister of Justice noted that it was unnecessary to replace all investigators who worked during the previous administration, adding that only investigators who had formerly abused their office should be removed. The Minister of Justice also declared that any investigators who committed crimes in the past will be prosecuted. The Chief Investigator of Tirana asserts that almost 70% of the investigators in Tirana are relatively new to the job.

⁶⁸ UN Standard Minimum Rules, *supra*; Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, Dec. 9, 1988, GA res 43/173.

⁶⁹Interview with Maksim Cifligu, Chief Investigator, in Tirana, Albania (October 12, 1991).

Investigators must have a law degree to be hired. Investigators receive additional training two to three times a year by attending seminars. Once a year, according to the General Investigator, all the investigators in Albania attend a meeting in Tirana. The chief investigators for every district also hold meetings once every two to three months to discuss investigative problems and procedures.

The investigator is responsible for interviewing witnesses, including the suspect, and gathering physical evidence. The investigator has the authority to initiate an investigation, although the prosecutor may also direct that an investigation begin. Typically, only one investigator is assigned to work on each case.⁷⁰ In important cases, however, two or three investigators may work together.⁷¹ The investigators work with the police, but, according to the General Investigator, there is friction between the two entities as the police would like more investigative responsibility.

One of the primary responsibilities of the investigator is to inform the detainee, once a charge has been brought, of his or her right to consult with defense counsel. According to the Director of the College of Advocates in Tirana, however, investigators sometimes do not tell suspects about this right, effectively nullifying the right to counsel at a crucial stage in the criminal proceedings. Many of the detained do not know of their right to counsel and do not ask for a lawyer. Thus, while the detained person has a right to a lawyer during the initial stage of the criminal process, in practice, many are prevented from securing such help because of investigators' tactics.

Until adoption of the new Law on Advocacy in December 1991, the right to counsel was limited since defense counsel was not permitted to meet with his or her client in private.⁷² Under the procedures in force during the Minnesota Lawyers Committee delegation's visit, the defense counsel was able to meet with the defendant only in the presence of the investigator or the prosecutor.⁷³ The new Law of Advocacy which guarantees a lawyer "the right to meet alone with an arrested defendant"⁷⁴ is being considered which would provide the opportunity for a defendant to consult with an attorney in confidence.

⁷⁰*Id.*

⁷¹*Id.*

⁷²Interview with Maksim Cifligu, *supra*, and interview with Shezget Muci, Minister of Justice, in Tirana, Albania (October 12, 1991).

⁷³*Id.*

⁷⁴ Article 11, December 1991 Law on Advocacy, Appendix 4. The Committee has no information, however, concerning whether this provision has been implemented to date.

Additionally, once the investigation file is closed and the case has been referred to a prosecutor, defense counsel may not meet with their clients without specific permission from a judge.⁷⁵ The Minister of Justice recently established this directive by telegram.⁷⁶ Although defense lawyers consider this new rule to be unlawful, it is followed.⁷⁷ The Director of the College of Advocates in Tirana states that permission to meet with clients is very rarely granted by the judges. Thus, the right to consult with an attorney is even more limited by this new procedure.

According to the General Investigator, detainees must be charged with a recognizable crime within 72 hours of detention. The charge is in writing and it gives notice of the article of the criminal code that the defendant allegedly violated.⁷⁸ If no charge is filed within the 72 hour period, the detainee is released. The investigation may continue and the person may be charged at another time.⁷⁹

Once a charge has been brought, the investigation must be concluded within three months. For serious crimes like murder, espionage or diversion, pretrial detention can last the full three months.⁸⁰

The investigative system has changed often in the past and different ideas are being proposed to reorganize the criminal justice structure. Under one proposal, the investigator would be subject to the control of the prosecutor. Under another proposal, the judge would also conduct the investigation.

Recommendations:

- (1) The General Investigator should establish written guidelines in conformity with the U.N. Principles on Detention, and other international norms, setting forth the responsibilities of and the procedures to be followed by the investigators in carrying out all phases of the investigative process.
- (2) According to the Principles on Detention, no detained person while being interrogated

⁷⁵Interview with Naum Pejo, Director of the College of Advocates in Tirana, Albania (October 15, 1991).

⁷⁶*Id.*

⁷⁷*Id.*

⁷⁸Interview with Maskim Cifligu, *supra*.

⁷⁹*Id.*

⁸⁰*Id.*

shall be subject to violence, threats, or methods of interrogation which impair his or her capacity of decision or his or her judgment.

(3) According to the U.N. Principles on Detention, the duration of any interrogation of a detained person and of the intervals between interrogations, as well as the identity of the officials who conducted the interrogations and other persons present, shall be recorded and certified in such form as may be prescribed by law.

(4) The General Investigator should establish a separate unit within the investigative office to monitor internal affairs and charges of abuse of authority.

(5) The Courts and the General Investigator should establish sanctions against investigators who abuse their authority, including sanctions against investigators who fail immediately to inform detainees of their right to counsel when the suspect is first apprehended. One method of enforcing the right to counsel is to establish prophylactic rules disallowing the use of evidence secured before a suspect was informed of his or her right to counsel or confessions obtained by improper means.

(6) The Minister of Justice should discharge investigators who abused their authority under the former administration.

APPENDIX 1

**LAW ON THE INNOCENCE, AMNESTY AND
REHABILITATION OF FORMER
POLITICAL PRISONERS**

Unofficial Translation
Kathleen Imholz 1/8/92

LAW

ON THE INNOCENCE, AMNESTY AND REHABILITATION
OF FORMER POLITICAL PRISONERS [LIT. PERSONS
PUNISHED AND PROSECUTED]

For 45 years, many Albanian citizens were accused, tried and sentenced, imprisoned, interned or prosecuted for infractions of a political nature, violating their civil, social, moral and economic rights.

The first pluralist Parliament of the Republic of Albania has determined to create a just, honest juridical system, which is to be fully in accordance with the laws and regulations that protect basic human rights. A program of national reconciliation has been adopted [lit. adapted; misprint in original Albanian] and is being consolidated through which all Albanian citizens are given guarantees for exercising their civil rights through legal means, as the basis for the re-establishment of a free and democratic society. For this reason, the People's Assembly, using its powers [lit. competencies], declares the innocence of [lit. gives innocence to] former political prisoners and is honored, as the highest representative of the people, in the name of the juridical state to ask pardon from these persons for the political punishments and sufferings that they have undergone in the past.

The Government shall take all measures to compensate and rehabilitate all persons who were wrongly accused for the infractions with which this law deals and shall assure for them, on a priority basis, material and moral assistance for their full reintegration into society.

In accordance with article 16, point 6 of law no. 7491, dated April 29, 1991, "On Fundamental Constitutional Provisions," on the proposal of the Council of Ministers,

THE PEOPLE'S ASSEMBLY
OF THE REPUBLIC OF ALBANIA

D E C I D E S:

Article 1

All persons who were punished for agitation and propaganda against the state, for escaping, for sabotage, for

cluding or participating in political organizations, [and] for not denouncing crimes against the state; those who were punished for defamation and insults against the highest organs of the state and the Party, for violations of decree no. 7459 dated January 22, 1991 "On the respect and defense of monuments connected with national history and state symbols," and also [those who were punished] for violations of decree no. 7408, dated July 31, 1990 "On meetings, gatherings and demonstrations of citizens in public places" are [declared] innocent and are considered unpunished for moral, political, social and economic purposes.

Article 2

All Albanian citizens who escaped from Albania during the war or after Liberation of the country up to May 8, 1990, because of their beliefs or their political activity are [declared] innocent, except those who have committed terrorist and diversionary acts when these acts caused death or other serious consequences. The others are amnestied.

Article 3

Military personnel who by crossing state boundaries in an illegal manner have also committed the penal offenses of desertion and permanent abandonment of military service are also entitled to take advantage of this law.

Article 4

All those sentenced for crimes against the state and for not denouncing and [for] abetting these crimes are amnestied, with the exception of those who have committed terrorist and diversionary acts when these acts caused death or other serious consequences.

Penal prosecutions for penal acts specified in this article, as well as the above-specified articles of this law for all investigative issues, for issues not examined by a court and for all denunciations made before competent organs for these penal acts committed up to the date of entry into force of this law are dismissed.

Article 5

These rights are recognized for persons who are entitled to take advantage of article 1 of this law:

a) For purposes of job seniority, the time during which punishment was suffered with deprivation of freedom and with being interned as a consequent penal punishment shall be given effect [lit. is recognized as valid]. Seniority for the time of punishment shall also be given effect for persons who

been unemployed before the beginning of the penal prosecution.

For purposes of calculating their pension, persons who were sentenced may elect the average monthly pay received during three consecutive years out of [lit. in] the ten final years of work, before or after the penal proceedings, or the pay received by a worker who worked under the same working conditions as those which the prisoner performed during his punishment. When this election cannot be made for other causes, those [persons] shall receive an average pension.

b) Titles of honor and decorations that were taken away by decision of the court or decree of the Presidium of the People's Assembly shall be returned.

c) Return to the place of residence where they had been before penal prosecution or internment shall be guaranteed; work according to their profession, on a priority basis, outside or inside the state shall be guaranteed, and precedence shall be given for shelter.

d) The right to study in higher schools shall be returned to those from whom that right was taken away because of their penal proceeding or [that of] their relatives, and education inside or outside the country shall be guaranteed [to them] as soon as possible.

e) Compensation shall be made for the damage caused and a specified payment shall be given for the fulfillment of the conditions of living, according to rules that shall be established by special provisions in accordance with international criteria. The right to the return of or compensation [for] confiscated property is recognized.

f) Compensation for the damage caused shall also be given to the families or legal heirs of former political prisoners who are no longer alive and those who were shot without trial or who died without being sentenced by a court.

g) Families of those shot and imprisoned without trial, those who died in prison or those who have died in prison without being sentenced in a trial, shall be entitled to a pension according to the provisions on family pensions.

The executive committees of the districts and regions are charged with the implementation of the obligations specified in letters "c" and "d" of this article.

The Council of Ministers shall take into consideration the requests of former prisoners and political internees, when the conditions of point "c" of this article are not fulfilled.

Article 6

Persons discharged or interned for political motives shall also be entitled to the rights recognized in article 5 of this law.

Article 7

All the rights recognized in this law for political prisoners [lit. those punished] are also recognized for the families of persons who have died during the process of investigation or who were executed without trial.

Article 8

The Council of Ministers, the Ministry of Public Order, the Ministry of Justice, the Attorney General, the Ministry of Finance and the executive committees of the districts and regions are charged with the implementation of this law.

Article 9

A commission shall be [lit. is] created, with the participation of the deputies, the members of the Government, the workers of the judicial organs and the members of the Society of former political prisoners, to review and confirm state political crimes.

This commission is charged to control this law and with its implementation.

Article 10

This law is effective immediately.

Tirana, September 30, 1991
No. of law: 7514

Promulgated as [lit. with] decree no. 43, dated October 1, 1991, of the President of the Republic of Albania, Ramiz Alia.

APPENDIX 2

**LAW ON THE MAJOR CONSTITUTIONAL PROVISIONS
TO BE IN FORCE UNTIL THE ADOPTION
OF THE CONSTITUTION OF THE REPUBLIC OF ALBANIA**

Attached herewith is the Law on the Major Constitutional Provisions, which will be in force till the adoption of the Constitution of the Republic of Albania, whose draft will be worked out by the Special Commission charged by the People's Assembly.

The Constitution will be adopted by the People's Assembly during the first quarter of 1992.

Tirana, 21st May 1991

LAW

ON THE MAJOR CONSTITUTIONAL PROVISIONS
THE PEOPLE'S ASSEMBLY
OF THE REPUBLIC OF ALBANIA

D E C I D E D :

CHAPTER ONE

GENERAL PROVISIONS

ARTICLE 1

Albania is a parliamentary republic. National sovereignty derives from the people and belongs to them.

ARTICLE 2

The Republic of Albania is a democratic state, based on the rule of law.

Man's dignity, his rights and freedoms, free development of his personality as well as the constitutional order, equality before the law, social justice, social assistance and pluralism are the foundations of this state, whose duty is to respect and protect them.

ARTICLE 3

The fundamental principle of state organization is the division of the legislative, executive and judicial powers.

The people exercise their power through their

representative organs and the referendum as well.

The representative organs are elected by free, general, equal, direct and secret ballot.

State activity is exercised only by the state organs recognized by law.

ARTICLE 4

The Republic of Albania recognizes and guarantees the human rights and fundamental freedoms of the individual and of national minorities, accepted by international documents.

ARTICLE 5

The legislative power belongs to the People's Assembly of the Republic of Albania.

The head of State is the President of the Republic elected by the People's Assembly.

The rights and duties of the President are defined by this Law.

The supreme organ of the Executive Power is the Council of Ministers.

The rights and duties of the Council of Ministers are defined by this Law.

The judicial power is exercised by courts which are independent and are guided solely by law.

ARTICLE 6

Political pluralism is one of the fundamental conditions of democracy in the Albanian state.

The political parties and other organizations,

are created and exercise their activity according to the law. They are fully separated from the state.

The activity of political parties in military units and institutions of the Ministry of Defence and the Ministry of the Interior, the Ministry for Foreign Affairs and diplomatic representations abroad, the attorney's offices, investigation offices, courts, etc. is prohibited. The departization and depoliticizing of these organs is done by law.

ARTICLE 7

The Republic of Albania is a secular state.

The state respects the freedom of religious faith and creates conditions to exercise it.

ARTICLE 8

The legislation of the Republic of Albania considers, recognizes and respects the generally accepted principles and norms of international law.

The strict and equal application of juridical norms is compulsory for all the state organs, political parties, other organizations, employees as well as for other physical and juridical persons.

All the citizens are equal before the law.

ARTICLE 9

In its foreign relations policy, the Republic of Albania defends the national independence and interests, pursues the policy of cooperation and good neighbourliness, international peace and security.

The Republic of Albania pays attention to the recognition of and respect for the national and democratic rights of the Albanians residing outside the state borders of the Republic.

ARTICLE 10

The country's economy is based on the diversity of ownership, the free initiative of all economic subjects and the regulatory role of the state.

Economic initiative of juridical and physical persons cannot develop contrary to the social interest and should not impair the security, freedom and dignity of man.

ARTICLE 11

Subjects of the right to ownership are the state, juridical and physical persons.

All kinds of ownership are equally protected by law.

The assets which are objects of the state property are set by law.

ARTICLE 12

The foreign juridical and physical person may gain the right to ownership under the conditions foreseen and guaranteed by law.

The foreign physical and juridical person is guaranteed the right to carry out independent economic activity, to invest in Albania, to form joint or his/her own ventures under the conditions provided for in the law. He/she is also guaranteed the right to transfer the profits to his/her own country.

ARTICLE 13

It is incumbent upon the juridical and physical persons to contribute to defray the state expenditure in proportion to their income.

No tax or levy can be imposed except by law.

ARTICLE 14

The trade unions recognized by law are juridical persons and may sign collective working contracts with the public or private subjects. The way of reaching contracts is defined by law.

CHAPTER II

THE SUPREME ORGANS OF THE STATE POWER

A. The People's Assembly

ARTICLE 15

The People's Assembly is the highest organ of the state power and the only law-making organ.

The People's Assembly exercises sovereignty on behalf of the people and state, in the forms and limits provided for under this Law.

ARTICLE 16

The People's Assembly has the following main competences:

1. It defines the main directions of the internal and foreign policy of the state.

2. It adopts and amends the Constitution and the laws, decides definitely upon the compatibility of the laws with the Constitution and makes their interpretation.

3. It adopts the economic and social draft programs of the country's development and the synthetic indices, as well as the state budget.

4. It decides on the partial and general mobilization, the state of emergency and state of war in case of armed aggression against the Republic of Albania or when this is necessary to fulfil obligations deriving from the international treaties.

5. It ratifies and denounces:

The treaties of political character;

The treaties or agreements of military character;

The treaties or agreements related with the borders of the Republic of Albania;

The treaties or agreements concerning the fundamental rights and duties of the citizens;

The treaties from which derive financial obligations for the state;

Treaties or agreements which bring about changes to the legislation.

Treaties or other agreements which foresee that their ratification or denunciation be done by the People's Assembly.

6. It grants amnesty.

7. It decides on people's referendums.

8. It elects and discharges the president of the Republic of Albania.

9. It elects, appoints and discharges the Supreme Court, the Attorney General and his substitutes.

10. It controls the activity of the Council of Ministers and the Attorney General's office.

11. It controls the activity of RTV, ATA and other official media of public information which are dependent on it. The status of these organs is set by law.

12. It defines the administrative-territorial structure of the country.

13. It decides on the creation or dissolution of the ministries or other organs equal to them.

ARTICLE 17

The People's Assembly is made up of 250 deputies.

The people's Assembly is elected for a 4-year term.

The people's Assembly convenes the first session no later than two months from the day of its election.

The elections to the People's Assembly are held no later than 3 months from the day its mandate expires.

In case of war or state of emergency the People's Assembly can function regardless of the scheduled term, so long as the war or the state of emergency continues.

ARTICLE 18

The People's Assembly elects its presidency, which consists of the chairman and two vice-chairman

The activity of the People's Assembly and its Presidency is conducted according to the regulation it has adopted.

ARTICLE 19

The People's Assembly convenes its sessions no less than 4 times a year.

The sessions of the People's Assembly convene on the decision of its Presidency. The Presidency convenes the session of the People's Assembly when this is also requested by the President of the Republic, the Council of Ministers or by one fourth of the deputies.

The meetings of the People's Assembly start when the majority of the deputies is present.

The meetings of the People's Assembly are open, except in special cases when the People's Assembly decides otherwise .

ARTICLE 20

The People's Assembly elects from its ranks permanent and temporary commissions.

In its first session the People's Assembly elects a commission to examine the mandates of the deputies. At the proposal of this commission, the People's Assembly confirms or annuls the mandates of the deputies.

It is incumbent upon the permanent commissions to examine the draft laws and normative decrees of the

President of the Republic, to follow and control the activity of the ministries and other state organs according to the respective sectors and to forward problems to the People's Assembly or the Council of Ministers. The temporary commissions are set up for certain issues.

ARTICLE 21

It is the duty of the deputy to the People's Assembly in his activity to serve the people and the homeland conscientiously. The rights and duties of the deputy are defined by law.

ARTICLE 22

The deputy to the People's Assembly enjoys immunity.

The deputy cannot be prevented from accomplishing his duties, nor from obtaining the data which are not a state secret.

The deputy cannot be checked, detained, arrested or penally prosecuted without the consent of the People's Assembly. The deputy may be detained without the consent of the People's Assembly only in cases when he commits an apparent and grave crime.

The deputy has no legal responsibility for the activities he carries out and the stands he adopts while performing his duty as deputy or for the vote he casts.

ARTICLE 23

The law-making initiative belongs to the President of the Republic, to the Council of Ministers, to every deputy, as well as to a group of 20.000 nationals enjoying the right of voting .

The laws and other acts of the People's Assembly, except the constitutional ones, are considered adopted, when voted for by the majority of the deputies present, but no less than one third of the deputies.

The laws are announced no later than 15 days following the approval and enter into force 15 days after being published in the Official Gazette, except for the cases when foreseen differently by the laws themselves as well as the cases of organic laws.

B. THE PRESIDENT OF THE REPUBLIC OF ALBANIA

ARTICLE 24

The president of the Republic of Albania is the Head of State and represents the whole unity of the people.

ARTICLE 25

The president of the Republic of Albania is elected by the People's Assembly with no less than two candidates running for 5 years, by secret ballot, and by a two-thirds majority of the votes of all the deputies. In case the required majority is not ensured in the first ballot, a second voting is held in which the president of the republic is elected by the absolute majority of all the deputies votes.

The candidate for president is proposed to the People's Assembly by a group of no less than 30 deputies.

In case there are more than two candidates for the post of the president of the Republic, in the second voting the two candidates who have won the greatest number of votes in the first voting have the right to run. The

candidate that wins the absolute majority of all the deputies votes is considered elected.

ARTICLE 26

President of the republic may be elected every Albanian national who has completed the age of 40 and meets the conditions to be elected as deputy.

The president of the Republic, after being elected by the People's Assembly, takes on oath before it.

The election of the President of the Republic is held no later than 30 days before the mandate of the out-going President of the Republic expires.

The same person cannot be elected President of the Republic more than twice in succession.

In case the president is elected from among the ranks of the deputies, he gives up the mandate of the deputy.

The function of the President is irreconcilable with any other function with the exception of those foreseen by this Law.

ARTICLE 27

The president of the Republic is discharged or released before the expiry of his mandate only when:

- a) he has committed the crime of betrayal of the Homeland or has violated this law.
- b) his health condition prevents him from performing the duties.
- c) he has given his resignation of his own free will.

ARTICLE 28

The President of the Republic has these main competences:

1. Guarantees the respect for this Law, for other laws as well as for the rights and freedoms of citizens.
2. Convenes the first session of the new legislature of the People's Assembly.
3. Fixes the date of elections to the People's Assembly and local power organs.
4. Declares the laws and referendums decided upon by the People's Assembly.
5. Enjoys the right, within 15 days from the adoption of the law by the People's Assembly, to put it up for reexamination by the People's Assembly only once.
6. He nominates the Chairman of the Council of Ministers and accepts his resignation.
7. Upon the proposal of the Chairman of the Council of Ministers between the two sessions of the People's Assembly, he appoints, discharges or releases separate members of the Government. The President of the Republic submits this decree for approval to the People's Assembly in its nearest meeting.
8. He appoints and discharges, upon the proposal of the Chairman of the Council of Ministers, leaders of other central institutions.
9. After getting the opinion of the Chairman of the Council of Ministers and of the chairman of the Presidency of the People's Assembly, he may dissolve the People's Assembly prior to the expiry of the legislature, when its composition does not allow the performance of

the functions of the Assembly itself and makes impossible the country's running. In this case, the elections to the People's Assembly are held again no later than 45 days since the day of dissolution.

The President cannot exercise this competence over the last six month period of his mandate.

10. He signs international treaties, ratifies and denounces those not examined by the People's Assembly itself.

11. He appoints and discharges the diplomatic representatives upon the proposal of the Chairman of the Council of Ministers.

12. Accepts the credentials and letters of call of the diplomatic representatives of foreign states.

13. Endorses the requests for granting or giving up Albanian nationality.

14. Exercises the right of pardon.

15. Awards decorations and honourable titles.

16. Grants the right of political asylum.

17. When it is impossible for the People's Assembly to convene he declares the partial and general mobilization as well as the state of emergency. In such cases, the declaration is submitted for approval to the People's Assembly within five days.

18. When the convocation of the People's Assembly is impossible, he declares the state of war in case of armed aggression against the Republic of Albania.

19. Issues decrees of individual character and decisions; in urgent cases he even issues decrees of normative character, which are submitted for approval to the

People's Assembly in its nearest session.

ARTICLE 29

The acts issued by the President of the Republic on the exertion of competences foreseen in the items 10, 11 and 19 of Article 28 of this Law assume juridical force after undersigned, depending on the case, by the Chairman of the Council of Ministers or by the respective minister or by the persons equalled with them.

ARTICLE 30

When the seat of the President of the Republic is vacant for any reason whatsoever, his competences are exercised temporarily by the Chairman of the Presidency of the People's Assembly, excluding those foreseen in the items 5, 6, 7, 9 and 19 of Article 23 of this Law.

The election of the President of the Republic takes place no later than 15 days from the day when the seat of the president has remained vacant.

ARTICLE 31

The President of the Republic is not responsible for the actions taken during his function with the exception of the cases of treason to the homeland or violation of this law.

In such cases, the question of responsibility might be discussed at the People's Assembly at the request of no less than one fourth of the deputies. The respective decision is adopted by secret ballot with a majority of two thirds of the deputies.

ARTICLE 32

The president of the Republic of Albania is General Commander of the Armed forces and Chairman of the Council of Defence.

The Council of Defence is set up to direct, organise and mobilise all the forces and the country's resources for the defence of the Homeland.

The composition of the Council of Defence is assigned by the People's Assembly on the proposal of the Chairman of the Council of Defence

CHAPTER III

SUPREME ORGANS OF STATE ADMINISTRATION

ARTICLE 33

The Council of Ministers is the highest executive and legislative organ.

The Council of Ministers is assigned in the first session of the People's Assembly.

The President of the Republic assigns the Chairman of the Council of Ministers and, upon the proposal of the latter, the ministers too.

The composition of the government and its programme are adopted by the People's Assembly with majority of votes, within 5 days from the date it is submitted.

In case he does not get the vote of confidence, the Chairman of the Council of Ministers immediately submits his resignation to the President of the Republic, who assigns the new Chairman of the Council of Ministers.

Before resuming the functions, the Chairman of the Council of Ministers and the ministers swear on oath before the President of the Republic.

ARTICLE 34

The deputies enjoy the right to forward at any time a lack of confidence motion towards the Council of Ministers or its separate members. The lack of confidence motion should be signed by at least one tenth of the deputies and can be examined by the People's Assembly only after three days of its presentation.

Non-approval by the People's Assembly of a proposal forwarded by the government does not necessarily bring about the compulsory resignation of the government .

ARTICLE 35

- The Council of Ministers is composed of : the Chairman, vice-chairmen, the ministers and other persons defined by law.

Any Albanian citizen residing permanently in the Republic of Albania and enjoying the right to be elected might be in the composition of the Council of Ministers.

The member of the Council of Minister should not have, except for the mandate of the deputy, any other state or professional function and should not take part in leading bodies of economic and trade organisations.

The member of the Council of Ministers may leave his seat vacant even when he does not ensure the vote of confidence or when he resigns.

The Council of Ministers is a collective organ. Decisions are adopted when approved by the absolute majority of its members.

The ministers respond collectively for the acts of the Council of Ministers and individually for acts of their institutions.

The composition, attributes and organisation of the Council of Ministers are provided for by law.

ARTICLE 36

The Council of Ministers has the following main competences:

1. Directs the activity for the realisation of the domestic and foreign policy of the state.
2. Issues the decisions, orders and instructions in compliance with the Constitution and laws and on their implementation; they are signed by the Chairman of the Council of Ministers and, when having a normative character, are published in the Official Gazette, excluding separate cases foreseen by law.
3. Guides and controls the activity of ministries and other central organs of the state administration.
Coordinates and monitors the activity of local organs of administration ensuring the compulsory and similar implementation of the laws and acts of the Government.
4. Directs the activity for the fulfilment of the tasks in the field of the country's defence in conformity with the decisions of the Council of Defence.
5. Adopts measures on security, the preservation and strengthening of juridical order and of the citizens

rights.

6. Reaches international agreements, adopts and denounces those that are not subjected to ratification.

7. Works out economic and social programmes of the country's developments and the synthetic economic indices, the state budget, pursues and controls the state finances and the monetary and credit system.

8. Makes the division or unification of the administrative-territorial units.

9. Adopts measures to ensure the protection of the environment, the suitable working conditions and the protection of the citizens health.

ARTICLE 37

The Council of Ministers invalidates the illegitimate acts of the ministries and other central organs of state administration.

ARTICLE 38

The chairman and the vice-chairmen of the Council of Ministers constitute the presidency of the Council of Ministers.

By . decision of the Council of Ministers, the Presidency may be charged to examine and solve various questions under its competences.

The Chairman of the Council of Ministers represents the Council of Ministers, presides over its meetings, directs its general activity and responds for it, ensures the unity of political and administrative management of the Government, coordinating the affairs of the ministries and other central institutions.

ARTICLE 39

The ministers and other persons equalled with them, direct the ministries and the other central institutions in certain branches of the respective ministries.

The ministers bear responsibility for the activity of respective ministries.

The ministers, on questions under their competences, issue orders, regulations and instructions based on the laws, ordinances and decisions of the Council of Ministers and on their implementation. The acts of ministers of normative character are issued in the Official Gazette, special cases foreseen by law excluded.

ARTICLE 40

The ministers abrogate unlawful orders and instructions of the subordiante organs, enterprises and institutions

ARTICLE 41

The members of the Council of Ministers respond penally to the violation of this law as well as other laws related to the exercise of their function. The penal prosecution is approved by the People's Assembly.

CHAPTER IV

FINAL PROVISIONS

ARTICLE 42

The creation, organisation and activity of the local organs, of power, administration, courts and Attorney

General are made according to certain regulations with existing legal provisions, excluding those that run contrary to this law.

The investigator's office depends administratively on the minister of justice.

ARTICLE 43

The drafts for amendments to this law might be forwarded by the President of the Republic of Albania, the Council of Ministers or one fourth of all the deputies.

The adoption of amendments is done by the People's Assembly with a majority of two thirds of all the deputies.

ARTICLE 44

The provisions of this Law operate till the adoption of the Constitution of the Republic of Albania, whose draft will be worked out by the Special Commission charged by the People's Assembly.

The composition of the commission and the schedule of the presentation of the draft-constitution is defined by special decision of the People's Assembly.

ARTICLE 45

The Constitution of the PSRA, adopted on 28.12.1976, as well as its later amendments, are invalidated.

ARTICLE 46

This Law enters into force immediately.

Tirane, 29.4.1991

Law No: 7491

APPENDIX 3

**LAW ON THE LEGAL PROFESSION IN THE
PEOPLE'S SOCIALIST REPUBLIC OF ALBANIA
(Effective November 1990)**

[Unofficial
translation 7/91]

[May 1990 - effective November 1990]

LAW

**On the Legal Profession in the People's Socialist Republic
of Albania**

In accordance with Article 67 of the Constitution -

On the proposal of the Council of Ministers -

THE PEOPLE'S ASSEMBLY

OF THE PEOPLE'S SOCIALIST REPUBLIC OF ALBANIA

ENACTS:

ARTICLE 1

The legal profession has as its duty the giving of legal assistance to Albanian and foreign citizens, institutions, enterprises, agricultural cooperatives and social organizations, as well as foreign juridical persons. In fulfillment of its duties, the legal profession serves as protector of the rights and legal interests of citizens, their education with a spirit of respect and for the precise implementation of the laws and regulations of socialist

living together, and prevention of the violation of laws and of civil legal disagreements.

ARTICLE 2

The advocate exercises his duties by taking part in the defense, investigation and adjudication of penal questions, or as the representative of the participants in the process of adjudicating civil questions, in arbitration, in other state organs for civil or administrative questions, and also in other cases specified by law. Legal assistance is given in the form of advice on legal questions, in writing or orally, preparation for the commencement of proceedings or demands for penal prosecution, preparation of complaints or demands against judicial decisions, as well as preparation of other complaints and demands of citizens.

ARTICLE 3

Advocates are joined in "colleges" approved by the Ministry of Justice, which also specifies the jurisdiction to which their activities extend.

The college of advocates is a juridical person.

ARTICLE 4

The highest organ of the college of advocates is the general assembly of members, from which a three-person leadership is elected. In districts where the college has less than ten members, one leader is elected, who represents the college in relations with other persons and who also organizes and directs the work of the college.

ARTICLE 5

Citizens who have the highest juridical education and not less than three years' experience as a jurist are accepted as members of the colleges of advocates. Exceptions to the requirement of work experience as a jurist are made by the Minister of Justice.

ARTICLE 6

In the Ministry of Justice, there acts the council of overseers, which consists of the minister who leads it, his deputy, the director of the directorate or the head of the relevant branch, and four members of the colleges, elected at the general meeting of the colleges of advocates.

The council of overseers, on its own initiative or on the proposal of the general assembly of the respective college of advocates, decides on the admission of a jurist as a member of the college.

Also, on the decision of the council of overseers, a jurist can be activated as an advocate in the colleges for a specific term for a particular matter, according to rules specified in the regulations on the legal profession approved by the Minister of Justice.

ARTICLE 7

The advocate, in his capacity as representative or as defender, has the right to pursue a question in all state organs and social organizations and to ask them for information and documents that have to do with the person he represents or defends or with the matter in which he is acting as representative or defender. State organs and social organizations must fulfill this request of the advocate.

ARTICLE 8

The advocate is obliged to use all means permitted by law for the defense of the rights and legal interests of Albanian and foreign citizens as their defender or

representative, as well as state organs, institutions, undertakings, agricultural cooperatives and social organizations that he represents, while respecting socialist legality.

ARTICLE 9

The advocate is not permitted to undertake the giving of legal assistance, as representative or defender, when he is a close relative by marriage or otherwise with the investigator, prosecutor or judge who is examining the matter. Also, he is not permitted to undertake the giving of legal assistance when he has previously participated in the same matter as investigator, prosecutor, judge, expert or witness.

The advocate is forbidden to give legal assistance to or to represent a party when he has previously given legal assistance to or has represented the opposing party.

ARTICLE 10

The advocate may not be called as a witness about what he has learned in his capacity as representative or defender, nor to disclose facts he has learned while performing his duty in the giving of legal assistance.

T. J.

ARTICLE 11

The advocate has the right to give legal assistance and to defend the rights and interests of those he represents in the judicial organs, the office of investigation and the administration of the district to which the jurisdiction of the college where he takes part extends, as well as in the court of the local zone and in the Supreme Court.

In cases specified by the regulations of the legal profession, representation by an advocate in another college of participants in a trial or defense of the accused is also permitted.

ARTICLE 12

The advocate can refuse to give legal assistance and can resign from a representation or defense he has begun, when he has cause considered reasonable by the leadership or director of the college. In such cases, he must pursue the matter until the interests of the defense are secured.

ARTICLE 13

Legal assistance is given for payment on the basis of schedules specified by the Ministry of Justice in cooperation with the Ministry of Finance and is credited to the account of the colleges. In special cases, specified in the rules of the legal profession, legal assistance can be given for free.

The manner of division of income is defined in the rules of the Ministry of Justice.

Advocates enjoy the rights of state social security.

ARTICLE 14

The Minister of Justice has the right to suspend the implementation of illegal acts or acts contrary to regulations of the general assembly, the leadership or the directors of the colleges of advocates or to turn the matter over for investigation.

ARTICLE 15

For the violation of the provisions of this law and

the regulations specified for the exercise of the legal profession, the council of ministers shall take disciplinary measures [unless there is an] exception from the college, according to the rules for the legal profession.

ARTICLE 16

The Ministry of Justice assists and controls the colleges of advocates in all their activities.

ARTICLE 17

The Minister of Justice shall promulgate relevant regulations for the implementation of this law.

ARTICLE 18

Decree No. 4277, dated July 20, 1967, "On the creation of offices of legal assistance," is repealed.

ARTICLE 19

This law goes into effect November 1, 1990.

Tirana, May 8, 1990
No. of Law: 7382

APPENDIX 4

LAW ON ADVOCACY IN THE REPUBLIC OF ALBANIA
(Effective December 1991)

Unofficial Translation
Kathleen Imholz

2/17/92

LAW

ON ADVOCACY IN THE REPUBLIC OF ALBANIA

In accordance with article 16 of law no. 7491, dated April 29, 1991 "On Fundamental Constitutional Provisions," on the proposal of the Council of Ministers,

THE PEOPLE'S ASSEMBLY
OF THE REPUBLIC OF ALBANIA

DECIDES:

CHAPTER I
GENERAL PROVISIONS

Article 1

Advocacy in the Republic of Albania has the duty of giving legal assistance to Albanian and foreign citizens, Albanian and foreign juridical persons, organs, state institutions and social organizations.

Article 2

Legal assistance is given:

- a) by advice on legal questions;
- b) by preparation of charges or demands for penal prosecution;
- c) by preparation of complaints against decisions, of investigation, of arbitration, of the organs of state administration, and so forth;
- d) by preparation of citizens' complaints and demands;
- e) by compiling acts verified by a notary;
- f) by participation as defender in investigations and in trials of penal questions;
- g) by representation of the participants in the trial of civil matters, in arbitration and in other state organs on civil and administrative questions;
- h) in other cases provided by law.

Article 3

A Supervisory Council is created to oversee the activities of the legal profession, consisting of the director

or chairman of the branch of the legal profession in the Ministry of Justice and six lawyers elected by the general meeting of lawyers.

The Supervisory Council of lawyers shall be independent in the exercise of its activity.

Article 4

The Supervisory Council has these competencies:

- a) It grants licenses for the exercise of the profession of lawyer, when a jurist fulfills the conditions provided in this law.
- b) It decides on administrative and disciplinary matters for lawyers who violate the rules of the exercise of the profession of law [lit. lawyer].

CHAPTER II THE MANNER OF EXERCISE OF THE PROFESSION OF LAWYER AND THE LAWYER'S RIGHTS AND DUTIES

Article 5

The lawyer conducts his profession:

- a) As an individual;
- b) In a partnership or with collectives of lawyers.

Article 6

The lawyer conducts his activity in the district where he has his center, as well as in the organs where second-level review of matters is undertaken.

On the request of interested parties, the lawyer may also take upon himself matters in other districts of the country or outside the state.

The lawyer may resign from a representation or defense that has begun, returning the compensation taken.

Article 7

In his capacity as representative or defender, the lawyer has the right to ask state organs or other juridical persons for information and documents which have to do with matters or persons that, respectively, he is representing or defending. State organs and other juridical persons are obliged to fulfill the requests of the lawyer.

Article 8

The lawyer uses all lawful means for the defense of the rights and interests of Albanian or foreign citizens, as well as Albanian and foreign juridical persons.

Article 9

A lawyer may not undertake a matter when he is a close relative, by marriage or otherwise, of the investigator, prosecutor, or judge who is examining the matter. Also, he may not undertake a matter in which he has taken part as investigator, prosecutor, judge, expert or witness.

A lawyer is forbidden to give legal assistance to a party or to represent him in court when he has previously given assistance or represented the other party in this matter.

Article 10

A lawyer is not obliged to make a denunciation in the competent organs and may not be questioned as a witness about what he has learned during the exercise of his profession as lawyer. He is prohibited from disclosing what he has learned during the performance of his obligation to render legal assistance.

Article 11

A lawyer has the right to meet alone with an arrested defendant, and as many times as the defendant requests; to become aware of all material in the investigative file at the conclusion of the investigations; to direct questions to the defendant or witnesses in the course of the investigation; and to take part in the performance of investigative acts. He has the right to make comments in the report of an investigative act in which he has participated and to sign the report.

CHAPTER III THE RIGHT TO PRACTICE LAW

Article 12

A licence for the practice of law [lit. the conduct of the profession as lawyer] is given by the Supervisory Council to Albanian citizens who have completed higher juridical education and have not been punished for a penal act.

Pedagogues of the Faculty of Justice [may] also conduct the profession of lawyer. Also, jurists with titles and degrees enjoy this right, except in cases when there is a legal impediment.

Article 13

Jurists who perform state obligations on permanent salary are prohibited from conducting the profession of law, except those mentioned in article 12, paragraph II of this law.

Article 14

Jurists who conduct the profession of law must be registered in the registry of lawyers of the Ministry of Justice.

Article 15

A lawyer has the right to have assistants training to be lawyers [lit. for their preparation as lawyers] as well as administrative personnel.

Assistants are chosen by the lawyer himself and are registered in the registry of assistants in the Ministry of Justice.

CHAPTER IV
REMUNERATION FOR THE LAWYER'S WORK

Article 16

A lawyer has the right to receive from an interested party expenses incurred in the performance of legal acts, as well as remuneration for legal assistance given in accordance with article 2 of this law.

Remuneration and payment of expenses is done according to the agreement of the lawyer and the interested party, without exceeding the tariffs set in the rules approved by the ministries of Justice and Finance.

Article 17

In every case, the remuneration shall be reflected in a document signed by the interested party and the lawyer, a copy of which shall be included in the investigative or judicial file. For remuneration for other legal services a copy of the document shall be retained by the lawyer.

Article 18

Physical and juridical Albanian or foreign persons may also enter into contracts with fixed remuneration for the lawyer's work.

Article 19

A lawyer and his assistants shall keep a book for the work they perform, in which the payments that interested parties make shall also be reflected.

Non-fulfillment of this rule [lit. of the rule of the book of income] constitutes a disciplinary offense.

Article 20

Lawyers and other employees of the legal profession shall enjoy the rights of social security according to regulations presented in the law on "other employees."

CHAPTER V MEASURES OF PUNISHMENT

Article 21

Lawyers and their assistants have disciplinary responsibility in particular when:

- a) a lawyer has received a license for the conduct of the profession of law with falsified documents;
- b) he commits unlicensed acts and open unlawful interference in state organs;
- c) he receives remuneration higher than that specified in the tariffs;
- d) he does not keep in order the book of his legal work and the compensation he receives from interested parties;
- e) he performs legal work [lit. legal acts] during a period when he is forbidden to conduct the profession of law;
- f) he does not record the remuneration received in the documents that he compiles.

Article 22

The Supervisory Council, after verifying infractions in the performance of a duty, [may] take these measures against a lawyer or assistant:

- a) a fine of from 1,000 up to 5,000 lek;
- b) taking away the right to conduct the profession of law for up to 5 years.

Article 23

Measures against lawyers shall be taken within one month from the date of discovery of the disciplinary infraction and no later than one year from the date of its commission, after the lawyer is first heard by the Supervisory Council.

When he is not present the examination shall be done in his absence.

CHAPTER VI
FINAL PROVISIONS

Article 24

The Ministry of Justice shall watch out for and direct the work for the qualification of lawyers.

The Ministry of Justice shall issue appropriate regulations for the implementation of this law.

Article 25

Every lawyer shall have his seal, in rectangular form, on which the title "lawyer" ["avokat"], his degrees and titles, his name and surname, and the administrative center where he conducts his activity shall be indicated.

Article 26

Law no. 7382, dated May 8, 1990 "On the legal profession in the Republic of Albania," is repealed.

Article 27

This law is effective immediately.

Tirana, December 18, 1991
No. of law: []

PRESIDING CHAIRMAN:
Kestriot Islami

APPENDIX 5

LETTER OF TRANSMITTAL TO PRESIDENT RAMIZ ALIA

January 28, 1992



Minnesota Lawyers International Human Rights Committee

A private, nongovernmental organization of lawyers, jurists
and other individuals committed to the promotion and
protection of human rights worldwide.

January 28, 1992

■ OFFICERS

President
Louis N. Smith

Vice President
R. Richard Boncy

Secretary
Paula K. Richey

Treasurer
Wood R. Foster, Jr.

Past President
James V. Roth

■ STAFF

Executive Director
Barbara A. Frey

Director, Refugee
and Asylum Project
Nancy Arnison

Legal Director
Sonia A. Rosen

Legal Fellow
Daniel L. Gerds

Development
Director
Mary B. Foster

President Ramiz Alia
President of the Republic of Albania
Tirana, Albania

Dear President Alia:

I have the honor to submit for the comments of your government a draft report prepared by the Minnesota Lawyers International Human Rights Committee concerning the current human rights situation in Albania. The report is based on the findings of a delegation of the Minnesota Lawyers Committee that visited Albania from October 8 to 15, 1991. The Minnesota Lawyers Committee will publish this report in its final form on February 22, 1992. We therefore must request a response from your government by February 15, 1992 to include it in the final publication.

The Minnesota Lawyers Committee is an international nongovernmental organization committed to the promotion and protection of human rights worldwide. In January 1990, the Minnesota Lawyers Committee published Human Rights in the People's Socialist Republic of Albania documenting a pattern of gross human rights violations.

The Committee's 1992 report recognizes steps taken by the Albanian government to curb human rights abuses that were prevalent in the past 45 years, but recommends significant further actions to provide real human rights protections for the citizens of Albania. The draft report notes that human rights protections are now the obligation of the Albanian government since it has acceded to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights.

The Minnesota Lawyers Committee wishes to express its appreciation for the cooperation of Albanian government officials during the investigation of the Minnesota Lawyers Committee and to encourage further dialogue about necessary human rights guarantees, especially in the legal system.

The information necessary to mail or fax your government's response to this draft is printed below. Please contact me if you need further clarification.

Respectfully,

Barbara A. Frey
Executive Director

cc: Mr. Sokol Ncaj

400 Second Avenue South ■ Suite 1050
Minneapolis ■ MN 55401 ■ USA
(612) 341-3302 ■ Fax (612) 341-2971



The Minnesota Lawyers International Human Rights Committee, founded in 1983, is a nongovernmental organization of 1,000 members that works to promote and protect international human rights. The Committee advocates against individual human rights abuses, works to strengthen institutions and laws that protect human rights, researches and investigates human rights conditions in the U.S. and other countries, and educates the public about human rights issues. The Committee has published reports about human rights conditions in over 15 different countries.

ISBN: 0-929293-00-2