

ATTACKS ON JUSTICE - ALBANIA

Highlights

Albania has continued reforming its legal system in the framework of its democratization process. Meanwhile, the authorities must also cope with other serious challenges such as the fight against human and drug trafficking and the dismantling of organized crime. Although the Constitution provides for an independent judiciary, political pressure, intimidation, endemic corruption, bribery, and limited resources have hampered the independent and efficient functioning of the judiciary. A law on disclosure of personal assets was adopted in April 2003 to thwart the pervasive corruption in Albanian society, including the judiciary. Two important measures were adopted in order to improve the judicial system: the adoption in March 2004 of the *Law on the Protection of Judges and Witnesses* and the establishment of the Serious Crime Courts in January 2004 to deal with trafficking and organized crime. On 12 October 2003, local elections in many major Albanian cities tested the performance of the new *Electoral Code*. Unfortunately, according to international observers, these elections fell short of international standards.

BACKGROUND

Albania is a republic with a multiparty unicameral parliament, currently dominated by the socialist and democratic parties. A split arose within the ruling Socialist Party in early 2002, which adversely affected the stability of the government, as the latter's attention was entirely devoted to internal difficulties. The political situation temporarily improved after June 2002 following the broad-consensus election of President Alfred Moisu, who thereafter facilitated cross-party agreements on fundamental reform issues such as electoral and judicial reform. However, the sudden resignation of Foreign Affairs Minister Ilir Meta in July 2003 and the dismissal by Prime Minister Nano of the Minister of Public Order – ministerial cabinet that replaced the previous Ministry of Internal Affairs -, Luan Rama, in October 2003, after the Minister allegedly assaulted a member of the media in a TV show, left a vacuum in the government for several months, and therefore diverted government efforts to reform the judicial system. Following a cabinet reshuffle, Prime Minister Nano secured a majority in Parliament, allowing for a more effective pace of reforms. General legislative elections are expected to take place in June 2005.

The [Constitution](#) adopted by Parliament on 21 October 1998 and approved by referendum the following 22 November establishes the separation of powers as a fundamental principle of democracy. However, the country remains a young and rather fragile democracy. The European Union expressed in its "[Albanian Stabilization and Association Report for 2004](#)" that the consolidation of democratic culture is essential to bring about necessary reforms in Albania.

The method in which the local elections of 12 October 2003 were conducted illustrated the fragile institutional framework of Albania. The elections of mayors and commissioners in local units were organized under the new [Electoral Code](#) (adopted on 19 June 2003), which integrates many of the recommendations made by the international community. The main amendments introduced by the reform are the establishment of a media monitoring board and of an Electoral College at the Court of Appeal in Tirana. The new electoral code also allows for complaints regarding modifications in the voters list and provides for regulations concerning the use of public resources during election campaigns. An additional positive measure was the introduction of educational programs by the Central Electoral Commission (CEC), targeted at citizens to raise their awareness concerning the electoral process. However, although the new law provided cause for optimism, some of its provisions were not applied in practice. The electoral reforms had given rise to the expectation that the public institutions would perform their duties well during the local elections. However, the international observers of the OSCE and of the Council of Europe found the elections to fall short of international standards. In particular, the Office for Democratic Institutions and Human Rights of the OSCE spoke of “a missed opportunity for significant progress towards compliance with OSCE commitments and other international standards for democratic elections” ([OSCE Report on Albanian Local Government Elections](#), 25 February 2004, p. 1). The international observers’ main concerns were the irregularities caused by the undefined rules of procedure and the lack or insufficiency of decision-making undertaken by the Central Elections Commission regarding the registration of voters, as well as the counting of the votes. Some districts of Tirana had to reschedule a second vote following problems encountered regarding the initial counting of votes. The OSCE found that “the falsification of results was reported by international observers in 10 per cent of vote counts observed. In 19 per cent of the counts observed, more ballot papers were found in the ballot box than the number of the voters recorded as having voted” (p. 2). Accordingly, the Council of Europe’s Venice Commission and the ODIHR Office of OSCE released [recommendations](#) on the merit of the system used, in order to enhance better performance in future elections.

As regards human rights, the main subjects of concern remain trafficking in human and drugs and organized crime. The UN Human Rights Committee (HRC) expressed further concern on 2 December 2004 in its “[Concluding Observations](#)” on Albania’s initial report under the International Covenant on Civil and Political Rights (ICCPR) about police abuses, arbitrary arrests and detentions, ill-treatment in police custody, discrimination and violence against women under customary and traditional codes, the high rate of infant mortality, inhumane conditions of detention, harassment against journalists, living conditions of the Roma community and poor respect for the rights of minorities. In addition, the UN Committee was concerned “about the alleged cases of executive pressure on the judiciary and persistent problems of corruption, lack of access to counsel and legal aid, and the undue delay of trials” (UN Human Rights Committee Concluding Observations on Albania, 2 December 2004, UN Doc. CCPR/CO/82/ALB, paragraph 18). The same issues were highlighted by the Committee against Torture in [June 2005](#). The UN Committee on the Rights of the Child on 31 March 2005 also expressed concerns “about allegations of ill-treatment and improper use of force, in particular against children, both by public officials and the police in pre-trial detention centres, in prison and in other institutions in which children are in the care of the state” (UNCRC, [Concluding Observations: Albania](#), 31

March 2005, paragraph 40) The Albanian Constitution, however, provides reasonable formal protections for human rights, as it includes sections dedicated to freedoms and rights of the person and to economic, social and cultural rights. In practice however, there is no systematic effort to implement these rights.

LATEST DEVELOPMENTS

The Judiciary

The juridical system of Albania is part of the civil law family. The first Civil Code of 1928 was inspired from the French and the Italian versions. Hence, the tradition of legal practitioners was based on Roman and Germanic Law. The communist regime, on the other hand, installed a legal system widely based on the prominence of the Executive on the judicial organs. After the collapse of the Berlin Wall, the Albanian legal system underwent a revolutionary change. The main influential actors had been international institutions, such as the European Union, the Council of Europe and the OSCE, and international donors, such as the American Bar Association. This external influence, coupled with consistent financial aid, led to judicial reforms seeking to create and strengthen an adversarial judicial system.

Currently the judiciary is established by the Constitution of 1998 (Part 9). The independence of the judiciary is enshrined in Article 7 of the [Constitution](#) and upheld in article 3 of the [Law on the Organisation of the Judicial Power](#). The general principles regulating the work of courts are set out in its Part 9. The Constitution provides for the independence of judges (Article 145), the independence of the budget of the courts (Article 144), the criminal immunity of judges (Article 137), and security of tenure and pay (Article 138). However, the judicial system is facing several obstacles in its attempt to comply with the requirements of accountability and transparency. Improper influence on judicial decisions and general corruption hamper public confidence in the judiciary.

The ordinary judicial system consists of three levels. District courts are courts of first instance and adjudicate on civil and criminal matters. There are no administrative courts, but administrative sections in ordinary courts deal with administrative law cases. Courts of first instance are also the courts for serious crimes and military courts (see, Article 6, *Law no. 8436*). District courts are composed of a single judge competent to hear criminal cases whose sentencing does not exceed 7 years of imprisonment, preliminary investigations issues, executions of decisions and jurisdictional issues with foreign authorities (Article 13(2) and (3), *Code of Criminal Procedure*). In civil and administrative cases the Court of first instance is composed of one judge and two assistant judges (Article 35(1), *Code of Civil Procedure*). The Court of Appeal has jurisdiction on appeals against decisions of the District Courts with a panel of three judges both in civil, criminal and administrative cases. The serious crimes appeal court, hearing appeals against a decision of a court for serious crimes, has a panel of 5 judges (see, Article 7, *Law no. 8436*; article 14 of the *Criminal Procedure Code*; and Article 35(2) of the *Code of Civil Procedure*). The High Court has direct jurisdiction on conflict of competence or jurisdiction among courts, against a decision of a court of appeal in criminal cases for formal legal issues,

on interpretation and application of the law, and on procedural matters (Articles 431 and 432 of the *Code of Criminal Procedure*). In civil cases it has jurisdiction on the same grounds and for illogical reasoning of the appellate court and for lack of consideration of essential proofs (Article 472, *Code of Civil Procedure*). Military courts too dispose of first instance and appellate courts (Articles 8-10, *Law no. 8436*). The High Court is divided into the Civil College (with jurisdiction on civil, commercial, administrative and labour cases) and the Criminal College (hearing criminal and military criminal cases) (see, Article 10, [Law no. 8588 On the Organisation of the High Court of the Republic of Albania](#)). The High Court can select particular cases that, because of controversial jurisprudence, it decides to treat in a joint college (Article 141(2), *Constitution*; Article 438 of the *Code of Criminal Procedure*).

The Constitution provides for the existence of a Constitutional Court competent to decide on the compatibility of the laws with the Constitution and international agreements; the compatibility of international agreements with the Constitution, before their ratification; the compatibility of normative acts of the central and local organs with the Constitution and international agreements; conflict of competences between powers, as well as between central and local government; constitutionality of the political parties or other political organisations; the dismissal of the President of the Republic; verification of elections and incompatibility issues regarding the President and the deputies; the constitutionality of referendums and the verification of their results; and the final adjudication of individual complaints for the violation of constitutional rights on the basis of a failure to comply with the due process of law, after all legal means for the protection of those rights have been exhausted (Article 131, *Constitution*). Its decisions are binding and have the same legal force as primary legislation (Article 132, *Constitution*). The Court is composed of 9 judges, in possession of high qualifications and with legal experience of 15 years or greater in the profession, appointed by the President of the Republic with the consent of the Assembly for a non-renewable term of 9 years (article 125, *Constitution*). They examine the merits of cases in plenary and decide with the majority of the members (Articles 20, 21 and 32, [Law no. 8577 On the Organisation and Operation of the Constitutional Court of Albania](#); and article 133(2), *Constitution*). The court can be invested of a constitutional issue by: the President of the Republic, the Prime Minister, one-fifth of the deputies or more; the Chairman of the High State Control; ordinary courts on constitutionality of law involved in the case under them; the People's Advocate; organs of local government; organs of religious communities; political parties and other organisations; and individuals (Article 134, *Constitution*). The Constitutional Court is subject only to the Constitution (Article 124(2), *Constitution*). The Court has budgetary independence (Article 6, *Law no. 8577*) and the salaries are equal to those of the President of the High Court (Article 17(2), *Law no. 8577*).

On 17 April 2003 the Constitutional Court modified Article 410/2 of the *Criminal Procedure Code*, which provides for the right to appeal, in cases where a defendant is found guilty in absentia, on grounds of unconstitutionality. The article was regarded as particularly flawed as it did not allow the defendant's family members to appoint a lawyer on his/her behalf in the trial (decision no. 6 of 17 April 2003, Constitutional Court). The case was brought before the Court by a [human rights group](#) that argued

that the article infringed upon the right to appeal as guaranteed by the Constitution of Albania.

The Role of International Law

The Constitution of Albania affirms that “the Republic of Albania applies international law that is binding upon it” (Article 5). In the hierarchal system of legal sources, ratified international agreements are subordinate to the Constitution, yet of greater authority than primary legislation (see, Article 116(1), *Constitution*). Ratified international agreements that are self-executive are part of the domestic juridical system from the moment of their publication in the Official Journal and they are superior to the incompatible laws of the country (Article 122(1) and (2), *Constitution*). Also norms of international organisations are superior to domestic laws if there is a conflict (Article 122(3), *Constitution*). As a consequence of this doctrine, the major international and regional human rights treaties to which Albania is a party constitute the domestic laws of the country and the courts have the duty to apply them.

Judicial Reforms

Over 2003-2004, the general situation of the judiciary has significantly improved but some serious shortcomings in the system persist and continue to threaten the independence of the judiciary. The judicial reform process, particularly boosted by the negotiations with the EU for the possible entrance of the country into the transnational organization in the future, has continued focusing on bringing Albanian legislation as well as the organization and functioning of independent legal professions into line with that of the European Union (EU).

The determination of further reforms is based on several objectives, including adoption of justice legislation compatible with the Constitution, the fulfilment of requirements for EU membership, the improvement and introduction of effective legislation on the fight against illegal trafficking, organized crime and corruption, the further development of legal and institutional structures of judiciary organs, the fair and transparent appointment or the removal of magistrates, as well as the introduction of disciplinary procedures and measures with regard to them.

Serious crimes courts, along with their courts of appeal for serious crimes, were established as of 1 January 2004 in an effort to increase the efficiency of the judiciary in fighting organized crime. The courts have specific jurisdiction over the following crimes: genocide, crimes against humanity, war crimes, intentional killings of public officers (including judges, lawyers and prosecutors) in the exercise of or for reason of their duties and of informers, witnesses or victims, kidnapping or keeping a person hostage trafficking of human beings and children, hijacking, certain serious crimes committed with the intention of overturning the constitutional order, terrorist acts and ancillary offences, terrorist organisation and armed gang activities, trafficking of weapons, ammunitions, explosives and dealing with prohibited substances such as poison, radioactive matters or of narcotics, organisation of a criminal organisation or of a structured criminal group as well as membership of such an entity, and commission of criminal offences within the sphere of these organisations.

There are no particular limitations on personal jurisdiction, regardless of whether the offences were committed by minors or military personnel (Article 75a, [Criminal Procedure Code](#)). The first instance court is the Serious Crimes Court, and the second instance court is the Court of Appeal for Serious Crimes. Both courts hear cases in panels of five judges (Article 6, [Law on the Organisation and Functioning of the Courts for Serious Crimes](#)). The fact that the military personnel is to be judged by these courts for serious offences can be seen as a positive improvement, as they are out of the military judicial system. Nevertheless, the deviation from the principle of a separate juvenile justice system for minors is of great concern, particularly in the light of the fact that a proper and organic juvenile justice system has not yet been established to date in Albania (See, International Helsinki Federation, "[Human Rights in the OSCE Region: Albania](#)" (2004)). The UN Committee on the Rights of the Child has recently complained about "the lack of an effective juvenile system of specialised police prosecutors, judges and social workers to deal with children in conflict with the law" (UNCRC, [Concluding Observations: Albania](#), 31 March 2005, paragraph 76).

Enforcement of Judgments and Subpoena Powers

The judiciary has adequate subpoena powers, provided for by legal norms (Articles 157, 164 and 165 of the *Criminal Procedure Code*; and Articles 165, 166, 167 and 168 of the *Civil Procedure Code*). Nevertheless, there have reportedly been many difficulties in enhancing respect for and with enforcement of these norms (See, CEELI – American Bar Association – Report, "[Judicial Reform Index for Albania](#)", February 2004). As for powers of execution of the sentences, the norms appear to be adequate (Articles 462-469 of the *Criminal Procedure Code*; and Part 4 of the *Civil Procedure Code*). In their practical enforcement, however, the system has experienced important delays. In particular, administrative and civil judgments against the government are reported to be enforced slowly and rarely.

Independence, Pressures and Threats

The judiciary is reported to be under pressure from the executive, and vulnerable to corruption. In its "[Concluding Observations](#)" following the examination of the initial report on Albania under the International Covenant on Civil and Political Rights, the Human Rights Committee expressed concern "about alleged cases of executive pressure on the judiciary and persistent problems of corruption, lack of access to counsel and legal aid, and the undue delay of trials" (paragraph 18). The Human Rights Committee also complained about practices of arbitrary arrest and detention, ill-treatment and torture and excessive use of force. In addition, it stressed its concern at the fact that these acts do not encounter the protection of an apposite criminal provision, but are simply qualified as "arbitrary acts". Following these findings, the Committee recommended Albania to "take firm measures to eradicate all forms of ill-treatment by law enforcement officials and ensure prompt, independent and impartial investigations into all allegations of torture and ill-treatment. It should prosecute perpetrators and ensure that they are punished in a manner proportionate to the seriousness of the crimes committed, and grant effective remedies including compensations to the victims" (paragraph 13).

Threats and intimidations of judges pose a severe problem in some areas, but go unreported most of the time. Security within courthouses is considered to be insufficient in several places. The judicial system reportedly lacks resources to effectively protect judges and their families in serious cases. In addition, old and exiguous court buildings often fail to provide judges with the requisite level of protection. On 15 March 2004, Parliament adopted a new [Law no. 9205 on the Justice Collaborators and Witness Protection](#) to provide enhanced protection for persons standing as witnesses in trials. The protection is meant not only for individuals, but also for their families. The law also provides for the transfer of the witnesses to a secret place when necessary. Judges, including those of the Constitutional Court, do not receive automatic protection in the case of a threat but they can ask for special protection for themselves, their family and their property when it is considered essential or serious circumstances arise (Article 38(1), *Law no. 8436*, and article 18(1)(a), *Law no. 8577*).

Prosecutors can avail themselves of the same protection but it can be provided *ex officio* and it needs to be “necessary under the circumstances of a serious danger related to the exercise of [their] duty” (Article 35(1), *Law no. 8737 on the Organisation and Functioning of the Prosecutor’s Office in the Republic of Albania*). Judges and Prosecutors hired in the Serious Crimes Courts and their appellate bodies are entitled to “special personal, family and property protection, as well as close physical protection, according to the manner provided in sub-statutory and statutory acts” (Article 9(1)(c), *Law no. 9110 on the Organisation and Functioning of the Courts for Serious Crimes*, and Article 35(2), *Law no. 8737*). Nevertheless, to date no regulations on the issue exist and it has been reported that judges are “unprotected against intimidation from crime syndicates” and that both judges and prosecutors are subject to “[t]hreats to [their] physical integrity [and also of] members of their families or their staff” (Report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, “[Honouring of Obligations and Commitments by Albania](#)”, 23 March 2004, Doc. 10116, paragraphs 107 and 109)

Transparency

Public and media access to courtrooms is very limited due to the poor quality of court buildings in use. Many first instance courts reportedly lack sufficient numbers of courtrooms, with the result that hearings are often conducted in judges’ offices (See, CEELI, “[Judicial Reform Index Albania](#)”, 2004). The publication of judicial decisions is also not systematic or frequent, impeding efforts to provide for the transparency of justice. In practice, it can be very difficult for someone who is not a party to the case, to obtain a copy of the written decision. Only the opinions of the High Court and the Constitutional Court are regularly published.

Immunity

Article 137 of the Constitution provides for rules of immunity for judges. The foundational document provides for a differentiation among judges. The members of the High Court may be criminally prosecuted only following approval by the Assembly, while prosecutions of other judges are subject to the approval of the High Council of Justice. In the case of an arrest of a judge during the commission of a

crime or immediately after, a request must be sent immediately to the Constitutional Court, for High Court judges, and to the High Council of Justice, for other judges, that can consent or not to this measure within 24 hours. A similar procedure exists for Constitutional court judges, but the organ charged with approval of prosecutions and detention measures is the Constitutional Court itself (Article 126, *Constitution*). Potentially, judges can be prosecuted under Article 315 of the [Criminal Code](#) for knowingly making an unfair decision.

Appointment and Selection

The selection of judges is now largely based on objective criteria. While political or personal influence is possible on some first instance court appointments, this appears to be the exception rather than the rule.

Judges of the High Court are appointed by the President of the Republic, after the consent of the Assembly has been obtained and the Chairman is selected according to the same procedure (Article 136(1), (2) and (5), *Constitution*). Their mandate lasts 9 year and renewals of the mandate are prohibited (Article 136(3), *Constitution*). Members of the Constitutional Court are appointed through the same procedure as that which exists for the High Court and are restricted to the same time-limit: 9 years without the possibility of re-election (Article 125 (1) and (2), *Constitution*). They can be selected from a number of “lawyers with higher qualifications and with work experience of no less than 15 years in the profession” (Article 125(2), *Constitution*; see also, [Law no. 8577 on the Organisation and Operation of the Constitutional Court of the Republic of Albania](#)).

All other judges are appointed by the President of the Republic upon the proposal of the High Council of Justice and following a competition (Article 136(4), *Constitution*; see also, [Law no. 8436 as modified on the Organisation of the Judicial Power in the Republic of Albania](#), Article 20/a). Each candidate must satisfy the following criteria: have full capacity to act, have completed higher legal education, have completed the Magistrates’ School, possess no criminal record and enjoy a good reputation, being not younger than 25 years old (Article 19, *Law no. 8436*). Particular exceptions are provided for people who were not able to attend Magistrates’ School (see, Article 20, *Law no. 8436*). While all ordinary judges have indefinite term tenure, the judges of the Serious Crimes Courts and the relative Courts of Appeal serve for a 9 years renewable term (Article 3, [Law no. 9110 on the Organisation and Functioning of the Courts for Serious Crimes](#)) and they must have at least a 5 years previous court experience, being distinguished professionals and having high ethical-moral qualities (Article 24, *Law no. 8436*). Their term of tenure can be renewed by the High Council of Justice. Despite the new reforms on appointment criteria, the selection of judges is reported to be largely subjective. There is a widespread belief that the advancement of judges through the judicial system is correlated to their personal connections, as opposed to their merits. This perception does not, however, extend to those judges appointed following competitions held in the Magistrates’ School. Indeed, while ongoing legal education of judges is not mandatory, most judges participate in legal training.

Dismissal Procedures

Ordinary judges can be removed from office only in the following circumstances: when they resign or reach retirement age; when they are criminally convicted by a final court decision; when they become physically or mentally incapable; when they do not respect the prohibitions on association, expression and strike; and when they are discharged as a consequence of a disciplinary measure (Article 27, *Law no. 8436*). The body responsible for the disciplinary proceedings of judges is the High Council of Justice (see composition, below). Judges can be subject to disciplinary measures (reprimand, reprimand with warning, suspension, transfer or discharge from duty) for the commission of acts that according to the law are incompatible with the function of a judge, disclosure of an investigation regarded as secret or other confidential data; serious or systematic delays in the performance of duties, failure to respect the rules of solemnity, absence from work without reason, commission of immoral or indecent actions during or outside of work, commission of actions contrary to the due performance of duty or failure to perform obligatory actions, and failure to implement a disciplinary measure imposed, in the absence of an acceptable justification (Articles 41 and 42, *Law no. 8436*). The disciplinary proceedings are instituted by the Ministry of Justice and decided by the High Council of Justice (Articles 43 and 44, *Law no. 8436*). Both the Ministry of Justice and the High Judicial Council employ their investigative services to inspect the activities of judges (Article 11, *Law no. 8678 On the Organisation and Functioning of the Ministry of Justice* and Article 14, *Law no. 8811 On the Organisation and Functioning of the High Council of Justice*). This has resulted in severe criticisms from the European Commission (See, [Progress Report 2005](#)). Many of the grounds for disciplinary action appear to be too vague and apt to arbitrary interpretation and intervention by the Parliament, e.g. in the definition of acts that according to the law are inconsistent with a judge's function.

Judges of the Constitutional Court can be removed by the Assembly with a two-thirds vote of its members, for violations of the Constitution, commission of a crime, mental or physical incapacity and acts and behaviour that seriously discredit the position and reputation of a judge. The decision of the Parliament is reviewed by the Constitutional Court that verifies the existence of these grounds and provides for the removal (Article 128, *Constitution*). While this article allows for a dialogue between the two institutions, the risk of following this procedure is the potential for the talks to come to a standstill, if different positions are assumed by both parties. The same procedure exists for the dismissal of High Court Judges (Article 140, *Constitution*).

Structural Independence

The judiciary has full control over its own budget and expenditure (see, Article 144, *Constitution*; and article 18, *Law no. 8436*), through the Office for Administration of the Judicial Budget (Article 1, *Law no. 8363 for the Creation of the Office for the Administration of the Judiciary Budget*). Salaries of judges are guaranteed in Article 138 of the Constitution and have been raised towards a more satisfactory amount. Judges salaries are linked to the salary of a High Court Judge by percentages established by law (Articles 39/1 and 39/2, *Law no. 8436*). Salaries of ordinary prosecutors are equalised to those of the judge of the court where the prosecutor serves; the General Prosecutor's salary is the same as that of the President of the High Court (Article 52, *Law no. 8737*). Court support staff have generally increased in

number, but the number of legal advisors and researchers is still not sufficient to allow judges to fully discharge their professional duties with ease. Considerable progress has been made in computerization, although additional office equipment and improved infrastructures are needed.

The High Council of Justice

The High Council of Justice is the body responsible for the protection, appointment, transfer, discharge, education, evaluation, career and oversight of all judges of first instance and appeal (Article 1, *Law no. 8811*). It is composed of the President of the Republic, the Chairman of the High Court, the Minister of Justice, 3 members elected by the Assembly, and 9 judges of all levels elected by the National Judicial Conference. Elected members serve for a term of 5 years without immediate re-election (Article 147(1), *Constitution*). The High Council has competence on the dismissal of its members on grounds similar to those governing the dismissal of a High Court judge (see, Article 7, *Law no. 8811*). The Council's voting procedure functions on the basis of the majority of those members who are present, voting.

The National Judicial Conference

The National Judicial Conference is an organization of judges created in December 1999 dedicated to the promotion of the interests of the judiciary. It elects 9 judges to the High Council of Justice (Article 147(1), *Constitution*). Due in large part to its unclear legal status, the National Judicial Conference has not proved to be an effective judicial association.

Corruption

Although Articles 260, 244 and 259 of the [Criminal Code](#) expressly condemn the receiving, giving and soliciting of bribes, this practice remains widespread in the judiciary. Petty corruption is the most serious problem affecting the judiciary and the country is reportedly one of the most corrupt in the world (See, [Transparency International Corruption Index for 2004](#)). This situation seriously undermines public confidence in the courts. It is reportedly common for litigants and their lawyers to pay judges to achieve the desired outcome of a case. One of the reasons for the ongoing corruption is a lack of professionalism amongst certain judges, particularly those who were appointed prior to the first promotion of the School of Magistrates in 2000. Although the low salary of judges is often invoked as a cause for corruption, it appears that the lack of sufficient enforcement mechanisms to prevent corruption and an atmosphere of general social tolerance and acceptance of the existence of corruption are the main sources of its prevalence. The relatively poor socio-economic condition of Albania is also a factor, as well as a consequence of escalating corruption. Moreover, the lack of sufficient financial resources prevents the proper investigation of corruption affairs.

On 10 April 2003, Parliament approved *Law no. 9049* "[On the declaration and control of assets, financial obligations of the elected and some public officials](#)". This law requires elected officials and public employees, including prosecutors, judges and bailiffs (article 3(1)(d), *Law no. 9049*), to disclose their financial assets. The High Council of Justice has been actively trying to curb corruption, but lacks sufficient

investigative powers to collect the requisite level of evidence needed to establish corrupt practices. Individuals subject to this legal framework must declare their assets, and are prohibited from taking office until they comply with financial disclosure requirements. Assets that must be disclosed include real estate, valuable items, and personal income.

Case

On **29 September 2003**, the vehicle of Tirana Appeal's Court judge, Zegjine Sollaku, was shot at by an armed individual, killing the driver. The perpetrator was tried *in absentia* on 24 March 2005 and sentenced to a life term in prison for assassinating the personal driver of the family of General Prosecutor Theodhori Sollaku.

Legal Profession

Some 1200 lawyers are active in Albania. Their profession is governed by *Law no. 9109* of 17 July 2003 "*On the profession of the lawyer in the Republic of Albania*". Efforts have been made to adequately train lawyers and improve the functioning of the judicial system. However, lawyers continue to lack general training, in particular in the field of international human rights law. Lawyers consequently fail to uphold internationally recognized principles to protect their clients. They are also often perceived by the public as taking a weak and passive role in the defence of their cases. Albanian lawyers themselves claim to be treated less favourably by the courts, government and public than the prosecution (See [OSCE Report on the Criminal Justice System of Albania](#)).

Lawyers enjoy freedom of expression and association and are not reported to suffer from professional restrictions by reason of their membership in a local, national or international organization.

Prosecutors

Independence

Prosecutors are subject only to the Constitution and the law. They must respect "the principles of a fair, equal and duly ordered legal proceeding and the protection of lawful human rights, interests and freedoms" (Article 4, *Law no. 8737*). There is a strong hierarchy of control in place, as "orders and instructions of a higher prosecutor are given in writing and are binding on a lower prosecutor" (Article 4(3), *Law no. 8737*). This can give rise to problems regarding the internal independence of the prosecutorial service.

The Office of the Prosecutor is an independent body, whose main function is to carry out criminal prosecutions while representing the State and in taking measures and overseeing the execution of criminal decisions (see, Article 2(1), *Law no. 8737*). The Office of the Prosecutor is a centralized authority, with three levels: prosecutors are appointed to district courts, appellate courts and the General Prosecutor's Office (see, Chapter V, *Law no. 8737*). The prosecutors exercise their functions in ordinary and

military courts. The President appoints the General Prosecutor with the approval of Parliament (Article 7(1), *Law no. 8737*) and the latter can be dismissed by the President on the proposal of Parliament if he/she has violated the Constitution or engaged in serious violations of law during the exercise of his/her duties, for mental or physical incapacity, or for acts of conduct that seriously discredit the position and figure of the prosecutor” (Article 7(2), *Law no. 8737*). It is always the President who appoints the prosecutors on the proposal of the General Prosecutor (Article 8(2)(b), *Law no. 8737*), following a competition.

Appointment

The Council of the Prosecutor’s Office is responsible for the organisation of competitions for the appointment of new prosecutors and for their promotion. It evaluates their work and gives opinions to the General Prosecutor in cases of disciplinary proceedings. It is composed of 7 members, one of which is the representative of the President, another the representative of the Ministry of Justice and 5 prosecutors, each with at least 5 years experience and elected by the General Meeting of Prosecutors every three years (Articles 10 and 11, *Law no. 8737*).

The requirements to be prosecutor and be admitted to competitions for these placements are: being an Albanian citizen, having full capacity to act, possessing a higher legal education and having completed the Magistrates’ School (some special provisions apply for those who did not). In addition, it is necessary not to have been convicted of a crime, or have been removed from public administration for disciplinary violations within a period of three years (5 if the functions were of prosecutor, officer of police, notary, judge or lawyer), and to be at least 25 years old (see Articles 17 and 18, *Law no. 8737*).

Transfer and Disciplinary Procedures

A prosecutor cannot be transferred against his will unless there are particular needs within the prosecutor’s office that require the transfer of a prosecutor. The decisions on transfer and promotion are the domain of the General Prosecutor. The law also provides for limits on the powers of secondment possessed by the General Prosecutor (see Articles 25 and 25, *Law no. 8737*). A prosecutor can be suspended by the General Prosecutor only when a criminal case is commenced against him until the end of the case, when a serious disciplinary violation is discovered and for no more than 30 days, and when the General Prosecutor proposes to the President of the Republic his discharge from duty (Article 26, *Law no. 8737*). A prosecutor can be discharged from duty when he is punished for the commission of a criminal offence, he is judged incompetent by the evaluation procedure, or he is discharged according to a disciplinary proceeding (Article 27(3) and 42, *Law no. 8737*). Disciplinary violations are the failure to take the oath or its violation, serious or systematic delays in proceedings, revealing secrets of the investigation, unjustified absence for more than 5 days, commission of actions that seriously discredit the image of a prosecutor and for commission of actions that according to law are incompatible with the functions of a prosecutor. These can lead to reprimand, reprimand with warning, duties being severely restricted or discharge from duty. While the first three measures are issued by the General Prosecutor, the discharge can be done only by the President upon proposal of the Prosecutor that has heard the Council of his office. In this institution

that Prosecutor has the chance to present his defence. At a later stage, he/she can appeal against the disciplinary measures to the Court of Appeal of Tirana or the nearest court to that if they are employed there (see, Articles 28-34, *Law no. 8737*).

Freedom of Expression and Association

Prosecutors can take part in associations, non-profit organisations or any organisation whose purpose is to promote ethical and professional improvements (Article 38(1), *Law no. 8737*). At the same time, prosecutors are prohibited from taking part in political parties or in any activities of a political nature, their position and duties are incompatible with any electoral and public duty office or activity, excluding posts in education and professional training. They cannot be engaged in double employment or take part in management organs of commercial companies (Article 39, *Law, no. 8737*). Prosecutors are prohibited from striking (Article 38(2), *Law no. 8737*) and making declarations or giving opinions about the activity of other organs. The nature of these entities is not specified in the law and this can create problems in respect of the prosecutors' freedom of expression (see Article 40(2), *Law no. 8737*).

Access to Justice

Legal Aid

The Albanian Constitution provides for the right of everyone to have a legal defence in criminal proceedings. Everyone has the right to choose his own lawyer and to be assured a free defence paid for by the state if they do not possess sufficient funds (Article 31(d), *Constitution*). The same Basic Law provides for the guarantee of due process rights in a fair, impartial, independent and public trial, in which the accused may defend his own constitutional, legal rights and interests (Article 42). It also provides for a right to appeal judicial decisions (Article 43) and a right to be "rehabilitated and/or indemnified in compliance with the law if he is damaged because of an unlawful act, action or failure to act of the state organs" (Article 44).

The right to free legal defence in criminal proceedings is upheld in Articles 6 and 49(7) of the *Code of Criminal Procedure*. According to *Law no. 9109* of 17 July 2003 "*On the profession of the lawyer in the Republic of Albania*", the system of free legal defence is organised in legal defence chambers, that are established and supervised by the National Attorneys' Chamber, i.e. the National Bar Association. However, it has been pointed out that, although the system is based on lists drafted by the Bar Association, in several cases the lists were not observed by courts or prosecutors, and that the quality of the defence of free legal counsellors was at an acceptable level. Moreover, reportedly many detainees and convicted persons did not have knowledge of their right to free legal defence (see, International Helsinki Federation, "[Human Rights in the OSCE Region: Albania](#)" (2004)).

Impunity

In early 2004, in several cases, police officers subject to investigation were, reportedly, not systematically suspended from duty. In addition, the court proceedings were lengthy and the results of the proceedings rather inconclusive.

Indeed, there appears good cause for concern, for while several investigations have been undertaken against police officers since the beginning of the year, none of them have resulted in a lawsuit before a Court. In some cases, victims withdrew their complaint, which, reportedly, might be the result of inducement or coercion. However, in two such cases, a prosecutor in Durrës decided to continue investigations against the police officers, despite the withdrawal of the complaints (see [Amnesty International bulletin](#) 2004). In May 2004, it had been reported that two former police officers were released after the district court ruled there was insufficient prosecutorial evidence to justify their detention. The two persons had been under arrest since May 2003 in connection with the disappearance of Rezmi Hoxha, an Albanian from Macedonia, and the torture of Ziso Kristopulli from Saranda District in 1995. There was a suspicion that the authorities blocked the investigation, which started in 1995 and, despite the subsequent re-opening of the investigation, the fate and whereabouts of Remzi Hoxha still remain unknown.

Length of judicial proceedings

Lengthy judicial proceedings in many cases undermine the principle of due process. Delays in court proceedings can result from either a lack of professional ability on the part of certain lawyers and judges, their voluntary delay of proceedings for reasons of personal interest, or due to a lack of resources, which impedes their ability to provide adequate court premises and facilities. Legislative gaps also contribute to the procrastination of proceedings. Until the approval of the new [Law no. 9205 on the Justice Collaborators and Witness Protection](#), the issue of the lack of protection for trial witnesses had resulted in the non-appearance of subpoenaed witnesses, making it difficult for prosecutors to present, and for judges to hear, the evidence necessary to reach a decision. No information, however, is yet available on the impact of this new law on the length of proceedings. The lack of court support staff may also be a factor contributing to the delays in judicial proceedings; courts generally lack legal advisors and administrative staff to support the work of judges, who often spend an inordinate amount of time performing administrative functions. Higher courts such as the High Court of Justice or the Constitutional Court generally have more resources to hire additional staff.

Lack of due process – Non compliance with court orders

On 18 November 2004, the European Court of Human Rights ruled on the case *Qufaj co. SH.P.K v Albania*, concerning a legal dispute between a building company and an Albanian municipality. The building company claimed that the judicial system had failed to enforce the decision of the Appeal Court that awarded damages against the municipality. The European Court ruled that the execution of a judgment forms part of the concept of fair trial and that the municipality could not justify its failure to execute a court decision by invoking the excuse of an insufficient budget. This case highlighted for the international community, the shortcomings of enforcement procedures in Albania.

In 2002, the Constitutional Court ruled that the General Prosecutor Arben Rakipi's dismissal was unconstitutional because the procedure followed by the Assembly and the President was unfair, since it did not grant the General Prosecutor the right to defend himself from the accusations levied at him. The General Prosecutor was

dismissed by Parliament on the grounds that he failed to deal effectively with corruption, trafficking, and organized crime cases, that he persecuted the opposition, that he possessed a number of family, social, and work ties with a major drug-trafficking ring and for his failure to secure important prosecutions during his five-year tenure. The Constitutional Court ordered the repeal of the dismissal decrees and the reinstatement of a new dismissal procedure obedient to fair trial guarantees. Parliament ignored this decision of the Constitutional Court, merely asserting the need for further reform to the dismissal procedure in the future (see <http://www.law.nyu.edu/eecr/vol11num3/constitutionwatch/albania.html>, and [OSCE Report](#)).

The Albanian Human Rights Group reported on the case of Gjergji Bedulla, an individual of Egyptian origin brought before the Korça's district court on 23 July 2004 on allegations of child trafficking. According to AHRG, the defendant was denied his basic rights throughout the judicial proceedings, both prior and during trial. The AHRG requested the court to consider as evidence a tape in which the children were questioned regarding the guilt of the man standing accused and retracted their initial accusations. The AHRG concluded that the review of the defendant's requests was conducted in a biased manner. The District Court sentenced him to 12 years of imprisonment. However, the Appeal Court overturned this decision in June 2004 and released him (see, [Albanian Human Rights Group Press Release](#) and the [Report of Amnesty International](#)).

People's Advocate's Office

On 16 February 2000, Parliament elected Ermir Dobjani, as the first People's Advocate (ombudsman) and re-elected him for a second term on 18 February 2005. According to Article 60 of the Constitution, the People's Advocate "defends the rights, freedoms and legitimate interests of individuals from unlawful or improper actions or failures to act of the organs of public administration organs". The Office of the People's Advocate is impartial, independent and confidential (see, Article 2, [Law no. 8454 On the People's Advocate](#)). According to the People's Advocate Office itself, the People's Advocate Law should be amended in order to strengthen the functioning of the office and empowered it to compel administrative bodies to respond to its requests and recommendations, in particular by imposing binding obligations on the administration. Reportedly, the work of the Office of the People's Advocate is also hindered by a lack of adequate premises and offices (see, [OSCE Legal Sector Report 2004](#), p. 147).

According to the People's Advocate (see, [Report 2004 of the People's Advocate](#)), "corruption is a widespread phenomenon both in the administration and judiciary" (p. 26) and, with regard to the judicial sector alone, "the biggest concern of the Albanian citizens remains the problem of non-execution of court verdicts" (p. 39). This last problem mainly concerns civil judicial decisions against state-owned enterprises. Moreover, "in many cases, elected or appointed officials do not abide by the obligation to execute the final court decisions because of the wrong perception for these kinds of decision, for deficiency in their professional performance and the lack of will to seek assistance from their legal departments" (p. 40). Reportedly, another contributing factor is the existence of ill-treatment by security forces (pp. 44-45).

LIST OF RECENT LEGAL REFORMS

- 1 July 1998:** *Law no 8363 “For the Creation of the Office for the Administration of the Judicial Budget”.*
- 10 February 2000:** *Law no. 8577 “On the Organisation and Operation of the Constitutional Court of the Republic of Albania”.*
- 17 May 2001:** *Law no. 8811 “On the Organization and Functioning of the High Council of Justice”.*
- 21 February 2003:** *Regulation of the Disciplinary Proceedings against Judges, Decision no. 137 of the High Council of Justice.*
- 10 April 2003:** *Law n° 9049 “On the declaration and control of assets, financial obligations of the elected and some public officials”.*
- 10 July 2003:** *Law no. 9102 modified Law no. 8737 “On the Organisation and Functioning of the Prosecutor’s Office in the Republic of Albania”, adopted on 12 February 2001.*
- 17 July 2003:** *Law no. 9109 “On the profession of the lawyer in the Republic of Albania”.*
- 24 July 2003:** *Law no. 9110 “On the Organisation and Functioning of the Courts for Serious Crimes”.*
- 24 July 2003:** *Law no. 9111 amended Law no. 8436 “On the Organisation of the Judicial Power in the Republic of Albania”, adopted on 28 December 1998, and previously amended by Law no. 8546 of 5 November 1999, Law no. 8656 of 31 July 2000, Law no. 8811 of 17 May 2001.*
- 24 July 2003:** *Law no. 9112 modified Law no. 8678 “On the Organisation and Functioning of the Ministry of Justice”, adopted on 14 May 2001.*
- 19 June 2003:** *Law no. 9087 on “The Electoral Code of the Republic of Albania”.*
- 15 March 2004:** *Law no. 9205 “On the Justice Collaborators and Witness Protection”.*
- 20 May 2005:** *Law no. 9414 amended Law no. 8136 “On the Magistrates’ School of the Republic of Albania”, adopted on 31 July 1996.*