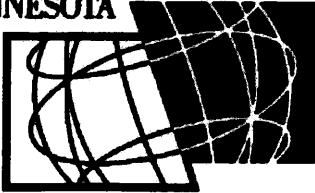


MINNESOTA



ADVOCATES
FOR HUMAN RIGHTS

Press Restrictions in Albania

December 1995



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Minnesota Advocates for Human Rights

400 Second Avenue South, Suite 1050

Minneapolis, MN 55401-2408 U.S.A.

Tel.: 612-341-3302; Fax: 612-341-2971

Internet: mnadvocates@igc.apc.org

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Minneapolis, MN 55401-2408 U.S.A.
Tel.: 612-341-3302; Fax: 612-341-2971
Internet: mnadvocates@igc.apc.org

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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.

the legitimate purposes expressly enumerated in the texts of the treaties.³² Third, any restrictions must be shown to be "necessary in a democratic society." To be "necessary" a restriction does not have to be "indispensable," but it must be more than merely "reasonable" or "desirable." A "pressing social need" must be demonstrated, the restriction must be proportionate to the legitimate aim pursued, and the reasons given to justify the restriction must be relevant and sufficient.³³ The European Court has stressed that, in evaluating a particular restriction, it is faced "not with a choice between two conflicting principles but with a principle of freedom of expression that is subject to a number of exceptions which must be narrowly interpreted."³⁴

The provisions of the Albanian Press Law and the penal code amendments do not incorporate these limits and have been applied in a manner inconsistent with the principle of freedom of expression. Therefore, the content and application of this legislation violates established international standards and Albania's obligations under international law.

1. The Law on the Press

The Albanian Law on the Press is closely based on the North Rhine-Westphalia Press Law of 24 May 1966, as amended. The Westphalian Law provides a fair model of a law that appropriately balances press freedom and other public interests, but only because it is subject to Germany's Basic Law and is interpreted and applied in keeping with that Law's spirit and purpose.

Albania's Law on the Press can be found to comply with European-wide standards of press freedom only if it is interpreted in light of the constitutional principles that animate the Westphalian Press Law. For example, Article 5 of Germany's Basic Law guarantees the right of "everyone," including publishers, editors, journalists and readers, to freedom from government interference with the right to express and disseminate opinions and to gather information from generally accessible sources; in addition, it grants special institutional protections to the mass media.³⁵ These special protections are justified on the ground that the media have a "public

³² As noted above, freedom of expression may be restricted only as necessary to respect the rights or reputations of others, or for the protection of national security or public order, or for protection of public health or morals.

³³ *Handyside v. United Kingdom* Judgment of 7 Dec. 1976, Series A no. 24, at paras. 48-50; *Sunday Times v. United Kingdom*, Judgment of 26 April 1979, Series A no. 30, at para. 62.

In *Sunday Times*, the Court described a balancing test to determine whether any public interest provides "sufficient" justification for interfering with the freedom of expression. Where the information subject to restriction involves a matter of "undisputed public concern," the information may be restricted only if it appears "absolutely certain" that its dissemination and diffusion would have the adverse consequences legitimately feared by the state.

³⁴ *Sunday Times*, supra, at para. 65.

³⁵ Article 5, paragraph 1 provides:

Everyone shall have the right freely to express and disseminate his opinion by speech, writing and pictures and

function" to inform public opinion and act as a "public watchdog."³⁶ This public function must be the responsibility of bodies which are independent of government influence. The special role of the media forms the basis for privileges, such as the right to refuse to give evidence in court, as well as duties, such as the obligation to verify information and to offer a right of reply.

Media freedom under the German constitution may be limited by provisions of "general laws" that promote important public or private values. The general laws that may restrict media freedom are those that protect youth, personal honor, the rights and reputations of others, national security, and public order. Media freedom may also be limited by constitutional protections of human dignity, free choice and practice of a profession or occupation, and the right to property. These competing values do not automatically justify restrictions on media freedom; rather, if an individual right or pressing state interest conflicts with media freedom, the German courts carefully balance the competing interests. The balancing takes into account the extent to which the increased protection of an individual or state interest might risk stifling the freedom of the media.³⁷ Courts will not uphold a restriction on the media unless it is appropriate, necessary and proportionate.³⁸ Any doubts are to be resolved in favor of press freedom.³⁹

The basic protections of the German law are the same, for all purposes relevant to this analysis, to those stated in the European Convention on Human Rights. Without these protections, several provisions of the Albanian press law conflict with the European and international standards.

a. Article 18: Confiscation

This article permits the prosecutor or his assistants to seize a publication without court order and remove it from circulation in several circumstances, including when dissemination would pose a "moral risk to youth." While this provision is also in the Westphalia law, the German courts have issued several decisions clarifying the kinds of publications that may and may not be seized on grounds of protecting the morals of youth.⁴⁰ Additionally, the provisions of German basic law

freely to inform himself from generally accessible sources.

Freedom of the press and freedom of reporting by means of broadcasts and films are guaranteed. There shall be no censorship.

³⁶ 7 Federal Constitutional Court (FCC) 198 (1958) (Luth Case); 42 FCC 170 (1975) (Deutschland-Magazin case).

³⁷ 7 FCC 198, *supra*; 30 FCC 173 (1971) (Mephisto); 75 FCC 369 (1987) (Strauss-Karikatur).

³⁸ U Karpen, "Freedom of the Press In Germany", in *Press Law and Practice: Press Freedom in European and Other Democracies* (London: ARTICLE 19 1993), at 80.

³⁹ 82 FCC 236, 260 (1990) (Schuberth).

⁴⁰ 30 FCC 337 (1971).

that limit the discretion of the prosecutor have yet to be established as part of Albanian law and practice.

b. Articles 20, 21, and 22: Criminal Penalties

Articles 20, 21, and 22 provide for heavy fines and imprisonment of up to one year for various violations of the press law.⁴¹ None of these provisions has any corollary in the Westphalian law. All of them violate the prohibition of disproportionate penalties under the European Convention.

Although several European countries continue to have laws on their statute book that permit imprisonment for press offenses, these penalties have not been applied in recent memory. In only two situations have the authorities seriously threatened to seek jail terms for press personnel: Where publication could have damaged national security, and where a journalist refused to disclose the identity of a confidential source believed to have information about criminal activity.

The two UN rapporteurs on freedom of expression suggested that imprisonment of anyone, not only media personnel, for speech offenses may well violate international standards.⁴² They wrote:

"[T]he question of imprisonment calls for some discussion inasmuch as it raises a problem of principle with regard to the criterion of proportionality. Can the abuse of expression really justify deprivation of liberty?... [W]hen we know what abuses resort to imprisonment can give rise, ought not this form of penalty to be called seriously into question...?"⁴³

The UN Human Rights Committee, which monitors states' compliance with the ICCPR, has criticized countries for having laws that authorize imprisonment for speech crimes.⁴⁴

Disproportionate penalties for speech offenses are all the more unacceptable when directed against press personnel because not only do they violate the individual's freedom of expression, but they also pose a substantial risk of discouraging the press from fulfilling its public functions. As stated by the European Court, heavy penalties against the press for publishing information and opinions

⁴¹ See footnote 8, *supra*, and see, generally, The Law on the Press, attached as an appendix to this report.

⁴² The Sub-Commission to the U.N. Commission on Human Rights has established thematic special rapporteurs on certain human rights issues of special concern to the Sub-Commission.

⁴³ *The Right to Freedom of Opinion and Expression: Update of the preliminary report prepared by Mr. Danilo Turk and Mr. Louis Joinet, Special Rapporteurs*, submitted to the Sub-Commission of Prevention of Discrimination and Protection of Minorities, UN Doc. E/CN.4/Sub.2/1991/9, at para. 100.

⁴⁴ See, e.g., the Committee's criticism of Iceland's libel law, which permits the possibility of a sentence of up to one year for libel. Report of the *Human Rights Committee*, 1994, GAOR Supp. no. 40, UN Doc. A/49/40, Vol. 1, at para. 78.

concerning matter of public interest are intolerable except in the narrowest of circumstances because of their likelihood to "deter journalists from contributing to public discussion of issues affecting the life of the community."⁴⁵

2. Penal Code Provisions

Law No. 7769, passed in November 1993, included amendments to the penal code that have served as the basis for prosecutions of journalists. The provisions of these amendments, which have been substantially incorporated into the newly-enacted criminal code, as well as other provisions of the code seriously violate European and international standards:

a. Prison Terms for Insulting or Defaming Parts of the Population

Article 7 of Law No. 7769 added a paragraph to Article 56 of the Penal Code which makes it a crime punishable by up to five years' imprisonment to "put the public peace at risk" by, among other statements, calling for hatred against parts of the population, or insulting or defaming them. This language was incorporated into Article 266 of the new criminal code.

Many European countries have laws that make it a crime to advocate hatred against an ethnic, national, religious or racial group. In fact, countries that are party to the ICCPR are required to make such advocacy "punishable by law" (although not necessarily a crime). However, three aspects of the Albania law make it much broader (and more problematic) than other European laws.

First, the phrase "to put the public peace at risk" is unacceptably broad. Penalties of imprisonment should be available only where violence is threatened and likely. Second, the phrase "parts of the population" is too vague. The jurisprudence of other European countries has narrowed the scope of groups that may claim injury due to hatred, insult or defamation to those defined by ethnic, national, racial, religious or similar characteristics.⁴⁶ Third, penalties of imprisonment of any length, and certainly of up to five years, are totally unacceptable for speech that is not intended or likely to cause violence.⁴⁷

Similarly, Articles 119-121 of the new criminal code include penalties of imprisonment for libel, insult and invasion of privacy. The new code provisions do not specifically define the elements of these offenses, although penalties are increased in each case if the offense is "committed publicly." In European jurisprudence, libel and related offenses are generally addressed under the

⁴⁵ *Lingens*, para. 44.

⁴⁶ See generally S. Coliver, ed., *Striking a Balance: Hate, Speech, Freedom of Expression and Non-Discrimination* (London: ARTICLE 19 1992).

⁴⁷ See the reports of the UN rapporteurs and the Human Rights Committee, discussed *supra*.

civil law, rather than as criminal offenses. Ordinarily, individuals are not imprisoned for the non-violent exercise of the right to free expression.⁴⁸

b. Insult and Defamation of the Constitutional Organs, the President of the Republic, the State and its Symbols, and Representatives of Other States

Articles 14-17 of Albanian Law No. 7769 specified criminal penalties for the crimes of insult and defamation of the President, the Parliament, the government, other constitutional organs, the State itself and its symbols, and representatives of other countries. These provisions have been substantially incorporated, with minor changes, into the new criminal code. For example, while defamation of the President is still criminalized, "insulting the President" is no longer listed as an offense. However, other provisions criminalize both defamation and insult of any "official acting in the execution of a state duty or public service." Furthermore, the code does not define the constituent elements for either defamation or insult, although the new provisions still provide penalties of imprisonment for these offenses.

A few European countries, including Germany, France and Norway, continue to keep such laws on the books, but they have been superseded or invalidated by decisions of the highest courts in the interest of protecting the free and fair discussion of matters of public interest.⁴⁹ It is entirely inconsistent with current European law, including the European Convention, for Albania to be reintroducing these archaic laws. They should be repealed immediately.

Politicians, heads of state, and government officials must tolerate a greater degree of criticism concerning matters relevant to their public functions than private persons. In 1976, the German Federal Constitutional Court reversed a criminal conviction for defamation resulting from a published story about the involvement of two politicians in the 1939 invasion of Poland.⁵⁰ In a 1982 case, the FCC ruled that calling the Bavarian Christian Social Union Party a neo-Nazi party, although intemperate, was fully protected political speech.⁵¹ The French also have a number of archaic criminal statutes that make it an offense to insult the President, any state institution, a minister, a Member of Parliament, a foreign head of state or other foreign representative. These laws are never used and, indeed, public officials and political leaders are required to meet a higher

⁴⁸ See discussion, pp. 14-15, *supra*.

⁴⁹ For example, the Federal Constitutional Court (FCC) of Germany ruled in 1990 that attacks against state symbols, such as the flag and the anthem, even if harsh or satirical, must be tolerated in view of the constitutional protections of freedom of expression, the press and the arts. 81 FCC 278, 294 (1990) (Bundesflagge); 81 FCC 298, 306 (1990) (Bundeshymne). Similarly, criticisms of Federal policy and politicians, even if sharp and obviously unfair, and even if untrue (so long as the speaker took reasonable measures to verify the claims) are entitled to protection unless they amount to defamation or insult under the general defamation laws. Decision of the Federal Penal Court, 19 official collection (BGHSt) 311 (*Neue Volkszeitung*, Communist Party).

⁵⁰ 43FCC 130 (1976) (*Politisches Flugblatt*).

⁵¹ 61 FCC 1, 13 (1982).

standard of proof in prosecuting a defamation claim.⁵² The situation is the same in Norway.⁵³ In Sweden, the last remnant of laws protecting government institutions and officials from insult was repealed on the ground that, in a democratic society, government institutions should be open and responsive to all criticism, even when based on lies.⁵⁴

The European Court of Human Rights has made clear in a series of judgments that individuals have a broad right to criticize political leaders, public officials, governments and institutions of state, and that they may be punished only when their criticisms are excessively offensive or factually false and made without due care as to their truth. Even when they overstep the permissible limits of lawful speech, any punishment must be proportionate to the offense. In particular, no person should be sentenced to prison for defamation or insult (or for that matter, for any speech that was neither intended nor likely to cause violence), and no fine should be so high as to imperil the media organ's continued operation.

In the landmark *Lingens* case, the Court established the rule that politicians must tolerate a greater degree of criticism than private individuals:

Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders. More generally, freedom of political debate is at the very core of the concept of a democratic society.... the limits of acceptable criticism are accordingly wider as regards a politician as such than regards a private individual.⁵⁵

In *Castells v. Spain*,⁵⁶ the European Court ruled that governments are required to tolerate an even greater degree of scrutiny than politicians:

The limits of permissible criticism are wider with regard to the Government than in relation to a private citizen, or even a politician. In a democratic system the actions or omissions of the Government must be subject to the close scrutiny not only of the legislative and judicial authorities but also of the press and public opinion. Furthermore, the dominant position which the Government occupies makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means are available

⁵² R Errera, "Press Law in France," in *Press Law and Practice, supra*, at 67, 69.

⁵³ Steingrim Wolland, "Press Law in Norway," in *Press Law and Practice, supra* at 123.

⁵⁴ Hans-Gunner Axberger, "Press Law in Sweden," in *Press Law and Practice, supra*, at 160.

⁵⁵ *Lingens v. Austria*, *supra*, at para 41.

⁵⁶ *Castells, supra*.

for replying to the unjustified attacks and criticisms of its adversaries or the media.⁵⁷

The provisions of the Albanian legislation are especially problematic given the newness of the Albanian democracy and legal system, coupled with the president's active role in the Albanian government. These provisions become more worrisome in the light of Albania's political history. Enver Hoxha consciously created a cult of personality in Albania during his autocratic rule, and only in recent years has the Albanian political process allowed for dissent and criticism within the government. The idea that any public criticism of government officials is an attack on the state is still very much a part of Albanian political consciousness. By specifying criminal penalties for critical speech, the Albanian government is impermissibly constraining the right to freedom of expression, in contravention of international standards. The problem is exacerbated by the fact that laws which may be facially neutral have clear political application. For example, since the president plays such an active role in Albanian politics, the distinction between an insult to the president and vigorous criticism of his policies and agenda might be impossible to define. Consequently, the mere presence of these provisions in the Albanian penal code has a chilling effect on political debate, and violates the fundamental right of freedom of expression.

B. PROSECUTIONS

Prosecutions under the Law on the Press and the penal code are intended to limit criticism of government officials, policies, and actions, and have a stifling effect on political opposition. The restrictions are so broad and the prosecution is so selective as to result in self-censorship of those inclined to criticize state policy. Coupled with the economic pressure brought to bear on the press in Albania and collateral attacks on individual journalists and newspapers, these actions create an atmosphere of intimidation and a climate of repression, and are clearly in violation of established international standards protecting freedom of expression.

Even independent of the substance of the legislation, patterns of enforcement make it clear that the press law and penal code provisions are being used to curtail criticism of the government. Every prosecution under these provisions has been against journalists opposing or criticizing the government. The attacks against opposition figures on state-controlled Albanian radio and television and in *Rilindja Demokratike*, the newspaper of the Democratic Party, are every bit as personal and as strident as the articles in the opposition papers.⁵⁸ However, *Rilindja Demokratike*, as the paper of the ruling party, does not experience government harassment. None of its personnel have faced government prosecution under either the press law or the defamation

⁵⁷ *Id.* at paras. 42 and 46.

⁵⁸ Interview with Arben Imami, Tirana, Albania (June 6, 1994). Imami is a journalist with *Aleanca* and a Democratic Alliance M.P. Imami also reported that the Democratic Alliance attempted to bring a case under the provisions of the penal code against Albanian Television for saying that Alliance members were being paid by Belgrade. The Democratic Alliance was told that it had been a mistake, and no further action was taken.

provisions.⁵⁹ For most of the past 50 years, the press has served as an organ of the state, and that history affects how the government treats its own party paper and the opposition papers.⁶⁰

The prosecution of Leka and Frangaj highlights the political application of the law. Originally, Leka was accused of having written a false statement, and of having insulted the Minister of Defense.⁶¹ After 10 days, the prosecutors added the state secret charge. A Defense Ministry spokesman claimed that the media was prohibited from informing the public about acts related to the military; under Albanian law, the Ministry determines what documents are secret.⁶² As noted, the trial court acquitted Frangaj but found Leka guilty of disclosing a state secret. The prosecution appealed and the Appeals Court found Frangaj and Leka guilty under the press law, and also held that Leka was guilty of slandering the Minister of Defense, even though the Minister had not brought a charge of slander against Leka.⁶³

According to opposition journalists, the prosecution was intended to discourage reporters from writing about the army, as well as punish *Koha Jone* for its repeated criticism of the government and of Democratic Party officials.⁶⁴ The prosecution of journalists obviously has a chilling effect on reporters' willingness to criticize the government. Even after President Berisha issued pardons to the journalists on May 3, 1994, the law remained in place, and that in itself has a chilling effect on critical reporting.

The law also dissuades attempts to report on corruption, since anything that might be construed as a direct attack on a government official could be actionable under the provisions of the penal

⁵⁹ Interview with Edi Paloka, Tirana, Albania (June 3, 1994). Paloka is a reporter for *Rilindja Demokratike*, and member of the Democratic Party National Council.

⁶⁰ Edi Paloka noted that the duty of *Rilindja Demokratike* was to make propaganda for the Democratic Party, and although the paper might criticize the party on small matters, mostly it takes the role of the defender of the party.

⁶¹ Interview with Martin Leka, *supra*.

⁶² Interview with Krenar Laloci and Kristaq Traja, Tirana, Albania (June 5, 1994). According to Traja, judicial bodies have no discretion to question this decision, which means that a state secret is anything that the administrative bodies think is a secret.

⁶³ Interview with Martin Leka, *supra*. The trial court judge who released Frangaj, Arben Ristani, had been arrested on corruption charges in the interim and dismissed. Unsubstantiated reports attributed Ristani's dismissal to the leniency of the sentences.

⁶⁴ Interview with Lulzim Cote, Tirana, Albania (June 5, 1994). The way in which arrests are carried out also seems designed to intimidate: Leka said that the police broke down his office door the night after the article was published, and that agents of the "special police" were sent to his mother's house. Ilirian Zhupa reported that while he was being taken to jail on March 14, 1994, someone ransacked the offices of *Populli Po* and took documents.

code.⁶⁵ Furthermore, the threat of prosecution has a chilling effect on potential sources as well as journalists.⁶⁶ Government officials continue to raise the spectre of criminal prosecution to intimidate opponents and critics of the government. On January 24, 1995, for example, Albanian Television reported that a government spokesman, commenting on allegations made against Premier Aleksander Meksi by the newspaper *Dita Informacion*, included the following language in his statement: "It is up to the justice system, to which we will refer, to take under protection the state's interest and to protect individuals from such harmful attacks that are punishable by the laws of every democratic country."⁶⁷

The on-going attempts to stifle criticism and free expression have resulted in clear violations of international law. In June 1995, Amnesty International sent a letter to President Sali Berisha in response to the trial and imprisonment of Ilir Hoxha. Amnesty International protested Hoxha's imprisonment for the non-violent exercise of his right to free expression as a violation of Article 19 of the ICCPR. Similarly, Article 19, the International Centre Against Censorship, sent a letter of protest to President Berisha in the case of Filip Cakuli, and the International Federation of Journalists protested the trial against Arban Hasani.

C. COLLATERAL ACTIONS AGAINST THE PRESS

While prosecutions and threats of legal action against reporters critical of the government create cause for concern, reports of physical attacks against journalists are even more disturbing. In June 1993, ATA journalist Fatmir Elezi was beaten to death. No one was ever charged with his killing. In the early months of 1994, journalists with *Aleanca* were attacked on two separate occasions. On March 3, Gjergi Zefi, the Deputy Editor of the paper, was attacked and beaten near his home in Shkoder. A week later, Teodor Keko, the editor-in-chief of *Aleanca*, was attacked by two men while he was walking with his wife in Tirana. No one was arrested in either case.

Some pro-government journalists who met with the delegation suggested that the attacks were unrelated to politics. Most others, however, were convinced that at least some of the attacks were politically motivated. They suggest that the government was responsible, or at least has knowledge concerning the attacks. Although the police reportedly investigated each case, no one

⁶⁵ Interview with Lulzim Cote, *supra*. Cote also reported that the editor-in-chief of *Zeri I Popullit* was called by the general prosecutor to come in for questioning after the paper published letters critical of the director of Albanian Telegraph Agency: according to Cote, this kind of questioning is in itself very threatening because "the mentality exists that the prosecutor has power, and the journalist must expect him to follow-up."

⁶⁶ *Ibid.*

⁶⁷ BBC Summary of World Broadcasts, Jan. 24, 1995. Part 2 Central Europe and the Balkans; Albania; EE/2209/B; "Spokesman Condemns Paper's Charges Against Premier." Source: Albanian TV, Tirana. 1900 GMT 21 Jan 95.

has ever been charged in any of these attacks.⁶⁸

Additionally, formal actions on the part of some government officials seem designed to intimidate or obstruct the opposition press. The Committee to Protect Journalists reported that in 1994 Teodor Keko was continuously harassed by government prosecutors, who demanded that he appear in court once a week to testify about a journalist who anonymously wrote an article in *Aleanca* about the murder of a Democratic Alliance politician. Although Keko refused to name the journalist, he was repeatedly summoned to court over the course of several months.⁶⁹

Opposition and independent papers are frequently the subject of "investigations" by the financial police. The financial records of *Koha Jone* were reviewed more than 30 times in 1993, and these reviews continued in 1994.⁷⁰ Ilirian Zhupa reported similar harassment at an international conference on the press held in Tirana in November 1994. Zhupa criticized the government's treatment of the press in his initial presentation to the conference. At the closing session, Zhupa spoke again, and said that he missed the second day of the conference because, after his remarks on the first day, he had been visited by the financial police.

The offices of *Koha Jone* in Tirana were closed down by the police on July 27, 1994. Police sealed the offices on the grounds that the paper owed money to the state-owned printing house. *Koha Jone* still managed to publish an edition on the 27th, and the seal was removed the following day after they were able to prove in court that the payments had been made.⁷¹

Journalists also claimed that police and security forces limited their access to particular areas and events. Photographers report that film has been confiscated by police, and journalists allege that they have been turned away from the scenes of rallies and protests. Journalists from opposition papers have had difficulty getting passes for trials of major political significance, and some have been turned away by the police, even when they had valid passes.⁷² Opposition journalists also

⁶⁸ There were no further reports of physical attacks in the last half of 1994 and beginning of 1995. However, in May 1995, *Gazeta Shqiptare* reported that Adrian Krasta, a journalist for Albanian TV, was beaten by unidentified individuals, and concluded that the attack was probably in connection with his work as a journalist.

⁶⁹ Committee to Protect Journalists, *Attacks on the Press in 1994*.

⁷⁰ Interview with Martin Leka, *supra*.

⁷¹ Pressure has not been limited to the political press: a student paper set up with equipment donated by the International Media Fund was closed down at the journalism faculty after the first issue criticized the press law. While school officials claimed that the paper was unauthorized and that students had consulted opposition papers before publishing, the paper's editors charge that the decision was blatantly political. Representatives of the International Media Fund who were working with the students in Tirana also felt that there was a political basis for the action taken against the student paper. The paper published several more issues off-campus, and recently was re-established at the journalism faculty.

⁷² A journalist from the Democratic Party readily acknowledged that he could get into trials when opposition journalists could not, but suggested that it was just a matter of being friends with the right people.

have a great deal of difficulty collecting information. Opposition and independent journalists do not have ready access to information from the government, and have significant difficulty even getting interviews with some government officials.⁷³

There have been several cases where reporters at opposition rallies, especially rallies organized by the Socialists, have been arrested and charged with organizing the demonstrations. Because opposition journalists often have senior roles in opposition parties, the distinction between reporter and participant may be blurred. Fatmir Kumbara, a journalist who is a member of the presidency of the Socialist Party was convicted of organizing an illegal rally in July 1993, even though he denied the charge and claimed that he had attempted to persuade the demonstrators to disperse. Another journalist, Luan Rama, was detained after the rally, then released. Thoma Gellci, the editor-in-chief of *Zeri i Popullit*, was arrested on July 31 at the front door of the paper's offices, and charged with organizing an illegal meeting, because he had been at the rally.⁷⁴ Sometimes, however, these arrests seem to be aimed specifically at the opposition press: when the trial of Fatos Nano began in March 1994, police arrested Shyqyri Meka and detained him for several hours. They reportedly told him that they needed to arrest a journalist from *Zeri i Popullit*, and he was the first one they found.⁷⁵

Even foreign journalists critical of the government have been subject to intimidation. In August 1993, an Italian journalist who had written articles critical of the President was detained without charges, and released only after agreeing to leave the country.⁷⁶ Also in 1993, a freelance Spanish photographer had his film seized and destroyed, and a reporter for AFP was stopped by the police after reporting on corruption within the national archives.⁷⁷ Because of its reporting on the trial of Fatos Nano, the BBC lost access to a medium-wave transmitter south of Tirana, had its FM service threatened, and its correspondents harassed by agents of the secret police.⁷⁸ In August and September 1994, Greek journalists covering the espionage trial of five ethnic Greeks were routinely harassed, at least two were arrested, and several were expelled from Albania.

⁷³ Interview with Martin Leka, *supra*.

⁷⁴ Interview with Lulzim Cote, *supra*.

⁷⁵ *Ibid*. Collateral actions by the government that affect *Zeri i Popullit* and the Socialist Party take many forms: In April 1995, several former and current editors of *Zeri i Popullit* were charged with misusing funds given to the paper by the former government to purchase a printing press. Several people were imprisoned, while others, including current chief editor Thoma Gellci, were placed under house or city arrest. Socialist Party leaders contend that the charges were designed to weaken the party before the next elections.

⁷⁶ U.S. State Department Country Reports on Human Rights, p. 772 (1993).

⁷⁷ Interview with Lulzim Cote, *supra*. Cote also said that the reporter's son was kidnapped by someone and held for three hours, and that the reporter was threatened by phone.

⁷⁸ Information on harassment of the BBC reported in *The Economist*, "Out of the Frying Pan," April 2, 1994, p.49.

Coverage of the espionage trial created a particular source of tension between journalists and the Albanian police. Both Albanian and Greek journalists reported that they were frequently stopped, searched, and questioned during the trial. A member of the Minnesota Advocates Delegation to the trial witnessed police surround, beat to the ground, and repeatedly kick a man holding a camera.⁷⁹ Albanian authorities claimed that many of the journalists had entered the country on tourist visas, and did not have proper press credentials. The mistreatment of the journalists was apparently part of a pattern of behavior by police toward Greek nationals who were attending the trial.⁸⁰ However, several Greeks were expelled precisely because they were attempting to cover the trial.⁸¹

Coverage of the espionage trial highlights another concern: there is inevitably a degree of self-censorship by the Albanian press, in part because journalists fear government prosecution, but also because many papers have specific agendas they are addressing. For example, very few Albanian papers originally reported on clashes at Gjirokaster between Albanian authorities and ethnic Greeks in 1993. One of the independent journalists who was in the area reported to Minnesota Advocates that he had observed an Albanian Television van driving past the demonstration, on the way to the Greek border to film Albanians who were being sent back from Greece. The director of Albanian Television denied that a crew was in the area, however, and suggested that the events were exaggerated for Greek Television, "perhaps by the communists."⁸²

The issues of preferential treatment and harassment of opposition media do not apply in the radio/TV context, because the state still holds monopoly control over Albanian Radio and Television. According to the director, broadcast decisions are made by "consensus" by a council selected based on parliamentary groups.⁸³ However, eight of the eleven members of the council are from the Democratic party. Opposition parties claim that the government-run radio and television are biased, and do not cover their positions on issues. The U.S. State Department Country Report for 1994 noted:

Opposition critics of the government continue to allege that television serves the interest

⁷⁹ See *Trial Observation Report: The Albanian Trial of five Ethnic Greeks for Espionage*, Minnesota Advocates for Human Rights, September, 1994.

⁸⁰ See Human Rights Watch/Helsinki, *Albania: The Greek Minority*, February 1995.

⁸¹ The International Federation of Journalists issued a statement condemning the Albanian authorities for "their heavy-handed harassment of journalists covering a politically charged trial in Tirana," and Aiden White, the Secretary-General of the organization said that "the Albanian government should understand that its arbitrary rough treatment, arrest, and expulsion of media workers is a serious breach of international standards of freedom of expression."

⁸² Interview with Skendar Bucpapaj, Tirana, Albania (June 4, 1994). Bucpapaj was the director of Albanian Radio and Television.

⁸³ *Ibid.*

of the ruling Democratic Party. State television's portrayal of the events outside the courthouse during the Omonia trial, including police use of force against Greek journalists and lawyers, was misleading since it created the false impression that the police were violently provoked. Opposition parties claimed that some controversial interviews and programs, including rebroadcast segments of the Voice of America, were not aired, reportedly at the request of political and government leaders.⁸⁴

In part because the only positions currently available in radio and television broadcasting are with the state-controlled stations, broadcast journalists are even more likely to engage in self-censorship. Two private FM radio stations, in Vlore and Patos, were briefly allowed to operate before they were shut down by the police. The station in Vlore began broadcasting music and entertainment programming in November 1994, but was closed down shortly after AP ran a story about it.⁸⁵ The director of Albanian Television asserted that Albania is not ready for private radio and television, because they would broadcast "pornography and slander."⁸⁶

CONCLUSION

Legislative developments limiting press freedom in Albania, the repressive measures taken against some journalists, and the government's apparent attempts to assert economic control over the print media raise very serious questions about the Albanian government's commitment to the right to free expression. The process of transforming the political system takes time, and the inherent problems in creating a new framework of democracy and democratic institutions are only exacerbated when there is no recent history of democracy to build upon. While it is important to recognize the difficulties this poses for the transformation of the legal and political system in Albania, it is also important to recognize that fundamental rights cannot and should not be compromised.

Minnesota Advocates for Human Rights calls on the government of Albania to recognize that the ability of a journalist to disagree with, criticize, and even chastise government officials is the hallmark of a vibrant democracy, and must be guaranteed under the laws of a democratic society. Attempts to regulate and control this, no matter how well meaning, necessarily have a chilling effect on the press and on the democracy as a whole, and open the door to increased repression and authoritarian control. Minnesota Advocates urges the government of Albania to repeal or amend the press law and the penal code provisions, remove prohibitive taxes and economic regulations, and allow for the development of independent radio and television broadcasting, so that the free press can flourish in Albania.

⁸⁴ U.S. State Department Country Reports on Human Rights, p. 724 (1994).

⁸⁵ Interview with Merita Dhimgjoka, Tirana, Albania (February 6, 1995). Dhimgjoka is the AP correspondent in Tirana.

⁸⁶ Interview with Skendar Bucpapaj, *supra*.

APPENDIX I

(Official Journal of the Republic of Albania, No. 12, November 1993, page 771 - Fletorja Zyrtare e Republikës së Shqipërisë, Nr. 12, Nëntor 1993, faqe 771)

LAW No. 7756 dated October 11, 1993

"ON THE PRESS"

In reliance on articles 16 and 20 of law no. 7491 dated April 29, 1991 "On the major Constitutional provisions," on the proposal of a group of deputies, the People's Assembly of the Republic of Albania

D E C I D E D:

Article 1: Freedom of the Press

The press is free. The freedom of the press is protected by law.

The press is limited only by Constitutional provisions and the provisions of this law.

The taking of any other measure that violates the freedom of the press is prohibited.

The formation of professional organizations of the press with compulsory membership and the creation of special courts for the press with controlling power over it is prohibited.

Article 2: Freedom of Exercise of the Press

The activity of the press, the setting up of press enterprises or any kind of enterprise that has to do with the press does not require the supplying of a license.

Article 3: Public Duty of the Press

The press fulfills a public duty through the investigation, preparation and dissemination of news, pronouncements, the exercise of criticism or in other manners and is a factor influencing the formation of free opinion.

Article 4: The Right of the Press to be Informed

Public offices [lit. official links] are obligated to give information to the representatives of the press to enable them to fulfill their public duty.

The obligation to give information does not apply when:

- The conduct of a judicial proceeding, civil or criminal, that has begun would be hindered, made more difficult or jeopardized by it;
- The request for information conflicts with legal provisions for maintaining secrecy;
- A public or private interest that is protected by law would be injured.

The issuance of general orders that prohibit officials from giving information to the press in general, to one with a specific director or a particular periodical publication is prohibited.

The printing house of a newspaper or magazine may request officials not to give official information [to them] for use later than to their competitors.

Article 5: Obligation of the Press to Verify Information

The press must verify all news before its dissemination as to its truthfulness, content and source. The obligation to keep a press publication free from punishable content may not be broken.

Article 6: Definition of the Term "Press Publication"

1. Press publications within the meaning of this law are all writings prepared by the technique of printing books or other techniques of mass production, duplication or dissemination, and also recorded magnetophone tapes, figure recorders, drawing with or without writing, and musical pieces with text or explanation.

2. In press publications are also included announcements in multiple copies through which news agencies, press correspondents or other undertakings furnish the press with their materials in writing, images or another similar manner. Announcements given by an auxiliary editorial enterprise are also considered a "press publication" regardless of the technical form in which they are given.

Periodical press publications are newspapers, magazines or other printed publications that are published continuously, even if not regularly, but in time intervals no longer than six months.

3. The following are not considered "press publications"

- official printed materials unless they themselves contain official announcements;
- printed materials that serve professional purposes, circulation, private or social life, such as forms, price lists, family announcements, advertising materials, annual business or administrative or similar reports, as well as election ballots.

Article 7: Identification [Lit. Introduction] of Editorship

All press publications printed in the territory of the Republic of Albania must give the place and year of publication, the name or firm and address of the publisher, as well as the name and address of the owner of the typography.

In addition to this, the name and address of the editor-in-chief [lit. general or responsible editor] must be given in periodical publications. If there are several editors-in--chief, all data for each of them must be given in conformance with paragraph 1. In this case it must be made known for which part or section of the publication each editor is responsible. A responsible party must also be designated for the advertising section; the same rules shall apply to him as for the editor-in-chief.

Newspapers or their supplements which take and use ready-made parts for publication must give the name of the editor-in-chief of the parts and their source. Secondary newspapers or supplements, either local ones or those of the capital, in their introduction must also identify the publisher of the principal newspaper.

Article 8: Personal Requirements for the Editor-in-Chief

1. A person who

- resides outside the territory of the Republic of Albania;
- as the consequence of a judicial decision does not have the right to work in a public office;
- has not reached the age of 18;
- may not be pursued penally in an unlimited manner

may not hold the position of editor-in-chief [general or "responsible" editor].

2. The rules of paragraph 1, no. 3, do not apply to press publications which are published by the young for the young.

Article 9: Characterization of Paid Publications

If the publisher or responsible party of a press publication has been paid for a publication or has sought or agreed to be promised compensation for it, then this publication, when it is not published in the designated place under the heading of advertisements, must be clearly identified with the word "advertisement."

Article 10: Requirement for Refutation

1. The editor-in-chief and the publisher of a periodical press publication are obligated to publish a refutation for a person or other subject who has been affected by published material. The obligation extends to all secondary publications or newspapers of the press publication in which the relevant material was published.

2. The obligation to publish a refutation does not apply in cases when:

- a) the person or subject does not have a justified interest in its publication;
- b) the refutation is not suitable because of its length; or
- c) it is a question of an advertisement that has to do only with business.

In cases when the refutation does not exceed the length of the text to which it refers, it is considered suitable. The refutation must contain only true data and is not permitted to contain anything punishable. It must be submitted in writing and must be signed by the injured party or his legal representative. The injured party or his legal representative may request publication of the refutation only when it is submitted to the editor-in-chief or publisher not later than three months after the publication of the text to which it refers.

3. The refutation must be printed immediately in the next issue not yet ready for the press, in the same place and with the same writing as that of the text to which it refers, and without addition or reduction. It may not be printed in the form of readers' letters. It shall be printed without charge. A person who expresses himself in the form of a refutation in the same number must present only actual facts.

4. A regular legal proceeding may be brought against the refusal of a refutation. On the basis of the complaint of the injured party, the court may order that the editor-in-chief or publisher publish the refutation in conformance with paragraph 3. This procedure shall be carried out in accordance with the provisions of the code of civil procedure. The refusal of publication is not required to be verified. A judicial proceeding shall not take place on the question.

5. Paragraphs 1 through 4 do not apply to reports on the conduct of sessions of the People's Assembly or representatives of communes, municipalities, district councils and also courts.

Article 11: Obligation of Publishers and Publishing Houses to Deposit Press Publications

1. For every press publication that is published in the territory of the jurisdiction of this law, the publisher must deposit five copies in the following libraries at his own expense and without compensation.

- a) National Library when the publication was done in Tirana and in the districts.
- b) District library when the publication was done in the local press.

2. The press publications specified in paragraph 2 of article 6 are exempted from the requirement of depositing copies, as are presentations in pictorial form without text. Press publications may be exempted from this obligation.

3. In cases when because of their circulation or the great value of the publication its deposit may not be requested from the publisher, a request shall be made and the expenses of deposit reimbursed.

4. Paragraphs 1 through 3 apply, respectively, also for enterprises that print a publication when the publication does not have a publisher in the territory of Albania or when he moves outside the jurisdiction of this law.

Article 12: Order of Confiscation

1. Confiscation of a press publication may be done only by order of the magistrate.

2. Confiscation may be ordered only in cases when:

- there are reasons why the order may be given for the removal of the press publication from circulation or for its sequestration and

- the removal of the publication shall be done only when there are reasons, on the basis of the respective complaint or an authorization.

3. Confiscation may not be ordered in cases when

- the importance of the interest that is protected by the measure of confiscation is smaller than the putting at risk of the public interest in being informed by this press publication
or

- it is clear that the damages that come from the confiscation do not correspond to the importance of the matter.

Article 13: The Measure of Confiscation

1. An order for confiscation shall be given only for issues of the press publication that are found in the possession of the publisher, distributor, editor, press, tradesman, or other persons who have influenced, in their preparation, publication and dissemination, the printed parts that were offered publicly or shown publicly as well as press publications intended for dissemination or duplication; confiscation may be extended also to pictures, plates, matrices or other relevant means that carry the content of the publication.
2. In the order for confiscation the issues of the press publication that are to be confiscated must be specified and also the laws that have been broken by them must be identified. Parts that may be detached and that do not have harmful content are not to be confiscated.
3. Confiscation of a press publication may be annulled in cases when the author has himself retired that issue from circulation, dissemination or duplication.

Article 14: Carrying Out the Confiscation

1. Measures for the carrying out of a confiscation must correspond to the seriousness of the matter.
2. The confiscation shall be carried out by making known in writing or orally to the persons mentioned in the first sentence of the first paragraph of article 13 the reason for the issuance of the order of confiscation, also explaining the consequences arising from it.

Article 15: Prohibition of Dissemination of Confiscated Press Publications

During the period of confiscation the dissemination of the confiscated publication is not permitted, as well as the reprinting of the issue that has caused its confiscation.

Article 16: Annulment of the Confiscation

1. An order for confiscation may be annulled when a public accusation is not compiled within a month or the publication voluntarily removed from circulation.
2. If the time period contemplated in paragraph 1 is not sufficient because of the breadth of

the legal process or the difficulties in collecting evidence, the prosecutor may request an extension of the period for an additional month. The application may be renewed only one time.

3. If the act of accusation has not been compiled and a demand for voluntary withdrawal from circulation has not been made either, the order of confiscation shall be annulled at the moment when the prosecutor himself requests this. On presentation of the request of the prosecutor, the prohibition according to article 15 is not longer effective. The prosecutor must make his request known to the interested parties.

Article 17: Compensation for a Baseless Confiscation

1. If a confiscation is unlawful or the order for confiscation turns out to be baseless, the injured party shall be compensated with money. This shall extend also to a case when the order of confiscation remains in force, although according to article 16 it should have been annulled.

2. A request for compensation may be justified only when the order for confiscation is annulled as well as when the order for removal or sequestration was not given.

3. Compensation shall be made for material damage resulting from the confiscation.

4. A request under paragraph 1 shall be directed to the district court within one months from the announcement of the decision mentioned in paragraph 2.

Article 18: Temporary Security Measures

1. The prosecutor or his official assistants have the right to remove from circulation a publication for purposes other than those of securing evidence and without an order of confiscation (temporary security), in cases when the issuance or dissemination of that publication constitutes an illegal act, which verifies the object of

-- risk to peace, risk to a democratic juridical state, treason against the country, risk to external security or

-- of a criminal act proscribed by the Penal Code

-- of the dissemination of writings that constitute a moral risk to youth, and also in cases when a judicial order of confiscation cannot be obtained in time. Paragraphs 2 and 3 of article 12 and articles 13 and 17 may also be applied for temporary security measures.

2. Temporary security measures are not to be applied for daily newspapers.

3. A judicial decision of confiscation (article 12) of a press publication which is subject to temporary security measures must be sought from the prosecutor within 24 hours after the security [measures are taken]. The court must render a decision on the prosecutor's complaint within twenty-four hours from the moment of presentation. Temporary security measures automatically become invalid on the court's decision turning down the complaint for confiscation.

4. In cases when the temporary security measures are ordered by an official assistant of the prosecutor, the materials shall be presented to the prosecutor within 12 hours.

5. An order for temporary security measures becomes invalid in cases when the decision rendered by the relevant organs on confiscation is not presented within 5 days from the date of its issuance; the press publication temporarily restrained immediately gains its freedom.

Article 19: Confiscation for Securing Evidence

Articles 12 through 18 are not applicable in cases of confiscation of particular issues of a press publication for securing evidence.

Article 20: Criminal Liability

1. Liability for the commission of criminal offenses by a press publication shall be dealt with under the provisions of the criminal law.

2. If a press publication commits a violation that constitutes a criminal offense, there shall be penally liable

-- in the case of periodical press publications, the editor-in-chief and

-- in other publications, the publisher

who wilfully or negligently have violated their obligation to keep the press publication free from performing punishable violations, they shall be punished with imprisonment of up to one year or by a fine, if they are not deemed to be author or co-author of the offense in conformity with paragraph 1. If the illegal act performed by the press publication and which constitutes a penal offense may be pursued only on a complaint or authorization, proceedings in accordance with sentence 1 shall be carried out on the basis of the drawing up of the complaint or the issued authorization.

Article 21: Violations of the Rules of the Press

A person who does the following shall be punished by a fine of from 100,000 to 800,000 lek:

- being the publisher, appoints as editor-in-chief an employee who does not meet the requirements of article 8;
- signs in the capacity of editor-in-chief when even he himself does not comply with the requirements of article 8
- being editor-in-chief or publisher of a press publication with an illegal content does not respect the rules on identification (article 7)
- in contravention of article 15 disseminates or reprints a confiscated press publication.

Article 22: Other Violations of the Rules of the Press

1. Persons who, wilfully or negligently, do the following are considered to act in contravention of law:

- being in the position of editor-in-chief or publisher, they either do not comply with a rule of article 7 on identification [of editorship] or as an enterprise propagate press publications which lack in whole or in part the data specified in article 15 (identification) [the latter reference is incorrect and should be "7"];
- holding the position of publisher or responsible person (sentence 4 of paragraph 2 of article 7), contrary to article 9, they do not identify a paid publication as an advertisement or permit this to be done [by someone else];
- they violate the obligations of the third sentence of paragraph 3 of article 10;
- they violate the obligations of deposit under paragraph one of article 11, also in connection with paragraph four.

2. Violations of these rules are subject to fine from 10,000 to 800,000 lek.

Article 23: The Right to Refuse to Give Evidence; Prohibition of Confiscation and Control

1. Editors, journalists, publishers, distributors, printers and others who take part professionally in the preparation and publication of a periodical press publication have the right to refuse to give evidence in connection with a publisher, correspondent or person who guarantees

something printed in the editorial part of the press publication or an announcement given to be published, as well as for its content.

2. The confiscation of written materials, voice tapes or recordings of pictures, views or other presentations that are found in the possession of a person who refuses to give evidence or an editor, publisher and printing press, in cases when confiscation is ordered for purposes of investigation or verification of facts, over those to whom the right to refuse to give evidence extends, is forbidden.

3. Paragraph 2 applies to a search.

4. In cases when a person who has the right of refusal is suspected of having committed a criminal offense or acted in complicity in its commission, in urgent circumstances and cases, the refusal is invalid.

Article 24: Final Provisions

1. Every provision contrary to this law is repealed.

2. This law is effective fifteen days after publication in the Official Journal. [The publication date was November 18, 1993].

Promulgated as decree no. 667 dated October 26, 1993, of the President of the Republic of Albania, Sali Berisha.

APPENDIX II

(Official Journal of the Republic of Albania, No. 14, December 1993, page 859 - Fletorja Zyrtare e Republikës së Shqipërisë, Nr. 14, Dhjetor 1993, fage 859)

Law No. 7769 dated November 16, 1993

"ON CERTAIN AMENDMENTS AND ADDITIONS TO THE PENAL CODE OF THE REPUBLIC OF ALBANIA"

In reliance on article 16 of law no. 7491 dated April 29, 1991 "On the major Constitutional provisions," on the proposal of a group of deputies,

THE PEOPLE'S ASSEMBLY OF THE REPUBLIC OF ALBANIA

DECIDED:

Article 1

The first paragraph of article 17 is amended as follows:

These principal punishments are given to persons who have committed crimes:

1. Deprivation of liberty.
2. Life imprisonment.
3. Death.

In the second paragraph of article 17, point 3 is repealed (re-education through work).

In the third paragraph of article 17, point 3 is repealed (removal of the right to vote).

Article 2

Article 19 is amended as follows:

A fine is a monetary punishment.

Punishment by fine is given from 10,000 to 1,000,000 lek.

Punishment by fine is given for penal acts that contemplate that punishment, within the bounds set in the second paragraph of this article.

When a fine is not paid in the set term, the court decides on its substitution by deprivation of liberty, calculated at 300 lek for one day's deprivation of liberty. The amount of punishment set by substitution may not exceed the punishment of deprivation of freedom contemplated by the relevant provision. If the person punished pays the fine while the punishment is being carried out, the judge shall withdraw his decision and make calculations according to the criteria set in this article.

Article 3

After article 21, article 21-a shall be added with this content:

Life Imprisonment

The punishment of life imprisonment is given by judicial decisions for a serious crime committed and is suffered in the places set for the carrying out of punishment by deprivation of liberty.

The punishment of life imprisonment may be given for the crimes specified by articles: 47, 48, 49, 50, 51, 52, 54, 57, 58, 60-a, 62, 65, 84, 94-a (second paragraph), 97 (second paragraph), 98 (second paragraph), 101 (second paragraph), 102, 152, 153, 154 and 159.

The punishment of life imprisonment shall not be given to persons who at the time of commission of the crime had not reached the age of eighteen or to women.

Article 4

Article 32 is amended as follows:

In extraordinary cases, when the court considers that the act has small social risk and not less than two mitigating circumstances contemplated by this code are verified, the court may impose a punishment under the minimum or the same but a more lenient punishment than that specified by the relevant provision of this code.

Article 5

Article 38 is amended as follows:

When the court gives a punishment of deprivation of liberty of up to five years, it may, because of the small risk presented by a person who has not been punished before, order that the person punished be put on probation, suspending the execution of the punishment, on the condition that during the probationary period the person punished not commit another penal act at least as serious or more serious. The term of probation may not be less than one year nor more than five years.

When the person receiving conditional punishment commits another penal offense as serious as or more serious than the prior one during the term of probation, the court shall withdraw the punishment given conditionally and apply the rules applicable to punishments for both crimes together.

When the court has given an additional punishment, it shall be applied regardless of whether the main punishment was conditional, except when the court decides otherwise.

Article 6

Article 42-c is amended as follows:

When a person punished by deprivation of liberty demonstrates by his conduct and his work that he has reformed, on his request the court may order early release on the condition that he has suffered two-thirds of his punishment.

Any part of the punishment for which an amnesty or pardon has been granted shall not be included in the time suffered.

A person sentenced to life imprisonment may receive early release on the condition, in extraordinary cases, that he has suffered not less than twenty-five years imprisonment.

Early conditional release is not permitted for a repeat offender.

When a person given early conditional release is punished for another penal act as serious as or more serious than the prior one, the court shall withdraw his early conditional release.

Article 7

In article 56, after the word "racial" the word "religious" shall be added.

A paragraph with this content shall be added to article 56:

A person who puts the public peace at risk by calling for hatred against parts of the population,

insulting or defaming them, seeking the use of force or arbitrary acts against them, shall be punished:

- by deprivation of liberty from one to five years.

Article 8

Article 57 is amended as follows:

The creation of an organization with a fascist, communist-enverist, totalitarian, terrorist character, directed against the constitutional order, or participation in it, shall be punished:

- by deprivation of liberty from one to five years.

Article 9

After article 57, article 57-a shall be added with this content:

Dissemination of anti-constitutional propaganda materials

The preparation, dissemination or introduction into the territory of the Republic of Albania of materials and means of propaganda of a party, organization or society prohibited as anti-constitutional, anti-national, fascist, racist, totalitarian, communist-enverist or those which are continuations of their activity or of a government, party, organization or society outside the territory of the Republic of Albania which share the aims of the former and assist them, shall be punished:

- by deprivation of liberty up to three years.

This provision shall not apply when the materials and means of propaganda serve as explanatory activity for defense against anti-constitutional intentions of art or science, research or teaching, information about current events or history, and similar purposes.

Article 10

In article 58 the words "national liberation war" shall be replaced by the words "anti-fascist war."

Article 11

After article 71, article 71-a shall be added with this content:

Unlawful Taking of Water

The unlawful administration of water, diverting or changing a water line, opening dams, building or shutting of drainage or irrigation canals or lines or other acts that constitute unlicensed works in the network of water supply for drinking, shall be punished:

- by a fine or by deprivation of liberty up to two years.

Article 12

After article 77, article 77-a shall be added with this content:

Hiding Income

Hiding or false reporting of income or objects that are subject to taxes and tariffs shall be punished:

- by a fine or by deprivation of liberty up to one year.

Article 13

After article 77-a, article 77-b shall be added with this content:

Non-payment of Taxes and Tariffs

Non-payment of taxes and tariffs within the required time by a person against whom administrative measures have been taken for the extraction of taxes or tariffs and who has the ability to pay them shall be punished:

- by a fine up to twice the amount of the unpaid tax or tariff or by deprivation of liberty up to two years.

Article 14

Article 118 is amended as follows:

Insult and Defamation against the Constitutional Organs

A person who insults or defames publicly the legislative organ, the government or other constitutional organs or one of their members shall be punished:

- by deprivation of liberty from three months up to two years.

Article 15

After article 119, article 119-a shall be added with this content:

Insult and Defamation of the President of the Republic

Insulting the President of the Republic in print, in a meeting or through the dissemination of writing shall be punished:

- by deprivation of liberty from six months up to three years.

Defamation of the President of the Republic that infringes on his honor and dignity shall be punished:

- by deprivation of liberty from six months up to five years.

A penal prosecution for these acts begins only with authorization of the President of the Republic.

Article 16

After article 119-a, article 119-b shall be added with this content:

Insulting the State and its Symbols

A person who in print, in a meeting or through the dissemination of writings insults the Republic of Albania, its constitutional order, its flag, emblem, national hymn and national martyrs shall be punished:

- by deprivation of liberty from six months up to three years.

Article 17

After article 120-a, article 120-b shall be added with this content:

Insulting Organs and Representatives of Other States

A person who insults a head of state or a member of a foreign government who is officially in the Republic of Albania, or a head of a diplomatic representation in the Republic of Albania, shall be punished:

- by a fine or by deprivation of liberty up to three years.

Article 18

The second paragraph of article 134 shall be amended as follows:

The cultivation of plants or trading in seeds for the production of narcotics, the unlicensed preparation, import, maintenance and sale of drugs and narcotic raw materials, shall be punished:

- by deprivation of liberty from three up to fifteen years.

Article 19

Article 176 is amended as follows:

Injuring a person slightly through carelessness shall be punished:

- by a fine from 10,000 up to 20,000 lek. [This was previously a crime, but the punishment was a social reprimand or re-education through up to six months' labor. Article 175, unchanged except for the elimination of a re-education penalty, covers serious injuries through carelessness.]

Article 20

After article 187, article 187-a shall be added with this content:

Intrusion on Personal Secrets

The revelation of a secret that pertains to the private life of a person, by one who is entrusted

with or becomes aware of it by reason of his profession or job, when he is obligated not to reveal it without being authorized, shall be punished:

- by a fine or by deprivation of liberty up to one year.

The revelation of a secret with the intent of profit or to injure another shall be punished:

- by a fine or by deprivation of liberty up to two years.

Article 21

Article 196 is amended as follows:

The appropriation of personal property which is found or which mistakenly or by chance falls into one's hand shall be punished:

- by a fine from 10,000 up to 100,000 lek or by deprivation of liberty up to one year.

Article 22

The death penalty is removed for the crime contemplated by articles 51, 52, 58, 60-a, 62 and the second paragraph of 101.

Article 23

Articles 20 and 25 of the Penal Code are repealed.

APPENDIX III

Selected Articles of Law No. 7895, dated January 27, 1995 Criminal Code of the Republic of Albania

Article 119: Insulting

Intentionally insulting a person constitutes criminal contravention and is sentenced to a fine or to up to six months of imprisonment.

When this act is committed publicly, it constitutes criminal contravention and is sentenced to a fine or up to two years of imprisonment.

Article 120: Libel

Intentionally spreading rumors, and any other knowingly false information, which affect the honor and dignity of the person, constitutes criminal contravention and is sentenced to a fine or up to one year of imprisonment.

The same act, committed publicly, constitutes criminal contravention and is sentenced to a fine or up to two years of imprisonment.

Article 121: Intruding into someone's privacy

Fixing appliances which serve for hearing or recording words or images, the hearing, recording or airing words, fixing, taping or transmitting images, as well as their preserving for publication or the publication of these data which expose an aspect of the private life of the person without his consent, constitutes criminal contravention and is sentenced to a fine or up to two years of imprisonment.

Article 225: Distributing anti-constitutional writings

Distribution of writings or use of symbols belonging to an anti-constitutional party, organization or associations or to one previously banned on the same grounds, is sentenced to a fine or up to three years of imprisonment.

Distributing or infiltrating materials, writings or symbols into the Republic of Albania from abroad, with intent to overturn the constitutional order or affect the territorial integrity of the country, is sentenced to a fine or up to three years of imprisonment.

Article 227: Insulting representatives of foreign countries

Insulting prime ministers, cabinet members, parliamentarians of foreign states, diplomatic representatives, or representatives of recognized international bodies who are officially in the Republic of Albania, is sentenced to a fine or up to three years of imprisonment.

Article 229: Insulting acts against the anthem and flag

Using words or committing acts which publicly insult the flag, emblem, anthem of foreign states and recognized international bodies, as well as taking away, breaking, irreparably damaging the flag, or emblem, which are displayed in official institutions, constitutes criminal contravention and is sentenced to a fine or up to one year of imprisonment.

Article 239: Insulting a public official on duty

Insulting intentionally an official acting in the execution of a state duty or public service, because of his state activity or service, constitutes criminal contravention and is sentenced to a fine or up to six months of imprisonment.

When the same act is committed publicly, it constitutes criminal contravention and is sentenced to a fine or up to one year of imprisonment.

Article 240: Defamation toward a public official on duty

Intentional defamation committed toward an official acting in the execution of a state duty or public service, because of his state activity or service, constitutes criminal contravention and is sentenced to a fine or up to one year of imprisonment.

When the same act is committed publicly, it constitutes criminal contravention and is sentenced to a fine or up to two years of imprisonment.

Article 241: Defamation toward the President of the Republic

Intentional defamation committed toward the President of the Republic is sentenced to a fine or up to three years of imprisonment.

Article 266: Calls for national hatred

Endangering public peace by calling for national hatred against other parts of the population, by insulting or defaming them, or by requesting the use of force or arbitrary actions against them, is sentenced to a fine or up to five years of imprisonment.

Article 268: Defamation of the Republic and her symbols

Defamation, made publicly or through publications or distribution of writings, of the Republic of Albania and her constitutional order, flag, emblem, anthem, martyrs of the nation or abolishing, damaging, destroying, making indistinct or unusable the flag or emblem of the Republic of Albania exposed by official institutions, constitutes criminal contravention and is sentenced to a fine or up to two years of imprisonment.

Article 294: Spreading state secrets by the person entrusted with it

Divulging, spreading, and informing facts, figures, content of documents or materials which, according to a publicly known law, constitute state secrets, by the person entrusted with it or who became informed of it because of his capacity, is sentenced to a fine or up to five years of imprisonment.

When the same act is committed publicly, it is sentenced to a fine or up to ten years of imprisonment.

Article 295: Spreading state secrets by citizens

Divulging, spreading, and informing facts, figures, content of documents or materials which, according to a publicly known law, constitute state secrets, by any person who becomes informed on them, is sentenced to a fine or up to three years of imprisonment.

When the same act is committed publicly, it is sentenced to a fine or up to five years of imprisonment.

Article 318: Insulting a judge

Insulting a judge or other members of trial panel, the prosecutor, the defense lawyer, the experts, or every arbitrator assigned to a case because of their activity, constitutes criminal contravention and is sentenced to a fine or up to two years of imprisonment.

