

## Report of Albanian Helsinki Committee

*(July-September 1998)*

### **I. Escalation of political tensions**

The most distinguishing feature of this period is the further rise of the political tensions in the country. The main political parties have failed to find any common language. There have been continuous exchanges of accusations, not real debate whatsoever, full use of hate speech and this has naturally deeply embittered the atmosphere. The press on its turn has been the right picture of this situation, giving voice to confrontation.

The AHC has reacted on several occasions trying to draw the attention to this destabilizing phenomenon and calling on the political factors to put an end to this self-annihilating process and to engage in serious efforts to find a peaceful solution to the pressing problems.

Since July there have been some premonitory signs of a new wave of violence. Press reports spoke about armed attacks against the headquarters of political parties. Two cases were particularly mentioned: first, the attack here in Tirana against the offices of the Party "Balli Kombetar", which caused heavy material damages. Secondly, the attack against the photo-reporter of the French news agency AFP, when unidentified persons have entered his apartment and have stolen everything they found, cameras and passport included.

New cases of violence have been registered since the beginning of August, which have further aggravated the atmosphere. The murder of two activists was reported. The first, one of the Democratic Party and the second one of the Socialist Party. Even journalists didn't escape to acts of violence, as B. Myftari of the opposition press gravely maltreated by unknown persons in the capital. Both sides of the political spectrum have interpreted these tragic events as politically motivated. Furthermore, direct charges have been addressed towards the state organs as inspirers and promoters of the acts of violence.

The AHC has reacted in two ways: first, by expressing its sorrow because of this continuous use of violence and the failure of the competent authorities to bring the authors before their responsibility; second, by stressing that pure accusation not supported by evidence are simply a case of hate speech and hate speech leads to nothing but to further violence. The tense atmosphere in the country,- it was added,- is most likely to degenerate into tragic events.

This was a timely warning. In fact, some latest developments have added to the deterioration of the situation. By the end of August, the authorities engaged themselves in an operation which marked a turning point. In an unexpected move the General Prokuratura took the decision on August 22 to arrest 6 former high functionaries of the Democratic Party, holding them responsible for the events of last year, when this party

was in power. The accusation formulated was “crimes against humanity”. This has immediately triggered a new wave of harsh confrontation between the government and the opposition. It looked like any channel of communication between the two parties was definitely blocked and the conflict threatened to precipitate into an open conflict.

Given the delicate moment, the AHC reacted promptly by issuing a statement whose main ideas are here reproduced:

“The arrest of high functionaries of Democratic Party brings about a further escalation of the tension in the general situation in the country, which is highly strained as it is. It is to be expected that this measure, which has taken by surprise a number of significant circles in the country and abroad, will influence without any doubt in a negative sense the handling of major problems the country is facing at this moment.

But, on the other hand, there is the great principle of separation of powers and the independence and impartiality of the judiciary. The Prokuratura Office, as the organ which is competent to initiate the process, has formulated the charges followed by the arrest of those accused, a decision which was confirmed by the court.

The Albanian Helsinki Committee feels opportune to affirm its commitment to follow the whole process from now on. Moreover, it is our conviction that this will be a subject for joint consideration with similar HR organizations abroad, whose involvement would, surely, constitute an additional guarantee for objectivity and impartiality.

However, the judicial organs should be left to do their job according to the law. Justice does not know another authority, but the law. The AHC calls on the political subjects of both sides, the public opinion at large to show more maturity, to refrain from uncontrolled passions which lead to nothing but the escalation of the aggravation of the situation in the country.

The AHC concluded its statement by underlining that this case is “of a particular importance”. Judiciary is under test, it is under the strict observation of human rights organizations, which will not hesitate to denounce and condemn every action not sustained by law.”

The arrest of the former high functionaries of the Democratic Party provoked a resentful attitude by wide circles not only of the opposition in the country, but also from abroad. It was made known that strong reservations were formulated towards the authorities, and deep concern was expressed, lest this should bring back the last year turmoil.

Under pressure, Prime Minister F. Nano made public a proposal to block the process for a three year period and to let free those accused. On his turn, the chairman of the Democratic Party, S. Berisha, went far beyond by saying in a press conference that there couldn't be any more a dialogue with the government and that every mean, including force should be used to bring down what he called “the neo-communist government” and to restore what he described the “democratic values”.

The AHC issued a statement on September 10<sup>th</sup> in relation to these developments. On one hand, it was underlined that any interference by the executive branch into the sphere of the judiciary is contrary to the principles of the separation of powers and the independence of the judicial organs. Once initiated, this process should find its conclusion within the framework of the judiciary. It is up to these organs to take the final decision. On the other hand, the statement of the chairman of DP was denounced as contrary to the constitutional norms and to the standards of a society organized on the basis of political pluralism and rule of law.

As a conclusion, a warning was addressed to all political forces about the real danger of the situation falling out of control into a new chaos and anarchy. Under these circumstances, the President of the Republic, R. Meidani, was invited to take some urgent steps, what he would estimated the most appropriate, to prevent further escalation of distrust and violence and to ensure the full observance of constitutional order.

No more than a couple of days after the worst happened. One of the leaders of the DP Azem Hajdari was assassinated in the evening of Saturday, September 12<sup>th</sup>. His young life was cut off by a barbarian crime. Hajdari enjoyed high prestige, because of his early engagement in the movement for the democratic changes in Albania, since the beginning of the decade. The Hajdari's murder raised a deep emotion and indignation, especially among the ranks of his party members.

The AHC strongly condemned this cruel act, while highly praising Hajdari's role in the democratic movement. The following sentence contains the main argument of the pertaining statement of September 14<sup>th</sup>: "The career of Azem Hajdari was cruelly stopped. This extreme use of violence harshly strikes not only his family, not only the party he fought for, but the whole democratic process in Albania. It is an urgent task of the competent organs to discover the criminals and to bring them before law. It is, perhaps, among the most delicate and of highest responsibility cases, because, whatever the motives of this barbarian act are, its background is a political one. It is a shocking event which adds fuel to the fire, it is a crime which bears the risk to destabilize the situation in the country. The stability of the country, more than ever before must be the concern of everyone. The AHC has stated, more than once, that a tense and intolerant atmosphere prevails in the country and is continuously increasing. Moreover, recently there have been clear signals that the situation can go out of control. All political factors in the country should mobilize to stop this most dangerous process."

To conclude, the AHC called on the parties concerned to refrain from any act of revenge and to join their efforts to find a peaceful solution to the crisis within the democratic and legal constitution. This tragic event,- it was added,- should not be used to reach political objectives.

However, the crisis reached its culminating point the day of the funeral of the assassinated leader on September 15<sup>th</sup>. The chairman of the Democratic Party went out immediately by accusing directly the PM Nano as mandatory of the murder. He made a harangue to the crowd assembled to participate in the funeral, launching strong attacks against the government and asking for its immediate resignation. As a result, the procession of the

coffin at its head, instead of proceeding to the cemetery, moved to the area of the main official buildings. An assault followed on the PM office, the Parliament's Presidency, the Constitutional Court, the Ministry of Justice. The movement of protest gained momentum with the takeover of the central TV station, from where improvised speakers announced the falling down of the government. A state of confusion and uncertainty lasted for some hours until late in the afternoon. In this meantime, the city plunged into chaos with the mob looting, robbing, destroying and burning shops and premises.

Then suddenly the forces of order reappeared and within a couple of hours the situation turned back under control of the authorities. Soon after, several members of the government made their appearance in TV back in the hands of public order. They called this movement an "attempted coup" aiming at the violent overthrow of the government. The Democratic Party was held as responsible and its chairman the main inspirer and organiser. Immediate action was undertaken by the prosecution organs and the first measures of arrest were reported. The process is underway.

The AHC adopted a position of observation in expectation of further clarification of situation. However, while keeping the necessary reservation, the AHC issued a new statement. The use of violence against the legal institutions and TV was strongly condemned. At the same time, particularly attention was drawn to two questions. Firstly, it is a constant and imperative task of the competent organs, both of the prosecution and of the judicial ones, to respect strictly the legal norms, in the first place those who have to do with the rights of those detained. Above all, the principle of presumption of innocence should be held in due account. On the other hand, any interference into judiciary, whatever the form and the provenance, is contrary to the basic principles of justice.

The events of the second half of September underlined the necessity for a re-composition of the government. Prime Minister in charge, Nano, received the mandate by the Socialist Party to form a new government, but his attempt ended in failure. As a result, the Socialist Party assigned the task of forming a new government to the Secretary General of the SP, Pandeli Majko. Majko received the task also by the President of the Republic on September 29.

## **II. Project on Human Rights Advocacy on Local Government**

This period marks almost the conclusive part of this project. It should be reminded that the project is subsidized by the Republic of Austria - Federal Chancellery, East Cooperation and this has been underlined on every occasion.

In July and September three more fact-finding missions were carried out. As a result, altogether 11 missions are now realized out of 12 planned.

**1. On July 10 -11, 1998 a fact-finding mission was performed in the town of Vlora.** The mission established contacts with numerous citizens, representatives of the local power, representatives of NGO-s, various political forces and police structures in the

district. Common opinion was that the events of spring 1997 in the town had given a hard blow to the state structures in general, and specifically to the local power. The falling down of the state organs and the chaos provoked led to continuous and brutal violations of human rights and fundamental freedoms. Thus, many lives were lost, the property was violated, and the elementary freedoms were heavily trampled. The state abandoned Vlora and citizens were left to their fate. That is why all the people contacted pointed to one major problem - reestablishment and functioning of state structures.

A round table was held with the participation of local officials of various departments, representatives of police forces, judicial organs and public opinion in a broader sense.

The partial local elections in Vlora last June were considered a positive sign in this regard. Generally speaking, the elections were carried out normally and the results were an expression of the free will of the people of Vlora. Besides, they showed that the population have not lost hopes and the confidence to the local power and its role in the economic, social and human rights developments.

Given the last year events, criminality was the first topic addressed. Criminality and breach of law constitute a direct threat to the rights and freedoms of the citizens. The chief of the police, Mr. Memushi, said that efforts are made for better relations in between the police and the local power. Frequent reports are sent to the municipality and district council on crime and other matters. But, this has functioned only within the town, while there is an urgent need to extend it to the level of communes, the smaller units.

Sometimes, as in the case of illegal constructions, the cooperation between police and local structures has been fruitful. But, there are other cases when the decisions of the local organs have not been implemented or enforced, because of lack of an executive branch. The creation and functioning of a municipal police would be of a substantial help in this aspect, and would put an end to cases when people try to solve their problems and disputes by self-making justice.

Use of violence by police was also discussed. Very often police have used force against the citizens. Cases of maltreatment in the premises of detention were also denounced. According to Mr. Memushi, this shows that the police forces have a low professional level, and often do not know the law. In this regard, the necessity for education and professional training of the police was raised as an priority for the police forces. Mr. Memushi appreciated the support given by the AHC in specialized literature of national and international acts in the field of human rights. In this regard, J. Sejdia, legal advisor of the district council emphasized the need for the local administration as a whole to be much more and better informed about human rights and fundamental freedoms. Remarks were made to the address of central government, which only recently have been able to compile a summary of the legislation regarding local power. Local officials,- it was added,- have heard about the signature by Albania of the European Charter of Local Autonomy, but they did not possess a single copy of the Charter.

Another topic of the discussion was the way people are selected and appointed in the local administration. This was considered another weak point of the local power. The professional level of the local administration is low because very often people have been selected on political criteria and not on a professional basis. In the previous years there have been cases when people have been moved from their posts on political grounds. On the other hand, the selection of people for various posts on basis of party-belonging has influenced negatively the relationship between the local power and the citizens. Some people have been deprived of their rights; some others have been encouraged in getting more, thus opening the way to abuse and corruption. This explains the cases when a property is given to more than one owner, and the other cases when state owned land is given unjustly to individuals for new constructions.

Further, the participants raised the question of the transparency of the local organs. Several remarks and complaints were formulated. The citizens exercise their power through their vote given to the elected local officials. Therefore, the latter must give priority to the contacts with their electorate, must listen to their concerns and problems, and try hard to solve them.

To summarize, the roundtable showed that there is a concrete willingness to improve the situation and to make progress. By means of dialogue among the various social forces and good will,- it was concluded,- a lot can be achieved.

Some of the principal recommendations formulated by the participants in the meeting were as follows:

- a. To open an office under the authority of the municipality or the district council, which would continuously deal with and analyze the standards of human rights in the area and would suggest the necessary measures to be taken.
- b. All means of mass media should be used to ensure transparency. A proposal was made for the publication of a local newspaper that would reflect the activity of the local power, and would also assist the public in knowing the legislation. Local authorities and the citizens would better know their rights and duties.
- c. Concerning the right to work, the representative of the trade unions recommended that the local power, based on the present legislation, must do their utmost for including the unemployed in public works. This would help to lower the criminality rate, and stop the illegal emigration.

**2. A group of the AHC observers went to Gjirokaster where a meeting was organised on July 23.** The meeting was attended by the representatives of local power of Gjirokaster itself and other smaller towns of the area, as Tepelene, Permet and Libohove. Representatives from the police department took part, as well as of the local media and some members of the parliament. It is well known that in this area live the ethnic Greek

population, which is by far the largest in this country. Representatives of the Greek minority organization were also present.

The participation in the discussion was active and the exchange of views was fruitful. The general secretary of the Prefecture, Mr. Pandeli Bediava, presented a picture of the problems which have been of concern, and still are for the local administration in the area. He pointed out a problem which has been raised in many other occasions, that the local organs suffer of lack of competence and funds and, as a result, have not been able to solve numerous acute problems. Still, there is a strong feeling and mentality that everything should be expected from the state. The elected people in local power and the employees are of a low professional level, and what is particularly important they haven't any knowledge on the relevant legislation. The citizens complain of corruption. Though they do not produce facts, still their complaints are based on experience. It is necessary to deal seriously with this matter, because in case the local organs get corrupt, then the citizens' confidence will be reduced and ruined. Presently this is an embarrassing phenomenon,- Mr. Bediava concluded.

In the course of the discussion, many other participants also stressed the lack of competence of the local administration as a real obstacle to perform its duties. So, it makes no sense that the local organs have limited competence in the field of education and health problems. Actually, even for insignificant matters they need approval from the central organs. The vertical dependence from the central organs is counterproductive. Having in mind the debate about the new constitution, the demand was expressed that the laws and other legal acts, regulating the activity of local organs, must be reconsidered to make the local power more efficient and to bring it more close to the citizens. In this regard, the participants stressed the need for the reviewing of the organisational structure, of the competencies of the power organs and their officials. It is most important to avoid misinterpretations concerning the function and duties of prefects, so they must be properly defined.

The relation between the local administration and the police was also discussed and the present situation was considered inadequate. Police, in addition to the dependence to the central organs, should be more close to the local organs. This is essential for affording such acute problems as the fight against criminality and the disarmament of the population.

The round table turned its attention to the duties and responsibilities of the local organs towards the citizens. There were complaints and criticism to the address of these structures for displaying political stands in their work with the citizens. Thus people run from office to office without being able to enjoy their rights. The participants in the meeting asked for a rigorous implementation of the law independently of any party belonging. More transparency is needed in this direction.

The prevailing opinion was fully reconfirmed that minority problem in this country has been and still is under control. This question has been constantly held as a priority also on the level of local administration. The representatives of the minority organisation taking part in the debate shared the same opinion. However, it was reiterated that new problems could arise and thus minority question should not be neglected.

Unemployment was considered particularly problematic for the prefecture of Gjirokaster. Work sites are limited and the investors a few in number. The tragic events of the last year have had a negative impact in this regard. The participants said that this situation could be improved by foreign and home investors. The debate focused on the fate of a local shoe factory, which enjoys a very good tradition. This factory has an experience of 80 years of production, and has been working even in difficult conditions when the country was isolated. Unfortunately, the factory has stopped its work because of some contract conflicts. It is urgent to recuperate this factory, which in normal condition can give job to 500 people. The government knows about this matter, - it was added, - but nothing has been done to this moment for its solution.

All the participants agreed to conclude that a genuine autonomy is imperative for the normal functioning of the local administration. To this end it is essential for these organs to dispose of their own budgets. It is difficult to build infrastructure and improve the present situation without funds. It is their hope that with the approval of the new constitution, which has reached now its final stage, the position of the local government will find a better solution. It will sanction the basic principles of the organisation and functioning of the local power in the spirit of the European Charter of Local Autonomy.

**3. On 3 - 4 September 1998 a fact-finding mission was carried out in Saranda and Delvina.** Saranda district constitutes the starting border point with neighboring Greece. As such, it displays some particular problems, such as: issues of the Greek minority, which is the most important living in Albania, concern related to the ancient cultural monuments in this area, problems of tourism, etc. Meanwhile, being the edge of the Albanian state, problems in this district concentrate on some acute social issues, such as illegal emigration, contraband, prostitution, etc. This was the reason why the district of Saranda and Delvina, even though they belong to the prefecture of Vlora, were chosen to be observed in a separate mission.

A meeting was held on 04.09.1998, which was attended by representatives from all levels of the local government. Other officials also took part as the chairman of the Court, the chief of the police commissariat, the district prosecutor. NGO-s and media representatives were also presented.

The minority problem is a priority here. The fact-finding mission members noticed that in this regard there are no problems which would perturb the peaceful situation. The Greek ethnic population here is about 75.000, while half of the villages are inhabited by the Greek minority too.. The tradition of a peaceful, and even friendly co-existence between the majority and the minority here has been further consolidated in the new circumstances of the democratic regime. This opinion was widely shared during the meeting

The discussion went on by addressing some acute problems of a particular concern to the whole ambiance, the public at large, as well as the organs of the local government.

A question was raised relating to the increasing demands of the Albanian emigrants working in Greece, who are forced to change their Albanian names and nationality. It was

said, that this happens mainly for economic reasons, because in this way they can easier find jobs and housing in Greece. It was asked that in the framework of respecting basic human rights, the local government draws the attention of the central government, so that appropriate steps are taken in particular with Greek authorities so that this fundamental right is well respected.

In Saranda there is one of the most ancient and attractive centres of the Mediterranean civilisation. It is Butrint, which has been called “an antique museum amid nature”. It is encouraging that the World Bank is coming out with a big project to transform Butrint into a big national park which would be visited by thousands of people. It will be the main touristic monument of all the southern area. However, it was pointed out that the situation remains critical. An intervention is needed as soon as possible. The cultural and historic values of Butrint are in danger, because the museum as well as high valued objects in the environment of the centre are being stolen and abused. It was unanimously concluded that the only solution is the trusteeship of the UNESCO on Butrint, while the local government should be fully involved in its management. There cannot not be any future for Butrint without a greater engagement of the local government.

The participants discussed with a feeling of a great concern the phenomenon of unlicensed building. It is calculated that currently in Saranda there are some 1500-2000 unlicensed buildings. Also, during March 1997, when the local government was totally paralyzed the parks in the town were invaded and are now covered by every kind of buildings. As a result, all the coast line appears gravely damaged. In this regard the necessity was underlined for giving executive power to the local administration and for this the establishment of a municipal police is urgently required.

During the meeting, the relationship between the local government and the police commissariat was appreciated as a positive sign. The order is restored and the situation in the town is quite. However, there are still problems, particularly with the police staff, which was quickly re-organised after the turmoil of last year. The staff lacks a proper professional and juridical formation, and this is the cause of some incidents occurred in cases of use of violence by policemen.

The phenomenon of contraband was also discussed. Without denying the role of the local government in combating this phenomenon, the intervention of the central government to a greater extent was required. Cooperation with Greek and Italian authorities was also considered as essential for the success of this operation.

Last but not least, the participants in the meeting strongly raised the same problem encountered in all the other places, that of the difficult financial situation of the local government. It was said that a wrong privatisation policy was conducted, and a lot of unjust concessions have been granted. As a result, the local government today does not own any property, does not have its direct incomes, and as such it is limited to the establishment of different activities to better respond to the needs of the population. One can conclude that without denying some important achievements of the local government, a lot remains to be done. Of course, last year turmoil is left behind, but full normality is not yet reached.

### **III. On the situation in the prisons and police stations**

The situation in the prisons and police stations has been a continuous concern of the AHC. Its task presently has met with more understanding on the part of the penitentiary administration, which has expressed full availability for cooperation within AHC to monitor and to improve the situation.

It should be reminded that a round table was held during the last week of February for an exchange of views about HR of the prisoners. Representatives of the authorities also took part, who reiterated their full availability to collaborate with the AHC.

It has now been reported that continuous efforts have been deployed for the restoration of the penitentiary system. Last year unrest resulted in the falling down of the system as a whole. Presently, the department in the Ministry of Justice in charge of the penitentiary system is reporting that 5 main prisons have been already activated, while 3 others are under construction. In addition to this, there are police stations in all the districts and these are the places of preliminary detention.

In continuation of its commitment in this filed the AHC has carried out several visits, in particular in the police stations.

A group of the Albanian Helsinki Committee activists visited during the last week of July several police stations in the Southern area of the country, as Gjirokaster, Delvine, Sarande, Permet, Vlore. The police station No.1 in Tirana was also visited. The main objective was to look at the situation on the spot and to see how the rights of the detainees are implemented. Without denying the changes in the right sense in the activity of the police forces, still many problems remain which should be kept in due consideration. The following issues have been evidenced:

1. The number of the detainees is increasing, while the detention rooms in police stations are overcrowded. It is more evident in Gjirokaster, Vlore and Commissariat No1 in Tirana. This is due for the most to the delay in the investigation process. Suggestion was made to take measures to quickly conclude the investigation and trial process of the detainees who live under the above mentioned conditions. Another way to lighten the situation is to move the detainees to the respective prisons. In the commissariat of Vlora with a capacity of 22 persons, there are 33 detainees, among whom there are people from Saranda, Delvina, Fier, Lushnja, Kukesi. This grave reality must find a quick and proper solution.
2. In the Commissariat No1 in Tirana, some detainees (including minors) declared that they did not have any lawyers, and stated that they will defend themselves on their own. Our group told and clarified them that, according to the law, even if they cannot afford a lawyer, they have the right to a lawyer, on the expenses of the state.

On this occasion, attention was drawn to the following questions: first, when the detainees are minors, according to the penal procedure norms, they must be ensured the legal and psychological assistance during any stage of investigation, with the presence of his/her parents or other persons asked by the minor and admitted by the competent authority.

Second, based on point 2 of article 49 of the Penal Procedure Code, when the indicted person is under 18 years old or handicapped, which constitute obstacles to the self-defense, the assistance of a lawyer is obligatory.

3. One more remark was formulated to the address of the police staff. It was noticed that not all the policemen distinguish between the arrest and accompanying to the police station. As a result, there have been cases when the accompanied person has been kept in isolation and not in the offices of the police station, as provided by law. This is a violation, which infringes the rights of the citizens, despite the explanation was given that this has happened due to the lack of the sufficient place in the police station.

4. Attention was also paid to the living conditions and the treatment of the policemen. The treatment they get does not respond to the intensive and tiring and sometimes even dangerous work they are performing. Without any doubt it is an improper treatment. It is unacceptable that the civil guard of an object gets up to 20 000 Lek in a month, while the pay of chief police is 13 000 Lek. Their complaints are well founded. Suggestion was made to the competent organs to seriously engage with a quick solution of this problem.

#### **IV. Once again on the death penalty**

The question of death penalty is returning once again to the fore. As pointed out in one of the reports of this Committee (in particular Report covering January-March of this year), there is a tendency growing up in the country for the death penalty to be sentenced and applied. The belief prevails that death penalty might prove as an effective mean to combat the crime. It is widely regarded as an indispensable deterrent against increasing criminality. As a matter of fact, the new Albanian Penal Code, in force since 1995, provides for expressly death penalty, for the most serious criminal acts (8 articles of the Penal Code and 5 articles of the Military Code). As a result, there have been several cases of individuals sentenced to death by the courts in 1998, all of them for the gravest crimes. According to some reports, there are now altogether 22 people condemned to death and 3 of them have been sentenced during the first half of this year.

It is quite clear that this situation is in violation of the international commitments taken by Albania at the moment of joining the Council of Europe in July 1995. The obligation was undertaken to suspend any death penalty sentence and to abolish the death penalty until year 2000. No executions have been carried out since then, but there is a growing pressure, and some demands are being formulated to retain the death penalty even in the new constitution presently under preparation. The Albanian Helsinki Committee has reacted to this tendency and has reconfirmed its stand regarding the death penalty, that

means that Albania should abide to her international obligation and to abolish death penalty.

In regard to the death penalty, one more question arose lastly. During a fact-finding mission carried out in July in the police station in Vlora, an extremely inhuman and degrading practice was identified. Among the detainees there, there was also Adem Bendaj, 48 years old, sentenced to death for murder. He was arrested in August 1997 and condemned, by the first level court, on 6 April 1998. The decision was confirmed by the Court of Appeals, while the Court of Cassation (the highest court) has not reviewed the case, yet. Adem Bendaj was found with an iron helmet on his head and with chained hands. A few days before he had his feet chained too, but, due to the beginning of a lack of sensitivity (light paralyses) his feet were let free. Now he had only his hands tied, but the iron helmet on his head still remains. Adem Bendaj said that he has been kept in this way, for the last five months. The guards of the isolation rooms explained that, according to the internal regulation, all those sentenced to death penalty are kept in this way, until their case have been fully reviewed by all judicial organs.

It should be reminded that the AHC, since the very moment it was informed about the use of such practices, has publicly reacted in the beginning of 1996, deeming them as inhuman and degrading, as use of torture. It is unacceptable that the same practice, which has been used during the former regime, is still being applied. This happens after the adoption of the new democratic and contemporary legislation, of the new Penal Procedure Code and of a number of other legal acts. Any justification, trying to describe this practice as a measure aiming at preventing a suicide attempt by a condemned person could try in despair, is fully unacceptable. Any internal regulations, be they old or new, which permit such practices are contrary to the well known standards. They are just a simple form of torture unthinkable in a civilized democratic society. In fact, they are against the general trend of our legislation as well as against the international conventions, in which Albania is a party.

The Albanian Helsinki Committee urged to cancel immediately such an inhuman and degrading practice. In addition, the Albanian Helsinki Committee called on the judicial organs to apply speedy procedures while reviewing cases of death penalty sentences. The Court of Appeal and the Court of Cassation were invited to give precedence to these cases. Given the importance of this case, it was directly brought to the knowledge of the President of the Republic, who was kindly asked to pay the due attention and in particular to respond as quickly as possible to the pardon requests of those condemned.

## **V. Legislation**

The AHC has formulated some remarks to the address of a number of legal acts discussed and passed in the Parliament.

**1. Particular attention was paid to the law “On the National Informative Service” (SHIK) dated August 6, 1998.** In a special statement the AHC pointed out that in the formulation of some provisions there are ambiguities and vagueness, which could lead to subjective interpretation, arbitrary acts and violations of human rights.

The following issues were raised:

a. Article 6 of this law states that: “National Informative Service exercises its activity in accordance with the procedures drafted by its chairman and approved by the General Prosecutor of the Republic of Albania”.

This duty assigned to the General Prosecutor contradicts with the function of the Prosecutor as defined by the law. According to article 4 of the law, dated 18.02.1997 “On the organisation of justice in the Republic of Albania”, Prosecutor’s office “is the state authority which exercises the prosecution and represents the accuse in the process”. It follows that any approval of the procedures drafted by the chairman of SHIK exceeds this function. If the formulation will remain the way it is , - it was added, - the right of the General Prosecutor to exercise control on the implementation of these procedures should be provided for.

b. Last paragraph of the same article states that the use of these procedures against MP-s is excluded, unless a written authorisation is accorded by the Speaker of the Parliament, and in the case of the members of the Council of Ministers, there is an authorisation by the Prime Minister.

It should be reminded that the same formulation is found even in article 8 of the abrogated Law 7495, dated 02.07.1991 “On the National Informative Service”, which has been the object of serious criticism in the past.

The AHC argued that this problem must be viewed from two points of view. First, according to the approved law, SHIK is only an informative organ in the function of national security and not an investigating organ, as defined in the abrogated law. Second, if the formulation remains the way it is, a solution is to be given also to the way other people with immunity would be treated, because even for those somebody has to issue an authorisation.

c. Paragraph 4 of article 13 of this law causes particularly serious criticism. This paragraph is worded as follows: “Officials of state, central and local organs, state and private physical and juridical persons, are obliged to give information to SHIK to help them in the implementation of its duties for the sake of national security”.

The explanation given in this case saying that the circle of persons, who can be summoned to furnish information is quite limited while for those who do not respond to this the law does not provide any sanction, is unfounded. In fact, as provided for in the Civil Code, the circle of physical and juridical persons is quite wide. The expression “physical persons” means the citizens, while “juridical persons” is divided into public and private. This is only one side of the problem. What strikes the most is the obligation to give information. In

substance, this is illegal and unacceptable, because, “in the name of law” any kind of pressure can be exercised which could violate the free will of people.

As a conclusion, the law on SHIK was considered to suffer from serious deficiencies, which have to do with the defense of HR and that of the principles of the rule of law, as well. Regret was expressed that such a law, which contains serious deficiencies, was passed in the Parliament without being submitted to serious discussion.

On the other side, in its statement the AHC appreciated the prudence shown by the President of the Republic who invited for consultation various representatives of the public opinion. Representatives of the AHC were received by the President, on 11 August 1998, and this was a good opportunity to present the above mentioned remarks to the highest level of state authority.

2. The AHC turned back to the law dated 26.0.1998 “On the Criminal Police”, immediately after its entrance into power. Since the beginning we formulated some remarks which were forwarded to the Parliamentary Commission of Legislation. But, as no consideration was given in due time, the AHC turned back to the issue. More concretely, it is about article 9, which states that: “It is prohibited for the criminal police to undertake actions in the interest or in support of political parties, to perform secret acts, without the permission of the court, regarding the activities of elected state organs, of state administration, judicial organs and of legally recognized religious communities”.

It follows from this formulation that with the permission of the court, secret acts of investigation or prosecution regarding the elected state organs, judiciary, etc. are initiated. Elected organs means the deputies, too, and such a formulation can open the door to the violation of rights of persons enjoying immunity. In other words, the criminal police, which is a structure at the General Directory of Police at the Ministry of Internal Affairs, which has the duty to perform secret police tracking, with the permission of the court can put under surveillance and wire tapping even members of the parliament, ministers, judges and prosecutors. Against the above mentioned persons, such an action would be legal on the condition that the specialized organs start the prosecution, with the previous authorization from the competent organ.

Article 9 registers one more substantial ambiguity: the one which deals with the permission of the court. It does not specify which court, of what level; furthermore, the issue of the eventual appeal of the court decision is left in silence.

The AHC concluded its remarks by suggesting to the Presidency of the Parliament, as well as to Parliamentary Commissions of Legislation, Human Rights, Public Order and SHIK, to review and initiate a procedure for article 9 of this law to be revised and completed.

3. One more question arose at the beginning of August which was of some concern in particular for the journalists.

The Albanian Helsinki Committee, since 1993, has expressed its criticism against the Press Law then in force, which contained penal sanctions against the journalists. It should be reminded that some journalists have been condemned in the past based on this law. This

created an atmosphere of intolerance, which was a real threat for the freedom of press. This was the reason why the AHC hailed the abrogation of the above mentioned law and the approval of the new law which promulgates that “Press is free”. However, at the same time it was added that the country needs a more detailed press law, a law which must be contemporary and democratic.

It is to be expected that some initiative will be taken in this regard. In the meantime, a draft law about the information qualified as state secret has brought to the fore a very acute problem regarding the press. Articles 30 and 31 of this draft read that “the publication of the information qualified as a state secret is prohibited” and “the violation of the rules provided by this law will be punished as the law in force provides for”. This has caused an immediate reaction in journalistic circles. In a special statement the AHC shared the concern of journalists and asked for the revision of articles 30 and 31 of this draft, so that they are clearer and not giving ground to misunderstandings.

On the other side, the AHC drew the attention to the article 295 of the Penal Code, approved in 1995. In other words, this is a problem deriving from this article of Penal Code. It states that “commerce, distribution and informing of facts, numbers, content of documents or materials, which according to the publicly known law, constitute a state secret, by anybody who has been able to get aware about them, will be fined or sentenced to 5 years imprisonment”. It follows that the content of this provision does not exclude from the penal responsibility either the journalists, independently of the way and the form they get the information, the documents or the materials, which according to the publicly known law constitute a state secret.

The Albanian Helsinki Committee concluded its remark by suggesting that in addition to the discussion about this draft-law, articles 294, 295 and 296 of the Penal Code should be revised.

4. At the beginning of August a law was passed by the Parliament on the acute problem of the collection of weapons which are in possess of many people. One article of this law gives power to the police organ in charge of the collection of weapons to exercise control in houses or other premises or over individuals, according to the provisions of the Penal Procedure Code.

AHC is fully aware of the grave situation in the country, of the increasing rate of criminality and the spreading of the weapons in the hands of a great number of people. It is also clear that the performance of this law is limited in time (one year). But, on the other side, the AHC reminded of the necessity of strongly respecting to law. In fact, under whatever circumstances, excluding the flagrancy, no control of houses can be carried out without a court decision.

Accordingly, suggestion was made in particular to the Parliamentary Commission of Human Rights, Public Order and SHIK that this case be revised in accordance with the constitutional principles.

## VI. Genocide and ethnic cleansing in Kosova

The Albanian Helsinki Committee has tried to be the interpreter of the public opinion in this country regarding the repressive campaign undertaken by the Serb authorities against the Albanian population in Kosova. On several occasions, the AHC has reacted at its own initiative, while more than once it has conveyed the strong condemnation, by IHF and its affiliates, against the atrocities committed by the Serb authorities.

Two initiatives can be put in particular evidence. They are related to the 50<sup>th</sup> Anniversary of the Universal Declaration of Human Rights, organized by the Council of Europe in Strasbourg at the beginning of September.

First, it is the intervention by Prof. Arben Puto, Executive Director of AHC, whose contents is fully reproduced here:

*“During the plenary session of this assembly, as well as during the discussion in this workshop, the problem of gross violations of human rights was addressed rather in general terms, mainly on a theoretical level. Concern and regret have been expressed at the fact that gross violations of human rights are not a matter of the past, but they are still taking place.*

*Unfortunately, the tragic events in Kosovo didn't receive due attention, or even were left aside. This refers, in particular, to the speech and the paper of Prof. V. Dimitrijevic of the Belgrade University. While talking about gross violations of human rights, one cannot keep silent about the violent campaign undertaken by the Serb authorities against a majority of civilian population in Kosovo. It is widely known that all kind of violations are committed there. Thousands and thousands of displaced persons, entire villages burnt, massacres on a large scale. In a few words, a new Bosnia is taking place after the Dayton agreement, and in the middle of Europe before our eyes.*

*Under these circumstances, we cannot remain indifferent, just as outsiders. This gathering cannot simply commemorate the 50<sup>th</sup> Anniversary of the Universal Declaration; it should also react. We highly appreciate the passionate intervention of Mr. Hramov yesterday, who, moved just by the ideal of human rights, expressed a feeling widely shared to denounce the crimes against humanity perpetrated in Kosovo and to bring before justice those responsible, Milosevic in the first place.*

*We fully support the initiative taken by Mr. Hramov. In addition to this, we would formulate a twofold proposal:*

- *the Serb authorities should be called on to put an end immediately to the repressive and bloody campaign in Kosovo;*

- *an appeal should be addressed to all parties directly concerned and interested to engage themselves into serious mediated negotiations to find a peaceful solution to the crisis, which, if left as it is, is likely to endanger the peace and stability of the region as a whole.”*

Second, it is worth reproducing also the text of the appeal of the Russian representative:

***We must overthrow the regime of Belgrade:  
Request to the president and the prosecutor of the International  
Criminal Tribunal for the crimes committed in the former  
Yugoslavia to indict president Milosevic***

*Ten years ago, in Kosova, at the 'Blackbirds Camp', President Milosevic launched to the world his platform of intolerance and hatred, his promises of war, death and destruction.*

*Since then, the former Yugoslavia, which has suffered, which has suffered Miloscevic's policy of destruction and ethnic cleansing, has a dramatic barbarity situation that the world now knows.*

*From Vukovar to Dubrovnik, from the concentration camps of Prijedor and Omarska to Sebrenica, his ethnic cleansing policy has been applied everywhere, through the most violent and inhuman means.*

*During these 10 years Kosovo has not been spared. A "soft" but systematic repression, imposed by the Belgrade regime has deprived two million Albanians from their rights; two million individuals, who - nevertheless - still want to live in the country that they consider their own.*

*Today in Kosovo like yesterday in Croatia or Bosnia and Herzegovina, Milosevic has launched his policy of intolerance and hatred, violence and blood.*

*We must overthrow the National-Communist regime of Belgrade. We must end the aggression of the Kosovo. We must give the possibility to Serbs to establish democracy and the rule of law in their country. For these reasons we must stop President Milosevic. We must neutralize him, once for all. We must indict for genocide and crimes against humanity the person has been the "big director" and the instigator of the Balkan tragedy. We must do it now!*

*Otherwise any possibility of eventual freedom and democracy for Kosovo, as for Yugoslavia itself, well as for the Serbs will be lost. If we do not act now we will miss an opportunity for justice, the rule of law and the international community as a whole.*

It's a matter of deep regret that this appeal didn't receive due attention by the gathering.

