

104

# CHALLENGES TO DEMOCRACY IN ALBANIA

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Y 4. SE 2:104-2-11

Challenges to Democracy in Albania,...

HEARING  
BEFORE THE  
COMMISSION ON SECURITY AND  
COOPERATION IN EUROPE  
ONE HUNDRED FOURTH CONGRESS  
SECOND SESSION

MARCH 14, 1996

Printed for the use of the  
Commission on Security and Cooperation in Europe  
[CSCE 104-2-11]



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# HEARING ON "CHALLENGES TO DEMOCRACY IN ALBANIA"

THURSDAY, MARCH 14, 1996

COMMISSION ON SECURITY AND COOPERATION IN EUROPE

*Washington, D.C.*

The Commission met, pursuant to adjournment, at 12:14 p.m., in room 311, Cannon House Office Building, The Honorable Christopher Smith [Commission Chairman] presiding.

Commissioners present: Chairman Christopher H. Smith; Hon. John Edward Porter.

Witnesses present: Elez Biberaj, chief of the Albanian Service at the Voice of America; Kathleen Imholz, attorney-at-law who has traveled frequently to Albania observing developments relating to the legal system; and Fred Abrahams, consultant for Human Rights Watch/Helsinki.

Mr. SMITH. The Commission will come to order. Let me say at the outset I deeply apologize for being late in starting this hearing. I also serve as chairman of the International Operations and Human Rights Committee, and a markup scheduled for today that was supposed to take 15 minutes ended up taking over an hour.

And then, regrettably, the immigration bill is up next week. I have two amendments, of which I am the prime sponsor and two that I am the co-sponsor dealing with refugees and asylum, and I had to testify before the Rules Committee on those amendments. There were a number of questions about the intricacies of those amendments. So I apologize to our witnesses first for being late and to all of you for the tardiness.

Today's hearing focuses on the challenges to democracy in Albania. This hearing is unlike most that we have had in the past year, which have focused mainly on the incredible human rights tragedies associated with conflicts like those in Chechnya or Bosnia and what we should do about them. Given the urgency of those situations, countries still in the phases of democratic transition, like Albania, do not always receive the attention that they deserve.

While this hearing has not been scheduled in response to any specific event, it is timely nonetheless. First and foremost, Albania is preparing for parliamentary elections in May or June, the results of which will have important ramifications for the future course of the country.

Second, tomorrow marks the fifth anniversary of U.S.-Albanian bilateral relations, and the development of close ties between the two countries requires a better understanding of what is actually happening in Albania.

Third, reports of backsliding or resistance to democratization in Albania and human rights violations are increasingly coming to the attention of the Helsinki Commission. While these reports vary and even contradict each other at times, we are concerned that respect for human rights in Albania may not be improving.

Finally, for all the faults that can be found with the details of the Dayton Agreement for Bosnia, it has potentially opened the door for achieving progress in meeting the challenges to democracy in all the countries of the region, for the sake of peace, stability, and the well being of the people who live there.

Our witnesses today will look at the challenges to democracy in Albania from different perspectives.

Our first witness is Dr. Elez Biberaj, chief of the Albanian Service of the Voice of America. VOA broadcasts, I understand, played a critical role in bringing an end to Albania's self-imposed isolation and one-party rule a few years ago. Dr. Biberaj has written many books and articles on Albania and the Balkans and will give a general overview of political developments in Albania and a flavor for what the election period may be like.

Next we have Kathleen Imholz, an attorney from New York who is a specialist on the Albanian legal system. She traveled to Albania on many occasions since first being able to do so in 1991, and was there just a few weeks ago. Ms. Imholz will focus a bit more narrowly on the legal reforms in Albania and the degree to which the judiciary is, or is not, independent from government control or influence.

Then we will hear the testimony of Fred Abrahams, a consultant for Human Rights Watch/Helsinki in New York. He is the principal author of a comprehensive report on human rights in Albania that will be released next week. Mr. Abrahams will take our examination of the challenges to democracy down to the grass-roots level, focusing primarily on the rights of national minorities in Albania, especially the large Greek community there, religious liberty, and free media.

We look forward to hearing the views of this panel, and the Commission has taken an interest in Albania even before that country decided to open its borders and permit political pluralism. We consider Albania a friend, and today we hope not only to learn more about what is happening in that country at this hearing, but also to encourage and perhaps even urge Albania to move forward in its democratization and, of course, respect for human rights.

Doctor, if you could begin the testimony.

#### STATEMENT OF ELEZ BIBERAJ

Mr. BIBERAJ. Thank you very much, Mr. Chairman. I appreciate your kind invitation to appear before this distinguished panel. The Helsinki Commission has played a significant role in inducing Albania's last communist leader, Ramiz Alia, to permit the establishment of opposition parties back in 1990 and in facilitating a peaceful regime change.

In particular, I would like to pay tribute to the former Chairman of the Helsinki Commission, Senator Dennis DeConcini. In 1990, at a time when few people here in Washington or in other Western capitals devoted any attention to Albania, or even knew that it ex-



isted on the international map, the Helsinki Commission embarked on a policy of constructive engagement with Albania's communist leadership, welcoming Tirana's efforts to end its self-imposed isolation yet bluntly laying out the conditions that Albania had to meet if it wanted to join the community of nations.

While there is no question that domestic developments were the primary factor that led to the disintegration of the communist regime there, pressures exerted by the Commission on the Albanian Government especially during the later part of 1990 and during 1991 reinforced domestic democratic tendencies in that country. The situation in Albania has changed dramatically, I would say, since the early 1990's. Nevertheless, the Commission's continued observance of developments in Albania will have a profound impact on that country's further democratization.

Mr. Chairman, I would like to say at the outset that I am appearing here today in a purely personal capacity, and my views and opinions should not be attributed to the Voice of America or the U.S. Government.

I approach the subject of today's hearings with several basic assumptions. First, I strongly believe that the full consolidation of democracy in Albania will probably take several elections. Albania's political tradition has not been conducive to a democratic order.

Second, Albania had the misfortune of being ruled by one of the most repressive communist regimes in the world and for a period longer than any other Eastern European state. De-Stalinization in the 1950's and subsequent reformist trends in the 1970's and the 1980's, which changed the face of communism in the Soviet bloc, bypassed Tirana. In fact, Stalin's statue in Tirana was removed only in December 1990.

Third, of all former East European communist countries, Albania appeared least prepared for the transition because of the very unfavorable initial conditions. In early 1992, the government had, in fact, lost the capacity to carry out its basic functions. Anarchy prevailed in many parts of the country, and the economy was on the brink of collapse. Between 1989 and 1992, GDP had fallen by more than 50 percent. At this period, in early 1992, Albania had become totally dependent on foreign assistance to feed its three million population.

And fourth, Albanian leaders have found themselves guiding the transition to democracy with the ever present threat of being engulfed in the Yugoslav wars of succession, as Serbia continues to pursue a highly repressive policy toward the two million ethnic Albanians in Kosovo. In fact, Albania, one could say, is in the eye of the Balkan storm.

Post-communist Albania has undergone rapid and significant political, economic, and social transformations. Today it has a vibrant opposition and an outspoken press. The legal framework for a market economy has been put into place. Within 4 years, Albania has moved from the ruins of a totally state-controlled economy to a market economy, with the private sector now accounting for more than 65 percent of the GDP and about 70 percent of the national wealth in private hands. Albania has achieved one of the highest growth rates in Eastern Europe. Last year, in 1995, the economy grew by 6 percent according to the European Bank in London. The

World Bank here says the figure was 8.6, while the Albanian Government says about 11 percent. Nevertheless, it is still very impressive. A new middle class is emerging which has benefited from and supports market-oriented reforms.

Albania has witnessed profound legislative transformations. The communist-era constitution has been thoroughly revised, and a new institutional architecture is largely in place. The relationship between the state and the citizen has undergone fundamental change, and civil liberties mostly are now respected. While lack of consensus between the country's main political forces has prevented the adoption of a new constitution and Albanian voters rejected a draft submitted by the ruling party back in November 1994, the provisional constitution approved in 1991 has been amended several times, and one could say that Albania has created a new constitutional system.

The parliament has come to play a significant role, and today it is the most important forum for deliberations about the country's politics. Political struggles between the executive and the legislature have been less pronounced than in other countries of the region. Nevertheless, here I would like to emphasize that this is due more to the Democratic Party's ability to preserve its comfortable majority in the parliament rather than to the practice of accommodation and compromise between the ruling party and the opposition.

President Sali Berisha, in my opinion, is an effective president, shaping the nation's agenda during a period of momentous political, economic, and social changes. He has been the moving force behind the government's efforts at reform. He has displayed extraordinary persistence in the face of daunting challenges and a willingness to make unpopular and politically risky decisions to further the country's political and economic revival.

As you mentioned, Mr. Chairman, Albania is today a staunch U.S. ally and has come to play an important role in the American strategy of preventing the expansion of the Yugoslav conflict. It has forged close bilateral military ties with the United States and has placed at NATO's disposal its air and port facilities. Albania has also emerged as a responsible regional player; American, West European, and NATO leaders have expressed respect for its constructive role. While relations with rump Yugoslavia remain tense because of the Kosova issue, relations between Albania and its two other neighbors—Macedonia and Greece—have expanded significantly.

While Albania had made impressive progress since 1992, it still faces immense difficulties. The optimism and hope that greeted the 1992 democratic victory have mostly faded away. The implementation of radical economic reforms has led to great social dislocations. Albania has yet to achieve full economic recovery. Real GDP growth in 1995 remained at 25 percent below the 1989 level.

There is widespread recognition, Mr. Chairman, that the Albanian Government has made tremendous strides in respecting the human rights of its citizens. However, there are still significant abuses of human rights and a judiciary that remains weak and not wholly independent.

The press has gained authority and power to influence change and has managed to exercise practically unlimited freedom in both reporting and editorial comment. Nevertheless, the necessary responsibility and accountability have not accompanied the media's new authority and power. The communist legacy is evident in the low level of professionalism and party influence. The country's leading journalists were trained under communism, are highly ideological, and display poor professional judgment. They see their role more as advocates of a particular point of view than as simple reporters. Almost without exception, the ostensibly independent papers are closely affiliated with, or financed by, different political parties and groups.

The relationship between the government and the media has been adversarial. The press law, approved by parliament in October 1993, was seen by both domestic and foreign observers as too restrictive. Officials failed to realize that the law is not likely to determine media behavior, and that professionalism is not something that can be ensured through government restrictions. Often, the authorities have shown striking ineptitude in their treatment of opposition journalists. The arrest and sentencing of journalists had a damaging impact on Albania's image abroad.

While the institutional features of a democratic government are largely in place, civil society as a political force, unfortunately has yet to emerge. The delay in adopting a new constitution has contributed to some confusion over personal and institutional roles and responsibilities. Moreover, current constitutional laws lack the legitimacy that a new single charter, even without significant modifications from current documents, would have if it were adopted by the parliament, an assembly, or through a popular referendum. Therefore, the speedy adoption of a new constitution has become indispensable. Albania's long-term interests dictate that the country's major political forces put aside their narrow political considerations and engage in serious bargaining and compromise aimed at giving the emerging order a solid constitutional underpinning.

The concentration of power in the presidency has had both positive and negative impact. Berisha continues to be viewed as an indispensable guarantor of Albania's transition to democracy and a market economy. However, his domination of the executive branch has complicated the decisionmaking process, at times undermining good and effective administration, causing unnecessary delays in making decisions on major issues.

The extent to which the new governing elite has been able to provide transparent and accountable governance remains debatable. The government often failed, in my opinion, to draw the parliament, the opposition, and the Albanian population into a full and frank discussion and debate of the pros and cons of major decisions before announcing them. Accountability remains largely an alien concept. Corruption, nepotism, and the use of official position for private gain are said to be widespread.

Albania has yet to see the emergence of viable political parties that articulate competing interests and preferences of individuals. Probably several rounds of elections will be necessary before a stable system of relatively disciplined and responsible parties can emerge. Many parties overlap ideologically and in their social ap-

peal, which makes it difficult to describe their stand in terms of the Western traditional left/right continuum. Moreover, Albania has witnessed a tendency toward increasing fragmentation of the largest parties.

Parliamentary elections will be held at the end of May or the beginning of June. More than a dozen parties are expected to appear on the ballot. Although according to two recent polls sponsored by the U.S. International Republican Institute and European Commission's Eurobarometer, the ruling Democratic Party is likely to win the largest bloc of seats, I think the situation in the country is fluid and unpredictable; it is impossible, at least for me from this end, to gauge the relative strength of the parties that will be competing. I think the economy will very likely be the dominant issue, but relations with the United States are also likely to have a great saliency. While it is important not to take sides—after all, it is up to the Albanian people to elect whom they choose to—I think the United States should not remain indifferent. We have a stake in the outcome of these elections. Washington should not hesitate to assert its preference for a result that will advance democracy, a free market economy, and regional cooperation.

Despite the significant institutional and political changes and splits within the ruling party, the Albanian political scene continues to be dominated by two main actors: the ruling party, the Democratic Party; and the opposition Socialist—former Communist—Party. The Democratic Party remains the only party with a clear political and economic program. It has retained a wide base of support that cuts across all segments of the society.

The perils and pitfalls of governing the country during a crisis period, however, have taken a significant toll, and the Democratic Party faces an uphill battle. Nevertheless, even if it were to win the largest block of seats in the parliament, I think the Democratic Party must do lots of adjusting. It is not likely to get the simple majority that they had, like 60 percent or something like that, but even if it wins the largest block of seats, the Democratic Party will no longer have its accustomed parliamentary majority and will need to learn to consult with the opposition and to reach political consensus on critical issues, such as drafting and approving a new constitution.

The Socialist Party is the most cohesive and powerful opposition force in the country. It rejects Berisha's policy of shock therapy and massive privatization. The Socialists are also critical of Albania's growing military relationship with the United States and with NATO. The party leadership continues to be heavily dominated by the conservative communists. Since its humiliating defeat in 1992, the Socialist Party has displayed little commitment to democratic values and practices and has attempted to block the process of transition every step of the way.

In recent months, in a bid to prove that they are a moderate force, the Socialists have toned down their anti-Western, and particularly anti-American rhetoric. But there should be no doubt that an election victory by the former communists will pose a significant threat to Albania's democratic future. The Socialists are very resentful of changes since 1992 and the imprisonment of their chairman, Fatos Nano, and if they return to power, I think the tempta-

tion to seek revenge against the Democratic Party will be great. Cohabitation between a democratic president who was elected for a 5-year term—and his term expires in 1997—and a socialist-controlled parliament would be very difficult. While there is no chance of going back—and I strongly believe this—to Hoxha's dictatorship and centralized economy, I think the Socialists' mere attempt to roll back or retard such moves as mass privatization and repeal a large degree of legislation enacted since 1992 would be fraught with great instability.

There are two other significant actors: the Social Democratic Party and the Democratic Alliance. The Social Democratic Party is currently the third-largest bloc in parliament. It has its roots in the reformist wing of the Albanian Party of Labor, or the Communist Party. Some of its leaders have a distinctly communist background; they were quick-change artists who had faithfully served Alia's regime. [Party Chairman Skender Gjinushi, a former member of the Central Committee, served as minister of education in the last communist government.] But what is more significant is that he represented the communist government in negotiations with demonstrating students in December 1990 and hunger strikers in February 1991. Other party leaders, including historian Paskal Milo, had close links with the communist government. This party made no contribution to the democratic process in the beginning of the democratic process in Albania in early 1991.

Although originally allied with the Democratic Party after the elections in 1992, the Social Democratic Party has shifted considerably to the left, and the ideological distinction between the Social Democrats and Socialists is fading.

The Democratic Alliance I think is a much more serious political party. It was formed in late 1992 by what its critics call the "communist" wing of the Democratic Party. It stands out as the fourth most important force in parliament, with six deputies. The party leadership is composed of former senior Democratic Party officials, with nationwide name recognition. Self-described as a center-left party, the Democratic Alliance claims to represent the urban, middle-class, and intellectual strata and lacks a mass base of support. This party has been plagued by internal fissures over relations with the Socialists.

While the majority in the leadership continues to work for a coalition with the Socialists against the ruling party, some see any cooperation with former communists as a compromise of principles. Others in the leadership have taken up the middle ground between the two positions, choosing to emphasize the permissible forms of contact and cooperation with the Socialist Party, but generally embracing the idea of a coalition with the Social Democratic Party. Right now there are discussions underway between the Social Democrats and the Democratic Alliance and the Party for Human Rights to form a center pole coalition before the elections.

On the right, we have the Right League, which is composed of a group of loosely defined parties vying to outbid each other in their anti-communist positions. They are very unhappy with Berisha, but in the end they may decide to form an electoral alliance with the Democratic Party; but the latter, the Democrats, will have to compromise on this.

Although the date for parliamentary elections has not yet been set, Albanian political parties have already begun to campaign. I am a bit concerned because militaristic rhetoric and political manipulation have overtaken the spirit of tolerance and reconciliation on both sides. As elections approach, political tensions are likely to rise, and incidents of sporadic violence or terrorist acts cannot be ruled out. But there is reason to believe that the elections will, in fact, be sufficiently free and fair for the will of the people to be reflected in the results. With the successful conclusion of free and fair elections, Albania will have passed an important test of maturity, strengthening its democratic orientation and paving the way for further stability and prosperity.

Mr. Chairman, the Democratic Party took the helm at the most turbulent period in Albania's modern history. There is no question that there have been problems and mistakes, but the successes of President Sali Berisha and his government far outweigh their failures. In 4 years, Albania has attained relative economic and political stability. Pluralistic democracy and a market economy are beginning to take root. The symbols of a new Albania are everywhere.

But the tasks that confront Albania in fully consolidating its democracy are very ambitious. The road ahead is fraught with the risk of reversion, and the most difficult task in building a genuine democracy will be to inculcate civic values that will make democratic ideals part of the Albanian moral fiber. Further gains, of course, will depend primarily on the choices the governing elites make and the strategies that they pursue. But continued moral, political, and material support from outside, particularly from the United States, will also remain crucial.

Thank you very much for the opportunity to appear before you today.

Mr. SMITH. Dr. Biberaj, thank you very much for your testimony. Ms. Imholz, if you would present your views now.

#### STATEMENT OF KATHLEEN IMHOLZ

Ms. IMHOLZ. Chairman Smith, staff, ladies, and gentlemen, thank you for the opportunity to say a few words today about the state of democratization and the rule of law in Albania.

If I am critical, and I have to be critical, my criticisms should be taken in a constructive spirit. Albania has had a hard history, not just 45 years of Stalinist communism after World War II but 450 years of Ottoman occupation and other invaders too numerous to mention.

The United States and Albania have a special relationship going back many years. At the Paris Peace Conference after World War I, Albania was about to be dismembered when Woodrow Wilson stepped in and, supporting his principle of self-determination, demanded that Albania's integrity be maintained. He is a hero to this day in the country, and many people there bear the name "Wilson."

It is often said that when you save someone's life, you are responsible for them thereafter. I believe the United States and Albania have and should continue to have a special relationship. This is not just because we saved Albania as a country in 1920, but because of the importance to us of peace and stability in the Balkans today, which true democracy and legality promote.

Few outsiders expected that democracy and compliance with the rule of law would develop overnight, especially in a country with Albania's past. My criticisms do not stem from unrealistic expectations. When I first went there, the private practice of law had just been reestablished, after not existing for more than 20 years. Nevertheless, I found a legal tradition that surprised and impressed me, going back well before communism.

Albanian has spent 5 years reforming its legal system, and it has been an enormous and complicated process. Five years into the process, most of the framework is now there. There have been some bright spots; but large problems exist, especially in the implementation of the laws. The judicial branch is under intense pressure from the other parts of government. The widespread lack of popular faith in the judicial system needs to be addressed promptly and firmly by whatever government leads Albania after these upcoming parliamentary elections.

Let me add that I have not been in Albania since the terrible and unprecedented terrorist bombing of February 26. I am not addressing it in these remarks, except to condemn it and to express the hope that the truth behind it will be determined quickly.

A little over a year ago, two events occurred that gave reason for optimism about democratic development in Albania. On November 6, 1994, a referendum on a new constitution was defeated by the Albanian people. A few months later, an attempt to remove the chief judge of Albania's highest court on a pretext was defeated when parliament broke party lines. I say that these events were a reason for optimism regardless of the merits of either of them, because they showed a developing pluralism and the peaceful use of democratic methods—that is, voting—to resolve hotly contested questions. But these events have turned out to be exceptions.

Albania underwent many changes after the March 1992 parliamentary elections that brought the Democratic Party to power, including dramatic economic growth and an acceleration of the process of legislative revision. The communist constitution of 1976 had been repealed in 1991, replaced by a constitutional law called the Major Constitutional Provisions. As first enacted, it was rather sketchy; but several amending chapters were added, including the restructuring of the judiciary and establishing a constitutional court for the first time in Albania. Under that law, judges of the highest court, as well as the attorney general, cannot be removed from office except on a reasoned decision of parliament that it has been proven that they committed a "serious crime specifically provided by law."

This provision has been flouted twice, once in 1992, when the first attorney general of the Democratic Party was removed. Those of us who follow legal developments in Albania with concern hoped that it was only an aberrancy explainable as an occurrence of the transition.

Unfortunately, the same constitutional provision was used in September 1995, when the chief judge of the highest court, who had withstood an attack earlier in the year, as I mentioned, was removed from office. The details of his case are spelled out in an account he has written for the East European Constitutional Re-

view which I have submitted with my written testimony. It is a disturbing story.

It is particularly dramatic when the highest member of the judicial branch is involved, but there have been many other cases in the past 4 years in which Albanian lower court judges have been removed summarily.

There are many contributing causes to the lack of faith in the judicial system that I noted above. The Albanian Government has quite properly identified widespread corruption as one of them. They have all my support for meaningful efforts to combat that; it is an intractable problem. Nevertheless, it is also important that judges be perceived to be independent and not subject to removal for the way they decide a case. For example, within a day or two of the 1994 acquittal of the editor of the newspaper *Koha Jone*, which regularly criticizes the government, the judge who acquitted him was removed from office and accused of corruption. I have absolutely no idea whether that charge was grounded, but the circumstances and the timing made it seem like a pretext. Not without reason did the Council of Europe's Commission for Democracy Through Law recently conclude after a careful study that it could not satisfy itself "that judges in Albania feel free to arrive at their decisions without fear of negative consequences for their professional life."

I could give many other examples of challenges to Albania's democratic legal development, but in the limited time available, I will mention only the constitution, the press law, and the so-called "genocide" and "verification" laws passed last September and November.

Contrary to what is often said, Albania has a constitution. It is the law on the major constitutional provisions. Its human rights chapter, enacted in 1993, is one bright spot in Albanian law; but unfortunately it has rarely been implemented. The interim constitution was intended from the beginning to be replaced by a complete new constitution, and Albanian jurists and others have been working on that since 1991. I have seen most of their drafts and translated many of them. In my opinion, several have been excellent.

The draft that went to referendum in 1994 was not one of the best, but it would have sufficed. It was, in fact, not too different from the existing constitutional laws of Albania. In my view, the worst thing about it was that it further weakened a judiciary that is already too weak.

It has been reported that the president is now calling for Albania to adopt an already existing constitution of a Council of Europe member. I hope this suggestion is not pursued, for, I think, it would be one of the worst ways to solve Albania's constitutional problem. Law is organic. A foreign law translated word for word and grafted onto another culture makes limited sense and can do much harm. The Albanian constitutional drafting groups have shown their ability. The new constitution that comes out the process should fit Albania.

An example of just taking what has been done somewhere else is Albania's press law, enacted in the fall of 1993 over vociferous local and international protests. It is basically a translation of the



press law of a German province, although there are some differences. The Albanian law exists largely in a vacuum, however, since Albania lacks the judicial infrastructure of Germany, its constitutional history, and other elements that underlie the implementation of the German law.

Ironically, because the press law attracted so much criticism, and perhaps also because of the absence of the legal infrastructure, Albania has not used it much. In the last few years, many opposition journalists have been arrested, but in most cases they have been charged with violations under the regular criminal code. Perhaps other speakers today will say a little more about some of these cases.

Finally, I will mention two laws passed recently which are on the verge of being implemented as the elections approach. English translations of both are attached to my testimony and have been handed out today. These laws have been described simplistically as barring former senior communists from holding office until 2002, but the reality is much more complicated than that.

The first law was passed last September. Its full title is "On genocide and crimes against humanity committed in Albania during communist rule for political, ideological, and religious motives." The second was passed at the end of November and is called "On the verification of the moral character of officials and other persons connected with the defense of the democratic state." A constitutional court decision issued at the end of January upheld both laws, making a few changes in the verification law.

I want to make it clear that criticizing these two laws is not in any way intended to downplay crimes committed during the communist regime. I was not there then; as an American lawyer, I was not permitted even to enter the country. Drawing conclusions about what the people of Albania went through in those years would be presumptuous. But if we are really committed to the "rule of law," it is proper that we analyze individual laws, especially these, which have serious defects on their face.

The genocide law is so called because it starts by directing the office of the prosecutor to investigate communist crimes "with priority." The heart of the law, however, declares that persons in a number of categories, whether or not convicted of these crimes, may not be elected to various state positions until 2002.

The verification law contains an extensive list of positions in government that may not be held by people in the prohibited categories. Originally, one such position was journalist for a newspaper with a circulation of more than 3,000. But the constitutional court decision struck this clause down on the correct ground that such a position is not a state job.

The verification law expands on and adds to the prohibited categories of the genocide law. It is important to note that, even as expanded, it does not cover all senior communist positions, many of them equal in rank to ones that are listed. On the other hand, such categories as inclusion in the Sigurimi files cover many people who were not members of the Party of Labor at all, much less high-ranking ones. It has been estimated many times that in the tight police state that Albania was for 45 years, as much as one-third or one-fourth of the entire population was registered in one way or

another by state security, or Sigurimi. In theory, all these people are covered by these laws.

That's why I stress the inaccuracy of saying that they only remove senior communists from government. The verification law sets up a seven-member commission, all of whose members are appointees of the ruling party and can be removed at any time and for any reason by the person or organ that appointed them. They meet in closed sessions and say "yes" or "no" to people who would be candidates for parliament or any of the other positions listed in the law. There is one appeal to the Court of Causation.

The time periods are tight. It is not yet clear how they will fit with the upcoming parliamentary elections. Opposition parties will need time to replace rejected candidates, and the replacements will have to go through the same procedure. The timing is wholly within the control of the party in power.

The commission will have access to "all archival material," but after it completes its work, disclosing any documentation is prohibited until 2025. This is intended to end the question of what to do with the communist era files. Time will tell whether this law will truly end that debate.

Albanian critics quickly noted that genocide, murder, and similar crimes had been against the law at all times. Most important senior communists, such as former president Ramiz Alia and the widow of dictator Enver Hoxha, had been prosecuted and convicted, generally, of lesser crimes such as misappropriation of funds. Alia, indeed, had served his sentence and was released last July, although he has recently been re-arrested. That the genocide and verification laws were enacted, not in 1992 when the Democratic Party first took power, but on the eve of the 1996 elections, has understandably led many to a cynical conclusion.

The laws conflict openly with Albania's admirable charter of human rights, which has constitutional status. The constitutional court got around this issue by saying that parliament has the power to override some people's constitutionally guaranteed rights if they believe that this guarantees the implementation of all human rights.

I do not want to end this discussion on a negative note, but right now in Albania the challenges to the legal order are great. Respect for what we think of as the rule of law is not general. The United States should try to understand the situation there as best it can and give appropriate support.

"Avash avash," the Albanians say—"slowly, slowly." Democratic legal development is always slow. If enough people are persistent, however, I am convinced that it will come to Albania.

Thank you.

Mr. PORTER. Ms. Imholz, thank you very much for your testimony. I, by the way, am Congressman John Porter of Illinois, a member of the commission. We will now proceed to Fred Abrahams.

Mr. Abrahams, thank you for coming here to testify. Please proceed.

## STATEMENT OF FRED ABRAHAMS

Mr. ABRAHAMS. Well, first of all, thank you for inviting me here to speak. As always, Human Rights Watch is grateful for the opportunity to participate in these discussions.

My name is Fred Abrahams, and I monitor the human rights situation in Albania for the Helsinki Division of Human Rights Watch. I spent 1 year working in Albania as a journalist and at a media training center in Tirana during 1993-1994 and have visited the country three times since then.

Based on this experience, I can testify that Albania has taken some important steps to establish a democratic state with respect for human rights. According to law, Albanian citizens are now free to travel, practice their religions, open businesses, and express criticism of the government. All these rights signify a dramatic break from the not-so-distant past.

However, the experience of the last 5 years also reveals how difficult it is for Albania to shake its Stalinist past. Although Albanian law recognizes the basic civil and political rights outlined in the Helsinki Accords, in practice, Albanian citizens are still not adequately free to enjoy these rights.

In part, we may attribute these restrictions to Albania's lack of experience with democracy, but in many cases human rights violations in Albania are the direct result of specific actions taken by the new government.

Of particular concern is the state's continued interference in the judiciary. Despite many improvements, the court system is still used as an instrument of the state, especially against the political opposition. The leader of the largest opposition party is currently in prison after a trial fraught with due process violations.

Since 1992, many other critics of the government have been harassed, tried, imprisoned, or in a few cases physically attacked by unknown assailants, usually without any response from the government. Judges that make independent decisions on sensitive cases are sometimes reassigned to lesser posts or fired. More than 400 persons were selected mostly by the ruling Democratic Party to participate in a special 6-month law course. Upon completion of the course, they were enrolled as last-year part-time students in the law faculty at Tirana University. Today, most are working as judges and prosecutors throughout the country.

Last September, the chief justice of the Supreme Court was unconstitutionally sacked by parliament, prompting a protest from the U.S. Department of State. According to constitutional law, a Supreme Court judge may only be dismissed by parliament when proven that he has committed a serious crime or is mentally incapable to perform his duties, neither of which the government could prove. Despite this, parliament voted 73 to zero to remove the chief justice from his post. However, Human Rights Watch obtained the official voting record from parliament proving that vote had been falsified in order to obtain the necessary quorum of 71.

The government has undertaken an ambitious effort to prosecute former communist officials who committed crimes during the previous regime. However, the process has been selective and, at times, in violation of international law. Some former communist officials were denied the right to a fair trial, while others have avoid-

ed prosecution altogether because of their ties to the current government.

Freedom of the press is also circumscribed. Despite numerous promises from President Sali Berisha, no legislation exists to allow for the transmission of private radio or television, leaving the state-run programs that favor the government as the main provider of news for the majority of the population. Attempts to open private local radio stations have been thwarted by the police.

While there are many private newspapers throughout the country, they are restricted by a repressive press law and obstacles to their distribution. Since 1992, a large number of journalists, including foreign correspondents, have been harassed, arrested, or beaten by unknown assailants after writing articles that were critical of the government.

In recent months, the largest daily in the country, *Koha Jone*, has experienced repeated harassment and intimidation at the hands of authorities. In January, the paper was publicly accused of collaborating with the Serbian secret police, although no concrete proof has been made public yet. On February 26, police detained the entire staff of the paper, including the publisher, editors, journalists, computer operators, drivers, and a cleaner, to question them about a bomb that had exploded that morning in Tirana.

The rights of minorities have improved since the fall of communism. Nevertheless, problems do exist, particularly with the sizable Greek minority in the south of the country. In September 1994, five members of the ethnic Greek organization *Omonia* were tried and convicted on charges of espionage and the illegal possession of weapons in a case that violated both Albanian and international law. The five defendants were later released, but not before 70,000 Albanian guest workers had been forcibly expelled from Greece as retribution by the Greek Government.

The issue of Greek language schooling and the return of property owned by Orthodox Church are also areas of concern. In general, however, I believe that the problems of the Greek minority are related to the questions of democracy in the country as a whole. Many minority-specific complaints, such as discrimination in state employment and harassment by the secret police, are the same complaints made by the political opposition. In other words, all Albanian citizens with different views from the central authority, either on an ethnic or political basis, suffer repercussions.

Religious freedom has largely been restored in what was Europe's only officially atheist country. New mosques and churches are being constructed at a rapid pace to rival the military bunkers that dot the landscape. As mentioned, the government could expedite the return of former church property. There have also been two failed legislative attempts by the government to control who may head a religious community. In general, however, Albania has not succumbed to the religious hatreds that have ripped apart the former Yugoslavia. As the noted Albanian poet Pashko Vasa has said, "the religion of Albanians is Albanianism."

Parliamentary elections are due in the spring of 1996, but as of today, no fixed date has been set. Based on the Albanian Government's human rights record during the last 4 years, I must express my deep concern that these elections will be neither free, nor fair.

First, a new law requires all potential candidates to be screened by a special commission composed solely of government representatives. Any person found to have held top positions in a communist era government or to have been a collaborator with the former secret police will be prohibited from running in the elections. Individuals may appeal to the Supreme Court, but the timing of the campaign as outlined in a newly passed electoral law makes this appeal procedure virtually unavailable.

The same electoral law also revised the composition of the electoral commissions to the advantage of the government. Electoral zones will be devised by the president, and the Democratic Party will receive a disproportionate amount of media air time.

The biggest problem, however, is the government's bipolar perspective on politics. From President Berisha down, Albanian officials have repeatedly demonstrated an "us versus them" mentality. "If you are not for us, you are against us; if you're not a Democrat, you're a communist." Criticism is viewed as treason, dissent as a crime.

In closing, I would like to say that the United States can play an important role in fostering Albanian democracy. However, in my opinion, it is crucial to encourage the process rather than the party. Albania has a long history of strong leaders from Enver Hoxha to King Zog, and I believe it is a mistake to encourage the historical trend toward centralization by supporting one specific political force. Rather, the United States can assist in the construction of democratic institutions and the evolution of democratic culture. One way to do this is to maintain and, if possible, increase the amount of foreign aid given to the country.

Finally, I would mention that today Human Rights Watch released a full report on human rights in post-communist Albania that documents many abuses I have mentioned today. I am making it available to the commission. Journalists and others present today may see me after the hearing if they wish to obtain a copy. Thank you very much.

Mr. PORTER. Thank you very much, Mr. Abrahams. I did not have the benefit of being able to listen to your two fellow witnesses earlier, and I apologize for that. We are all having very full days. I wondered if the three of you could comment on the direction, the basic overall direction of human rights during the last 3 or 4 years. In other words, is Albania a country that is moving in the direction we would like to see her go regarding human rights, democracy, the rule of law, and the like? Or has there been substantial slippage or no progress at all? Can you give me your overall estimate?

Mr. BIBERAJ. I think in analyzing developments in Albania, we need to keep in perspective where Albania was and where Albania is today. There is no question that significant progress has been made. At the same time——

Mr. PORTER. No, but I don't want to know where they were and where they are today. I want to know where they were 3 or 4 years ago and where they are today.

Mr. BIBERAJ. I think they've made substantial progress, and they are making substantial progress. There were some problems last year concerning the Supreme Court, the role of the judiciary, which has come under pressure by the executive and by the parliament.

So there has been some slippage there. But in general, I think Albania is moving in the right direction. Compared with other countries in the region, I think Albania is a success story, but there are still many problems. I agree with what Fred said. There is a great need for United States presence in Albania, and to help the process, the democratic institution-building.

Mr. PORTER. Yes.

Ms. IMHOLZ. Yes. I think that in 1991 and 1992, there was a greater openness in the country, and on March 31, 1993, the adoption of that bill of rights that I mentioned was a high point; the very day that it became effective, the editor of Koha Jone was acquitted. He had been arrested for revealing a military secret or, I guess, it was saying something that was not true. A whole lot of witnesses came and said that they supported him, and so he was acquitted. I remember saying to him that day that this is the beginning of a lot of new things in Albania, but this man is on trial again. I believe it is his third or fourth trial. In the last few years, things have stalled, mostly in 1994 and 1995. I hope it continues. I agree with what both my fellow speakers have said about how difficult it is.

Mr. ABRAHAMS. Well, I remember very well when I first arrived in Tirana. It was the summer of 1993 and in my first week I spent time meeting with as many individuals as I could to get a picture of the situation. I remember meeting with one journalist, and he was trying to explain to me the state of freedom of the press in the country. He said, "Well, you know, freedom of the press, it's like this giant pyramid, and there's a curtain in front of this pyramid. In 1992 and in the end of 1991, this curtain was lifted, and we could see the base of this pyramid." And he was talking about press freedom, but I think we could make the analogy perhaps to human rights in general. Albanians could see the base of this pyramid, but already when I was meeting him—this is the end of 1993—that curtain was slowly being lowered once again, and in my humble opinion, I think that curtain has continued to fall since that time.

Mr. PORTER. So the three of you don't quite see eye to eye on this. The reason I asked the question was that my wife, Kathryn, and I met Sali Berisha prior to his becoming president; we were very impressed with him, had dinner with him. He is a medical doctor, and we thought that this showed very good promise. He was elected, I believe, in 1992, if I'm not mistaken; he was here last year to meet with us. This is after the trial of the Omonia Five.

Kathryn had gone to Tirana to try to intercede on behalf of the Omonia Five and made some substantial progress, but was rebuffed in her attempt to see the president at that time. He then came to the United States and met with a group of maybe 10 or 11 or 12 members of Congress, members of the House, last year; all of us raised the issue of the Omonia Five and the discrimination and oppression of the Greek minority.

The president lost it, very frankly. He was calling an American citizen who had attempted to intercede in their behalf a terrorist and was saying things that were just unbelievable in the context in which we were raising the questions. I felt at the time that the commitment to the kinds of values or principles that we had seen

in him in 1991 prior to his becoming president seemed to have been lost in this, and I'm not sure exactly what had led to this.

But I was very concerned if that is the kind of leadership that is in power in Albania, whether there is any real hope of making progress on these values or principles. I wonder if you can give me some insight or comment on that or if you have any at all.

Mr. ABRAHAMS. Well, I mean, I can say something generally about the Omonia trial.

Mr. PORTER. Why don't you?

Mr. ABRAHAMS. I mean, clearly this was the low point of Greek-Albanian relations. There is no question about that. However, I would like to say, during my time in Albania, I monitored a number of trials and the abuses. Violations occurred in the Omonia trial, such as poor access to an attorney and poor access to the investigator's file. They also complained of psychological and physical abuse, which is something that I cannot confirm.

But these violations were also seen in other trials that I monitored during the year, for example, the trials of journalists, and unfortunately, there were many; also the trial of Fatos Nano, the head of the Socialist Party. So I think this is a good example because it demonstrates that the issue is one of democracy as a whole.

And there are other cases as well. For example, the Greek minority complains about discrimination in state employment, but so, too, does the political opposition. The Greek minority complains about poor access to the state media, and so, too, does the political opposition.

Mr. PORTER. Well, I'm not sure that's an excuse in either case, however.

Mr. ABRAHAMS. Yes. No, I think clearly when you have a group of citizens that compose one ethnic body, then it takes on a particular meaning, especially when there is another country directly to itself. However, I just want to emphasize that I believe that these are problems of democracy in general.

Ms. IMHOLZ. Chairman Smith mentioned that tomorrow is the anniversary of the day in 1991 when the United States and Albania re-established diplomatic relations after so many years. I think there's no doubt that Albania, for a long, long time, was very hostile to outsiders; some of that, I think, what is often called old mentality remains, and that's why you sometimes find that kind of reaction to outsiders who are just trying to be helpful. It is upsetting when it occurs, but I think it would have been impossible for Sali Berisha to satisfy all the hopes that were placed in him.

Mr. BIBERAJ. Just other than address specifically your question, but getting back to relations between Albania and Greece, what we've seen after the release of the Omonia Five is a very rapid increase in cooperation between the two countries, and I think this is the most positive development in the southern Balkans right now. The Greek minister of defense will be attending a ministerial meeting in Tirana later this month, and in about a week or so the president of Greece will be visiting Tirana. So I think we've seen some very encouraging signs as far as relations between the two countries go.

Mr. PORTER. Have these translated into a lessening of the oppression of the Greek minority in Albania, or are these just top-level contacts that have occurred?

Mr. BIBERAJ. No, I believe they have. However, it continues, especially as far as education goes. But I think the greatest "threat to Hellenism" in Albania comes from Greece in the sense that Greece is very attractive to the ethnic Greeks in Albania. Everybody would like to leave the country in search of a better life in Greece. You have between 300,000 and 400,000 Albanians who are currently in Greece, and perhaps the best approach for Greece in this respect would be to funnel in money in these areas inhabited by the ethnic Greeks and encourage them to make it in Albania rather than emigrate.

Mr. PORTER. Isn't it true that, if you looked at the areas around Albania, including Kosova and Greece and others, that there are probably as many Albanians outside of Albania as inside Albania?

Mr. BIBERAJ. That is correct, yes. There are probably between 6 million to 7 million Albanians in the Balkans right now, 3.3 million or 3.4 million in Albania, about 2 million in Kosovo, and depending on whose figures you accept, in Macedonia between 400,000 to 500,000 to 600,000 to 700,000 Albanians.

Mr. PORTER. Mr. Abrahams, you had talked briefly about the church. Can you expand on the difference between the Greek Orthodox and the Albanian Orthodox church, what their relationship is, and what meaning this might have in this oppression of the Greek minority?

Mr. ABRAHAMS. Well, I'm certainly not an expert on church affairs. I can try to give you some answer. There is a separate Autocephalous Albanian Orthodox Church, which is essentially an independent Albanian church. It has among its members both ethnic Greeks and ethnic Albanians. As far as I can tell, the two communities get along peacefully. I should say, in general, on the outside of the church, I found always that both ethnic Greeks and ethnic Albanians were committed to peaceful coexistence, and often they expressed a concern that this conflict—I wouldn't call it that now—at times, a conflict, these tensions were between Tirana and Athens and that normal citizens were being caught in between.

With regard to the church, I think this also holds true. Perhaps someone else can say more, but my experience is that they get along very well. There is, I should say, one issue that makes the situation complicated was the enforced atheism of the Hoxha regime. As you know, it was the first officially atheist state, and the persecution against the religions was severe and brutal; that meant that today there are very few individuals qualified to lead the church. That is why a Greek citizen had to be appointed as the archbishop of the Albanian Orthodox Church, because allegedly no Albanian citizen was qualified to hold that position. Naturally, this evoked a response from Albanians who fear, who have a historical fear of Greek involvement in their internal affairs. So the relationship is very complicated.

Mr. PORTER. Anyone else want to comment on that? No. Fatos Nano has been in prison for corruption when he was prime minister in 1991. Apparently there are allegations that his incarceration was based on his leading the opposition to the party now in



power. Do you agree with these allegations, and should he now be set free?

Mr. BIBERAJ. Mr. Nano's imprisonment was part of a highly publicized anti-corruption drive. I do not share the view that Mr. Nano is in prison because of his opposition to the Democratic Party. At the time of his arrest, President Berisha and his Democratic Party were at the peak of their popularity and, therefore, had no reason really to fear him. Moreover, the Socialist leader was not a terribly impressive politician, nor was he considered a genuinely reformed communist. However, while the government has claimed that the struggle against corruption is at the top of its priority list, anti-corruption efforts have been half-hearted at best.

Going back to the coalition government in 1991, when the Democratic Party cooperated with the Socialists, there were allegations of corruption against Democratic Party ministers. These allegations have continued after the Democratic Party came to power. You have today officials, politicians from both the Democratic and the Socialist Parties who, it is alleged, have fallen victim of the greed and the mania for quick profit and are very involved in corruption. This was perhaps most dramatically illustrated by the massive smuggling of oil and other strategic items in violation of U.N. sanctions against Yugoslavia during 1992-1995. Now, while the government denies involvement, it is clear that, without the involvement of some very highly placed officials, sanctions-busting on such a massive scale could not have proceeded for such a long period.

The fact that the government has failed to address seriously the issues of high-level corruption or to launch a clean government campaign has, indeed, seriously undermined the case against Mr. Nano. Moreover, the Socialists have been able to skillfully exploit the case. Perhaps politically, it would make a lot of sense for Berisha to pardon Nano, and he has a very good chance of doing that on the fourth anniversary of the Democratic victory which would be March 22nd. I strongly believe that Nano is more of a threat to the Democrats in prison than if he were to be released today.

Mr. SMITH. Dr. Biberaj, as we all know, the communist dictatorship in Albania ranked among the most cruel in this century in Europe and possibly the world. To what extent has the Socialist Party been genuinely reformed, and can you tell us why there is support for the party despite its Stalinist legacy?

Mr. BIBERAJ. There is no question that it is a different party than it used to be. I mean, the country has changed; therefore, the party had to change as well. But despite its liabilities as the successor to the Communist Party, the Socialist Party has benefited from the fact that there are still significant segments of the population that support the old regime and who, in fact, blame the ruling party for ending their communist social benefits.

This party has also largely preserved the communists' strong internal structure and has a major nationwide network and organizational resources, and, in fact, remains the best organized party in Albania today. Moreover, it has another advantage because the majority of the newspapers in Albania are controlled or under the influence of the Socialist Party. I would also include a newspaper mentioned earlier, *Koha Jone*, which ostensibly is independent. It

is under Socialist influence. But what is perhaps as important is the fact that for many Albanians the memory of communist repression and atrocities committed during the Hoxha regime have been overshadowed by the disruptions caused by the radical reforms implemented by the Democratic Party. So the Socialist Party right now is wagering that the electorate will favorably compare this stability of the communist period to the dislocations of shock therapy.

Mr. PORTER. I have another meeting that I have to attend, but I wanted to ask a final question. Albania, for 50 years or so, seemed to be off everyone's screen. It shut itself in and shut everyone else out, and only recently are people in our country even aware of Albania. It is a relatively small country in a corner of the world that doesn't get much attention from the American press and the like. We are attempting to help Albania in a number of ways, but I wonder if you could tell us what you think of what American efforts have been? Have they been too little? Have they been misdirected? What should we do now to advance the democratization, the human rights and rule of law in this country, and as well, its economy? Are we doing the right things? Are we doing enough? Are we doing the wrong things? Give me your thoughts.

Mr. ABRAHAMS. An open question?

Ms. IMHOLZ. Start with you.

Mr. ABRAHAMS. OK. Well, as I mentioned in my testimony, I believe there is a very large role, an important role, for the United States to play. Specifically, I think the country is in dire need of aid in the field of education, health care, and infrastructure. Second, I think the U.S. Government can help to encourage the Albanian Government to respect human rights and fundamental freedoms as it is obliged to do by the international documents that it has signed and ratified. Third, I think that it is very important for there to be an effective international monitoring force for the upcoming elections.

Ms. IMHOLZ. I agree with Fred that it is very important to have an adequate monitoring force for these elections because I think many questions have been raised, not answered, and having a lot of knowledgeable people there will really help. I also think we all recognize that we cannot give the necessary aid to Albania, with all the needs in the world, and we have to marshal our resources. I think it is very important that the United States try to cooperate with Europe, with the Council of Europe, for example, much more than they have done in the past. I have seen them going off at cross-purposes. I travel to the country, I go back and forth, and I have seen a lot. But I think that is beginning to happen. The current people who are there for the American Bar Association's CEELI Project have established ties with the local groups from other European countries, and I think that will really help.

But I think hearings like this are very helpful because as we collect more information and listen to people who disagree, it will become a little bit more apparent, and sometimes, in Albania, as in all these countries, people want to use the United States, and you can't listen to the first person that you hear. You have to get as much information as you can.

Mr. BIBERAJ. I agree. I fully agree with what my two colleagues here said, especially on the issue of sending observers for the elec-

tions. I think that's critical. Also, the assistance provided to the judicial branch. Let's not forget that until 1990, Albania did not even have a ministry of justice because it was a system where you did not need a ministry because there wasn't any problem of justice.

In addition to economic assistance and assistance in democratic institution-building, I think it is very important to devote a little more attention to the force of Albanian nationalism into the problem of Kosova, the problem of the ethnic Albanians in Macedonia. I happen to believe that, after Bosnia, this is the most difficult problem to be solved in the Balkans; stability in the region will, to a large degree, depend on how this growing Albanian question is handled.

Mr. PORTER. Let me thank all three of our witnesses. Thank you, Mr. Chairman.

Mr. SMITH. Thank you very much, Mr. Porter. Could each of you comment on the performance of the Albanian police? How well trained are they? How are they regarded in society at large? When they are responsible for harassing citizens, are they acting on their own or are they acting on orders from above? Have they engaged in discrimination based on ethnicity or political affiliation? Mr. Abrahams?

Mr. ABRAHAMS. Yes. Well, in the report that we have released, there is a whole chapter on police abuse; clearly it is a very serious problem. Amnesty International has also released two separate reports on the problem of police abuse. I think one main concern is simply that police are not properly educated in international human rights standards. This is understandable; however, it does not excuse their actions. I do not have the precise numbers, but we have documented a number of cases where there have been deaths in custody. Certainly there is a serious concern for physical and psychological abuse during pre-trial detention. I must say, the Albanian Government has taken steps, has actually prosecuted some policemen who were found guilty of using excessive violence. However, for the most part, I would say that police violence occurs with impunity.

Ms. IMHOLZ. I believe that the United States Embassy has been promoting a program of police training, and I had heard that it had been approved. Most of what I know about the police situation is from the human rights report. I do not have close familiarity with the underlying facts, but I do think that it is a wonderful idea if the United States does assist with the police training program.

Mr. SMITH. There was a paragraph in the human rights report of the State Department that said there is a small but growing Protestant evangelical community which desires official government recognition and representation in the religious affairs section of the Council of Ministers. A Protestant umbrella organization, the Albanian Evangelical Alliance, has complained that Protestant groups have encountered administrative obstacles to building churches and obtaining access to national media, which it believes are the result of religious prejudice. Mr. Abrahams, do you want to comment on that?

Mr. ABRAHAMS. Yes. I read the State Department's most recent report, and I have to admit that is the first time I came across this allegation, and I haven't had time to verify it.

Mr. SMITH. OK. Would either of you——

Mr. BIBERAJ. I'm just not familiar with the——

Ms. IMHOLZ. Yes. It is true that there is not yet a law on religion, not that there really needs to be by our American way of thinking about it. I don't know very much about that particular situation myself, but I can say that because of the failure to have a specific legal form in which Protestant evangelical churches can organize themselves, some of them like the Church of Latter Day Saints, have organized as regular foundations. As far as I know, they've been permitted to do so, but I do not really pretend to be an expert on that issue either.

Mr. BIBERAJ. I am not familiar with this case, nor have I heard of any problems.

Mr. SMITH. Ms. Imholz, one of the conclusions that I think could be drawn from your testimony is that the problem with justice in Albania is less with the courts—you talked about this briefly in your oral comments as well—and the performance of the judges than with the attempts to ignore or to coerce the courts as they try to do their work. What can we be doing? You mentioned the Bar Association having its deployment of people working to train judges.

Ms. IMHOLZ. It always amuses me that we seem to think—by we, I mean myself and lots of other foreigners—that by telling the judges to be independent it'll help. Well, they all know——

Mr. SMITH. They want to be.

Ms. IMHOLZ. [continuing]. that's not where the problem is, and it isn't even a matter of drafting new legislation either. In the referendum constitution, the judiciary section started out, "the judiciary is independent." Well, saying so doesn't really help. Again, I think we should be working with the Council of Europe, which has been working on this issue and issued a very good report, which I quoted briefly. There are some legislative changes that can be made. I think that plus a change in the climate will do more than haranguing the government to let the judges be independent or to harangue the judges to be independent, because I think they want to.

Mr. SMITH. As a member of Congress over the last 16 years, it has been my experience with emerging democracies that observing an independent judiciary has always seemed to be the last piece of the puzzle to fit. Many within the executive branches of these countries do everything they can to prevent the establishment of an independent judiciary. Anything we can do along those lines, I think, we should be doing.

Ms. IMHOLZ. I think Albania has a particular problem, too, because it was the most Stalinist of the countries of the region and remained so up to the end, and the Stalinist way of looking at law was law was really instrumental and that meant "telephone justice," and it is just hard to break those habits.

Mr. ABRAHAMS. May I add a comment on this?

Mr. SMITH. Yes.

Mr. ABRAHAMS. I agree that the legacy of Enver Hoxha weighs very heavily on the country today, but I think there are many cases when the executive branch has violated the principle of separation

of powers and most of these cases cannot be attributed to bad practices of yesterday.

Mr. SMITH. Let me make one final comment. In looking over the human rights in post-Communist Albania, Mr. Abrahams, I noticed there was one notation that abortion was made legal in 1990, and then the authors of the report make reference to the issue of access to abortion.

Many of us in Congress—and there's a deep division in the Congress, and certainly among the American public, on the issue of the right-to-life—happen to believe that the most fundamental of all human rights is the right to life. Even the Declaration on the Rights of the Child and the Convention on the Rights of the Child—about which I was privileged to give the U.S. speech on its behalf in New York when I served as a congressional delegate to the U.N. on behalf of the Bush administration—noted that the child, all children, by reason of his or her developmental immaturity, are deserving of safeguards before, as well as after, birth, and that birth is really just an event that happens to a child.

Birth can happen at various stages of gestation, but hopefully it occurs after 9 months. An unborn child ought to be afforded at least a basic right to life. Yes, there are some hard exceptions that even if we were, in this country, to re-assert a pre-Roe versus Wade policy, probably some very hard cases would be recognized. But abortion for birth control reasons and other reasons, and particularly in late stages of pregnancy, are seen, in my view, as cruelty toward children.

Your organization does not take a view that abortion is a right, do you?

Mr. ABRAHAMS. No. That is not a position we're taking in this report, simply stating that abortion has been re-legalized, and the comment here is, I believe, that women's activists said there was a need to improve access to health care facilities, including counseling and services and family planning. But we're not taking a position on whether abortion should or should not be legal.

Mr. SMITH. I appreciate it.

Ms. IMHOLZ. Yes. Albania did, in fact, adopt a new law last fall regulating abortion. I will be glad to send a copy of it because I have translated it. They made late-term abortions illegal and have certain restrictions about early abortions. I think the women's groups in Albania were generally satisfied with it.

Mr. SMITH. Ms. Imholz, I would appreciate that. I would——

Ms. IMHOLZ. I will be glad to do that.

Mr. SMITH [continuing].—Ask without objection that it be made a part of the record as well. Is there anything else that our three witnesses would like to add at this point, anything we may not have touched on?

I'd say for the record, and I say this with some pride and satisfaction, the country director for Albania for the International Republican Institute happens to be a former staff member, Peter Dickinson, who served for years on my staff. We are very proud of the work that he's doing.

If there are no further comments, this commission hearing is adjourned. Thank you very much to our witnesses.

[Whereupon at 1:32 p.m., the Commission adjourned.]

COMMISSION ON SECURITY AND COOPERATION IN EUROPE  
Hearing on the Challenges to Democracy in Albania  
March 14, 1996

Statement of  
Representative Christopher H. Smith, Chairman

Today's hearing focuses on the challenges to democracy in Albania. This hearing is unlike most that we have had in the past year, which have focused mainly on the incredible human tragedies associated with conflicts like those in Chechnya or Bosnia, and what we should do about them. Given the urgency of those situations, countries still in the phases of democratic transition, like Albania, do not always receive the attention they deserve. This hearing intends to correct this, at least to some degree.

While this hearing has not been scheduled in response to any specific event, it is timely nonetheless. First and foremost, Albania is preparing for parliamentary elections in May or June, the results of which will have important ramifications for the future course of the country.

Second, tomorrow marks the fifth anniversary of U.S.-Albanian bilateral relations, and the development of close ties between the two countries necessitates a better understanding of what is happening in Albania.

Third, reports of backsliding or resistance to democratization in Albania, as well as human rights violations, are increasingly coming to the Commission's attention. While these reports vary and even contradict each other, we are concerned that respect for human rights in Albania may not be improving.

Finally, for all the faults that can be found with the details of the Dayton Agreement for Bosnia, it has potentially opened the door for achieving progress in meeting the challenges to democracy in all the countries of the region, for the sake of peace, stability and the well being of the people who live there.

Our witnesses today will look at the challenges to democracy in Albania from different perspectives. Our first witness is Dr. Elez Biberaj, Chief of the Albanian Service of Voice of America. VOA broadcasts, I understand, played a critical role in bringing an end to Albania's self-imposed isolation and one-party rule a few years ago. Dr. Biberaj, who has authored many books and articles on Albania and the Balkans, will give a general overview of political developments in Albania, and a flavor for what the election period may be like.

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Next we have Kathleen Imholz, an attorney from New York who has become a specialist on the Albanian legal system. She traveled to Albania on many occasions since first being able to do so in 1991, and was there just a few weeks ago. Ms. Imholz will focus a bit more narrowly on the legal reforms in Albania, and the degree to which the judiciary is, or is not, independent from government control or influence.

Then we will hear the testimony of Fred Abrahams, a consultant for Human Rights Watch/Helsinki in New York. He is the principal author of a comprehensive report on human rights in Albania that will be released next week. Mr. Abrahams will take our examination of the challenges to democracy down to the grassroots level, focusing primarily on the rights of national minorities in Albania, especially the large Greek community there, religious liberty and free media.

We look forward to hearing the views of this panel. The Commission has taken an interest in Albania even before that country decided to open its borders and permit political pluralism. We consider Albania a friend, and today we hope not only to learn more about what is happening in that country at this hearing, but also to encourage and perhaps even urge Albania to move forward in its democratization and respect for human rights.

COMMISSION ON SECURITY AND COOPERATION IN EUROPE  
Hearing on the Challenges to Democracy in Albania  
March 14, 1996

Statement of  
**Representative Steny H. Hoyer**

For four and one-half decades, Albania was almost completely cut off from the world, about as cruel a communist state as one could imagine, and, in its propaganda, incredibly anti-American. A little more than five years ago, that all changed, quickly and completely. Although I have never been to Albania, I have followed developments there with great interest as a member, and former chairman, of this Commission. Having similarly followed the horrible events which have taken place just next door, with Yugoslavia's violent disintegration, and other places where transition went astray, Albania's democratic development has, in many ways, been a welcome contrast.

This does not mean it has been easy for Albania, or that it has fully developed as a democracy. The testimony of the panel of witnesses we have before us, in fact, points to the contrary. Regional instability and tensions, as well as a legacy of Stalinist rule, pull almost like gravity on the country's movement toward democracy. And many problems persist, especially in the respect shown for the rule of law, the rights of members of the Greek community as equal citizens of the country, and the expression of independent points of view.

We must understand the challenges to democracy in Albania, but we must not excuse these problems nor accept their continuation. Instead, we must encourage and assist Albania in moving forward. As a friend of Albania, I want to see things change for the better. Today's hearing gives the members of the Helsinki Commission, and other Members of Congress, the opportunity to learn where change is needed and to call for those changes to take place. I trust that the Albanian government will understand our good intentions, listen to our concerns and respond accordingly.



## Albania's Democratization: Successes, Problems and Prospects

By  
Dr. Elez Biberaj  
Chief, Albanian Service  
Voice of America

Testimony to the Commission on Security and Cooperation in Europe  
14 March 1996

Mr. Chairman, Mr. Co-Chairman, Members of the Commission:

I am honored to appear before this distinguished Commission to share my thoughts on the transition process and the consolidation of democracy in Albania. The Helsinki Commission has played a significant role in inducing Albania's last communist leader Ramiz Alia to permit the establishment of opposition parties in 1990 and in facilitating a peaceful regime change. In particular, I would like to pay tribute to the former Chairman of the Helsinki Commission, Senator Dennis DeConcini. In 1990, at a time when few people here in Washington or in other Western capitals devoted any attention to Albania, the Helsinki Commission embarked on a policy of constructive engagement with Albania's communist leadership, welcoming Tirane's efforts to end its self-imposed isolation yet bluntly laying out the conditions that Albania had to meet if it wanted to join the community of nations. While domestic developments were the primary factor that led to the disintegration of the communists' support base, pressures exerted by the Commission on the Albanian government during 1990-1991 reinforced domestic democratic tendencies, making the communists' position untenable. The situation in Albania has changed dramatically since the early 1990s. Nevertheless, the Commission's continued observance of developments in Albania will have a profound impact on that country's further democratization.

On 22 March 1992, Albania held its first free and fair parliamentary election in more than seventy years. The election, a referendum on ending communist rule, resulted in an overwhelming majority for the Democratic Party-led coalition. The transfer of power from Ramiz Alia to Sali Berisha, Albania's first post-communist president, was remarkably peaceful and smooth. Indeed, this was the first time in Albania's history that the change from one type of a regime to another was accomplished without violence. With this momentous event, Albania embarked on the difficult road of transition from a totalitarian, one party hegemonic system to a pluralistic democracy. Since 1992, events in this tiny Balkan country have developed at a breathtaking pace. The transition process has been remarkable for both the pace and scope of change. Despite their late entry into the transformation process, the Albanians have not lagged far behind their East European neighbors and have proven incorrect most pessimistic predictions about their country. Berisha's government has made significant progress in ensuring respect for human rights, building democratic institutions, establishing the rule of law, and laying the foundations of a free market economy. To be sure, Albania faces formidable challenges and approaches the beginning of the 21st century with great

uncertainty.

I approach the subject of today's hearings with several basic assumptions. First, the consolidation of democracy in Albania will be exceptionally difficult and will probably take several elections. Albania's political tradition has not been conducive to a democratic order. While the majority of its neighbors established at one time or another a parliamentary system, Albania never developed a genuine democracy; its experiment with a multi-party system in the early 1920s was short-lived. Second, Albania had the misfortune of being ruled by one of the most repressive communist regimes in the world and for a period longer than any other Eastern European state. Enver Hoxha's regime engaged in gross violations of human and political rights, causing great trauma and incalculable psychological damage to the population. De-Stalinization in the 1950s and subsequent reformist trends in the 1970s and the 1980s, which changed the face of communism in the Soviet bloc, by-passed Tiranë. Albania's Stalinist political system and its entrenched state-run command economy remained essentially unchanged. Stalin's statue in Tiranë was removed in December 1990. Third, of all former East European communist countries, Albania appeared least prepared for the transition because of the inauspicious initial conditions. At the time the Democratic Party assumed power, there was a serious breakdown in law and order, the government had lost the capacity to carry out its basic functions, and the economy was on the brink of collapse. Albania had experienced by far the sharpest drop in production of any former communist country. Between 1989 and 1992, Gross Domestic Product (GDP) had fallen by more than 50 percent. Industrial and agricultural production had declined by as much as 60 percent and 30 percent respectively. Inflation had topped 237 percent annually, while unemployment had reached alarming proportions as virtually all factories, enterprises and cooperatives had shut down. Albania had become totally dependent on humanitarian assistance to keep its three million people alive at a subsistence level. Fourth, Albania is in the eye of the Balkan storm and remains vulnerable to dangerous currents of instability originating outside its borders. Albanian leaders have found themselves guiding the transition to democracy with the ever present threat of their country becoming entangled in the Yugoslav wars of succession, as Serbia continues to pursue a highly repressive policy toward the two million ethnic Albanians in Kosova. The regional environment could scarcely be more threatening or less propitious for Albania's efforts to continue with fundamental political and economic reforms.

Post-communist Albania has undergone rapid and significant political, economic and social transformations. It has a vibrant opposition and an outspoken press. The legal framework for a market economy has been put into place. Within four years, Albania has moved from the ruins of a totally state-owned economy to a market economy, with the private sector accounting for more than 65 percent of the GDP and about 70 percent of the national wealth in private hands. Agriculture, transportation and retail trade, and housing have been almost totally privatized. The restructuring and privatization of large state-owned enterprises has also begun and the government is actively seeking foreign partners for the privatization of sectors of strategic importance, including mines, electric power, and telecommunications. Albania has achieved one of the highest growth rates in Eastern Europe, exceeding targets set by the International Monetary Fund. In 1993 and 1994, Albania registered GDP growth rates of 11 percent and 7.4 percent, respectively. Last year, the economy grew by 6 percent. Agriculture, the driving force behind the country's economic recovery,

increased by 6.8 percent in 1994 and 6.5 percent in 1995. The *lek* remained stable, inflation dropped to 6 percent, and the trade deficit decreased to 6.5 percent of the GDP. At the end of 1995, unemployment fell to 195,000, or 13 percent of the able-bodied population. Unofficially, unemployment is estimated to be much higher. Thousands of Albanians have taken to personal freedom and entrepreneurial opportunity with a fervor defying all forecasts. A new middle class is emerging which has benefited from and supports market-oriented reforms. Even former *nomenklatura*, which have amassed enormous wealth, and command the heights of the economy, have a vested interest in promoting stability and the further strengthening of the market economy.

Albania has witnessed profound legislative transformations. The communist-era constitution has been thoroughly revised, and a new institutional architecture is largely in place. The relationship between the state and the citizen has undergone fundamental change and civil liberties by and large are now respected. While lack of consensus between the country's main political forces prevented the adoption of a new constitution and voters rejected a draft submitted by the Democratic Party in November 1994, the 1991 provisional constitution has been amended and supplemented on several occasions. With the addition of a chapter on the Organization of the Judiciary and the Constitutional Court in 1992, and a Charter on Fundamental Human Rights and Freedoms in 1993, Albania has indeed created a new constitutional system, with reliable checks and balances, safeguards for fundamental rights and freedoms, and genuine judicial review.

The parliament has come to play a significant role and is the most important fora for deliberations about the country's politics. There has been a remarkable degree of agreement between the presidency, the government, and the legislature on policy outputs and responses to sustain the reform impulse. Political struggles between the executive and the legislature have been less pronounced and acrimonious than in most other East European countries. But this is due more to the Democratic Party's ability to preserve its comfortable majority in the parliament than to the practice of accommodation and compromise between the ruling party and the opposition. The fragmentation of the democratic parliamentary group has surprisingly not been as profound as many had predicted. Since 1992, the Democratic Party has experienced only two major splits, resulting in the defection of eight out of the original ninety-two deputies.

Sali Berisha's strong leadership qualities and the pivotal role that he played in the downfall of communism have helped make him the unquestionable lynchpin of Albanian politics. An activist president, Berisha has proven to be an effective president, shaping the nation's agenda during a period of momentous political, economic, and social changes. He has been the moving force behind the government's efforts at reform. He has displayed extraordinary persistence in the face of daunting challenges and a willingness to make unpopular and politically risky decisions to further the country's political and economic revival.

Albania is a staunch United States ally and has come to play an important role in the American strategy of preventing the expansion of the Yugoslav conflict. It has forged close bilateral military ties with the United States and has placed at NATO's disposal its air and port facilities. Albania has emerged as a responsible regional player and American, West European, and NATO leaders have

expressed respect for its constructive role. While relations with rump Yugoslavia remain frozen because of disagreements over Kosova, Tiranë's relations with its other two contiguous neighbors -- Macedonia and Greece -- have expanded significantly. Berisha has attempted to balance Albania's concerns about Macedonia's treatment of the ethnic Albanians with Tiranë's desire to maintain satisfactory relations with Skopje, especially in the economic sphere. Concomitantly, he has exerted a restraining influence on ethnic Albanian leaders in Macedonia while trying to allay Macedonian fears about Albanian territorial claims. Albanian-Greek relations have gone through a difficult period over the past few years. Disputes between Tiranë and Athens have revolved around three main issues: ethnic Greek minority rights, illegal Albanian refugees in Greece, and the Albanian Orthodox Church. In addition, Albania's decision to recognize Macedonia and its deepening political and military relationship with Turkey, on the one hand, and Greece's close alliance with Serbia, on the other, have served as a constraint on the expansion of bilateral ties. Despite continued suspicions, the two countries seem on the way of reconciling their differences. The president of Greece is scheduled to visit Tiranë later this month. Indeed, the steady normalization of Albanian-Greek ties since early 1995 is probably one of the most positive developments in southern Balkans.

Berisha has treaded carefully so as not to encourage irredentism among Albanians in former Yugoslavia. But Kosova and Macedonia present Albania's policy makers with a unique national and foreign policy predicament. The situation in Kosova can be described as neither war nor peace. Since the early 1980s, Kosova's Albanians have been living under virtual Serbian military occupation. Silent ethnic cleansing has been underway for several years. The region can erupt at any moment. Even in the wake of the Bosnia peace agreement, the political climate in Belgrade has not tipped in favor of an accommodation with the Albanians. Serbia has given no indication that it is willing to open talks with the ethnic Albanians, let alone consider their demands of separation from Yugoslavia. Similarly, Albanian leaders have shown no inclination to back away from their demands for independence. Meanwhile, ethnic Albanian leader Ibrahim Rugova is facing growing internal opposition as his approach of peaceful resistance has given few results. All along he has told his supporters that good behavior and peaceful resistance will eventually be recognized and rewarded by the international community. Rugova's claims of international support have run up against the creeping realization that the international community is treating Kosova simply as a minority issue and might ignore Serbian repression of ethnic Albanians in order to secure Belgrade's compliance with the agreement on Bosnia. The exclusion of Kosova from the peace talks is seen as an enormous affront to Albanians on both sides of the border.

Meanwhile in Macedonia, tensions have been rising between Slav Macedonians and ethnic Albanians, who according to official figures account for about 23 percent of the country's population. Ethnic Albanians object that constitutionally they are considered a national minority and have demanded equal nation status with the Macedonians. Other demands include the recognition of Albanian as an official language, Albanian-language education at all levels, including the university, free use of Albanian national symbols, proportional representation in government, economic, and cultural administration, and unimpeded development of the Albanian-language media. The Macedonian government has rejected most of these demands. The two ethnic groups are faced with seemingly irreconcilable divergences. Albanians, with their legacy of domination and discrimination,

are unlikely to see themselves as equal citizens of Macedonia. Slav Macedonians, for their part, are reluctant to accept the idea of autonomy or to raise the constitutional status of Albanians. Unless Skopje develops a formula to reconcile Albanian demands for greater rights with a unified state, Albanian ethnic assertiveness will likely increase, potentially threatening Macedonia's very survival. Although the position of ethnic Albanians has improved significantly and they participate in the country's political life, unfortunately Macedonia is gradually, but indisputably, moving toward segregation, and not integration.

The unification of Germany and the Yugoslav wars of secession have delegitimized the question of existing borders. The salience of the Albanian national question is likely to increase. Given current demographic trends and in the absence of a devastating war or some natural calamity, within a decade the Albanians will become the third largest nation in the Balkans, right after the Serbs and the Greeks. How can their interests and national aspirations reconcile with those of their more powerful neighbors? Overwhelmed by the challenges and dilemmas of transition, the Tiranë government has placed the issue of national unification on the back burner. But Albanians in and outside their mother country remain vulnerable to nationalistic rhetoric. There is an urgent need for the United States and its West European allies to focus on and attempt to manage the Albanian question. Concomitantly with supporting Rugova's non-violent political approach, the United States should exert pressure on Serbia to accept a gradual and peaceful "divorce" with Kosova. The outbreak of conflict in Kosova will likely have a spill over effect, possibly leading to a wider Balkan war, with disastrous effects for the entire region and perhaps beyond. Stability and peace in the region will to a large degree depend on how the emerging Albanian question is resolved.

While Albania had made impressive progress since 1992, it still faces immense difficulties. The optimism and hope that greeted the 1992 democratic victory have mostly faded away. Those expectations were bound to prove too high in a country emerging from four decades of terror and social and economic devastation at the hands of the most brutal communist dictatorship. The implementation of radical economic reforms has led to great social dislocations. Albania has yet to achieve full economic recovery. Major problems include structural imbalances, unacceptably high unemployment, delays in overhauling the financial system, and inadequate transportation and communication infrastructure. Real GDP growth in 1995 remained about 25 percent below the 1989 level. The economy also remains highly dependent on external factors. These include continued foreign assistance, foreign investment, and the unresolved issue of Albanian refugees in Greece. Foreign aid is likely to decrease, while foreign investments remain problematic. Remittances from refugees, which have played an important factor and in 1995 reportedly amounted to 25 percent of the GDP, are likely to gradually decrease. The situation of more than 200,000 Albanian workers in Greece is dependent on the overall political relations between Tiranë and Athens. Any deterioration in bilateral ties, as in 1994 when Athens deported more than 70,000 Albanians to protest the trial of six ethnic Greeks on espionage charges, will be reflected in the economic field. Large-scale expulsions of workers in Greece would have an immediate, devastating impact on the Albanian economy.

There is widespread recognition that the Albanian government has made tremendous strides

in respecting the human rights of its citizens. However, there are still significant abuses of human rights, including instances of police abuse, procedural irregularities resulting in denial of fair trial, and mistreatment of defendants. A key element in Albania's efforts to consolidate a democratic system has been the establishment of an independent judiciary. The judicial system had to be built practically from the ground up. But overcoming the weight of half-a-century of communist rule that displayed no regard for due process and considered the judiciary merely as the voice of the ruling party has proven to be a daunting task. As a result, the judiciary still remains weak and not wholly independent.

The press has gained authority and power to influence change and has managed to exercise practically unlimited freedom in both reporting and editorial comment. But the media's new authority and power have not been accompanied by the necessary responsibility and accountability. The communist legacy is evident in the low level of professionalism and party influence. The country's leading journalists were trained under communism, are highly ideological, and display poor professional judgment. They see their role more as advocates of a particular point of view than as simple reporters. Although there are more than 240 registered newspapers in Albania, most are organs of political parties and groups and usually engage in political diatribes. Almost without exception, the ostensibly independent papers are closely affiliated with, or financed by, different political parties and groups. The relationship between the government and the media has been adversarial. There have also been occasional restrictions of the freedom of speech and press. The press law, approved by parliament in October 1993, was seen by both domestic and foreign observers as being too restrictive. Officials failed to realize that the law is not likely to determine media behavior and that professionalism is not something that can be ensured through government restrictions. On many occasions, the authorities have shown striking ineptitude in their treatment of opposition journalists. The arrest and sentencing of journalists had a damaging impact on Albania's image abroad. Meanwhile, broadcasting remains a government monopoly. Critics say it has simply switched political masters; however, it does offer a great variety of information to its viewers and listeners. The parliament has yet to approve a law permitting the establishment of private radio and television.

While the institutional features of a democratic government are largely in place, civil society as a political force, has yet to emerge. With the exception of trade unions, few non-governmental associations are strong enough to exert effective pressures on state institutions. Lack of sustained political participation on the part of a growing number of Albanians could hamper the development of democracy. The absence of a well developed civil society sharply limits citizens' ability to influence events.

The current constitutional order has contributed to some confusion over personal and institutional roles and responsibilities. The quality of Albania's institutional arrangements is quite impressive for a country in the initial phase of transition from communism to democracy, and compare favorably with the constitutions adopted by other former communist countries. But the delay in adopting a new Constitution has muddled the division of labor and responsibilities between different branches of government and, as a result, the decision-making process has at times been

confounded by institutional confusion. Moreover, current constitutional laws lack the legitimacy that a new single charter, even without significant modifications from current documents, would have if it were ceremoniously adopted by the parliament, a constituent assembly, or through a popular referendum. Therefore, the speedy promulgation of a new Constitution has become indispensable. Albania's long-term interests dictate that the country's major political forces put aside their narrow political considerations, and engage in serious bargaining and compromise aimed at providing the emerging order with a solid constitutional underpinning.

The concentration of power in the presidency had a positive and a negative impact. Berisha continues to be viewed as an indispensable guarantor of Albania's transition to democracy and a market economy. His domination of the executive branch, however, has complicated the decision-making process, at times undermining good and effective administration and causing unnecessary delays in making decisions on major issues.

The extent to which the new governing elite, with no tradition of democratic problem solving and limited experience in rights and responsibilities, has been able to provide transparent and accountable governance remains debatable. A salient feature of decision-makers has been lack of responsiveness to citizens' needs, requirements, and wishes. The government often failed to draw the parliament, the opposition, and the Albanian people into a full and frank discussion and debate of the pros and cons of major decisions before announcing them. Despite the significant changes and improvements since 1992, accountability remains largely an alien concept. Albania has a long way to go in creating a civil service based on merit and immune from all partisan influence or activity. There are no recognized standards of ethical conduct for government employees, and corruption, nepotism, and the use of official position for private gain are said to be widespread. From civil servants who demand small bribes to big businessmen who pay off cabinet ministers for major favors, corruption has become a growth industry. Too many post-communist high-level officials, who saw public office as an opportunity to enrich themselves, have amassed great wealth from illegal sources. Lack of public accountability for both political and economic transactions threatens to discredit the Albanian political and business establishment. The decree, issued in December 1995, requiring political office bearers and senior public servants to disclose their assets has done little to increase the public's trust in government. Clearly, new structures to implement state oversight, increased wages for civil servants, and more open and accountable business procedures could inhibit corruption in private contracts. Nevertheless, unless immediate and swift measures are taken to establish effective legal and political constraints, Albania could face a situation in which graft and patronage are considered normal business practices.

The issues of accountability and transitional justice remain a perennial question as Albania struggles to overcome the legacy of decades of communist repression. Many former political prisoners maintain that Albania cannot heal the wounds of the past and build a stable future without first addressing the horrors of Hoxha's regime and its lingering legacies. Initially, Berisha insisted that peace and stability had higher priority over justice. His election strategy in 1992 was driven by the belief that putting the past behind would facilitate the healing process. The Democratic Party focused more on restitution to communist-era victims than on retribution for its evils, warning that

Albania's delicate political balance could not afford a retribution process. Right wing forces, however, insisted that to achieve reconciliation and peace, Albania must seek some redress for the crimes of the communist rule. After months of blustery rhetoric from both sides, the parliament in September 1995 passed a broad lustration law barring from public office for six years former senior communist officials. Democratic Party officials claim the law represents a basis for a lasting reconciliation and argue it will promote a more legitimate political leadership. The leftist opposition has denounced the measure as designed to prevent leading Democratic Party opponents from running in this spring's elections. The law also allows legal proceedings against crimes committed by the former regime. More than thirty former senior officials have been arrested and are awaiting trial on charges of genocide and other crimes.

Albania has yet to see the emergence of viable political parties that articulate competing interests and preferences of individuals. Probably several rounds of elections will be necessary before a stable system of relatively disciplined and responsible parties can emerge. While political participation is concentrated almost exclusively within the realm of the parties, citizens' identification with parties remains relatively weak as these groups seek to develop their positions on the issues amid shifting political allegiances. Most Albanian parties have not developed deep-rooted group loyalties and rest on an uncertain base of popular support. Many overlap ideologically and in their social appeal, making it difficult to describe their ideological stand in terms of the Western traditional left-right continuum. Moreover, Albania has witnessed a tendency toward increasing fragmentation of the largest parties.

Parliamentary elections will be held at the end of May or the beginning of June. The election law has been revised. The number of seats elected from single-member districts has been raised from 100 to 115; the rest -- 25 -- will be awarded proportionately based on party lists, with a 4 percent threshold. More than a dozen parties are expected to appear on the ballot. Although according to two recent polls -- the U.S. National Republican Institute and European Commission's Eurobarometer -- the Democratic Party is likely to win the largest bloc of seats, the situation is fluid and unpredictable and it is impossible to gauge the relative strength of the parties that will be competing. Economy is likely to be the dominant issue. Relations with the United States are also likely to have a great saliency. While it is important to maintain neutrality and not take sides, the United States should not remain indifferent. Washington should not hesitate to assert its preference for a result that will advance democracy, a free market economy, and regional cooperation.

Despite the significant institutional and political changes and splits within the ruling party, the Albanian political scene continues to be dominated by two main actors -- the Democratic Party and the Socialist Party. The Social Democratic Party and the Democratic Alliance have gained increased importance, but do not provide real alternatives to the Democrats and the Socialists. Outside parliament there are numerous parties, most of them with small membership. If they are to survive, they must differentiate themselves and broaden their appeal to a skeptical electorate.

*The Democratic Party* remains the only party with a clear political and economic program, which strives to appeal to multiple interests. It has retained a wide base of support that cuts across



all segments of the society. The perils and pitfalls of governing the country during a crisis period, however, have taken a significant toll and the Democratic Party faces an uphill battle. With the post-1992 demobilization, attachment to the Democratic Party has become weaker and strong partisans of the 1991-1992 period are largely gone. The voting behavior of significant blocks that made up the Democratic Party's coalition in 1992 is unpredictable. Since assuming power, the Democrats have moved away from an ally of such groups as former prisoners, followers of right wing parties, trade unions, and others. The Democratic Party has also come to be seen as a party tolerant of high-level corruption. Thus it faces a formidable task in developing a broad campaign strategy that will produce a winning coalition. Assuming it wins the election, the Democratic Party will have to do lots of adjusting. It will no longer have its accustomed parliamentary majority and will need to learn to consult with the opposition and reach political consensus on critical issues, such as drafting and approving a new constitution.

*The Socialist Party* is the most cohesive and powerful opposition force in the country. It rejects Berisha's policy of shock therapy and massive privatization, advocating instead gradual economic reforms and continued state role in regulating the economy. The Socialists are also wary of Albania's growing military relationship with the United States and NATO. The party leadership is heavily dominated by conservative communists and its claims of renovation are disingenuous. Since its humiliating defeat in 1992, the Socialist Party has displayed little commitment to democratic values and practices and has attempted to block the process of transition every step of the way. In recent months, in a bid to prove that they are a moderate force, the Socialists have toned down their anti-Western, and particularly anti-American rhetoric. But there should be no doubt that an election victory by the former communists will pose a significant threat to Albania's democratic future. The Socialists are very resentful of changes since 1992 and if they return to power, the temptation to seek revenge against the Democratic Party will be great. Cohabitation between a democratic president and a socialist-controlled parliament would be very difficult. While there is no chance of going back to Hoxha's dictatorship and centralized economy, the Socialists' mere attempt to roll back or retard such moves as mass privatization, and repeal a large degree of legislation enacted since 1992, would be fraught with great instability.

*The Social Democratic Party*, currently the third-largest bloc in parliament, has its roots in the reformist wing of the APL. Some of its leaders have a distinctly communist background; they were quick-change artists who had faithfully served Alia's regime. Party Chairman Skendër Gjinushi, a former member of the Central Committee of the APL, served as minister of education in the last communist government. He represented the communist government in negotiations with demonstrating students in December 1990 and hunger strikers in February 1991. Other party leaders, including historian Paskal Milo, had close links with the communist government. With an electoral support of some five percent in 1992, the Social Democratic Party came in third, winning seven seats, a more impressive performance than expected. Dissatisfaction with the communist regime had improved the Social Democratic Party's odds, as many voters with a leftist orientation opted for this party rather than the Socialist Party. But as the memory of the communist regime fades, the Social Democrats are likely to face their stiffest competition from the Socialists rather than from the Democrats. With many analysts arguing that the ideological distinction between the Social

Democratic Party and the Socialist Party is fading, the Social-Democrats will have to compete with Socialists for the same working-class strata and trade union members. Furthermore, the party split in December 1994 and the establishment of the Social Democratic Union could damage the Social Democratic Party's prospects in 1996.

*The Democratic Alliance*, formed in late 1992 by what its critics call the "communist" wing of the Democratic Party, stands out as the fourth most important force in parliament, with six deputies. The party leadership is composed of former senior Democratic Party officials, with nationwide name recognition. Self-described as a center-left party, the Democratic Alliance claims to represent the urban, middle-class, and intellectual strata and lacks a mass base of support. The Democratic Alliance has been plagued by internal fissures over relations with the Socialists. While the majority in the leadership continues to work for a coalition with the Socialists against the ruling party, some see any cooperation with former communists as a compromise of principles. Others in the leadership have taken up the middle ground between the two positions, choosing to emphasize the permissible forms of contact and cooperation with the Socialist Party but generally embracing the idea of a coalition with the Social Democratic Party.

*The Republican Party*, the second opposition party to be formed after the APL was forced to sanction political pluralism, initially operated largely in the shadow of the Democratic Party. Fractious and unpredictable, in the 1992 election it failed not only to meet the four percent threshold but also to get its chairman Sabri Godo elected to the parliament. It won only one seat. The party's poor performance was attributed to the lack of a clear program, acrimonious intra party struggles, and leadership problems. Considered by many analysts as a party on the verge of extinction, the Republican Party has been in search of an identity. In an attempt to create a social base, it has moved steadily to the right and has adopted an increasingly demagogic posture on many issues, including the thorny question of restitution for former owners. Godo apparently believed that the only way to revive his party's fortunes was to move to the right with a tougher stance on property issues. By 1994, its profile had changed to essentially that of a single-issue party. It embarked on a campaign designed to return the property confiscated by the communists to their rightful original owners. Nevertheless, its election prospects remain uncertain at best.

*The Right League*. Composed of a group of loosely defined parties vying to outbid each other in their anti-communist positions, the right remains superficially divided. Right-wing parties claim that the Democratic Party's reluctance to return property to their original owners and expose the criminal nature of communism is preparing the ground for the return to power of the Socialist Party. They maintain that Berisha has not done enough to prosecute former APL officials and to expose the criminal nature of communism. The parties on the right have a strong nationalistic component, advocating the unification of Kosova and other Albanian-inhabited territories in former Yugoslavia with Albania. They have accused neighboring countries of attempting to undermine Albania's economic and social structure by orchestrating economic chaos, political unrest, and social upheaval. They consistently expound the themes of the need for a nationalist-democratic fusion to counter Serbian-Greek pressures and/or designs.

The Right League's opposition to the Democratic Party reflects a hard political reality which belies expectations of an easy rapprochement. Tactical alliances between the two remain unlikely unless the two sides can bridge their programmatic differences. But bridging this ideological gap would require fundamental changes in the current policies of one or both sides. Any rapprochement will almost certainly be evolutionary. But with the rise in the Socialist Party popularity, the Right may reluctantly come to the conclusion that the Democratic Party is the lesser of two evils. Despite the deep animosity between the Right and the Democratic Party, they still might join forces against the Socialist Party.

*Other Parties.* Among other parties, the most important is the Party for the Protection of Human Rights, which represents the ethnic Greek community. While its stronghold is in the south, in the ethnic Greek-inhabited areas, it has expanded its activities, opening branches in many areas of the country where there are no ethnic Greeks. The party has effectively used its strong ties with Greece to expand its influence and is expected to do well in the next election.

Although the date for parliamentary elections has not yet been set, Albanian political parties have already begun the campaign for the hearts and minds of the voters. The spirit of tolerance and reconciliation have been overtaken by militaristic rhetoric and political manipulation. As elections approach, political tensions are likely to rise and incidents of sporadic violence or terrorist acts cannot be ruled out. But there is reason to believe that the elections will be sufficiently free and fair for the will of the people to be reflected in the results. With the successful conclusion of free and fair elections, Albania will have passed an important test of maturity, strengthening its democratic orientation and paving the way for further stability and prosperity.

The Democratic Party took the helm at the most turbulent period in Albania's modern history. There is no question that there have been problems and mistakes, but the successes of President Sali Berisha and his government far outweigh their failures. In four years, Albania has attained relative economic and political stability. Pluralistic democracy and market economy are beginning to take root. The symbols of a new Albania are everywhere. But the tasks that confront Albania in fully consolidating its democracy are formidably ambitious. The road ahead is fraught with the risk of reversion and the most difficult task in building a genuine democracy will be to inculcate civic values that will make democratic ideals part of the Albanian moral fiber. Further gains, of course, will depend primarily on the choices the governing elites make and the strategies they pursue. But continued moral, political, and material support from outside, particularly the United States, will also remain crucial.

Thank you for the opportunity to appear before you today.

Kathleen Imholz  
March 14, 1996

TESTIMONY BEFORE  
THE COMMISSION ON SECURITY AND COOPERATION IN EUROPE

Challenges to Democratization in Albania

Chairman Smith, members of Congress, staff, ladies and gentlemen: thank you for the invitation to say a few words today about the state of democratization and the rule of law in Albania.

If I am critical, and I have to be critical, my criticisms should be taken in a constructive spirit. Albania has had a hard history, not just the forty-five years of Stalinist Communism after World War II but four hundred fifty years of Ottoman Turkish occupation and other invaders too numerous to mention. That this little country has survived and, since 1912, defended an independence few thought it would ever achieve is close to a miracle.

Even if they didn't have diplomatic relations between World War II and 1991, the United States and Albania have a special relationship going back many years. Among other things, at the Paris Peace Conference after World War I, Albania, which as I noted became independent only in 1912, was about to be dismembered and cease to exist as a country, when Woodrow Wilson stepped in and, supporting his principle of self-determination, demanded that Albania's integrity be maintained. He is a hero to this day in the country, and many people there bear the name "Wilson."

It is often said that when you save someone's life, you are responsible for them thereafter. I believe the United States has and should continue to have a special role where Albania is concerned. This is not just because we saved Albania as a country in 1920, but because of the importance to us of peace and stability in the Balkans today, which true democracy and legality promote.

Let me note that I have no Albanian ancestry. I am a New York City corporate lawyer, with Irish and German roots. My interest in languages and history led me to the Balkans many years ago, and although it was impossible for an American lawyer to go to Albania at that time, I developed a strong desire to do so. I was able to realize that desire only in 1991, a few weeks after the first pluralist elections. The friends I made and the intrinsic interest of

what that country has endured, and what it is going through now, have led me to return as many times as I have been able in the past five years. I have learned the language and closely watched legal developments there. And I have learned more from Albania about what law means, and how and why it works or doesn't work, than three years at Harvard Law School and more than twenty years of legal practice in New York ever taught me.

Few outsiders expected that democracy and compliance with the rule of law would develop overnight, especially in a country with Albania's past. My criticisms do not stem from unrealistic expectations. When I first went there in April 1991, the private practice of law had just been re-established, after not existing for over twenty years. Nevertheless, I found a legal tradition that surprised and impressed me. Well into this century, the northern Albanian highlands preserved comprehensive oral codes (called the "Kanun") that contain traces of earliest Indo-European law. In the few short years between consolidation of its independence and the Italian occupation in 1939, Albanian lawyers, trained outside the country since it had no institutions of higher education of its own, succeeded in drafting and enacting civil and criminal codes that were quite good for the time. And even under Communism, as in the other countries of the region and despite the absence of private lawyers to defend people who were arrested, a comprehensive legal system existed. Of course, the Communist state, like all totalitarian states, twisted the law to its own ends when it so desired and considered its own interests to be above the law. But it is a mistake to think of the prior regime as "lawless."

In 1991 -- the process actually began, a little, in 1990 -- Albania set about reforming its legal system, with the aim of creating a modern system based on free market principles and respect for generally recognized international human rights and other norms. Like the other countries of the region, post-Communist Albania was descended upon by numerous Western "advisers" and self-designated experts, some of whom genuinely helped in the immense job of creating the new system; but the large bulk of the work, and it really is an enormous and complicated process, has been done by the Albanians themselves. Five years into the process, most of the framework is now there. But as I will describe, there have been and continue to be large failures of implementation. There have been some bright spots; but on the whole, the picture is a dark one. In particular, the general lack of faith in the judicial system is a serious problem that needs to be addressed,

promptly and firmly, by whatever government leads the country after the upcoming elections.

Let me also add that I have not been in Albania since the terrible, and unprecedented, terrorist bombing of February 26, and I am not addressing it in these remarks, except to condemn it and to express the hope that the truth behind it will be determined quickly.

A little over a year ago, two events occurred that gave reason for optimism about democratic development in Albania. On November 6, 1994, a referendum on a new Constitution was defeated by the Albanian people, expressing their free choice despite strong executive pressure. Less than two months later, an attempt to remove the chief judge of Albania's highest court from office on a pretext was defeated when, on February 1, 1995, Parliament broke party lines and narrowly voted to uphold his immunity. I say that these events were a reason for optimism regardless of the merits of either of them, because they showed a developing pluralism and the peaceful use of democratic methods -- voting -- to resolve hotly contested questions. The subsequent year, however, has seen little but backtracking.

After the March 1992 parliamentary elections, which the Democratic Party won overwhelmingly, and Dr. Berisha's election by parliament as president in early April, Albania underwent many changes, including dramatic economic growth and an acceleration of the process of legislative revision that had already begun. Albania's last Communist Constitution, the Constitution of 1976, had been repealed in 1991 and replaced by a constitutional law called the "major constitutional provisions." As first enacted, it was rather sketchy; but after the 1992 elections, a chapter restructuring the judiciary was added to it, which, among other things, stated clearly that judges of the highest court (the court of cassation), as well as the Attorney General (General Prosecutor) and his deputies, could not be removed from office except on a reasoned decision of parliament that it had been proved that they committed a "serious crime specifically provided by law." It also established a constitutional court for the first time in Albania.

The quoted provision of the judiciary chapter of the Constitution was ignored when the ruling party decided to get rid of its first Attorney General in September 1992. When he appealed his dismissal to the constitutional court, that court issued a decision that in effect stated that the Constitution did not mean what it said. Parliament's right to "control" the administration of justice was held to

override an express constitutional provision to the contrary. In the face of criticism from bar associations and human rights organizations all over the world, the Albanian government nevertheless felt compelled to justify the Attorney General's dismissal. Thus, he was charged with the crime of falsifying personnel transfer documents. The "falsification" consisted of three cases in which, it was claimed, his introductory statement was false that the Supreme Council of Justice, the body with jurisdiction (on which the Attorney General sits), had approved the transfers. He was convicted in early December 1992 without being permitted to call other members of the Supreme Council of Justice as witnesses. With international attention focussed on the case, however, instead of the nine year prison sentence permitted by the law of the time, he was let off with a fine of 1,000 lek (US\$10).

The trial was highlighted in the U.S. State Department's Human Rights Report on Albania for 1992. Those of us who follow legal developments in Albania with interest and concern hoped that it was an aberrancy, explainable as an occurrence of the transition from a totalitarian state to a democratic one.

Unfortunately, the same constitutional provision was used, or misused, again last September, when the chief judge of the highest court, who had narrowly escaped removal earlier in 1995, was attacked again, this time successfully: that is, he was removed from office. I will not go into the details of his case, which are spelled out in an account he has written for the East European Constitutional Review and which I am submitting with my written testimony. Although no criminal proceeding was brought against the judge before he was removed from office, I think it likely that one would have ensued, as in the case of the former Attorney General, had he and his wife not left the country shortly after his dismissal. They are now studying abroad.

It is particularly dramatic when the highest member of the judicial branch is the subject of proceedings like this, but it should also be noted that there have been many other cases in the past four years in which Albanian lower court judges have been removed summarily. They do not have the same constitutional "protection" as the Attorney General and cassation judges (not that it has been a protection in fact). It is at the lower court level, of course, that most people's contact with the judiciary of any country occurs. This fall, the Lawyers' Committee for Human Rights, out of Washington and New York, issued a broad criticism of the

Albanian judicial system, stressing the problems at all levels.

The lack of faith in the judicial system that I noted above has many contributing causes. The Albanian government has quite properly identified widespread corruption as one of them. They have all my support for meaningful efforts to combat that; it is an intractable problem. But it is also important that judges be perceived to be independent and not subject to removal for deciding a case in a way other branches of the government do not want. For example, within a day or two of the 1994 acquittal of the editor of the newspaper *Koha Jone*, which regularly criticizes the government, the judge who acquitted him was removed from office and imprisoned on a charge of corruption. I have absolutely no idea whether that charge was grounded; but the circumstances under which it was brought made it seem like a pretext. The charge was quietly dropped in the face of international protests, but the judge never got his job back and he now practices law privately. Another reason for lack of faith in the system is an apparently rather widespread failure to enforce judicial decisions, which would appear to be within the government's power to change more easily than some of its other problems.

I could give many other examples of challenges to Albania's democratic legal development, but in the limited time available, I will mention only the Constitution (with a digression on the press law) and the so-called "genocide" and "verification" laws passed last September and November.

Contrary to what is often said, Albania has a Constitution. It is the law on the major constitutional provisions, with all its amendments, each passed in a perfectly valid manner for constitutional laws, that is, by two-thirds of Parliament. The human rights amending chapter, enacted in 1993, is one of the brightest of the bright spots in Albanian law that I mentioned. The law on the major constitutional provisions is sometimes called the "transitional Constitution," because it was intended from the beginning that it be replaced by a complete new Constitution. And various groups of Albanian jurists and others have been working on this since 1991. I have seen most of their drafts and translated many of them. And in my opinion, several have been excellent.

The draft that went to referendum in 1994 was not one of the better ones, but it would have sufficed. It was, in fact, not too different from the law on the major constitutional provisions. In my view, the worst thing



about it was that it further weakened a judiciary that is already too weak. It would have sanctioned removing a judge of the high court without proof of a crime, for example. The real reason why the chief of cassation was attacked for alleged malfeasance shortly after the referendum failed was that the requirement I have quoted about proof of commission of a serious crime remained, and still remains, in the Constitution. Otherwise, he could have been quickly and quietly removed.

Following the "no" vote in the referendum, a technical drafting group was set up composed of designees of several opposition parties, and this group prepared still another draft Constitution. Previously, the drafting groups had tried to accommodate President Berisha's desire for a strong presidency within a parliamentary government, but now they felt free to create a government with a figurehead president, somewhat like the German system. This is the last draft that has been prepared. President Berisha himself has been reported as saying that Albania should take an already existing Constitution of a Council of Europe member and adopt it without changes. I hope this suggestion is not a serious one, for in my opinion it would be one of the worst ways to solve Albania's constitutional problem.

Law is organic; a foreign law translated word for word and grafted onto another culture makes limited sense and can do much harm. The experience of constitutional drafting groups in Albania over five years has shown that they have the needed ability. The new Constitution that comes out of the process should fit Albania.

Sometimes it does seem simpler just to take what other countries have done, and a well-known example is Albania's press law, enacted in the fall of 1993 despite vociferous protests from local journalists and worldwide organizations. It was said to be a translation of the press law of the German province of Nordrhein-Westphalia, but I have compared the Albanian law with the German original and there are quite a few differences. More importantly, the Albanian law exists largely in a vacuum, since Albania lacks the judicial infrastructure that Germany has, its experience in interpreting speech restrictions, its constitutional history, and other elements that underlie the implementation of the German law.

I think that the great Albanian writer and scholar of the early part of this century, Father Fishta, summed it up quite well in his introduction to a compilation of the most famous oral law code of Albania, the Kanun of Lek Dukagjin:

"Nji ligjë e preme, po zame," he wrote in the rich dialect of northern Albania, "për ingliz, aleman e tjerë popuj të shtruem e të gjytetnuem, sugurisht nuk ban - sado e drejtë e ndershme të jet - për rrebela të Ballkanit." This means, roughly, "Let us consider a cut-and-dried law of the English, Germans or other orderly, civilized peoples: however honorable and just it may be, it just doesn't work for the rebels of the Balkans."

Ironically, because the press law attracted so much criticism, and perhaps also because of the absence of the legal infrastructure, Albania has not used it much. In the last few years, many opposition journalists and others writing in newspapers have been arrested, and most of them convicted, but they have usually been charged with violations of the criminal code, such as defamation, dissemination of state secrets, inciting hatred against parts of the population, and so forth. Perhaps other speakers today will say a little more about some of these cases.

Finally, I will mention two laws passed recently, which are on the verge of being implemented as the elections approach. English translations of both are attached to my testimony. These laws have been described simplistically as barring former senior Communists from holding office until 2002, but the reality is much more complicated than that.

The first law was passed on September 22, 1995 and promulgated by President Berisha on September 26. It is called "On genocide and crimes against humanity committed in Albania during Communist rule for political, ideological and religious motives." The second, intended to implement it but also changing and expanding it, was passed on November 30 and promulgated on December 4. Its title is "On the verification of the moral character of officials and other persons connected with the defense of the democratic state." In this testimony I call them, for short, the genocide law and the verification law. A constitutional court decision issued January 31, 1996 upheld both laws, but made some changes to the verification law.

Before going on, I want to make it very clear that criticizing these two laws is not in any way making a statement or judgment about or downplaying crimes committed during the Communist regime in Albania. I was not there then; as an American lawyer, I was not permitted even to enter the country. Hundreds of conversations with people who lived through this period have given me some knowledge of it, but it would be presumptuous and improper of me to

draw conclusions about or make light of what the people of Albania went through in those years.

But if we are really committed to the "rule of law", it is proper that we analyze individual laws, including these, which have serious defects on their face and significant dangers that may well flow from their implementation.

The genocide law is so called because the first two of its five short articles direct the office of the prosecutor to investigate communist crimes against humanity "with priority" and provide that the present code of criminal procedure shall apply to the perpetrators of these crimes. But the third article is the heart of the law: it declares that persons in a number of categories may not be elected to central or local organs of power or named to the high administration of the state, the judicial system and the mass media until December 31, 2001. You can see the categories in the translation, along with the proviso at the end "with the exception of cases when they have acted against the official line and distanced themselves publicly."

You can also see near the beginning of the article that these persons are defined as the "perpetrators, promoters and implementers" of Communist crimes against humanity and genocide. This, I believe, is designed to meet the objection often made to laws of this kind that they punish status, and not conduct. But creating an irrebutable presumption that the status entails the conduct in no way closes the evidentiary gap.

The verification law, whose purpose, as I said, was to implement the genocide law but which also amends and broadens it, begins with an extensive list of positions in government that may not be held by people in the prohibited categories. Journalist for a newspaper with a circulation of more than 3,000 was originally one such position; but as you can see, since the translation includes changes made by the constitutional court decision, that was struck down, on the correct ground that such a position is not a state job.

The second article expands on and adds to the prohibited categories of the genocide law. I think it is important to note that even as expanded it does not cover all senior communist positions; candidate members of the Central Committee, for example, are not included, nor are various other positions equal in rank to ones that are listed. On the other hand, the categories of informer, aggravating witness in political cases and several others

include many people who were not members of the Party of Labor at all, much less high-ranking ones. It has been estimated many times that in the tight Communist police state that Albania was for forty-five years, as much as one-third or one-fourth of the entire population was registered in one way or another with State Security (Sigurimi). In theory, all of these people are covered by these laws.

The remainder of the verification law sets up a seven-member commission all of whose members are appointees of the ruling party. They can be removed at any time and for any reason by the person or organ that appointed them. They meet in closed sessions and, by majority vote, say "yes" or "no" to people who would be candidates for Parliament or any of the other positions listed at the beginning of the law. The commission must act within fifteen days, and a rejected applicant has one appeal, direct to the Court of Cassation, which also must act within fifteen days.

It is not yet clear how this time frame will fit with the upcoming parliamentary elections. Opposition parties will need time to replace rejected candidates, and the replacements will have to go through the same procedure. The procedure and timing are wholly within the control of the party in power. Even the constitutional court, while approving the laws in general, felt nervous about this and directed parliament to supplement the law to assure that the time limits will be respected.

Finally, the commission will have access to "all archival material," including the archives of the Party of Labor and the Sigurimi. After the commission completes its work, disclosing this documentation is prohibited until 2025. This is intended to end the question of what to do with the Communist era files, a question of enormous debate in Albania as throughout the region. Time will tell whether this law will truly end that debate.

Despite the rhetoric of their titles and preambles, these laws fall within the category that has become known as "lustration" laws, the first example having been passed in what was then Czechoslovakia in 1991. The word is borrowed from ancient Roman religious rituals called "lustrum" and "lustratio," and is intended to convey the meaning of purification. Calling them "purge" or "screening" laws would be clearer.

To the extent that the genocide law actually deals with serious crimes, Albanian critics quickly noted that genocide, murder and similar crimes had been against the law

at all times. The former President Ramiz Alia, the widow of dictator Enver Hoxha and most living former Politburo members had been prosecuted and convicted between 1992 and 1995, generally of lesser crimes such as misappropriation of funds. Ramiz Alia, indeed, had served his sentence and was released last July. He has recently been re-arrested, along with numerous others, although it is not yet clear what new evidence will be presented. That the genocide and verification laws were enacted not in 1992, when the Democratic Party first took power, but on the eve of the 1996 elections and following the dramatic referendum defeat, has understandably led many to a cynical conclusion.

Another problem is that the laws conflict openly with Albania's admirable charter of human rights, which has constitutional status. The constitutional court got around this issue in a way that reminds me of its 1992 decision justifying the Attorney General's removal: Parliament has the power to override some people's constitutionally guaranteed rights if they believe that this guarantees the implementation of all human rights. Perhaps there is some progress in that this time, at least, a dissenting opinion identified the issue clearly and spoke out boldly for complying with Albania's fundamental law.

I do not want to end this discussion on a negative note, but right now in Albania, the challenges to the legal order are great. The United States should try to understand the situation there as best it can and give appropriate support, because peace and stability in the Balkans are in our national interest, and a country that truly respects and implements the rule of law creates conditions of peace and stability for all its citizens.

Avash avash, the Albanians say: slowly, slowly. Democratic legal development is always slow. If enough people are persistent, however, I am convinced that it will come to Albania.

Thank you.

Commission on Security and Cooperation in Europe  
Hearing on Albania  
March 14, 1995, Washington D.C.

Testimony of Fred Abrahams - Human Rights Watch/Helsinki

First of all, thank you for inviting me here to speak. As always, Human Rights Watch is grateful for the opportunity to participate in these discussions.

My name is Fred Abrahams and I monitor the human rights situation in Albania for the Helsinki division of Human Rights Watch. I spent one year working in Albania as a journalist and at a Media Training Center in Tirana during 1993-94 and have visited the country three times since then. Based on this experience, I can testify that Albania has taken some important steps to establish a democratic state with respect for human rights. According to law, Albanian citizens are now free to travel, practice their religions, open businesses and express criticism of the government. All of these rights signify a dramatic break from the not-so-distant past.

However, the experience of the last five years also reveals how difficult it is for Albania to shake its Stalinist past. Although Albanian law recognizes the basic civil and political rights outlined in the Helsinki Accords, in practice Albanian citizens are still not adequately free to enjoy these rights. In part, we may attribute these restrictions to Albania's lack of experience with democracy. But in many cases, human rights

violations in Albania are the direct result of specific actions taken by the new government.

Of particular concern is the state's continued interference in the judiciary. Despite many improvements, the court system is still used as an instrument of the state, especially against the political opposition. The leader of the largest opposition party is currently in prison after a trial fraught with due process violations. Since 1992, numerous other critics of the government have been harassed, tried, imprisoned or, in a few cases, physically attacked by unknown assailants — usually without any response from the government.

Judges that make independent decisions on sensitive cases are sometimes reassigned to lesser posts or fired. More than 400 persons were mostly selected by the ruling Democratic Party to participate in a special six-month law course. Upon completion of the course, they were enrolled as last year, part-time students in the law faculty. Today most are working as judges and prosecutors throughout the country.

Last September, the Chief Justice of the Supreme Court was unconstitutionally sacked by parliament, prompting a protest from the U.S. Department of State. According to constitutional law, a Supreme Court judge may only be dismissed by parliament when proven that he has committed a serious crime or is mentally incapable to perform his duties, neither of which the Albanian government was

able to prove. Despite this, parliament voted 73-0 to remove the Chief Justice from his post. However, Human Rights Watch obtained the official voting record from parliament proving that the vote had been falsified in order to obtain the necessary quorum of 71.

The government has undertaken an ambitious effort to prosecute former communist officials who committed crimes during the previous regime. However, the process has been selective and, at times, in violation of international law. Some former communist officials were denied the right to a fair trial, while others have avoided prosecution altogether because of their ties to the current government.

Freedom of the press is also circumscribed. Despite numerous promises from President Sali Berisha, no legislation exists to allow for the transmission of private television or radio, leaving the state-run programs that favor the government as the main provider of news for the majority of the population. Attempts to open private local radio stations have been thwarted by the police.

While there are many private newspapers throughout the country, they are restricted by a repressive press law and obstacles to their distribution. Since 1992, a large number of journalists, including foreign correspondents, have been harassed, arrested or beaten by unknown assailants after writing articles that were critical of the government.



In recent months, the largest daily in the country, *Koha Jone*, has experienced repeated harassment and intimidation at the hands of authorities. In January, the paper was publicly accused of collaborating with the Serbian secret police, although no concrete proof has been made public. On February 26, police detained the entire staff of the paper, including the publisher, editors, journalists, computer operators, drivers and a cleaner, in order to question them about a bomb that had exploded that morning in Tirana.

The rights of minorities have improved since the fall of communism. Nevertheless, problems do exist, particularly with the sizable Greek minority in the south of the country. In September 1994, five members of the ethnic Greek organization Omonia were tried and convicted on charges of espionage and the illegal possession of weapons in a case that violated both Albanian and international law. The five defendants were later released but not before 70,000 Albanian guest workers had been expelled from Greece as retribution by the Greek government. The issue of Greek-language schooling and the return of property owned by the Orthodox Church are also areas of concern.

In general, however, I believe that the problems of the Greek minority are related to the question of democracy in the country as a whole. Many of the minority's specific complaints, such as discrimination in state employment and harassment by the secret police, are the same complaints made by the political opposition.

In other words, all Albanian citizens with different views from the central authority -- either on an ethnic or political basis -- suffer repercussions.

Religious freedom has largely been restored in what was Europe's only officially atheist country. New mosques and churches are being constructed at a rapid pace to rival the military bunkers that dot the landscape. As mentioned, the government could expedite the return of former church property. There have also been two failed legislative attempts by the government to control who may head a religious community. In general, however, Albania has not succumbed to the religious hatreds that have ripped apart the former Yugoslavia. As the noted Albanian poet Pashko Vasa has said: "The religion of Albanians is Albanianism."

Parliamentary elections are due in the spring of 1996 but, as of today, no fixed date has been set. Based on the Albanian government's human rights record during the last four years, I must express my deep concern that these elections will be neither free nor fair.

First of all, a new law requires all potential candidates to be screened by a special commission composed solely of government representatives. Any person found to have held top positions in a communist-era government, or to have been a collaborator with the former secret police, will be prohibited from running in the elections. Individuals may appeal to the Supreme Court, but the

timing of the campaign, as outlined in a newly passed electoral law, makes this appeal procedure virtually unavailable.

The same electoral law also revised the composition of the electoral commissions to the advantage of the government. Electoral zones will be devised by the President, and the Democratic Party will receive a disproportionate amount of media air time.

The biggest problem, however, is the government's bi-polar perspective on politics. From President Berisha down, Albanian officials have repeatedly demonstrated an "us versus them" mentality. If you are not for us, you are against us. If you're not a democrat, you're a communist. Criticism is viewed as treason, dissent as a crime.

In closing, I would like to say that the United States can play an important role in fostering Albanian democracy. However, in my opinion, it is crucial to encourage the process rather than the party. Albania has a long history of strong leaders, from Enver Hoxha to King Zog, and I believe it is a mistake to encourage the historical trend toward centralization by supporting one specific political force. Rather, the United States can assist in the construction of democratic institutions and the evolution of democratic culture. One way to do this is to maintain and, if possible, increase the amount of foreign aid given to the country.

Finally, I would mention that today Human Rights Watch released a full report on human rights in post-communist Albania, which documents many of the abuses I have mentioned today. I am making it available to the commission. Journalists and others present today may see me after the hearing to obtain a copy. Thank you very much.

Zef Brozi  
12/95

FOR THE EAST EUROPEAN CONSTITUTIONALISM REVIEW  
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THE INDEPENDENCE OF JUDGES IN ALBANIA  
DURING THE PERIOD OF TRANSITION:  
AN IDEAL AND A BITTER REALITY

Until the end of 1990, Albania was a one-party Communist state, self isolated from the world. The separation of the three powers was not accepted even nominally in the Constitution. Under the Constitution of 1976, the Party was the principal guiding force of the state and society. The judicial power was not considered separate or independent.

In December 1990, after student demonstrations joined in by the people, political pluralism was legalized and other parties were created, the first of them being the Democratic Party, founded December 12, 1990. On March 31, 1991, the first pluralist parliamentary elections were held, and won by the (Communist) Party of Labor by a large majority. Nevertheless, during most of 1991, a coalition government ruled Albania. The 1976 Constitution was repealed at the end of April and replaced by a "law on the major constitutional provisions," intended to be transitional.

On March 22, 1992, early parliamentary elections were held and won overwhelmingly by the Democratic Party. While a Parliamentary Commission worked on a complete new Constitution, a chapter on the judiciary was added to the

major constitutional provisions, setting up for the first time a Supreme Council of Justice (SCJ) and a Constitutional Court, and proclaiming the independence of the judicial power.

#### 1. THE JUDICIAL SYSTEM BEFORE 1992

The structure of the judicial system in Albania before 1992 was: A Supreme Court, courts of the second level (zonal courts), courts of the first level (district courts), and courts in villages and cities that were "people's courts," without professional judges.

Judges were elected for specific terms. The judges of the Supreme Court were elected by Parliament every four years, without any limitation on their right to be re-elected. Other judges were elected by the people every three years by secret vote. In order to be elected a judge, a person had to be a law graduate and was supposed to enjoy popular trust and respect. Judges were not prohibited from taking part in politics. In fact, most of them were party members, some in leadership positions.

The whole judicial system was directed by the Supreme Court, which had wide powers. (The Ministry of Justice was abolished in the late 1960's and not re-established until 1990). It administered the judicial budget approved by Parliament; all judges were subordinate to it; it directed their professional qualification and saw to the proper functioning of the work of all courts. The judicial system was a well-oiled machine. The Supreme Court was the supreme authority.

## 2. THE JUDICIAL SYSTEM FROM 1992 UNTIL TODAY

### 2.1 THE LEGAL FRAMEWORK

In Law Nr. 7491, dated April 29, 1991, "On the major constitutional provisions," approved by the first pluralist Parliament, it was accepted for the first time that "[t]he fundamental principle of state organization is the separation of the legislative, executive and judicial powers."

Matters connected with the structure of the judicial system, the principles of its functioning, the criteria for and manner of election, and the naming and removal of judges found full legal regulation in constitutional law Nr. 7561 dated April 29, 1992 "On the organization of justice" and in ordinary law Nr. 7574 dated June 24, 1992 "On the organization of justice and some changes in the Codes of Criminal and Civil Procedure."

According to article one of the constitutional law, "The judicial power is separate from and independent of the other powers."

The new judicial structure consists of the Court of Cassation (the highest court), the appellate courts, the first level courts and military courts. There is also a separate Constitutional Court. The number of courts, their territorial jurisdiction and the total number of judges is set by presidential decree. At present, Albania has one Court of Cassation, one court of civil appeals, one court of military appeals and thirty-six district courts. The total number of judges is about 300.

## 2.2 ELECTION AND REMOVAL OF THE JUDGES OF THE COURT OF CASSATION.

The method for electing and removing judges of the Court of Cassation is regulated by the constitutional law.

Judges of the Court of Cassation are elected by Parliament for a seven year term with the right of re-election. The president proposes the chairman and vice-chairmen, while the deputies may propose other judges.

The judges enjoy immunity. They may not be detained, arrested or punished for acts connected with the fulfillment of their duties.

A Cassation judge may be removed from office, by a reasoned decision of Parliament, only in two cases: first, when it is verified that he has committed one of the serious penal acts specified by law; second, when he is mentally incompetent.

As can be seen, although the constitutional law does not contemplate life tenure for judges, it guarantees their non-removability. The law leaves no room for other motives for removing a judge of Cassation, except for the two cases contemplated in it. But experience would show that this law would be violated without hesitation in the attempts of the other powers to subjugate the Court of Cassation. In practice, the reasons for removal were extended without any limitation, as will be discussed below.



### 2.3 NAMING AND REMOVAL OF THE JUDGES OF THE DISTRICT AND APPELLATE COURTS

Judges of the district and appellate courts are named by the Supreme Council of Justice (SCJ). Unlike the judges of the Court of Cassation, who are elected for a seven year term, they have no fixed term.

The conditions for being a judge and for removing a judge are set out in law Nr. 7574 dated June 24, 1992 "On the organization of justice...". Under it, persons who are Albanian citizens, have a law degree, enjoy full capacity and have good moral character may work as judges. They are discharged from office by decision of the Supreme Council of Justice when they commit a penal offense, become incompetent from the viewpoint of health, do not pass a periodic professional examination, violate work discipline or commit a "moral infringement."

Thus, the reasons for removing these judges are much broader and do not correspond with the constitutional principle of the non-removability of judges. They give the green light to the executive and political power to discharge those judges who displease them.

By law, the Minister of Justice has the right to take certain disciplinary measures against judges (except judges of Cassation): he may reprimand them or warn them of a possible discharge from work. Furthermore, he proposes other disciplinary measures to the Supreme Council of Justice: suspension from work, transfer or discharge. In practice, although he does not have the right by law, the General Prosecutor also does this. These procedures are

contrary to the Constitution of Albania and unprecedented in the Western world, and has been harshly criticized by international institutions, as well as within the country.

Albanian judges are always in danger and threatened. Whenever he wants, complying with the political interests that he defends, the Minister of Justice can put pressure on or discharge "faithless" judges.

The law provides that the judges have immunity and may not be searched, detained, arrested or criminally prosecuted without the authorization of the Supreme Council of Justice. But in practice, this principle has been violated, and in some cases judges have been arrested without legal reasons, without the authorization of the SCJ but merely by the order of a prosecutor or an employee of the police.

### 3. THE SUPREME COUNCIL OF JUSTICE

Since the major questions relating to the district and appellate judges are connected with the Supreme Council of Justice (SCJ), it is necessary to speak a bit about this organization.

The SCJ was created for the first time in constitutional law Nr. 7561 of April 29, 1992. In article 15 of that law, the manner of formation, composition and competencies of the SCJ are set out.

The SCJ consists of the President of the Republic, who chairs it, the chairman of the Court of Cassation, the Minister of Justice, the general prosecutor (attorney general), and nine jurists elected one time for a five-year

term at a joint meeting of the Court of Cassation and the Office of the General Prosecutor.

Its competencies are naming district and appellate judges, taking disciplinary measures against them, discharging them from office, and authorizing their criminal prosecution. Its decisions are taken by a simple majority of votes. No information about its proceedings or discussions is given to the public or even to the judges discharged by its decisions.

Many critical comments can be made with respect to this legal structure and the activity of the SCJ to date. First, the law should provide how many judges, how many lawyers and how many prosecutors are to be members of the SCJ, assuring a majority of judges from all levels. At this time, no lawyer is a member of the SCJ, judges are in the minority and the representatives of the executive are in the majority. Not unexpectedly, the results of the voting tend to be in favor of the executive power rather consistently.

Second, the Minister of Justice and the general prosecutor should not be members of the SJC, or should not have the right to vote, because they may use their power to threaten judges or punish them. (It may be noted that the Minister of Justice chairs the Bulgarian analogue of the SJC and does not have the right to vote).

Third, the members of the SJC should be elected by the association of judges and the Bar Association (association of private lawyers). In this way, the elected members would represent and protect the interests of the judicial power rather than the executive power. Today's method of electing

nine jurists is in fact a designation and not an election. The President has named them himself, although the law does not give him this right and although they have been formally approved by the Court of Cassation and the Office of the General Prosecutor. Practically, the President has selected those who are his trusted men, who will not raise opposition even when the interests of judges and the judicial power are seriously violated. This has made the SJC only a formal entity, while in fact, the President decides.

It is significant that the office where the SJC meets is in the building of the presidency, right next to his office, and the secretary of the SJC is one of the president's secretaries.

Fourth, the procedure of giving out disciplinary measures to judges and removing them is in contravention of all experience of other states, whether Western or Eastern, and the standards of international acts with respect to an independent judicial power. As noted, disciplinary measures against judges are proposed by the Minister of Justice or the General Prosecutor, who also take part in the vote on them. The judge against whom the measure is taken is neither notified nor called to give explanations. The law gives him no right to appeal.

Under this procedure, during the years 1992-1995, about 92 judges were removed. The reasons for their removal were generally more political than legal. Judges who did not see eye to eye with positions of the party in power, the Democratic Party, were removed in a flash. The Council of Europe asked for explanations from the Albanian government about the removal of these judges, but that was all.

For giving disciplinary measures to judges, it would be better to create a disciplinary commission consisting of only judges and lawyers. The commission could be a constituent part of the SJC, as is the case in Italy, or separate, as in many other countries. In no case should the person proposing the punishment against a judge be a member of the disciplinary commission or take part in the vote.

Fifth, the manner of functioning of the SJC should be regulated by law and not by rules that it itself adopts. Experts from the Council of Europe and America have supported this recommendation. In fact, from 1992 until March 1995, the SJC had functioned without rules. And even the rules eventually adopted in 1995 conflicted with the Constitution in a number of articles.

Sixth, the procedure of nominating judges has received much criticism. The Minister of Justice proposes them. The professional qualifications and moral stature of the candidates are not evaluated, but rather their political attitudes and party sympathy. During the years 1994-1995, the majority of the judges named had no experience and, indeed, had limited legal training. They had been prepared with six month law courses in 1993, rather than receiving a normal diploma from the Faculty of Law as the law requires. Although the original intent behind the courses was a sort of affirmative action for people who had been politically persecuted, and the Society of Politically Persecuted People made some nominations, in fact, most of the approximately 450 students who were chosen for the courses were Democratic Party loyalists or active sympathizers. As a consequence,

the professional level in the district and appellate courts has become extremely low, and many judges are politicized.

A more honest and beneficial way to name judges would be by competition, depending on their professional skills. The judicial conference of the Albanian Judges Association held in Tirana July 27-29, 1995, made a declaration in which, among other things, it criticized the practices to date of the SJC in naming and removing judges and sought that the designations be done by competitive examination and not based on political criteria and that the non-removability of judges be guaranteed.

#### 4. THE WAR OF THE PRESIDENT, THE GOVERNMENT, THE CONSTITUTIONAL COURT AND THE OTHER MECHANISMS OF POWER TO SUBJUGATE THE COURT OF CASSATION IN 1994-1995.

The political and executive power, and the parliamentary group of the Democratic Party (DP), continue to be directed by the same mentality and positions with respect to the courts and the judges as in the past, in the years of the dictatorship, although with a democratic veneer.

The three year period 1992-1995 has shown that the independence of judges in Albania will be much delayed in its realization, although it has been accepted in the law. Just as in the past, the political and executive powers, as well as the legislative one, are trying to make the courts trusty tools in their hands.

Today in Albania, a neo-dictatorship holds power, dressed in a democratic veil. Political opponents are

fought against, threatened and imprisoned; human rights and freedoms are openly violated; and corruption by those in power is constantly increasing. Freedom of speech is accompanied by the imprisonment of journalists who dare to criticize the current regime, especially with respect to corruption or dictatorial practices. People fear the secret police (now called SHIK instead of "Sigurimi"), which has been put in the service of the PD and the President. All those whose political beliefs deviate from the ruling party are at risk of losing their jobs. The state crushes and distorts the individual. These people need protection to be assured on the basis of law, and only independent courts can provide such a protection.

During the years 1994-1995, the Court of Cassation was the only state institution that showed signs of independence from the dictates of the president, the government, the political and legislative powers; that had begun to awaken people's hope and trust that their violated rights could have lawful, honest judicial protection.

The president and other powers commanded by him fought fiercely, and with astonishing intrigues, against the attempts of the Court of Cassation for a judiciary independent from them. And with the silent tolerance of the Western World, including the Council of Europe to which Albania had just been admitted at the end of June, and a people used to subjugation, the president reached his goal on September 21, 1995.

On that night, the Chairman of the Court of Cassation was discharged in lightning-speed, in a parliamentary

proceeding called by the President, with only PD deputies present, and the absence of a quorum.

#### 4.1 WHY DID THE WAR OF THE PRESIDENT AND OTHER POWERS AGAINST THE COURT OF CASSATION AND ITS CHAIRMAN BECOME SO INTENSE IN 1994-1995 AND NOT BEFORE?

The time period of the duel between the Court of Cassation and the forces mentioned above is not coincidental. To make the answer somewhat more clear, it is necessary to digress briefly and discuss certain things experienced in those two years.

A Democratic Party member of Parliament had been appointed Chairman (Chief Judge) of the Court of Cassation in late September 1993 to fill a vacancy. At the beginning of 1994, having seen many official documents go from the Office of the President, Parliament, and the leadership of the Democratic Party in which orders were given about specific cases under adjudication, he sent a letter to those institutions, in which he asked them not to interfere in the work of the court and not to send formal or informal orders about such cases. Shortly thereafter, following a meeting of the Supreme Council of Justice at which both had been present, the President took the Chairman of Cassation aside and angrily commented about this letter that "you [the Chairman] are obliged to keep me informed and carry out my orders even about court cases."

Furthermore, from many court cases and citizens' complaints, it became clear that the police, the prosecutors' offices and the secret police (the National Information Service, or "SHIK" from its Albanian initials)



were not complying with the requirements of law and the Constitution and the code of criminal procedure in connection with searches of homes and persons, detentions and arrests. Among other things, physical and psychological violence was being used against the persons detained or arrested, in some cases even causing their death; and the orders of the court were not being implemented by the police, which sought to put themselves above the courts. To correct these violations, the Chairman of Cassation wrote a letter to the President and the Minister of the Interior in April 1994, asking that measures be taken to guarantee the respect of the constitutional laws about human rights. But on the contrary, instead of doing this, the persons to whom the letter was directed began a joint war against the Chairman of the Court of Cassation.

This set the stage for the events of late May, 1994, when the Court of Cassation found two journalists of the independent newspaper "Koha Jone," Aleksander Frangaj and Martin Leka, innocent of a charge of the dissemination of a state secret. The Chairman of Cassation had been the head of the three-judge body that decided the case, and the day after the decision was announced, the President called the Chairman into his office and expressed his outrage at the decision. "Why did you find the journalists innocent? Why didn't you ask me?" The Chairman responded: "No, Mr. President. For decisions of the court I don't account to anyone, not even to you."

It is noteworthy that, although expressing his strong feelings about their guilt, earlier in May, in response to international pressure, the President had given a pardon to

Frangaj and Leka, along with some other journalists, while the case was on appeal to Cassation.

On November 6, 1994, a draft constitution to replace the law on the major constitutional provisions was voted on by the Albanian people in a referendum. It was the good fortune of Albania, however, that the people voted against it. Prepared under the President's tight control, and approved by a commission whose majority was PD, it strengthened the personal power of the President, already strong under the major constitutional provisions, while giving lip service to Albania's remaining, formally, a parliamentary republic. The draft also made inroads on the principles of religious freedom by dictating governing conditions for major religions. Importantly, while proclaiming that "the judiciary is independent," it not only failed to guarantee judicial independence but violated the independence of the judicial power and especially that of the High Court (Cassation).

Under the draft referendum constitution, which according to the President "God himself had blessed," the High Court was actually put under the power of the President, because on his proposal, for any reason, its judges could be removed by Parliament. The requirement of proof of a serious crime, specified by law, was dropped, as well as the requirement that Parliament issue a reasoned decision that the crime had been proved. Since the cases for removal were not described at all, the referendum constitution would have given an open road to the full dependence of the high court on the political, executive and presidential power.

According to his hidden plans, as soon as the Constitution won, the President was going to remove its chairman as well as several other judges of Cassation who had been his allies in the fight for an independent judiciary.

Since the referendum constitution lost and the people won, the President angrily sought other ways to subjugate the Court of Cassation.

On November 17, 1994, the police and the deputy general prosecutor created an incident in the corridor of the General Prosecutor's office, while the Chairman of Cassation was in a meeting. His chauffeur and bodyguard were injured, and the prosecutor's bodyguard drew his gun but was prevented from shooting. This provocation was a threat to the Chairman himself, a warning that there would be a physical attack on him too. That same day, the Chairman of Cassation called a press conference, drawing attention to the attack and denouncing it as a political attempt, organized in the high offices of the state. Time proved him right.

The Chairman has sometimes been criticized for using the press during the attacks on him and his office, but it is important to stress that the press was virtually the only means available to him at that time. The criminal justice system did not function. For example, in the incident described above, and in others to be discussed, no criminal proceedings were ever begun against the persons who initiated the violence or crimes.

## 4.2 THE KALLAFATOS CASE

On December 29, 1994, in an unexpected and lightning-fast manner, the General Prosecutor, under the President's orders, presented to Parliament a request for the removal of the immunity of the Chairman of the Court of Cassation with an accusation ungrounded either in law or in fact: the Chairman's signing of an order, prepared by the chair of a three-judge body of Cassation not including him, to release from jail a Greek citizen and foreign investor in Albania, Kostadinos Kallafatos.

In late November, 1995, the three-judge body of the Court of Cassation had reversed the two decisions of the lower courts, which had sentenced Kallafatos to four years' imprisonment for his alleged possession of 260 grams of unprocessed leaves of cannabis sativa. He had not been in jail prior to trial, and therefore had been arrested and taken to jail directly from the district court, in accordance with normal Albanian criminal procedure. Upon the reversal of the conviction, therefore, again in accordance with procedures, an order for his immediate release was sent to the prison. Such orders are normally and customarily signed by the chairman. The procedure is an administrative one, not specified in detail by the law in effect at that time, and it was this fact that gave the executive power an idea of a possible way to attack the Chairman.

From November 22, when this order was issued, and December 29, 1994, no problem about the case or the procedures was brought to the attention of the Chairman of Cassation or raised in Parliament. On the day when the

question was finally brought to Parliament, the Chairman was working as always in his office and had no knowledge of the accusation nor any chance to defend himself or give explanations in Parliament, contrary to its rules. Expecting Parliament's rubber-stamp approval, the police had surrounded the building of the Court of Cassation and were ready to arrest the Chairman. But Parliament deferred consideration of the question temporarily.

At this point, many international organizations, the Albanian Helsinki Committee and the Organization of Albanian Judges, lawyers and politicians protested, considering the accusation an attempt to remove the Chairman of Cassation for political rather than legal reasons. Indeed, on February 8, the Chairman was scheduled to head a three-judge panel reviewing the case of five Albanian citizens, members of the Greek minority and leaders of that minority's organization "OMONIA," who had been given prison terms for espionage. The state feared an honest adjudication under the law, because they knew the weaknesses of the case. Thus, they sought to accelerate the date of the adjourned hearing in Parliament.

Throughout January 1995, the President worked on the deputies of the DP, including calling a special meeting of the PD Parliamentary group, to tell them to vote for lifting the Chairman's immunity, which would lead to his arrest and consequent removal from office. On February 1, taking advantage of the absence of many opposition deputies, the DP brought the case to the floor of Parliament for discussion. At first, the Chairman of Cassation was not permitted to enter Parliament nor to give explanations. After four hours

of insistence by a number of deputies, he was finally permitted to speak before Parliament.

The debates continued into the night. Among other things, they concerned whether or not the vote would be secret, as required by the rules of Parliament, or open, as the leadership of the DP Parliamentary Group insisted. It was finally decided by secret vote that the vote on the Chairman's immunity would also be secret.

Foreseeing that the results of the vote would not be what the President wanted -- he was calling the chairman of Parliament every few minutes with instructions and comments -- ten minutes before the vote was to take place, a deputy of the PD took the Chairman of Cassation aside and asked him to resign before the vote, in which case the question of his immunity would be withdrawn and he would not be arrested. Understanding their fear, but considering that to do so would be dishonorable, the Chairman of Cassation refused to resign. Around midnight, the secret vote was taken, and his immunity was narrowly upheld.

The independent press at that time called this the President's second great loss, after the referendum. Public opinion was favorable to Parliament's stand, but adherents of the President increased their pressure on the Court of Cassation and its chairman. The secret police trailed him constantly, surveilled his home and his telephone calls, and threatened him on the telephone, among other things.

#### 4.3 THE OMONIA CASE

On February 8, as scheduled, the Cassation hearing on the five OMONIA defendants took place. For more than a year, this case had aggravated relations with Greece, which had forcefully expelled more than 70,000 Albanian refugees working in Greece. Many American and European organizations sought the release of the five. Nonetheless, the President of Albania and organs subordinate to him pressured the court to keep them in prison. There was even an attempt to steal the files of the case from the safe of the Chairman of Cassation, but foreseeing the possibility, he had had them moved to another office.

The hearing was public, with the participation or presence of many diplomatic representatives, human rights institutions, deputies, American and Greek lawyers, and journalists. The judicial process revealed the unlawful acts of the secret police (SHIK), the office of the prosecutor and other state mechanisms in this staged proceeding.

The three-judge panel of the Court of Cassation decided on the release of the five imprisoned defendants. The Chairman, in the minority, argued for a finding of innocence, based on illegalities in the proceeding and the absence of convincing evidence. The other two judges confirmed the guilty finding, but held that the defendants should be released on probation.

The release of the five caused an earthquake in the office of the president, the office of the prosecutor and SHIK. The head of the secret police (SHIK) called the

Chairman of the Court of Cassation in his office right after the decision was issued and threatened him, calling him un-Albanian and a traitor and saying that "we will get rid of you...". That shameful act was publicly denounced by the Chairman and by journalists who were in his office and themselves heard the tense conversation. Although it constituted a criminal offense under law, no proceeding was ever initiated.

In addition, the deputy general prosecutor, after consultation with the President but in violation of the requirements of law in several respects, ordered a stay (suspension) of this decision. Faced with pressure from representatives of a number of foreign embassies in Tirana, representatives of international institutions and foreign and local journalists who had followed the proceeding and, after the verdict, stood all afternoon and evening in front of the prison awaiting the release of the defendants, after eight hours or so the Office of the General Prosecutor was obliged to retract the order of suspension of the judicial decision. The five members of the Greek minority were released around midnight. Threatening telephone calls from high offices of the state to the home of the Chairman of Cassation continued during the night.

The decision was well received by the people and, of course, by the defendants. Relations between Albania and Greece began to improve sensibly. Albanian politicians who had attacked the Court of Cassation began to travel for official visits in Greece.



## 4.4 THE KRYEZIU CASE AND OTHER DEVELOPMENTS

In March 1995, the Court of Cassation reversed the guilty finding of two persons convicted on the basis of evidence that had been created by the police and SHIK. This case, also known as the "Kryeziu-Meshi Case," was another one that revealed serious violations of human rights in Albania. Because it got little attention outside Albania, the facts will be discussed in some detail.

On June 26, 1993, Ismet Kryeziu, an ethnic Albanian from Kosovo working in Tirana, was arrested and accused of possession of unlicensed arms. The district court sentenced him to eight years imprisonment, and the court of appeals affirmed. A policeman, Lin Meshi, accused of collaborating with him, had been sentenced to two years imprisonment. When the case came to Cassation almost two years later, after innumerable delays and trials held behind closed doors, it turned out that the two were innocent, victims of a trap set by the police, the prosecutors and SHIK, with possible implications to higher executive levels.

Lin Meshi revealed that he had been ordered to plant weapons in the home of his friend Kryeziu on the night in question, with the understanding that other police would break in on them. And so it happened. The police did not have the appropriate search warrant. They found nothing incriminating except the weapons Meshi had brought. They also arrested Meshi, explaining that this was necessary for appearances but that he would be released from jail in a few days. To his surprise, a criminal proceeding began against him. Again it was explained that appearances required it, that he should not tell the truth about Kryeziu and that the

proceeding would be dropped. But his imprisonment dragged on. Finally, he told the prosecutors directly what had happened and they released him, but he was ordered not to tell the truth in the court proceeding against Kryeziu.

Disobeying the orders of his superiors must have been difficult for a simple policemen, but on the day of Kryeziu's trial (closed for ostensible reasons of state security), he did tell the truth. Nonetheless, Kryeziu was found guilty. In an act of revenge, Meshi himself was re-arrested and sentenced to the two years imprisonment noted above.

In finding the innocence of the two men and ordering their immediate release, the three-judge panel headed by the Court's Chairman noted, among other things, that not only was the whole process a trap set by the police and the secret police, but the prosecutors and judges of both levels joined in a compromise to hide the truth; the initial search was illegal; other requirements of constitutional law were not respected, such as the right to a lawyer during the investigative process, the right to be presented promptly before a judge, the right to a speedy trial, and others. An arms possession charge should not have been called a "state secret," with the trial held in secret and delayed for many months, with numerous adjournments of what was a factually simple case.

The decision received wide publicity in Albania, which had positive and negative aspects. Positively, it showed the Albanian people that injustice, even in the judicial system, could come to light and be redressed. But, as a serious accusation against the state, it caused an increase

in the attempts of the state to seek vengeance against the Court of Cassation and its Chairman.

In another 1995 case, the Court of Cassation heard and upheld the appeal of the chairman of the court of the district of Korçe, who had been arrested by order of the deputy general prosecutor. The reason was that the judge had modified a measure of arrest ordered by a local prosecutor. Under Albanian constitutional law and international norms, a judge cannot be held responsible nor be prosecuted or arrested simply because other state organs disagree with a decision of his. The office of the prosecutor had, however, brought a case against the judge, accusing him of abuse of office, for just that reason. In the years 1993-1995, the number of cases where judges were penally pursued because of their decisions had increased markedly. The state wanted to frighten judges, and indeed, they were succeeding; the judges felt quite insecure. In this case, the Court of Cassation ordered the release of the judge and made it clear that arresting him had been illegal.

But the more that the Court of Cassation fought for the correct and equal implementation of the law, without discrimination for reasons of political beliefs or party affiliation, or other reasons, the more fiercely the political and executive power fought against it. In May 1995, the parliamentary group of the DP tried to remove two judges of the Court of Cassation (not the Chairman) on the pretext that they had been erroneously elected a year and a half before despite not having seven years' experience in the organs of justice as required by constitutional law. This attempted removal was in violation of the Constitution, which, as explained above, at this time contains very

limited reasons for removing a judge of Cassation. In fact, the attempt was made because these two judges were considered to be in the camp of the Chairman and did not act in the service of the executive. In addition, one of them was the president of the Albanian Judges Society and had publicly spoken in support of the Chairman of the Court of Cassation in his attempts for an independent judiciary. He had also been a member of the judicial body that judged the case of the five minorities. In May, however, shortly before the question of the acceptance of Albania into the Council of Europe was considered, and under international pressure, the removal request was withdrawn by those who had proposed it in Parliament.

The President and the executive looked for other ways. During the months of May and June, the Ministry of Justice and the government tried to have changes made in the just-approved law about the state budget with respect to the budget of the Court of Cassation. The attempt was clear: this court was to be put under budgetary and administrative dependence of the Ministry of Justice. For eight months, the budget of the Court of Cassation was blocked, except for salaries. The changes requested by the executive were made in the law, and the Court of Cassation lost powers that it had had even in the time of the dictatorship, not to speak of the five transition years: budgetary and administrative independence from the executive. Now, the employees of the administration of the Court of Cassation are named by, and are subordinate to, the Minister of Justice, and that ministry administers its budget.

## 4.5 THE DECISION TO REHEAR THE NANO CASE

The "last straw," which led to astonishing machinations by the government and the eventual dismissal of the Chairman of Cassation in violation of the Constitution, was his decision in July 1995 to call the plenum of the Court of Cassation for a rehearing of the case of Fatos Nano, imprisoned leader of the major opposition party, the Socialist Party (SP).

Nano had been arrested in 1993, after his immunity as a member of Parliament was lifted, and sentenced to twelve years' imprisonment after a trial held nine months later for misappropriation of state property "in favor of third parties" and related falsification of documents. The case involved the administration of international food aid to Albania in the difficult transition year of 1991, during the first part of which Nano held various government posts, including that of Prime Minister just before and just after the March Parliamentary elections. (The "third party" was an Italian firm, Levante & Co., chosen to administer the food aid when Nano was Prime Minister but continuing during successive governments, including that of the PD).

Nano and his lawyer, the Socialist Party and a number of international organizations considered his prosecution to be solely political, with the accusations unsupported by evidence. They sought his release from prison. Under the Code of Criminal Procedure in effect at that time, anyone sentenced after a final decision has the right to appeal to the Chairman of the Court of Cassation for a rehearing of his case by the plenum of the Court, that is, by all the judges.

At first, the prosecutor's office had accused Nano of abuse of office and falsification of official documents, but the court amended the charge to misappropriation of state property, a much more serious charge. Under standard Albanian criminal law, the court should not have made the charge against the defendant more serious, as it did in the instant case. Nano had not accepted the accusation either in the investigative phase nor in court, and had presented evidence and arguments in defense of his innocence, but they were not taken into consideration by the court. In his request for a rehearing, Nano also presented new evidence, not previously available, including the decision of the Italian organs of justice which found the delivery of the aid to Albania by Levante & Co. to be in order. According to the Code of Criminal Procedure, this decision constituted full proof of Nano's innocence of the charge of misappropriation.

Among other things, Nano and his lawyer complained of flagrant procedural violations in the investigation and in the trial. He had had no chance to familiarize himself with the investigative file nor had he had sufficient time to prepare his defense; his request for the receipt of various items of evidence had not received any attention; the translation of several documents from Italian into Albanian was not correct or notarized, but, in violation of law, had been made by persons with a state interest in the case. Another unlawful act was the taking of 200 pages from the investigative file because they did not support the accusation. (Later, in December 1995, Nano's lawyer sent his copy of this material to the President as a protest

against his interference in the trial and his keeping Nano in prison).

At the beginning of July 1995, Nano's lawyer presented a request to the Chairman of Cassation to initiate the plenum procedure, setting out the above data and his claims for a finding of innocence. Among his reasons for doing so at that time was the imminent effectiveness of a new Code of Criminal Procedure on August 1 that would take away the plenum procedure.

As for all citizens, in accordance with the rules of the Court, the files were taken from the Tirana district court and studied by the inspectors of legality in the Court of Cassation. They reported that the claims of the prisoner were correct and the case should be reheard in Cassation. (In November 1995, after the Chairman's dismissal, several of these persons were removed from office by the Minister of Justice).

In response, on July 14, 1995, the Chairman of the Court of Cassation ordered that the Nano case be reviewed in Cassation on July 26. Having faced more than a year of battle with the political powers, the Chairman knew that this decision would awaken all the force of the state, directed by the President, against him. He foresaw that the state would use every means to remove or arrest him as they had done before. It was well known that the President had ordered Nano's arrest and imprisonment and that he feared the chairman of the largest opposition party, especially as the new parliamentary elections approached. (Their normal date would be March 1996, but it was said that the President would defer them to give the DP time for the effects of the

absence of lights and heat in winter to die down). It was known that the DP deputies, constituting a majority in Parliament and wanting to keep their power, had no interest in Nano's release from prison. It was also known that if the question of removing the Chairman of Cassation went to Parliament again, the President would not permit the "mistake" of February 1 to be made again, that is, a secret vote. Many believed that the President had data about which DP deputies had been collaborators of the Communist secret police as well as data about current corruption by them, and that this information was being used to control their votes.

Nonetheless, the Chairman of Cassation believed that regardless of all this, the duty of the court was to protect citizens from arbitrariness by the state, treating them all as equal before the law. For him, Nano was a citizen like all the others. He was not to be discriminated against at the whim of the President. The truth about his case was not to be hidden. The case was to be reheard by Cassation. The full bank of judges would decide, according to the evidence and the law.

On the next day, July 15, vicious attacks on the Chairman were printed in the PD press, and in the following days it became clear that all the forces of the state had been marshaled against him. The chairman of the district court of Tirana, a close friend of the President and from his home region, blocked the Court of Cassation from obtaining part of the file of the Nano case (which, in accordance with Albanian procedures, was under his control in the court archives). This act was unprecedented.



It became clear on the day of the hearing that the purpose of this had been to create an excuse for adjournment. On that day, the General Prosecutor appeared before the plenum and said he needed more time to prepare himself, having been unable to read the missing part of the file (although in fact, he could have gone to the archives himself and read it, before the file was blocked). He asked for an adjournment to September, and the Court agreed, with only the Chairman and a few other judges resisting his request. They were aware that a new Code of Criminal Procedure would enter into force on August 1, and were uncertain of its effect on a proceeding that had already commenced.

On the same day, that is, July 26, without the Chairman's knowledge and showing the concerted efforts of the government to sabotage the rehearing, an amendment to the new Procedure Code was presented to Parliament and passed with the votes of only PD deputies. Its text is short: "For criminal cases that are in the investigative stage, at the court of the first level or the court of appeal when this Code enters into force, the provisions of the prior Criminal Procedure Code shall be applied up to November 15, 1995."

In other words, since this law excluded cases in the Court of Cassation, the new Procedure Code would be effective immediately only for those cases on August 1. And the new Code had abolished the plenum procedure. The opposition press referred to this amendment as the "Law against Nano," since the pendency of the plenum hearing against him was the reason for passing it.

## 4.6 FURTHER ATTACKS

Nevertheless, the adjourned date had been set, and as September approached, the public attacks on the Court and its Chairman began again. The party press and state-controlled media waged a campaign of defamation against him, falsely accusing him of having been a collaborator with the secret police, that he was getting divorced even though he had just been married, and telling other untrue and harmful stories.

He was even accused of being "a participant in Communist genocide" because in 1989, when he was a judge in the district court of Tirana, he had had a case involving a schizophrenic defendant. Accused of the destruction of state property and agitation and propoganda, the defendant could have received a lengthy prison sentence, but on the evidence of psychiatric experts that he was mentally ill and could not be held responsible under the criminal law, he had been found not guilty and sent for treatment to a local Tirana facility. All of this was in accordance with standard Albanian procedure, which also permitted him to apply each year to be released.

The expert had at that time recommended he be sent to a mental hospital outside Tirana, a more serious form of commitment, but the judge (now the Chairman of Cassation) agreed with the request of the defendant's legal advisor that the lesser treatment was adequate. When the case was resurrected to attack the Chairman, his 1989 decision was falsified before being printed in the party newspaper, so that it showed him finding the defendant guilty and sentencing him to the other, more serious facility outside

Tirana. In September, the Chairman made a complaint to the district prosecutor for falsification of a court decision and defamation because of this, attaching the original decision that had been falsified. No action has resulted.

These facts are explained in detail to show the lengths to which the government went in its attempts to vilify the Chairman of the Court that was trying to make its own decisions and, among other things, get to the truth of Nano's case, one of the most serious post-Communist legal proceedings in Albania.

On September 1, state television reported that the government had asked the Constitutional Court to declare certain orders of the Chairman suspending (staying) civil judicial decisions unconstitutional. A showdown was clearly imminent. Acting on the principle that "the end justifies the means," the government was clearly going to stop at nothing short of removing the Chairman of Cassation.

From the beginning of its life in 1992, when created under the constitutional law on the administration of justice and the Constitutional Court mentioned above, that Court had distinguished itself for being a political instrument of the President and his party, somewhat like the old Politburo during the time of the dictatorship, carrying out the party's orders, all powerful and answerable to no one. By the Constitution itself, this Court's decisions are final and cannot be appealed, even if they are openly unconstitutional or even criminal.

Involving the Constitutional Court directly in the war against the Chairman of Cassation was the only means left to

the President to get rid of the Chairman while giving the appearance of legality. But the pretext used was absurd. The orders of the Chairman staying certain civil decisions were in compliance with and contemplated by the Code of Civil Procedure in effect, article 185 to be exact. If the parties wished to complain against a stay, they had a legal route to do so, either to the district court or directly to Cassation. But no such complaints had been made. Former Chairmen of Cassation, vice chairmen and general prosecutors had used the procedure themselves, sometimes even in excess of their authority, but without any governmental complaint.

Promptly on learning of the government's complaint, the Chairman himself wrote to the Constitutional Court, requesting them to find the complaint outside their jurisdiction, because by law a citizen with a complaint against a stay could appeal directly, as described above. As expected, his request was not accepted, and the case was set to be decided on September 14.

Continuing the campaign against the Court of Cassation, on September 5 the Minister of Justice ordered the discharge of three employees of the Court. The order was clearly illegal, since the employees had been appointed by the Court itself, by competitive examination. They could be fired only by the Chairman, as employer, under the procedures specified in the new Labor Code (effective at the end of August 1995) and in their contract. Either from ignorance of the law or for some other reason, the Minister of Justice cited a statute that had been repealed in his order.

## 4.7 THE SURROUNDING OF THE COURT OF CASSATION

On September 6, 1995, at seven o'clock in the morning, the building of the Court of Cassation was unexpectedly surrounded by many uniformed police. The ostensible reason was the firing sixteen hours previously of the three employees, who were the director of administration, the director of legality and the documentation clerk and who were not permitted to enter the building. Several judges and other employees of the Court were also impeded from entering, the police jostled them and the director of administration was taken to the police station and kept in isolation for twelve hours. Ordinary citizens and lawyers were prohibited from entering, and the work of the Court came to a halt. Two journalists who took photographs of the surrounded Court were detained by the police and their film was confiscated.

In a special meeting that day, the judges and administrative staff of the Court analyzed the situation and issued a statement to the press. (It is interesting to note that the two judges who voted against the statement became the new Chairman and vice-chairman of the Court on September 21, the night the old Chairman was discharged). The statement said the police action was an unprecedented and a brutal attempt to intimidate the judiciary and called for the immediate removal of the police and for holding the perpetrators of the act criminally liable.

But the police stayed, both the uniformed police who were present outside the Court for two days and members of the secret police (SHIK) who filmed and photographed people coming and leaving, and surveilled the Chairman, throughout

September, until his discharge. His telephone calls continued to be listened to, as had been the case for over a year.

Opposition deputies as well as some from the DP, representatives of foreign embassies and local and foreign journalists came to the Court to learn what was happening. The opposition in Parliament sought an interpellance of the Prime Minister on an urgent basis, but he did not present himself until after the Chairman's discharge weeks later. The Chairman of Parliament, a PD deputy, as well as the vice minister of the Interior, gave interviews on state television in which they denied that a police action had taken place at the Court. But hundreds of people had seen it, and the opposition and independent press had written about it in detail.

#### 4.8 THE SITUATION DETERIORATES FURTHER

The opposition in Parliament continued to seek the interpellance of the Prime Minister, but the President, preparing for his trip to the United States to meet President Clinton on September 12, did not permit it.

The opposition then walked out of Parliament in protest. This, of course, was to the benefit of the President and the PD. Having a majority, they could take whatever actions they wanted without debate, provided only that a sufficient number of their members to constitute a quorum was present. Events would show that not even this requirement needed to be met.

The Cassation rehearing in the Nano case had been set for September 12, but on September 7, the government presented another complaint to the Constitutional Court. This time, they sought a finding that the rehearing would be unconstitutional.

On September 9, the President left for the United States. On the same date, the Attorney General (general prosecutor) left unexpectedly for England. The vice chairman of the Court left for Strasbourg a day later. Both of these people were to have been present at the Nano rehearing, and their staged absence made it necessary for the Chairman to postpone the rehearing until September 20.

The events at Cassation had gotten the attention of many international organizations, which protested against them. The situation was well known in Washington, D.C., too. On September 12, the Albanian President was received in the White House for a short meeting. According to the press release from the White House, President Clinton raised the question of strengthening the independence of Albanian courts. It is not known how the Albanian President responded.

A few days later, the President returned to Albania and the Constitutional Court took up again the two questions awaiting a decision. On September 19, that Court issued a decision holding the proposed rehearing by the Plenum in the Nano case "illegal and unconstitutional." Thus, the hearing scheduled for September 20 was finally and definitively annulled. The political power had achieved several goals. The imprisoned leader of the opposition would not have a reconsideration of his case by the full Court of Cassation.

And the message had gone out clearly to courts and judges all over Albania: do not think for the independence of the judicial power. You will do what we say.

A footnote is in order on the Nano case. Several months later, a three-judge body of the Court of Cassation heard an appeal by his lawyer that had come to them in the regular way, based on certain changes made under the new Criminal Code and dealing only with the length of the sentence, not with his guilt or innocence. The appellate court decision, shortening his sentence by a year, had been issued in July, and Nano appealed to Cassation. The file, however, was not delivered in a timely fashion to that Court; it stayed locked in the safe of the appellate court, leading to opposition protests. The day after the Chairman of Cassation was discharged, the file was finally released and delivered to Cassation. Nano withdraw his appeal, stating that he had no confidence in the Court of Cassation. But a three-judge body heard the case anyway in November, and added back the year to his sentence that the appellate court had taken away.

##### 5. THE DISCHARGE OF THE CHAIRMAN

On September 21, 1995, the Constitutional Court performed another service for the President and the government. At 2 P.M., it issued the requested decision declaring unconstitutional certain suspensions (stays) of final civil decisions.

Thus, the President finally felt he had a legal foundation for what he had been seeking all year: the discharge of the Chairman of the Court of Cassation. Around



dinnertime on September 21, he sent to Parliament his proposal to remove the Chairman, both as chairman and as a judge, on the basis of the Constitutional Court decision issued four hours earlier. As noted above, the opposition parties had walked out of Parliament some days previously to protest the situation at Cassation and the Prime Minister's failure to appear before them for explanations. By acting quickly, the DP could act alone, and so it did. The electronic records of Parliament show that six minutes after the session began, somewhat after 6 P.M., the Chairman of the Court of Cassation was removed from office and from the Court.

As was learned the next day, September 22, not only was the decision unconstitutional, but the vote had been falsified. While the DP had a majority in Parliament, not all of their deputies attended the session, for various reasons. Thus, the number of deputies required by constitutional law to be present -- a majority, or 71 deputies -- was lacking. The vote was recorded as 73-0. At least three deputies from opposition parties have declared publicly that they were not present in Parliament at that time although their votes were counted. Even if all of the other votes are valid, as to which there is some doubt, it is without question that a quorum was not present.

Furthermore, the procedure violated Parliament's rules in other respects. There was no debate, the vote was open (compare February 1), and the question had not been put in Parliament's agenda previously, which would have alerted the opposition.

The same night, a few minutes later, without discussion, the proposal of the President for the new Chairman of Cassation was approved, as well as a new vice-chairman to replace him.

That night, the Chairman of the Court of Cassation was working in his office, not aware of any of this or that the Court was once again surrounded by uniformed police, just as it was on December 29, 1994 or February 1, 1995. He heard the news of his discharge watching television in his office at 8 P.M. Several friends and a representative of the American Embassy were in the office with him, which was appropriate as they had been witnesses to the war against the Court of Cassation and supporters of its Chairman. But there was no need of police. The next day, the Chairman held a simple meeting, handing over his office to his successor and saying good-bye to his staff and fellow judges. He and his wife went for a short rest to Mirdita, the region north of Tirana where he was born, followed by three cars of the secret police. The secret police continued to follow them until he left Albania in November.

FOR WHAT REASONS WAS THE PROPOSAL OF THE PRESIDENT FOR THE DISCHARGE OF THE CHAIRMAN, AND THE VOTE OF THE DP PARLIAMENTARY GROUP, UNCONSTITUTIONAL?

As explained above, the current Constitution sets out clearly the cases when a judge of the Court of Cassation may be removed: first, when it is confirmed that he has committed a serious crime specifically provided by law in the Criminal Code, and second, when he is mentally incompetent.

There is no other reason why a judge of Cassation may be removed. Any broadening of the cases of removal is contrary to the Constitution, as well as to the international acts signed by Albania.

In the instant case, neither was the chairman accused of, nor was it affirmed that he had committed a crime. Furthermore, his mental state was normal.

The question arises: does the declaration of the Constitutional Court that several of his orders were unconstitutional constitute a reason for his dismissal? (A legal analysis of article 185 on staying final civil decisions, and why the Chairman's actions were not "unconstitutional," would be too long here and remains to be written).

The answer is clear: No, because the criminal law does not provide that it is a criminal act. Nor does the constitutional law itself so provide.

Even if it were to be considered as such, there have been many other Constitutional Court decisions that found various acts of government officials unconstitutional. For example, is the President himself subject to discharge, because he is the chairman of the High Council of Justice, one of whose decisions about the transfer of a judge was held unconstitutional at the end of 1994? Should Parliament discharge him for violating the Constitution, a power that the constitutional law gives it? Are all the judges of Cassation whose decision of July 26 to rehear the Nano case in September was declared unconstitutional by the Constitutional Court decision of September 19 subject to

dismissal? Until now, no suggestion of this kind has accompanied any Constitutional Court decision.

For all of these reasons, the dismissal of the Chairman of Cassation was unconstitutional. It is clear that it was done for political and not legal reasons. A statement of the United States government issued shortly after the Chairman's discharge was of the same opinion.

Several deputies brought complaints to the Constitutional Court about the Chairman's dismissal, but as of the end of December, the Court has deferred its decision several times. In addition, a number of deputies who considered the decision of the Constitutional Court about the stays of civil decisions to be groundless have requested detailed information from the files of the case. It is likely that there will be further developments.

#### 6. THE JUDGES' ASSOCIATION

On March 12, 1994, the Association of Albanian Judges was created on the initiative of several judges of the Court of Cassation and other jurists. It approved its charter and a Judicial Code of Ethics, prepared in conjunction with American experts.

Judge Petrit Plloqi, a member of the Court of Cassation, is its president.

The association has held two annual judicial conferences, prepared with the help of American lawyers, judges and institutions, which sponsored them. Various problems connected with the independence of the judiciary

have been treated in these conferences, the role of the courts in the protection of human rights, the role of a Judges Association in the protection of the interests of judges and the judicial power, and American experts have shared their experiences. The association has established ties with various foreign analogues and its representatives have taken part in international activities.

The association has made several attempts to protect the independence of the courts from the fierce attacks of the political and executive power. In January 1995, the leadership of this association issued a declaration in support of the Chairman when he was under attack in connection with the Kallafatos case, as explained above. The association also opposed the putting of the courts under the administrative and financial dependency of the Ministry of Justice.

In the conference held in Tirana on July 27-28, 1995, the association denounced the attempts of the Minister of Justice to derail the conference by ordering judges not to take part in it. Obviously, the executive and political power feared the union of all the judges, and for some time has worked to divide ~~them~~ and silence <sup>them</sup>.

And in fact, the association has not played the role it might have. When the attempt was made to remove two of the judges of Cassation in May 1995, one of them being the president of the association, it did not react. Nor did it take any action when the Court of Cassation was surrounded by uniformed police on September 6-7, 1995, or later. At this time, the Judges Association is subject to the other

powers. But it has the potential to be an active force defending the independence of the judicial power.

## 7. SOME CONCLUSIONS

1. Albanian legislation regarding the judicial system does<sup>S</sup> not guarantee the independence of judges in accordance with international standards, and it should be amended and supplemented. In the new Constitution that is still awaited, the Supreme Council of Justice should be eliminated, and another solution found for naming judges and giving them disciplinary measures. The judicial power should not be dependent on the executive in any way. The budget and administration of the courts should be in the dependence of the judicial power itself and not the Ministry of Justice.

2. At this time in Albania, judges are not independent. They have been turned into the tools of the political and executive power.

3. The President is exercising strong power over all courts and all judges. Among other things, he is using them to maintain his power and punish the opposition.

4. The dismissal of the Chairman of the Court of Cassation on September 21, 1995, was unconstitutional. It was done for political reasons, because of his insistence on an independent judicial power.

5. Unfortunately, the current situation in Albania is not one of the rule of law, although it is masked in a democratic veil. The Western world, in particular the

United States, should support those forces that are truly democratic in the coming parliamentary elections. If the current political forces continue in power, Albanian courts will forget what the word "independence" means.

Asst. Professor Dr. Zef Brozi  
New York, New York.

December 1995

Kathleen Imholz Translation  
12/95

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LAW

Nr. 8001 dated September 22, 1995

ON GENOCIDE AND CRIMES AGAINST HUMANITY  
COMMITTED IN ALBANIA DURING COMMUNIST RULE  
FOR POLITICAL, IDEOLOGICAL AND RELIGIOUS MOTIVES

In reliance on article 16 of law nr. 7491 dated April 29, 1991 "On the major constitutional provisions," of articles 1, 3, 6, 18 of law nr. 7692 dated March 31, 1993 "On an addition to the major constitutional provisions" [Tr. note: the human rights chapter of the transitional Constitution] and of articles 67 and 74 of the Criminal Code of the Republic of Albania, desiring to speed up criminal cases connected with crimes against humanity for political, ideological, class and religious motives organized and carried out by the communist state in violation of basic human rights and freedoms, through physical and psychological violence, making up, falsifying or manipulating facts, causing as a consequence murder, imprisonment, internment and exile as well as the mass destruction of religious institutions and objects,

THE PEOPLE'S ASSEMBLY  
OF THE REPUBLIC OF ALBANIA

D E ' C I D E D:

Article 1

The organs of the Office of the Prosecutor, in compliance with the criminal and procedural provisions, are charged to begin immediately and with priority the investigation of activity connected with crimes against humanity committed in Albania during Communist rule for political, ideological and religious motives.

Article 2

The perpetrators of the activity contemplated in article 1 of this Law shall be investigated and charged according to today's code of criminal procedure.



## Article 3

There may not be elected hereafter in the local and central organs of power nor be named to the high administration of the State, the judicial system and the mass media, until December 31, 2001 the perpetrators, promoters and implementers of the above crimes, who have been until March 31, 1991: former members of the Political Bureau and the Central Committee of the Albanian Party of Labor (and Albanian Communist Party), former ministers and former deputies of the People's Assembly, former members of the Presidential Council, former chairmen of the Supreme Court, former General Prosecutors, former first secretaries of the districts, former employees of State Security, former collaborators of State Security as well as those who were denouncing witnesses to the harm of defendants in political proceedings, with the exception of cases when they have acted against the official line and distanced themselves publicly.

## Article 4

The Council of Ministers is charged to prepare legal acts and to approve regulations by December 15, 1995.

## Article 5

This law is effective immediately.

Promulgated as decree nr. 1221, dated September 26, 1995 of the President of the Republic of Albania, Sali Berisha.

**LAW ON THE VERIFICATION OF THE MORAL CHARACTER  
OF OFFICIALS AND OTHER PERSONS  
CONNECTED WITH THE DEFENSE OF THE DEMOCRATIC STATE**

passed November 30, 1995  
by the People's Assembly of the Republic of Albania

[Kathleen Imholz translation 12/95 from the draft law published at page 5 of the newspaper ALBANIA on November 23, 1995. The draft law was said to have been passed without changes, but when the law as passed is published in the Official Journal of the Republic of Albania in the next few weeks, there will doubtless be some changes, both because of typographical errors in the newspaper version and other reasons. The letter written about December 4 by Article 19 group in London about this law suggests that there were some changes. By the way, the Article 19 letter calls this the "Law on the Verification of the Stature of Political and Public Figures," which may be the title of the law as it was passed or may just be a different and shortened translation of the title given in ALBANIA].

In reliance on article 16 of Law Nr. 7491 dated April 29, 1991, "On the major constitutional provisions," to assure the purity of the democratic life of the state in the period of post-communist transition, on the proposal of the Council of Ministers, the People's Assembly of the Republic of Albania decided:

Article 1

The organs and functions for which this law specifies the conditions to serve in them are:

- a) Deputy in the People's Assembly of the Republic of Albania;
- b) The President of the Republic, those elected by Parliament and those named by the President of the Republic;
- c) Members of government, state secretaries, their deputies, general directors and directors of ministerial directorates as well as those equivalent to them in other state structures;
- ç) In the office of the President, the administration of the People's Assembly and the Council of Ministers, of other central ministries and institutions, of the Constitutional Court, of the Court of Cassation, of the Control Service of the State, of the Office of the General Prosecutor and in ranks lower than those mentioned in point "c," if it is judged by the head of the office to be in the interests of the defense of the state and its official data.

- d) The governor, deputy governor and directors of the Bank of Albania;
- dh) In the Armed Forces of the Republic of Albania for officers whose organic function includes high ranks (general and colonel), the command of independent entities.
- e) Prefects, chairmen and members of district councils, chairmen of municipalities and communities and members of the council of municipalities and communities.
- ë) In the National Information Service. [SHIK]
- f) In the Republican Guard.
- g) Police chiefs, employees of the criminal police and other special branches.
- gj) Judges, lay judges, prosecutors and officers in the judicial police [formerly the office of investigation].
- h) In diplomatic representations of the Republic of Albania.
- i) In Albanian state radio and television as directors and editors.
- j) Journalists and employees with higher positions in newspapers with a circulation of over 3,000 copies.
- k) In management functions in economic communities, in state financial and insurance institutions, as well as in state banks.
- l) Rectors and directors in universities and schools of higher education.

## —Article 2

In order to serve in the organs and functions mentioned in article 1 of this law, it is necessary that a person during the period November 28, 1944 to March 31, 1991:

- a) Not have been a member or candidate of the Political Bureau, secretary, member of the Central Committee of the Party of Labor of Albania (PLA), first secretary of the Committee of the PLA in the districts and analogous levels, employee of the sector for state security in the Central Committee of the PLA, except for cases when he has acted against the official line or distanced himself publicly.
- b) Member of the government, member of the Presidential Council, chairman of the Supreme Court, General Prosecutor, deputy before the elections of March 31, 1991, except for cases when he has acted against the official line or distanced himself publicly.
- c) Not to have worked as an officer in State Security (legal or illegal), the special forces of the Ministry of the Interior [lit., departments of pursuit], and units for protecting high state figures.
- ç) Not to have been registered in the materials of State Security as a collaborator (informer, agent, resident,

or accommodator) or not to have collaborated consciously with State Security (not to have been the possessor of an apartment put at the disposition of State Security).

d) Not to have been a denunciator or false or aggravating witness in political cases to the injury of defendants.

dh) Not to have worked as an officer in the structure of camps and prisons with political prisoners.

e) Not to have completed the higher school of the Ministry of the Interior and its earlier analogues, in the security section, or the courses of three or more months in the same section, as well as their analogues outside the state.

ë) Not to have taken part as investigator, prosecutor, judge or lay judge in special political cases.

f) Not to have been or be a collaborator of any foreign investigative service or their analogues.

### Article 3

In special cases, but always with the approval of the Prime Minister, minister of Defense, minister of the Interior and the chairman of SHIK, for the account of his own organization, may fail to apply the condition specified in letters "c," "ç," "dh," and "e" of article 2, when its application affects important interests of the state and when the purpose of this law is not violated.

### Article 4

In order to verify the facts mentioned in article 2, a state commission shall be established consisting of a chairman, vice-chairman and five members, honorable citizens and of stature and who are not deputies of the People's Assembly.

The chairman is named and removed by the People's Assembly. The vice-chairman and one member of the commission are named and removed by the Council of Ministers, while one member each shall be named and removed by the Ministry of Justice, the Ministry of Defense and the National Information Service [SHIK].

Only those who have not performed an activity specified in article 2 of this law may be named members of the commission. The Prime Minister, the minister of Justice and the Chairman of the National Information Service jointly exercise supervision of the candidacies.

Membership in the commission is non-delegable. [The literal meaning of the last word, "pazëvendësueshme," is "may not be replaced;" but in view of the provisions above that members may be removed by the persons who named them,

and of common sense, it seems more likely that the meaning is that the members cannot send deputies to meetings of the commission]. The pay of members of the commission shall be set by the Council of Ministers.

Before his designation as a member of the commission, the opinion of the person who is proposed shall be received.

#### ---Article 5

The activity of the commission is effective when there are present the chairman or vice-chairman as well as at least 4 of its members. Sessions of the commission shall be closed and its decisions taken by a majority of votes.

#### Article 6

The commission may conduct investigations to determine the facts mentioned in article 2, as well as call an interested party for explanations.

The investigations shall be conducted according to the rules of the code of criminal procedure for the calling of witnesses, experts and so forth. In the case of a refusal to testify or a giving of false witness or expertise, the persons are responsible criminally according to the penal code.

#### Article 7

The commission begins a proceeding when a request is made:

- a) By a person who will put up his candidacy for election to one of the functions of article 1.
- b) By the work places mentioned in article 1.
- c) By a person who will work in one of the positions or organs mentioned in article 1 (paragraphs b through l), the request to be accompanied by the proposal for his appointment.
- ç) By an interested party against whom an accusation is made in the press or publicly, or by those close to him when he is not living, when the decision is necessary for purposes of rehabilitation, economically or morally.
- e) [Sic] By the prosecutor's office or the courts, when this fact comes out from an investigation or trial.

#### Article 8

The commission shall make a decision within 30 days from receipt of a request. In the decision it shall be indicated whether or not the person fulfills the

requirements of this law connected with the functions mentioned in article 1.

When it is affirmed in the decision that the citizen is not a person among those mentioned in article 2, this fact shall be reflected in all his documents.

#### Article 9

Every person who shall hereafter put up his candidacy for election to one of the functions of article 1 must first have received the decision of the commission that he has not taken part in any of the functions included in article 2.

When he does not fulfill the conditions to be presented as a candidate in the coming elections and nevertheless presents his candidacy for registration, notification shall be made to his party [lit. electoral subject], public opinion and the Central Election Commission, which shall not register him as a candidate.

When a person does not fulfill the conditions that are required in order to work in one of the functions mentioned in article 1 (paragraph b through l), he shall be discharged from work within 15 days from the day of notification of the decision by the state commission.

Employees of status who are discharged from duty according to this law lose the financial rights that belong to them.

Persons who have been checked under this law and who do not turn out to have been in the functions that article 2 includes, shall not be checked again when they take on other duties provided in article 1 during the time that the law is in effect.

#### Article 10

Within seven days from the date a decision of the state commission is communicated to him, a person may appeal to the Court of Cassation, which must reach a decision within thirty days.

#### Article 11

The facts provided in the decision of the commission, as well as the decision itself, are prohibited from being made known to public opinion without the prior written permission of the interested party, except for the case mentioned in the first paragraph of article 9.

## Article 12

A request for the verification of the leadership of parties and political associations who are present in the political and social life of the country may be presented by the minister of Justice and by the leaderships themselves, which shall be notified of the results. If these people continue in those structures, public opinion shall be informed.

## Article 13

In fulfilling the duties with which it is charged by this law, the state commission has the right to demand that all archival material be put at its disposition, including the documentation of the Albanian Party of Labor, from which data about the activity of State Security and particular persons may be taken that have to do with the implementation of this law.

The Ministry of the Interior, the National Information Service, courts and prosecutors, the general Directory of the Archives are obliged to present immediately to the commission, on request, all archival materials demanded.

At its request, the commission shall immediately have put at its disposition all copies of the above documents connected with the activity of State Security, with the program of its work or particular citizens.

## Article 14

If the state commission or organs charged with the defense of the constitutional order notice during their activity data about the persons specified in article 1, they shall inform the heads of the respective structures, who shall act according to this law.

## Article 15

The maintenance and public use of any document or facsimile of it outside the archives, mentioned in article 13, as well as the hiding, disappearance, falsification and every other means of manipulation of the documentation of State Security and other institutions with data that are the object of this law, as well as false public accusations against an individual, constitute a criminal offense and are punishable with five years imprisonment.

## Article 16

In the absence of other legal provisions, disclosing the documentation that is the object of this law for decisions about persons is prohibited after the year 2001 until the year 2025. The National Information Service, the Ministry of the Interior and the General Directory of the Archives of the State are charged with safeguarding the archives.

## Article 17

For persons who shall be punished for crimes against independence and the constitutional order, abuse of power and crimes against state property, their being in the positions prescribed in article 2 constitutes an aggravating circumstance.

## Article 18

The Council of Ministers is charged with drawing up necessary regulations for the implementation of this law.

Article 19

This law is effective immediately and shall be repealed on December 31, 2001, except for articles 14 and 16.



K. Imholz Translation. 2/96

From the Official Journal of the Republic of Albania  
Nr. 26/1995 (December), pp. 1144-1148.

LAW Nr. 8045 dated December 7, 1995

ON THE INTERRUPTION OF PREGNANCY

In reliance on article 16 of law nr. 7491 dated April 29, 1991 "On the major 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 D:

CHAPTER I

GENERAL PROVISIONS

Article 1

The law guarantees respect for every human existence from the beginning of life. This principle shall not be violated except for cases when it is necessary and under the conditions specified in this law.

The defense of this principle, information about problems of life and national demography, education about social responsibilities, the acceptance of the child in society and family policy are national obligations. The organs of central and local power shall make these obligations a reality and support every initiative that assists in making them a reality.

Article 2

The principles on which this law is based are:

1. Health care at all levels must use the services of family planning, as a means of avoiding unwanted pregnancies. The interruption of pregnancy [translated hereinafter by the translator as "abortion"] shall not be considered a method of family planning in any case.

2. A woman has the right of precise information and advice before an abortion.

3. In cases when abortion is not contrary to the provisions of this law, it must be performed in conditions that are safe for the health of the woman.

4. In all cases, women must be assured health care for the treatment of possible complications after an abortion.

5. Advice and family planning service after abortion must be immediate, with the aim of avoiding unwanted pregnancies.

6. Abortion is permitted only when the undesired circumstances in this law are verified to exist and in any case with the consent of the woman..

## CHAPTER II

### ABORTION

#### Article 3

A voluntary abortion shall be done only by an obstetric-gynecological specialist doctor in state and private health institutions that meet the conditions set in the respective guidelines of the minister of Health and Environmental Protection.

#### Article 4

A doctor of whom a voluntary abortion is requested must at the first visit inform the woman about:

1. The medical risks entailed by abortion to future pregnancies as well as biological problems of medical intervention.

2. The rights, assistance and advantages guarantees by law for the family, the mother and the child, as well as the possibilities of adoption of children who are expected to be born.

3. Institutions and organizations that may offer the woman moral and financial support.

4. Clinics and hospitals that perform abortions.

#### Article 5

The Minister of Health and Environmental Protection shall set by special guidelines the content, manner of preparing and distribution of the advisory materials with the information contemplated in article 4.

## Article 6

If the woman, after receiving the information mentioned in article 4, repeats her request for an abortion, the doctor shall ask for written confirmation of the request. This confirmation shall be requested after at least 7 days have passed from the first request.

When possible, the husband or a parent shall also take part in the counsel and making of a decision about an abortion.

If the term of 7 days would cause the time periods set out in this law to be exceeded, the doctor may decide that this term be at least 2 days.

## Article 7

If the decision is confirmed, the doctor shall perform the abortion in the conditions contemplated in article 3. When the doctor to whom the request is directed is not the one who will perform the abortion, then the request shall be returned to the woman together with a certification about compliance with the procedures of articles 4 and 6 to be presented to the doctor who will perform the abortion.

The state or private institution where the woman is accepted shall include in her records the request and the certification about compliance with the procedures.

## Article 8

In the case of pregnancy of an unmarried girl not yet 16, in addition to her own request for an abortion, the approval of a person who exerts parental authority or is her legal guardian is also required.

The request of the girl herself shall be done without the presence of the persons mentioned in the above paragraph.

Married women who are minors are subject to the provisions of article 7 of this law.

## Article 9

Abortion for medical reasons may be performed up to the twenty-second week of pregnancy, if a committee consisting of three doctors, after examination and consultation, judges

that the continuation of the pregnancy and/or the birth of the child endangers the life or health of the woman.

When the committee judges that the fetus has malformations incompatible with life, or an illness that would make it an invalid with treatment uncertain, it shall decide on an abortion at any time.

The Minister of Health and Environmental Protection shall specify by special guideline the cases mentioned in the first paragraph of this article as well as the conditions that the doctors of the committee should fulfill.

#### Article 10

When the woman considers that the pregnancy creates psycho-social problems, voluntary abortion may be performed within the twelfth week of pregnancy.

#### Article 11

Abortion for social reasons shall be performed during the twenty-second week of pregnancy, if a committee consisting of three specialists, a doctor, a social worker and a jurist, after examination and consultation, judges that the pregnancy is the result of rape or another sexual crime, as well as when other social reasons are verified.

Guidelines for the treatment of these cases and the make-up of the committee shall be approved by the Minister of Health and Environmental Protection.

#### Article 12

All abortions must be the object of a declaration confirmed by the doctor who performs the abortion, which shall be sent by the institution to the Institute of Statistics. Data about abortions shall be sent by the state or private health institution to the Ministry of Health and Environmental Protections, in accordance with the respective guidelines.

The declaration and other information shall not contain the identity of the woman.

#### Article 13

All warnings to women must be given to women who request abortion, the information and advice prescribed in

this law and in other regulations [sub-legal acts] for its implementation.

#### Article 14

In all cases of abortion, the doctor who performs it is obligated to inform the woman about services of family planning and to advise about contraceptive methods that the institution here he works offers and/or other state and private institutions.

### CHAPTER III

#### SPECIAL PROVISIONS

#### Article 15

Every kind of propaganda and advertising, direct or indirect, in words or pictures, of institutions, methods, medications and products that cause abortions are prohibited, except in scientific publications destined for doctors and pharmacists.

#### Article 16

No doctor may be obliged to perform an abortion against his will.

#### Article 17

Violations of the provisions contained in articles 4, 6, 7, 12, 13, 14 and 16 of this law, when they do not constitute a criminal offense, shall be punished as administrative offenses by fine of from 50,000 to 100,000 lek.:

Violations of the provisions contained in article 15 shall be punished by fine of up to 100,000 lek.

Fines are given by the supervisory organs designated by the minister of Health and Environmental Protection.

#### Article 18

An appeal against the decisions of the supervisory organs and the execution of decisions shall be done according to law nr. 7697 dated April 7, 1993 "On administrative infractions.

Article 19

The Council of Ministers shall approve state fees for abortions.

Article 20

All provisions that conflict with this law are repealed.

Article 21

This law is effective fifteen days after publication in the Official Journal [i.e. January 12, 1996]..

Promulgated as decree nr. 1331 dated December 22, 1995 of the President of the Republic, Sali Berisha.

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**HELSINKI**

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## I. INTRODUCTION

For nearly half a century Albania experienced a brand of communism unknown to the rest of Eastern Europe. A fateful blend of isolationism and dictatorship kept this tiny Balkan country the poorest and most repressive in all of Europe. During his forty-year reign, the Albanian leader Enver Hoxha banned religion, forbade travel and outlawed private property. Any resistance to his rule was met with severe retribution, including internal exile, long-term imprisonment and execution. His domination of Albania's political, economic and social life was absolute.

In light of this history, Albania has made substantial progress toward respect for civil and political rights in the past five years. Democratic elections in March 1992 swept the communist party from power, installed a new government led by President Sali Berisha of the Democratic Party, and paved the way for a series of liberalizing reforms.

Still, five years has not been enough to wipe away the legacy Hoxha's rule. The complete absence under communism of independent courts, a free media and human rights mechanisms poses a serious challenge to Albanian democracy today. More seriously, the one-party mentality is still deeply ingrained in many of the country's new leaders: critics of the ruling Democratic Party are often regarded as critics of "democracy."

BRUSSELS HONG KONG LONDON LOS ANGELES MOSCOW NEW YORK RIO DE JANEIRO WASHINGTON

As a result, Albanian citizens are still plagued by serious human rights violations, such as restrictions on freedom of expression and association, manipulation of the legal system and violence by the police. In part, these abuses are the result of Albania's Stalinist past. But in many cases, the human rights violations in Albania today are the direct result of specific actions on the part of the new government.

Of particular concern is the state's continued interference in the judiciary. Despite many improvements, the court system is still used as an instrument of the state, especially against the political opposition. The leader of the largest opposition party is currently in prison after a trial fraught with due process violations. Since 1992, numerous other critics of the government have been harassed, tried, imprisoned or, in a few cases, physically attacked by unknown assailants — usually without any response from the government. Judges who make independent decisions on sensitive cases are sometimes reassigned to lesser posts or fired. More than 400 persons, predominantly selected by the Democratic Party, were appointed as judges and prosecutors throughout the country, upon completion of a special six-month law course, thereby strengthening governmental influence over the judiciary and law enforcement officials.

Despite some positive developments - such as a new Bill of Rights - some of Albania's new legislation does not conform to international standards. Of particular concern is a new law that created a commission, appointed predominantly by the government, to review the communist-era secret police files. All those who were members of pre-1991 governments or found to have been collaborators with the former secret police are banned from holding elected office or other government-appointed posts until the year 2002. There is considerable fear that the law will be applied selectively against political rivals to the government.

The government has undertaken an ambitious effort to prosecute former communist officials who committed crimes during the previous regime. However, the process has been selective and, at times, in violation of international law. Some former communist officials were denied the right to a fair trial, while others have avoided prosecution altogether because of their ties to the current government.

Freedom of the press is also circumscribed. No legislation exists to allow for the transmission of private television or radio, leaving the state-run programs that favor the government as the sole provider of news for the majority of the population. While there are many private newspapers throughout the country, they are restricted by a repressive press law and obstacles to their distribution. Since 1992, a large number of journalists, including foreign correspondents, have been harassed, arrested or beaten by unknown assailants after writing articles that were critical of the government.

The rights of minorities have improved since the fall of communism. Nevertheless, problems do exist, particularly with the sizable Greek minority in the south of the country. In September 1994, five members of the ethnic Greek organization Omonia were tried and



convicted on charges of espionage and the illegal possession of weapons in a case that was in violation of both Albanian and international law. The five defendants were later released but not before 70,000 Albanian guest workers had been expelled from Greece as retribution by the Greek government. Large-scale detentions of ethnic Greeks by the Albanian police and secret service before the trial created an atmosphere of fear in areas inhabited by Greeks. The issue of Greek-language schooling and the return of property owned by the Orthodox Church are also areas of concern.

Parliamentary elections are due in the spring of 1996 but, as of February 1996, no fixed date had been set. The closing months of 1995 saw renewed efforts by the state to silence independent voices in the judiciary and media, as well as those of opposition politicians. Human Rights Watch Helsinki fears that these actions are an attempt by the government to eliminate its political rivals, thereby jeopardizing the fairness of the forthcoming elections.

\* \* \*

*Human Rights Watch/Helsinki*

Human Rights Watch/Helsinki was established in 1978 to monitor and promote domestic and international compliance with the human rights provisions of the 1975 Helsinki Accords. It is affiliated with the International Helsinki Federation for Human Rights, which is based in Vienna, Austria. Holly Cartner is the executive director; Erika Dailey, Rachel Denber, Christopher Panico and Diane Paul are research associates; Ivan Lupis is the research assistant; Fred Abrahams is a consultant; Anne Kuper, Alexander Petrov, and Shira Robinson are associates. Jonathan Fanton is the chair of the advisory committee and Alice Henkin is vice chair.

## Interview with the Very Reverend Arthur E. Liolin, Chancellor of the Albanian Archdiocese in Boston. By Kestrina Budina. January, 1995

*Note: Albanian Orthodox Christians during the Byzantine and Ottoman period belonged to the Greek Orthodox Church. With independence, Albanians felt the need for a national church such as that of the Bulgarians, Romanians, and Serbs. The Autocephalous Albanian Church was initially established in Boston, Mass., in 1908 and officially proclaimed in the homeland as an Autocephalous Orthodox Church in 1922. A statute of the Church requires that the head of the Church be of Albanian nationality. When freedom of religion was re-instituted in Albania in 1991 after thirty years of repression, the Albanian Church sought help from the Greek Church in replenishing the ranks of the clergy and organizing humanitarian assistance. In 1992 Greek Bishop Anastasio Yannulatos was named Archbishop of the Albanian Orthodox Church. The Albanian Church in the U.S. has been reluctant to recognize Yannulatos.*

*The U.S. Albanian Orthodox Archdiocese is a member of the Orthodox Church of America, as are other ethnic Orthodox churches in America. A recent article in the Albanian-American newspaper Illyria claimed that, "the Albanian Orthodox legacy is in the hands of...Father Liolin, the chancellor of the archdiocese, the very last stronghold opposing the usurpation of the Albanian Autocephalous Orthodox Church by Greek Bishop Yannulatos. In fact, Father Liolin was the first clergyman to enter Albania to stimulate the religious awakening in 1988, 1989, 1992 and 1994."*

**Kestrina Budina:** *What do you think about the relation of the Church to national identity with regard to the Greek and Albanian populations in South Albania?*

**Reverend Arthur E. Liolin:** Consideration must be given to the history of the Ottoman period when the millet system was imposed over the people. The Sultan placed all Orthodox under the jurisdiction of the Greek Patriarchate in Istanbul. The Greek language became the lingua franca under the Ottoman Empire. Unfortunately, the legacy of this period is the misconception that all Orthodox in Albania are Greek. This falsehood is being perpetuated even today for political ends and is regrettable because it does not foster harmony. As the Balkan countries became independent, each of them sought an independent church. The first liturgy in Albanian occurred in Boston in 1908, because Albania was still under Ottoman rule. The Orthodox Church in Albania was proclaimed autocephalous (self-governing) in 1922 in Berat after many years, marked by Greek persecution of Albanian priests, such as Father Stathi Melani, Papa Christo Negovani etc., who were killed by fanatics. In 1937, the Albanian Orthodox Church was recognized by the Patriarch of Constantinople, including all contested areas. Wherever the Greek minority villages existed, the liturgy was in Greek.

**KB:** *Do you think that the Albanian Church should play a role in developing Albanian national identity?*

**AEL:** The first role of the Albanian Church is spiritual, to develop the moral qualities of the faithful in all of Albania. The Church also has a role in the rediscovery of Albanian and Illyrian saints, and in making known the history of Albania and Illyria. However, the Church ought to enrich and not divide the lives of people. Too many harm the faith by equating it with nationalism alone.

**KB:** *Does the existence of Greek elements in the hierarchy of the Albanian Church prevent it from playing this role? Should anything be done about this?*

**AEL:** The great struggle to create the Albanian Church and to distinguish it from the Greek Church, and the numerous martyrs along that way, make it somewhat of an offense that a Greek is heading the Albanian Church. This can be said from several vantage points. Before coming to Albania, Bishop Janulatos indicated in his letters that he would stay for a concrete period of time and help reconstruct the Albanian church. Within a month and a half from the democratic elections (March 1992), in a secretive manner he was appointed head of the Albanian Church, a permanent position. It would certainly make you wonder about intentions.

Greek hegemony has been stimulating corruption using money and resources from Greece, ostensibly to rebuild the church, but due to general conditions of poverty this aid can be interpreted as a means of controlling people. Traditionally there has been ecumenical, goodwill spirit among the religious communities in Albania. This has not been prevalent among the Greek Orthodox in Greece or even among the Muslims of Turkey. So having any type of Greek leadership would foster intolerance in the people, which is incompatible with the history, martyrs, and statute of the Albanian Orthodox Church.

According to the apostolic canons of the Church, the leadership in any place or country should be indigenous, since this is the most effective way of transmitting the gospel. This has been reflected in the constitutions of many countries in Europe. Greek, Italian, Finnish constitutions all require the heads of churches to be indigenous. Therefore, Albanians should be trained and a timetable should be prepared and made public for the appointment of the Albanian Church leadership. If the Greek Bishop is sincere, he should declare that he will ordain Albanian priests, and he should publicly distance himself from the North Epiros irredentists who would dismember the Albanian nation.

Finally, all Orthodox Albanians in the U.S. pray for a day when the proper candidates will emerge from among the citizens of Albania to properly lead the church there. I am sure that sincere Orthodox Greeks pray for the same result for their sister church in Albania. ■











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