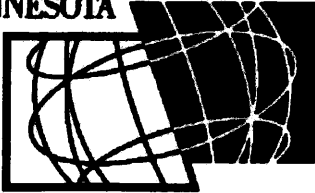


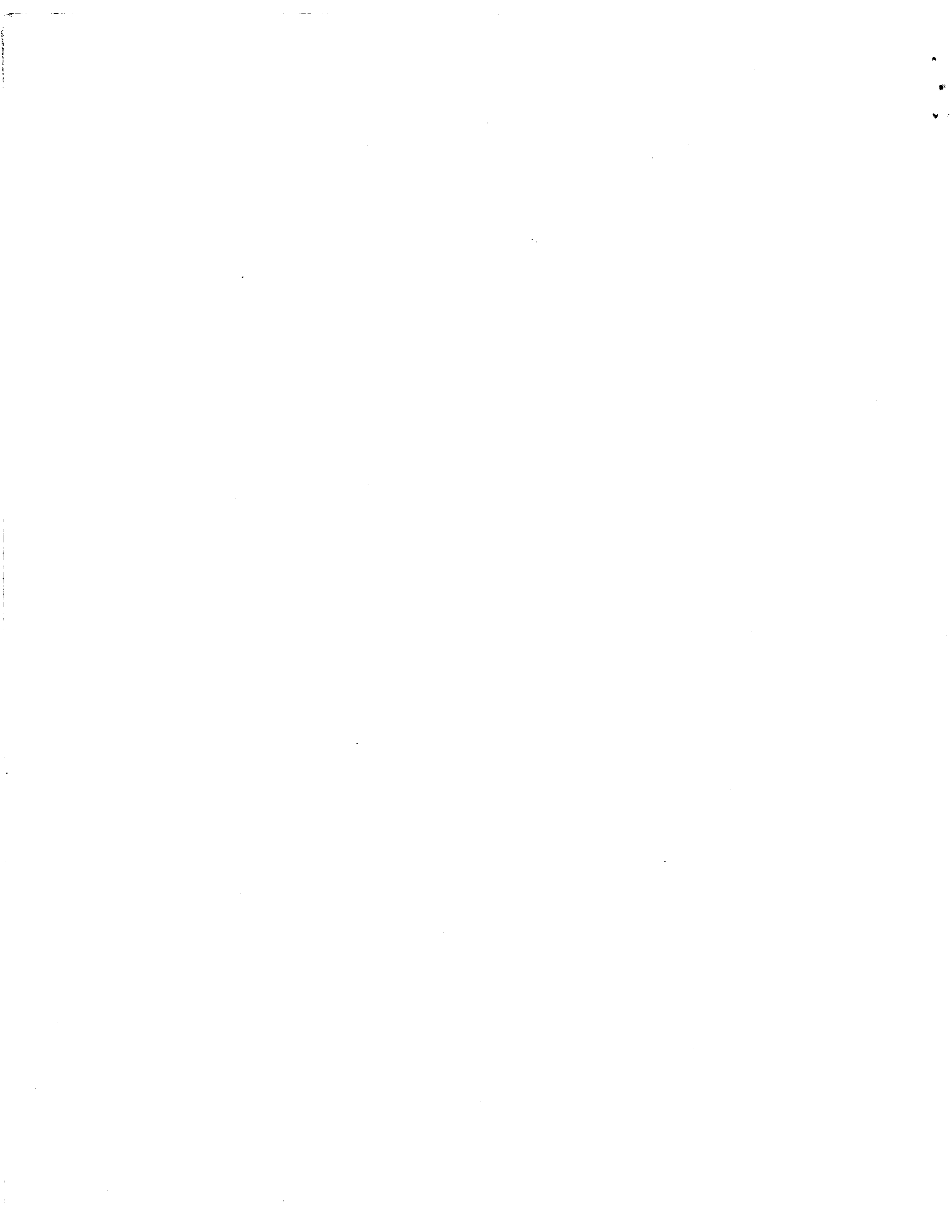
MINNESOTA



ADVOCATES
FOR HUMAN RIGHTS

Press Restrictions in Albania

December 1995



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Minnesota Advocates for Human Rights

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INTRODUCTION

A free press is the cornerstone of a democratic society. It has been said that liberty depends on freedom of the press, and that cannot be limited without being lost. This report examines developments over the course of the last two years that have placed substantial restrictions on critical reporting in Albania, and recently-adopted legislation that fundamentally threatens freedom of the press.

The Law on the Press, adopted by the Albanian Parliament in October 1993, and amendments to the penal code, passed in November 1993 and largely incorporated into the new criminal code in 1995, include provisions that have been used to seriously curtail press freedom. Numerous journalists have been prosecuted, and many others threatened with prosecution, under this legislation and under other provisions of the penal code.¹ The print media in Albania has also had to contend with prohibitive taxes, newly-established surcharges, and burdensome financial "investigations" by the government. Individual journalists have been harassed, threatened, and intimidated, and the cumulative impact of these attacks on the press has had a chilling effect on critical reporting in Albania. The following report details the findings of Minnesota Advocates for Human Rights based on its investigation of the right to free expression in Albania.²

RECOMMENDATIONS

Based on the findings of this report, Minnesota Advocates calls on the Albanian government to:

- Repeal or revise the Law on the Press to eliminate provisions that stifle free expression and are contrary to international law, as specifically set forth in the International Covenant on Civil and Political Rights, the documents of the Organization for Security and Cooperation in Europe, and the European Convention on Human Rights.
- Repeal the provisions of the Criminal Code that proscribe insult or defamation to parts of the population, the President, public officials, constitutional order, the State and its symbols, and representatives of other states, and rescind criminal penalties that allow imprisonment for libel, insult, and invasion of privacy.

¹ Although Albanian President Sali Berisha pardoned a number of journalists convicted under these laws on May 3, 1994, in recognition of World Press Day, the Press Law still remains on the books, and the new criminal code incorporates the restrictive provisions of the earlier amendments.

² In June 1994, a delegation from Minnesota Advocates spent a week in Tirana and met with journalists from numerous newspapers, as well as with judges, lawyers, human rights activists and government officials. The delegation was composed of James Coy, Minnesota Advocates Staff Attorney and Eastern Europe Project Coordinator, and Peggy Hicks, a member of the Minnesota Advocates Executive Committee. Delegations from Minnesota Advocates have returned to Albania three times since then to continue this investigation.

- End spurious "financial investigations" of independent and opposition newspapers.
- Insure that extra-judicial attacks on journalists are immediately and thoroughly investigated, and that responsible parties face criminal prosecution.
- Establish limited categories of information that may be designated as classified, and allow judicial review of any such designation to ensure due consideration of the balance between the interest in keeping the materials secret and the public's right to information.
- Provide equal access for opposition and independent journalists to news sources and information.
- Remove prohibitive taxes and surcharges that threaten the economic viability of the press, and insure equal access to all government-controlled resources.
- Allow the licensing and establishment of private radio and television stations, and guarantee editorial independence, diversity of viewpoints, and equitable coverage of opposition positions on state-controlled radio and television.

I. HISTORICAL BACKGROUND

The changes in the Albanian political and social landscape over the past five years have been as dramatic as any in Eastern Europe. The monolithic Albanian Party of Labor, which held exclusive control in the country for over forty years and created one of the most isolated and repressive regimes in the world, was forced in 1992 to surrender power to a democratically-elected parliament.³ Albania, once virtually cut off from the outside world, is now actively seeking foreign investment, assistance, and expertise. Albania has begun the process of reconstructing and recreating its legal, political, and economic structures. The current government has repeatedly expressed a desire to incorporate modern democratic principles and international human rights standards into Albanian law, and continues to seek membership in regional inter-governmental bodies and organizations.

A newly-emerged independent press was both a catalyst for and a product of the liberalization that presaged the dramatic changes to all facets of Albania's political and social structure. *Rilindja Demokratike*, the newspaper of the governing Democratic Party, was established in 1991 as the

³ Although the Democratic Party did not gain control of parliament until 1992, democratic reforms actually began in 1990, and the first multi-party elections were held in March 1991. Minnesota Advocates for Human Rights' prior reports *Human Rights in the People's Socialist Republic of Albania* (January, 1990) and *Trimming the Cat's Claws: The Politics of Impunity in Albania* (March, 1992) provide a detailed analysis of the human rights situation under the former regime and the transformation process.

first opposition paper in Albania.⁴ Later that year, several journalists from the state-controlled papers, along with representatives of Rilindja Demokratike, formed the Independent League of Albanian Journalists.

After the political process was opened up to opposition forces and independent organizations, new press publications began to appear. The Law on the Major Constitutional Provisions was adopted in May 1991 during the initial stages of the reform process.⁵ Article 6 of this law allowed for the creation of political parties separate from the state. These parties in turn established their own newspapers. After the Democratic Party won control of the government in 1992, there was a dramatic increase in the availability of media publications; approximately 240 newspapers and print publications registered with the Albanian government.⁶ There are more than 50 Albanian publications currently available in Tirana, if the count includes those that publish sporadically, monthly releases, and entertainment publications. Although the party papers still play a prominent role in Albanian journalism, several formally independent newspapers are now firmly established as part of the Albanian press.

Viewed in the light of the situation before 1991, the vitality of the press in Albania is astounding. There is clearly a functioning opposition and independent print media in Albania today. Certain protections for the press have been incorporated into Albanian law: Article 2 of the "Human Rights Charter" (Law No. 7692, adopted March 31, 1993), guarantees the right "freely to express opinions through speech, writing, or any other means of dissemination."⁷

However, the extent to which the media is free to operate in Albania has been increasingly questioned in the last two years, particularly since the adoption of the "Law on the Press" in November 1993. The law, while ostensibly guaranteeing a free press, contains provisions which instead seriously curtail press freedom. Prosecutions under the Press Law and under provisions of the penal code appear to be heavily influenced by the government and the ruling party; only opposition and independent journalists have been charged with violations of these laws. The prosecutions, coupled with attacks on and harassment of the press, have had a chilling effect on

⁴ Interview with Ilirian Zhupa, Tirana, Albania (June 6, 1994). Zhupa is the editor of *Populli Po*, an independent newspaper, and a founding member of Rilindja Demokratike.

⁵ The law was adopted as a stop-gap measure until a new constitution could be adopted, but is still in force because a formal constitution has yet to be ratified. In a November 1994 referendum Albanian voters rejected the most recent constitution proposed by the government.

⁶ The number of journals that are actually published in Albania is subject to some dispute. The number of registered publications include newspapers of trade unions and independent associations, as well as the party papers. Many print publications have shut down or publish only sporadically: Ilirian Zhupa contends that only a handful of the independent journals that are registered with the government are still publishing.

⁷ The Human Rights Charter, which was drafted to supplement the Law on Major Constitutional Provisions, enumerates basic rights and freedoms to be respected under Albanian law.

freedom of expression in Albania. While overt attacks and penal prosecutions have subsided somewhat in 1995, recently-enacted taxes and tariffs have created new problems for the print media in Albania, and the threat of prosecution is still used by the government in an attempt to control the press.

II. RECENT DEVELOPMENTS

A. LEGISLATION

1. The Law on the Press

The Albanian Press Law,⁸ adopted on October 11, 1993, is based on a law enacted in 1966 in Westphalia, Germany. According to German legal scholars, the law works in Germany because its terms and penalties are defined in the federal constitution and the penal code of the country.⁹ Germany has constitutional provisions that ensure freedom to information, freedom of speech, and other individual freedoms that serve as a backdrop for the implementation of the press law. Albania lacks these constitutional provisions, and has no history of individual rights protection. It is surprising, therefore, that such a law would be passed in Albania, where there is no constitution permanently in place to define the terms of the law and ensure individual rights and liberties.¹⁰ In Albania, terms of the law like "state secret" and "threat to peace" are vague and open to misinterpretation by an undeveloped court system that is heavily influenced by the

⁸ A translation of Law No. 7756, The Law on the Press, is attached as an appendix to this report. The most troubling provisions of the law set forth the penalties for violation of vaguely-defined provisions:

Article 18 permits a prosecutor to temporarily seize a publication without a court order and remove it from circulation in several circumstances, including when dissemination would pose "a moral risk to youth," or constitute a criminal act under Albanian penal law (such as revealing "state secrets").

Article 20(2) states that an editor-in-chief or publisher who fails to stop his or her publication from committing a violation of penal law is to be punished with imprisonment for up to one year or by a fine, even if the failure was merely negligent.

Article 21 provides for a fine of from 10,000 to 80,000 lek (US\$ 1,000-8,000) for a publisher who hires an editor-in-chief who does not meet the statutory residency and competency requirements; for an editor-in-chief who signs a registration form but does not meet the statutory requirements; or for an editor-in-chief who fails to register the publication properly or who disseminates or reprints a publication that has been confiscated.

Article 22 provides for a fine of from 10,000-80,000 lek for a publisher or editor-in-chief who wilfully or negligently fails to comply with the requirements for registering a publication, fails to identify clearly an item as an advertisement, fails to publish a properly submitted reply, or fails to deposit copies of the publication with libraries named in the law.

⁹ Kurt Braun, "Report on the Seminar on the Albanian Press Law Held by the Freidrich Ebert Foundation," December, 1993.

¹⁰ Ibid.

executive branch.¹¹

Furthermore, the Albanian law, unlike the German law, specifies prohibitively large fines for violations of particular provisions.¹² The fines, to be assessed against the editors and publishers of a paper that is in violation of the law, range between \$1000 and \$8000 at a time when the average journalist's salary in Albania is around \$50 a month. The law also permits confiscation of printed matter or property and allows for criminal punishment under certain circumstances.

The substance and application of the new press law has been roundly criticized by international observers and human rights activists as well as by the majority of journalists interviewed for this report. Journalists with opposition and independent papers uniformly agreed that the law was aimed at stifling criticism of the government. On October 15, 1993, most of the opposition papers and several of the independent papers went on a two-day general strike to protest passage of the law. A number of the newspapers also protested by publishing editions with a single blank page two days before the strike. This criticism was not universal, however; journalists affiliated with the Democratic Party or parties allied with the government were less concerned with the potential restrictions created by the law. Ylli Rakipi, the president of the Albanian League of Journalists, defended the creation of a press law, and criticized the protests of the opposition and independent papers.¹³ Mr. Rakipi, who at that time was also editor-in-chief of *Republika*, the newspaper of the Republican party, suggested that the law was "very necessary" to control the scurrilous and scandalous material being printed by some journalists.¹⁴

2. Penal Code Provisions

In addition to the press law, amendments to the Albanian penal code adopted in November 1993 allowed prosecution for "insult and defamation against the constitutional organs," "insulting the state and its symbols," "insult and defamation of the President of the Republic," and "insulting organs and representatives of other states."¹⁵ The new criminal code, adopted in January 1995 and effective June 1, 1995, substantially incorporates the provisions set forth in the amendments. In addition, the new code includes an article that criminalizes libel, providing for a sentence of

¹¹ *Ibid.*

¹² See note 8, *supra*.

¹³ Interview with Ylli Rakipi, Tirana, Albania (June 4, 1994). Although the League of Journalists was specifically formed as an independent organization, critics complain that it is now dominated by pro-government and Democratic Party supporters. Opposition and independent journalists recently formed the Albanian Association of Professional Journalists.

¹⁴ *Ibid.* In early January 1995, Ylli Rakipi resigned as editor of *Republika*, shortly after the Republican Party left the government coalition.

¹⁵ Law no. 7769, on Certain Amendments and Additions to the Penal Code of the Republic of Albania, November 16, 1993. A copy of that law is attached as an appendix to this report.

up to two years imprisonment if the act is "committed publicly."¹⁶ Whether or not charges are brought or sustained under these laws depends in large part on judicial and prosecutorial discretion, at a time when many judges and prosecutors are heavily influenced by the ruling party. Numerous opposition and independent journalists have been prosecuted under these provisions since 1993, and it is obvious that even the threat of prosecution can have a chilling effect on political commentary.

B. PROSECUTIONS OF JOURNALISTS

One of the first cases brought against a journalist by prosecutors under the new government was filed against Idajet Beqiri, editor of *Kombi*, the National Unity Party Newspaper. Beqiri was convicted of "defamation of the office of the president" in July 1993 for publishing an article that accused President Berisha of being the "murderer" of Albania and charged him with setting up a fascist state. Beqiri received a six-month sentence and spent three months in jail.

Journalists with the independent newspaper *Koha Jone* also quickly came under intense government scrutiny. Government prosecutors brought two actions against *Koha Jone* journalists in 1993. Editor Nikolle Lesi was charged with libeling the Chairman of the State Control Commission, found guilty, and fined. Aleksander Frangaj, the editor-in-chief of the newspaper, was charged with endangering state security for reporting that army tanks were being moved from the north of Albania to the south. Frangaj was placed under house arrest for over a month, but the Albanian government withdrew the charges in that case after a court hearing.

There was a flurry of legal action against members of the press in the first half of 1994. On January 17, Fatmir Zanaj, a journalist with the Socialist Party newspaper *Zeri i Popullit*, was given a suspended sentence of three months in jail and one year probation for publishing an article criticizing reforms in the Albanian Army. In addition, the paper's deputy editor, Shyqyri Meka, was fined the equivalent of \$1000 for publishing an open letter in *Zeri i Popullit* judged by the court to be insulting to President Berisha. The writer of the letter, Luftar Matohiti, was sentenced to two months imprisonment.

In April, Ilirian Zhupa, editor of the independent paper *Populli Po*, was sentenced to two months in prison for publishing an article that criticized the state intelligence organization for operating in the same style as the former communist security apparatus. Zhupa refused to identify the author of the article, and was charged, under the press law, as the responsible editor. The sentence was suspended on the condition that he not repeat the offense within one year.

The most severe action against the press taken by the government in 1994 was the prosecution of Martin Leka, a reporter for *Koha Jone*, and Aleksander Frangaj, the paper's editor. The charges against them were based on a story Leka authored in January 1994, reporting and criticizing an

¹⁶ Law No. 7895, Criminal Code of the Republic of Albania, January 27, 1995, Art. 120. The relevant articles of the newly-enacted criminal code are attached as an appendix to this report.

order sent to military officers concerning surrendering their weapons while off duty. Although Frangaj was originally acquitted, Leka, who had also been charged with libel, was sentenced to 18 months in prison for "colluding to reveal a state secret." On appeal from the trial court, the Court of Appeals found Leka guilty on the libel charge as well, but left the total sentence at 18 months. The appeals court also found Frangaj guilty under the press law, and sentenced him to five months in prison.¹⁷

On May 3, 1994, International Press Day, President Berisha pardoned both *Koha Jone* journalists, along with Ilirian Zhupa, Shyqyri Meka and Luftar Matohiti. Martin Leka, the only defendant actually in prison at the time of the pardon, was released.

The Court of Cassation decided the appeal in the *Koha Jone* case after the pardons were issued, and on May 31 it reversed the Appellate Court's convictions of Frangaj and Leka. The Court noted that no complaint for defamation had been filed by the Minister of Defense, which was a prerequisite for prosecution under the penal code. The court further held that since the story was true, it was not defamatory, in any case. While the defendants' sentences had already been removed by the presidential pardon, the Court of Cassation decision invalidated the underlying convictions.

Although no other journalists were sentenced to prison in 1994, other action was threatened by government prosecutors. Gergj Zefi, deputy editor of *Aleanca*, the newspaper of the Democratic Alliance, was arrested in March 1994 after publishing a report on the Frangaj and Leka trial. He had also published an article accusing the government of acting "like the Mafia." A case was opened against Zefi for insulting the state, but the charges were eventually dismissed. Martin Leka also reported that the Minister of Health brought another case against him for an unrelated article.¹⁸ The case was opened while Leka was in jail, but apparently no further action was taken after he was released.

In 1995, government police and prosecutors continued using the law to censor free expression and punish journalists. On June 8, Ilir Hoxha, the son of Enver Hoxha, was found guilty of "calling for hatred against parts of the population" and sentenced to one year in prison. The charges stemmed from an interview in the newspaper *Modeste*, where Hoxha defended his father's record and criticized the current government. Also in June, Filip Cakuli, chief editor of the satirical magazine *Hosteni 2000*, and journalist Naim Noka were arrested and questioned by SHIK, the Albanian secret police. They were released only after agreeing to change the cover of an upcoming issue. In August, Arban Hasani, chief editor of *Populli Po*, was fined \$1,000 for

¹⁷ Under Albanian law, both defendant and prosecutor can appeal the lower court verdict: thus, the prosecutor in this case was able to file an appeal with the appellate court, even though Frangaj had been acquitted in the original trial. Frangaj was out of the country at the time of the appeals court verdict, and so was not actually imprisoned after the verdict was handed down.

¹⁸ Interview with Martin Leka, Tirana, Albania (June 3, 1994).

defamation, based on the newspaper's report that a SHIK officer ordered the killing of a member of an opposition party.

C. ECONOMIC DEVELOPMENTS

Additional pressure on the media in Albania has been generated by financial constraints, some of which fall upon the print publications in a particularly onerous fashion. From the outset, the newspapers have necessarily had to contend with difficulties created by the general economic circumstances in Albania. These difficulties include limited availability of newsprint, limited physical facilities for printing, and a poor transportation infrastructure and delivery system for distribution outside of Tirana.

In addition to general economic hardship, however, specific decisions by the government have directly affected the viability of the newspapers. In May 1994, the government decided to make newspapers pay a 15% advertising tax, on top of taxes they were already paying. This was combined with a new tariff of 30% on newsprint. In July 1994 the editors of the seven major daily papers, including *Rilindja Demokratike*, appealed to President Berisha to eliminate some of the taxes. Berisha agreed to do this at a press conference held a few days later, but no further action was taken. In response, nine of the major papers went on strike for four days in August, protesting taxes that they claimed were aimed at destroying the independent and opposition press.

In March 1995, the Association of Professional Journalists issued a letter of protest, complaining of a 35% increase in European newsprint prices, and a 30% increase in Albanian printing costs. The letter was addressed to the Prime Minister and the Minister of Finance, and proposed that the government suspend customs taxes for paper and for primary materials for press production. The letter also proposed the possibility of a 30% subsidy of transportation costs, to offset transportation taxes.

Currently, newspapers are paying a tax on circulation, a tax on salary, a tax on "stipends," an advertising tax, and a tax on profits, in addition to general taxes on transportation and other general taxes.¹⁹ The taxes are especially burdensome on independent papers that are not subsidized by a political party or another venture; some report that they are currently operating at a loss.²⁰ There is no question that economic hardship is taking a toll, and papers, especially the independent press, have had to cut salaries and lay people off.²¹

¹⁹ Interview with Ilirian Zhupa, Tirana, Albania (November 20, 1994). Zhupa calculated that, taken all together, applicable taxes totaled 105% of revenue.

²⁰ *Ibid.*

²¹ Other regulations of the press have been proposed that would have direct economic impact; in May 1995, an order that all papers in Tirana be sold at government-owned bookstores and kiosks was suspended after journalists threatened to strike. The order would have placed severe limitations on the number of copies of each newspaper available to the

III. VIOLATIONS OF INTERNATIONAL STANDARDS

A. LEGISLATION

Albania became a party to the International Covenant on Civil and Political Rights (ICCPR) in January 1992.²² Thus, the government is legally bound by the ICCPR's provisions.

Article 19 of the Covenant reads, in relevant part:

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (order public), or of public health or morals.

Albania also is a participating state in the Organization for Security and Cooperation in Europe (previously the Conference on Security and Cooperation In Europe, "CSCE"), and has signed and thus accepted the obligations of the 1990 Copenhagen Document of the Conference on the Human Dimension. In that document, the participating states agreed to ensure that any restrictions on fundamental rights and freedoms must be:

...consistent with their obligation under international law, in particular the International Covenant on Civil and Political Rights.... Any restriction on rights and freedoms must, in a democratic society, relate to one of the objectives of the applicable law and be strictly proportionate to the aim of that law.²³

Furthermore, Albania was admitted into the Council of Europe in 1995 and hopes to be considered

public.

²² Instrument of accession deposited on 4 October 1991, entered into force on 4 January 1992. Status of the International Covenants on Human Rights, UN Doc. E/CN.4/1995/79 of 24 Nov. 1994.

²³ Copenhagen Document of the Conference on the Human Dimension, at para. 24.

a European democracy. Since member states of the Council of Europe must agree to comply with the provisions set forth in the European Convention on Human Rights, the Convention and its interpretation are also relevant.²⁴ Article 10 of the Convention provides essentially the same protections as Article 19 of the International Covenant.

The European Court of Human Rights, in interpreting the Convention, has consistently emphasized "the pre-eminent role of the press in a State governed by the rule of law."²⁵ Enhanced privileges, as well as special duties, for the press are necessary in order to enable the press to perform its dual roles of "purveyor of information" and "public watchdog."²⁶ It is "incumbent" on the press "to impart information and ideas on matters of public interest. Not only does the press have the task of imparting such information and ideas: the public also has a right to receive them."²⁷

Information or ideas concerning matters of public interest,²⁸ as well as those communicated in the context of a political debate or about a politician, are to be afforded special protection.²⁹ The Court has commented that:

Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of their political leaders. In particular, it gives politicians the opportunity to reflect and comment on the preoccupations of public opinion; it thus enables everyone to participate in the free political debate which is at the very core of the concept of a democratic society.³⁰

The International Covenant and the European Convention set forth the same three-part test for determining the legitimacy of restrictions on freedom of expression.³¹ The first prong of the test requires that any restriction must be provided by law. Second, any restriction must serve one of

²⁴ Currently, 34 countries are party to the European Convention including all countries in western Europe, Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania and Slovakia.

²⁵ See, e.g., *Castells v. Spain*, Judgment of 23 April 1992, Series A no. 236, at para. 43.

²⁶ *Lingens v. Austria*, Judgment of 8 July 1986, Series A no. 103, para. 42.

²⁷ *The Sunday Times v. the United Kingdom*, Judgment of 26 April 1979, Series A no. 30, para. 65.

²⁸ *Sunday Times*, para. 65 (information about the health risks of legal drugs); *Barford v. Denmark*, Judgment of 22 February 1989, Series A no. 149 (opinion concerning a court's lack of impartiality).

²⁹ *Lingens*, para. 42; *Oberschlick*, Judgment of 23 May 1991, Series A no. 204, paras. 57-61.

³⁰ *Castells*, at para. 43.

³¹ The test used by the Human Rights Committee in applying Art. 19 of the ICCPR is stated in a general comment in *Report of the Human Rights Committee to the General Assembly*, 38th Sess., Supp. no. 40, 1983 (A/38/40), Annex VI, General Comment 10. The states participating in the CSCE process have also pledged to observe the same test.