

ALBANIA

THE COST OF SPEECH: Violations of Media Freedom in Albania

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SUMMARY

This report looks at the situation of media freedoms in Albania, more than a decade after the Balkan nation started a transition from totalitarianism to democracy and rule of law. Like the progress of that transition in general, respect for media freedoms and other human rights has followed a rough path of ups and downs since 1990. While Albania has left behind the vicious suppression and isolation that marked its decades under Stalinist-style governance, the legacy of that regime continues to haunt it. The findings of this report suggest that the transition is far from over.

The report, which covers for the most part events of 2000 and 2001, focuses on three particular areas of concern: intimidation and violent attacks on journalists, defamation trials against the press, and political interference with the allocation of state advertising to media outlets. The report is based on three weeks of research conducted in Albania in late 2001, primarily through interviews with Albanian journalists, editors, media managers, media development experts, government officials, and lawyers. The findings on defamation trials and state advertising practices are based to a large extent on documentary materials, such as judicial decisions, trial records where available, and statistical surveys.

Human Rights Watch investigators found that Albanian journalists, especially those based in provinces outside the capital Tirana, are subjected to widespread intimidation and physical attacks. Journalists have been targets of serious and repeated threats against them and their families, unlawful and arbitrary arrests, and severe beatings and other physical assaults. Not only journalists affiliated with opposition newspapers and television stations, but also reporters working for unaffiliated outlets have been so targeted. What makes such violence even more troubling is that the perpetrators are often police officers or government officials who retaliate against press criticism or reporting of official misconduct, such as alleged corruption or human rights violations.

Recently, intimidation and physical assaults against the media reached a peak during the June 2001 election period and the subsequent run-offs. The report describes three serious incidents from that time, which suggest that the central and local authorities were responsible for widespread and possibly coordinated actions to restrict the free flow of information during the election period. At all times, however, the Albanian police tend to interfere with the right of the press to cover police activities, betraying a lack of awareness about police accountability and the media's role as a public watchdog in a democratic society. But the police are by no means the only institution that ignores the right of the public to be informed on issues of general concern. Albania's new Constitution and its 1999 freedom of information law have yet to be implemented to dismantle the inherited wall of official secrecy that surrounds much of the public administration, including the judiciary.

Violence against journalists goes virtually unpunished in Albania: not a single person implicated in the incidents detailed in this report is known to have been disciplined or prosecuted, despite the publicity and protests that these incidents have generated. The primary responsibility to investigate such incidents and hold the perpetrators responsible rests with the Ministry of Interior and, in more serious cases, with the public prosecutorial system. Yet, both of these agencies have failed dismally to meet their responsibilities, breeding a culture of impunity that is extremely detrimental to the development of a free and vibrant press. It is imperative that the Albanian authorities establish a formal and structured process for the internal investigation of police misconduct in their relations with the media. Similarly, the public prosecutor's offices should be instructed to investigate such allegations diligently and as a matter of priority. The Albanian Ministry of Interior did not respond to Human Rights Watch's written request for information on some of the incidents described in the report.

The analysis of six defamation trials in the second part of the report exposes another gap between constitutional and international guarantees of media freedoms and respect for those freedoms, by

Albanian courts in particular. The observed violations are a combined result of flawed—and possibly unconstitutional—defamation laws, and the ways in which the Albanian courts apply such laws. Albanian law contains criminal sanctions, up to a maximum of two years of imprisonment, for ill-defined offenses of libel and insult. Human Rights Watch maintains, as a matter of principle, that criminalization of defamation is an unnecessary and disproportionate measure that, in itself, violates freedom of expression and press freedoms.

In addition, Albanian *criminal* defamation laws contain some particularly problematic provisions that grant special protections to state officials, such as assistance from the public prosecutorial system in proving charges of official defamation (usually against journalists). Such privileges, which private citizens do not enjoy, are wholly unjustified and inconsistent with international human rights law and jurisprudence—and should therefore be repealed. International human rights law recognizes that media freedoms are wider, not narrower, for coverage of the activities of politicians, government officials, and other public figures.

Albania's *civil* defamation laws, which give victims of defamation the right to seek money damages, suffer from unclear and ill-defined standards of liability, evidence, and compensation. Such legal uncertainty about the limits of permissible speech can have profound chilling effects on the media. The excessive and disproportionate damage amounts ordered by the courts in the defamation cases reviewed in this report—with almost no discussion of the rights and principles at stake—compound the dangers of that flawed legal framework. The failure of the Albanian judiciary to apply civil defamation laws in ways that are consistent with media freedoms makes the need for thorough legislative reform pressing.

The six defamation trials reviewed in this report were fraught with violations of the journalist defendants' rights to a fair trial and resulted in verdicts undermining the right to free expression. One of the most serious violations involves the principle of presumption of innocence, with the courts placing the entire burden of proof on the defendants in criminal defamation cases. In five of the six criminal cases, the journalist defendants were found guilty and convicted for failure to prove the truthfulness of their published statements or their good faith. The courts required some of the defendants to prove the truth not only of factual statements, but also of opinions and value judgments that are, almost by definition, not susceptible to such proof. In each of these cases, the presumption of innocence, to which all defendants in a criminal trial are entitled under the Albanian Constitution and human rights treaties, was turned upside down into a presumption of guilt.

The Albanian courts also failed to recognize the right of journalist defendants to withhold the identity of confidential sources, an essential element of media freedom. More generally, the court judgments suffer from poor reasoning and lack of sufficient evidence on the record to justify the criminal and civil sanctions against the journalist defendants. The refusal of judges and prosecutors in some of the cases to take into account relevant evidence beneficial to the defendant suggests bias on their part. In other cases, the research found serious violations of the defendant's due process rights, such as the right to be heard or the right to defense.

The most worrying shortcoming of the judgments, however, is their failure to acknowledge the human rights implications that are bound to arise from application of defamation laws. This is, more simply, a failure to take rights seriously. In none of the six cases did any of the courts, at any level of the judicial pyramid, make a clear attempt to balance a public person's right to reputation with freedom of the press and the general democratic interest in promoting public debate. Instead, they ignored the defendants' arguments based on the Albanian Constitution and the European Convention on Human Rights. The performance of the High Court, Albania's supreme court, is particularly disappointing in view of its special responsibilities to secure respect for fundamental rights. The High Court summarily

dismissed, without discussion, the appeals filed by the defendants in three of the cases, in spite of the serious rights violations committed by the lower courts.

The third part of the report looks at a persistently controversial issue for the Albanian media: the allocation by the government of state advertising. The relatively large volume of such advertising, which is comparable in value to the entire private sector advertising, gives the Albanian government significant financial leverage over the press. In the absence of effective control mechanisms, that unchecked financial power is abused for purposes of political and personal profit.

Government agencies tend to use their own advertising as both a stick and a carrot. While they reward sympathetic media with generous contracts, they use financial blackmail to pressure or retaliate against critical outlets. Human Rights Watch research found that such interferences with editorial freedom can be sustained and coordinated, with government agencies across the board imposing virtual advertising boycotts against critical media. The report documents one recent case in which the biggest circulation Albanian daily became victim of such a boycott. At the same time, ministers and other senior officials use their own share of advertising leverage to retaliate against criticism of their personal performance or of their respective institution. Both types of official retaliation grew particularly intense in 2000 and 2001.

Misallocation of state advertising is facilitated by flaws in the governing laws and regulations. Vague and inconsistent standards create room for biased or corrupt officials in charge of state advertising to abuse their discretion. A large part of those abuses could be mitigated, however, by stricter financial controls and better enforcement of existing laws. Any internal or external auditing mechanisms currently at work appear to be grossly ineffective. One example of a blatant violation of public procurement laws, involving a major government advertiser (the National Privatization Agency), is described in the third part of the report.

Another source of serious concern for media freedom and independence in Albania is government subsidies, which are usually shaped as compensation for carrying massive public awareness advertisements. While it is up to each media outlet to accept or refuse such subsidies, only an independent body and transparent procedures could ensure their fair and non-intrusive allocation. Instead, in Albania, allocation of these subsidies to media outlets is handled directly by the government, which uses them single-handedly to reward—and so give an unfair competitive advantage to—media of their choice. The report examines a recent case of selective subsidization, involving a major newspaper, as well as the resulting distortion of competition in the press market.

The violations described in the report—violence and intimidation, criminal prosecution, exorbitant damage awards, and financial pressures—have a combined chilling effect that undermines the development of a free, objective, and professional media in Albania. Some of the consequences, such as the increasing numbers of journalists who abandon their profession or leave the country altogether—as three journalists interviewed for this report have done—are more visible. The impact on those who remain, at the price of learning to censor themselves, are harder to measure, but equally serious. The chilling effects of violence and intimidation against Albanian journalists and their families are the most direct and most overwhelming—especially when coming from delinquent police chiefs and other government agents whose job it is to enforce the law. The prospects of facing criminal prosecution by overzealous prosecutors, when charged with defamation by powerful officials, can be no less chilling and professionally disruptive. Financial pressures, resulting from court-ordered sanctions for defamation or state advertising cut-offs, can also effectively restrain the press in Albania's competitive media market. By many insider accounts, they trigger tides of self-censorship that start from media publishers or editors and reach all reporters down the line. In sum, the serious interferences with media freedoms become a recipe for turning the Albanian press into a lame public watchdog.

RECOMMENDATIONS

To the Albanian Government:

On Harassment, Intimidation and Violence Against Journalists:

- Conduct prompt and thorough investigations of government officials, including police personnel, implicated in abuses against members of the media, and prosecute or discipline those responsible.
- Issue and enforce directives to the police to end the widely tolerated harassment and intimidation of journalists by police officials.
- The Ministry of Interior should establish a formal, disciplinary framework for internal investigations into press reports of police abuses, irrespective of whether there is an official complaint by the victim.
- Amend criminal laws to remove the requirement of victim complaints for the prosecution of all serious offenses committed by police personnel.
- Parliament and the General Prosecutor should analyze the failure of the prosecutorial system to investigate the serious police abuses against journalists and other individuals identified in this report. The General Prosecutor should take measures to ensure the proper investigation of any such crimes in the future.
- Provide training to police personnel regarding the rights of the press to cover police activities and the right of the public to be informed about human rights violations, police misconduct, and other matters of legitimate public interest.
- Ensure the impartial access of journalists to government information and facilities. Government agencies should take steps to implement the 1999 freedom of information law. In addition, administrative measures should be taken to enhance the transparency of public administration and do away with its legacy of official secrecy.

On Defamation Laws and Their Application:

- Repeal criminal insult and libel provisions (sections 119, 120, 239, 240 and 241 of the Criminal Code). As a matter of particular urgency, repeal prison sentences for insult and libel as well as any procedural privileges for public officials who bring criminal defamation charges, starting with the involvement of the judicial police and public prosecutorial system in the investigation and prosecution of such charges.
- Amend the Civil Code and other relevant laws to establish clear standards of liability, evidence, and compensation in civil defamation cases, consistent with international and European human rights law and practice. The government should establish a reasonable statutory cap on civil awards for non-pecuniary damages, and consider requiring defamation victims to take steps to mitigate damage to their reputation by demanding apologies, corrections, or the publication of replies prior to taking court action.
- Legislate and ensure that journalists have a general, enforceable right to protect their confidential sources, which can only be restricted in exceptional cases of compelling public interest. Journalist defendants should not only enjoy the right to refuse to disclose the identity of confidential sources, but their refusal to do so should not be used against them.

- Provide periodic and systematic training to judges on international human rights law, and in particular the jurisprudence of the European Court of Human Rights. This would require, at a minimum, to make the key parts of such jurisprudence regularly available in Albanian.
- The Albanian High Court should use its constitutional powers to guarantee freedom of expression and the press in compliance with international and European human rights law and practice. In particular, the High Court should ensure that appeals against decisions of lower courts are not arbitrarily dismissed as inadmissible.
- The Albanian High Council of Justice should investigate instances of apparent judicial bias or serious professional inadequacy in the defamation trials reviewed in this report.

On State Advertising Laws and Practices:

- Take immediate steps to ensure the unbiased and apolitical allocation of state advertising, in accordance with Albania's public procurement and other laws.
- Consider amending such laws to make them more consistent and to include additional guarantees against abuse by government officials for political reasons or personal gain. Ban the allocation of state advertising through non-competitive procedures, such as direct procurement, except under narrowly defined, exceptional circumstances.
- Investigate allegations of improper allocation of state advertising, including cases of retaliation against media criticism of government officials or agencies. Discipline officials responsible for abuse of discretion.
- The High State Control (Albania's public audit agency) should ensure compliance with state advertising laws, and take appropriate disciplinary action against official abuse.
- Increase the transparency of state advertising. This can be done, for example, by requiring all government entities subject to public procurement laws to publish detailed, periodic reports of their advertising activities and the procedures used to assign advertising contracts.
- Establish an independent body to allocate any form of government subsidies to the media, in accordance with the principles and procedures set forth in the relevant recommendations of the Council of Europe.
- Take steps to stop the politically-motivated harassment of private businesses that advertise with the opposition or critical media.

To Albanian Journalists' Associations:

- Promote compliance with the journalists' code of ethics and in particular the voluntary publication of apologies, corrections, and replies for inaccurate or unfair statements.
- Promote the pursuit of available constitutional and judicial remedies for the enforcement of press freedoms and the right to information. Such avenues may include, when appropriate, petitions to the Albanian Constitutional Court or the European Court of Human Rights, as well as motions for compliance with the freedom of information law (with competent courts and the People's Advocate).

To the International Community:

- Urge the Albanian authorities to ensure full respect for media freedoms in bilateral and multilateral meetings, and follow up on the Albanian government's commitments regarding media freedom.

- Monitor closely the activities of Albanian law enforcement agencies, and condition any aid to those agencies on their improving their human rights record. Report publicly on police violence and intimidation of media professionals.
- Enhance monitoring and reporting of media freedom violations related to coverage of Albanian elections. Such monitoring should take place during campaign periods, on election day and through possible run-offs.
- Evaluate and report on the performance of the Albanian judiciary with respect to enforcement of freedom of expression standards and human rights generally. Assist the Albanian authorities in designing training and other mechanisms to address the identified shortcomings. Support scholarly reviews of the human rights jurisprudence of Albanian courts.
- Call upon the Albanian government to ensure the fair and disinterested allocation of state advertising to a diverse range of media outlets.
- The World Bank and the European Bank for Reconstruction and Development should make respect for media freedoms an element of their country assistance strategies. Support for a free and independent media should also become an integral part of efforts to combat corruption in Albania. In particular, international financial institutions should require the fair allocation of any advertising related to privatization, public construction, or other projects in which they are involved.
- Support the development of civil society organizations committed to media monitoring and development, including credible and impartial mechanisms for surveying circulation and audience levels.

To the Organization for Security and Co-operation in Europe (OSCE):

- The OSCE Representative on Freedom of the Media should take steps to enhance OSCE monitoring of media freedoms in Albania and to engage the Albanian authorities in a structured dialogue to remedy continuing abuses, including those set out in this report.
- Call for the abolition of criminal defamation in Albania.
- The OSCE Office for Democratic Institutions and Human Rights should thoroughly investigate and publicly report on cases of harassment and assaults on the media in the course of Albanian elections.
- The OSCE Presence in Albania should monitor and report publicly on violence against media professionals, and defamation trials involving journalist defendants. It should also undertake ongoing monitoring of the allocation of state advertising, and assist the Albanian authorities in improving relevant laws and practices in that area.

To the Council of Europe:

- Pay closer attention to violations of media freedoms in Albania in the context of the Parliamentary Assembly's monitoring procedure on the honoring of obligations and commitments by member states. In this respect, the Monitoring Committee should reconsider the assessment of the situation contained in its June 2000 report.
- Continue assistance to the Albanian authorities on the drafting of a new press law and support amendments necessary to bring Albania's criminal and civil defamation laws in line with international standards.

- Assist the Albanian authorities in providing systematic and periodic training to judges and prosecutors of all levels on the European Convention on Human Rights and the jurisprudence of the European Court. As a matter of priority, such training should cover freedom of expression and fair trial issues.
- Assist the Albanian Chamber of Advocates and/or journalist associations in providing training for interested journalists and defense attorneys on defamation issues and internationally protected media freedoms.

To the European Union:

- Condition progress in Albania's Stabilization and Association Process on respect for media freedoms. The EU should insist on sustained and effective measures to prevent and punish violence against journalists, improvements in the judiciary's human rights performance, and guarantees that allocation of state advertising is not abused for political purposes.
- Make human rights training of judges and prosecutors a priority of the joint European Commission-Council of Europe assistance to the Albanian judicial system. Such assistance should include support for the establishment of a continued legal education system for Albanian legal professionals.

To the United Nations (U.N.)

- The Special Rapporteur of the Commission on Human Rights on the promotion and protection of the right to freedom of opinion and expression should follow up on his findings and recommendations from his visit to Albania in June 2000, including his recommendation that criminal defamation be removed from the Albanian Criminal Code. The Special Rapporteur should also raise with the Albanian authorities the outstanding issues of intimidation and violence against journalists, defamation laws and trials, freedom of information, and state advertising.
- The U.N. treaty bodies should strongly urge Albania to comply with its long-overdue reporting obligations under all human rights treaties it has adhered to. In reviewing Albania's compliance with the respective treaty obligations, the treaty bodies, and the Human Rights Committee in particular, should consider the violations of media freedom cited in this report.

BACKGROUND

Ruled by one of the most totalitarian regimes in Eastern Europe until 1990, Albania has had little tradition of a free and independent press in the last century. Under communism the establishment and operation of media outlets was entirely controlled by the party-state, which used them as tools of indoctrination. The fall of the regime triggered the proliferation of a large and diverse range of newspapers and other periodicals, followed in the second part of the 1990s by the gradual establishment of a private radio and television industry that ended the decade-long monopoly of the state-run Albanian Radio-Television. Albania currently has thirteen daily newspapers, three television stations with close to national coverage, as well as dozens of small circulation periodicals and local radio and television stations.¹

The newly established newspapers, some of which started as and continue to be official outlets of political parties, became important contributors to political and public debate in the early 1990s. However, a series of factors—such as a lack of proper training and the political polarization during most of the last decade—have thwarted the development of professional, objective, and investigative journalism. A highly rhetorical and biased press has disenchanted readers and led to shrunken circulation numbers over the last several years. A voluntary code of ethics adopted by the major journalist associations is rarely enforced. In addition, the print media struggles with low subscription rates, high production costs, and a poor distribution system that is unable to serve large parts of the country.² Such financial burdens make newspapers even less fit to compete with the expanding network of electronic media, which is increasingly the dominant source of news for a majority of Albanians.

Politics and the attitudes of successive governments have done little to support the development of Albanian media. When the opposition Democratic Party (DP) came to power in 1992, it squandered the opportunity to start a tradition of government non-interference with media freedoms. On the contrary, the DP government became increasingly repressive of the press. In 1993 it passed a punitive press law³ and used it, on the pretext of curbing unprofessional journalism, to imprison critical reporters and political rivals. Between 1994 and 1997 several journalists were arbitrarily detained, while others were prosecuted and convicted for dissemination of “state secrets” or defamation of government officials. Dozens of journalists and publishers suffered violent assaults by never-identified attackers, usually in apparent retaliation for articles critical of the government. In 1997 the premises of *Koha Jonë* [Our Time], at the time Albania’s biggest-circulation daily, were completely burnt down by unknown perpetrators. No one was identified or prosecuted by the authorities in connection with those attacks. The Albanian Telegraphic Agency (the national wire service) and the public television were systematically biased in favor of the government.⁴

The Socialist Party (SP) government that took over in 1997, following months of civil unrest triggered by the massive collapse of fraudulent investment schemes, pledged to refrain from clamping down on the critical media. Shortly after taking office, the SP-dominated parliament repealed most of the 1993 press law, except for its opening clause: “The press is free. Freedom of the press is protected by law.” The amendment was followed by a certain improvement in the general attitude of the government toward media freedoms. News coverage by the public television gradually became more balanced,

¹ Albanian Media Institute, *Monitoring Albanian Media Landscape* (Tirana 2001). For a list of Albanian news dailies, their respective affiliation, and circulation numbers, see Appendix A.

² United Nations Development Programme, *Albanian Human Development Report 1998*, p. 69; available on the World Wide Web at <http://www.undp.org.al/publications.htm>.

³ Law on the Press (no. 7756) of October 11, 1993.

⁴ For a detailed account of violations of media freedoms in Albania between 1992 and 1996, see Human Rights Watch, *Human Rights in Post-Communist Albania* (New York: Human Rights Watch, 1996), pp. 64-92.

although not completely equidistant from the two main political poles. At the same time, however, a major controversy emerged over the regulation of private radio and television stations, which had mushroomed in a legal vacuum. The National Council of Radio and Television (NCRT), a regulatory authority set up and appointed by parliament, decided to make available only two national (coverage) licenses for private television stations and to grant the licenses through a competitive process. The opposition complained—with some justification—that the licensing of only two national stations was unnecessarily restrictive and that the licensees were biased in favor of the SP-led governing coalition. The NCRT has yet to research a thorough frequency plan, which would enable better informed decisions about spectrum capacity.

Human Rights Watch research reveals that serious media freedom violations still occur in Albania. Journalists—primarily but not exclusively from the opposition media—continue to be intimidated, arbitrarily detained, and physically attacked by the police and criminals with powerful ties. Such attacks take place both openly and in secrecy, and go largely unpunished. Albanian journalists are no longer thrown into jail in massive numbers, but they continue to be prosecuted, convicted, and punished with hefty fines for criticism of politicians and government officials. The judicial system routinely fails to protect journalists' nationally and internationally guaranteed rights, not to mention the interest of the Albanian public to be informed on issues of great public interest. More sophisticated, but no less insidious, forms of government interference with media freedoms and independence are also at work. Through extensive abuse of the financial leverage it holds over the press—via state advertising and other means—the government meddles with the editorial policies of media outlets, and retaliates against criticism.

In recent years Albanian journalists have been increasingly targeted because of their efforts to expose the country's rampant official corruption. The rise in violent attacks and defamation actions against the press by state officials accused of corruption appears also to coincide with an increased maturity, courage, and investigative capacity of the Albanian media in general. At the same time that Albanian journalism seems to be entering a new stage of development, it will have to reassert its freedom and independence in the face of improper government interference.

INTIMIDATION AND VIOLENT ATTACKS ON JOURNALISTS

Summary of Findings

Physical attacks and other acts of intimidation directed against journalists are widespread and go largely unpunished in Albania. Reporters based in the provinces outside the capital Tirana are particularly vulnerable to attacks by police officers and local government officials. The eight cases discussed in detail in this section are the most serious of the dozens of complaints that Human Rights Watch has received from Albanian media professionals over the last three years. Three of the cases involve serious violations of press freedoms committed by the Albanian police during the June 2001 general election.

Victims of violence and intimidation are not only reporters affiliated with the opposition, but also journalists working for the unaffiliated media. The main perpetrators of such violence against the media are police officials and organized crime groups with possible ties to government officials. The attacks are usually made in apparent retaliation for press criticism of specific individual officials or government agencies. Except when the political stakes are high—such as during electoral campaigns—they do not appear to be part of any organized and systematic campaign to suppress media freedoms. However, the almost complete failure of the authorities—the police and public prosecution system, in particular—to investigate such assaults and hold their perpetrators accountable breeds a culture of impunity that undermines a free and vibrant press.

Internal investigations by the Albanian police into alleged violations of press freedom by police officials are either nonexistent or wholly inadequate. Not a single police officer appears to have been subjected to any such investigation—let alone disciplinary action—in relation to any of the cases described in this report, most of which were widely publicized by the Albanian press and journalist associations. The Albanian Ministry of Interior did not respond to a written request by Human Rights Watch to provide information on the reports in this section.⁵

The public prosecutorial system has been equally reluctant to initiate criminal investigations against police officials and others responsible for violations that warrant criminal liability. (See below, for example, the Terziu, Hasbegu, and election-related cases.) In many cases Albanian prosecutors justify their inaction by reference to criminal laws that require a formal complaint by the victim in order to initiate the investigation of certain types of batteries and assaults.⁶ But victims are often deterred from reporting these crimes because the filing of a complaint can trigger even more severe attacks against them. Ideally, Albanian laws should be amended to remove the complaint requirement for *all* cases of serious police abuse. In any event, no complaint by the victim is required with respect to more serious forms of police abuse (such as those in the Hasbegu, Boriçi, and “election cameraman” cases below). The absence of a formal complaint cannot excuse the failure of Albanian prosecutors to investigate those well-publicized incidents. The Albanian Parliament, which oversees the general performance of the public prosecutorial system, has to date conducted no inquiries into prosecutors’ failure to pursue such cases.

A source of significant friction between police and the press in Albania is the widespread belief among the police that their activities are almost entirely immune from press coverage. (See, for example, the Hasbegu and election-related cases.) Such an attitude, reminiscent of a police state, reveals a lack of basic awareness about press freedoms and police accountability in a democratic society. Unfortunately, the Albanian media, and public opinion generally, are partly responsible for having fed such attitudes: eager to support an inexperienced police force in its efforts to restore order and fight organized crime, they have too often been uncritical of its methods. There are signs that both the media and the public are moving away from that *carte blanche* approach to police operations, possibly becoming aware of its boomerang effects. The Albanian government must complement that positive change in public perception by training the police force to respect press freedoms—including press coverage of the police itself—and human rights generally.

Cases of Intimidation and Violent Attacks

Attacks on Fatmir Terziu

The harassment and attacks suffered by Fatmir Terziu reveal how serious and persistent police harassment of the press can be in Albania—and yet go unpunished. Terziu was the Elbasan correspondent of the Democratic Party newspaper *Rilindja Demokratike* (*RD*, Democratic Rebirth) from 1994 until April 2001. He also served for several years as director of a local television station, *TV Dardania*. As a journalist working for an opposition newspaper, Terziu suffered unrelenting harassment by local officials after the SP’s rise to power in 1997. During that year, when social unrest and anarchy affected large parts of the country, he survived two abductions, once by a local criminal gang and once by a middle-level army officer. Between 1999 and 2001 Terziu suffered repeated physical attacks and verbal assaults by local police chiefs and government officials, in retaliation for his critical reporting on local affairs.

⁵ Human Rights Watch letter to the Public Relations Office, Ministry of Interior, November 21, 2001. (See Appendix B.)

⁶ See, for example, Albanian Criminal Code (ACC), sec. 90, in conjunction with Code of Criminal Procedure, sec. 59.

In the beginning of July 1999 Terziu published in *RD* an article alleging that a police chief in Gramsh, a small town in the Elbasan region, was responsible for the disappearance and personal use of police vehicles donated by a United Nations Development Program (UNDP)-sponsored disarmament project. The police chief was quick to react, Terziu told Human Rights Watch:

He called my home while I was out of the country and started shouting threats and curses at my wife. He told her, "Tell your husband that pretty soon we'll be getting rid of him and all those that stand behind him," probably alluding to the Democratic Party. . . . A few days later he beat up A. S., a secretary of the local DP chapter, for having allegedly passed me information on the issue. He also went on a private TV channel, *TV Elbasan*, and had the temerity to say publicly that he knew me, knew where I lived, and would "teach me a lesson" some day.⁷

According to Terziu, shortly after the incident the police chief was promoted to national head of the UNDP-sponsored disarmament program, despite protests by the League of Albanian Journalists to then-Minister of Public Order Spartak Poçi.

Terziu's most serious problems came as a result of his references to a police chief in the Elbasan police directorate. They started one morning in November 2000, when a staff reporter responsible for presenting the daily press review on *TV Dardania* read out a headline from an opposition paper that criticized the police chief. Shortly after the press review, Terziu told Human Rights Watch,

two of [the police chief's] bodyguards showed up at *Dardania* and demanded to see immediately the press review editor and myself (they knew my name). Before I could even try to talk them down, [one of them] punched me in the face in front of the staff, and challenged me to "do that again, if you have the guts." So I went on the air and denounced the violence. . . . But at the end of the day, as I was walking along the "Rinia" park on my way home, the same two guys were waiting for me and beat me up so badly that I thought I would die.⁸

A medical report by the surgeon that examined Terziu after the assault found that he had a fracture of the right arm and numerous bruises on his face and body; the doctor prescribed several weeks of bed rest.⁹

In February 2001 Terziu once again fell victim of the same police officer's ire, this time triggered by an article in the February 28 edition of *RD* that referred to an investigation by the General Prosecutor's office into the police chief's alleged involvement with drug trafficking. The article was initialed A.B.; Terziu insists that he had nothing to do with it, and that it was written by a Tirana-based reporter. But, according to Terziu:

The same day the *RD* article appeared, a police car cut in front of my scooter and stopped me between the maternity hospital and the prosecutor's office. Clearly, they had been looking for me. [The police chief] rushed out of the car, spit at me and yelled, "So, I'm the drug baron, huh? I'm going to wipe you out one of these days!" . . . Earlier that day he had been looking for me at the *Dardania* premises and had terrorized the staff. . . . In the afternoon he gave a press conference at the police station. The policeman at the gate had been ordered not to let me in; then one of [the chief's] bodyguards showed up, told me to follow him and started pushing, hitting, and swearing at me in the corridor. . . . [In the

⁷ Human Rights Watch telephone interview with Fatmir Terziu, New York, December 3, 2001.

⁸ Ibid.

⁹ Ibid.

conference] I asked [the chief] a question about an eighteen-year-old and a fifty-five-year-old who had died in custody in that same police station. He replied, in front of reporters from all major national papers, "If I had to kill someone, I would start with you."

Two other reporters who had attended the press conference, but requested to remain anonymous, confirmed separately to Human Rights Watch the police chief's threatening remark to Terziu.¹⁰ Terziu told Human Rights Watch that the harassment and physical attacks had a serious chilling effect on his reporting, especially on police activities. Following the February 28 incident, he went on working but as "some sort of semi-clandestine" reporter: "Honestly, I started to avoid [the police chief] and had to stop writing about his deeds," he admitted.

However, there was worse to come for Terziu. In the evening of April 13, 2001 he was hosting a real-time talk show on *Dardania TV* and receiving questions from the audience via telephone. One of the callers, who did not give his name, launched into a diatribe against the Socialist government and reminded Terziu that he [Terziu] had had "his own ribs broken" by the [police chief referred to above]. Terziu apologized for the provocative language used by the anonymous caller, interrupted the show, and left the TV station at about 10:00 p.m. On his way home, he was assaulted by two men who had their faces covered:

It happened as I left behind the "Rinia" park, on the street of the "Hamit Mullisi" elementary school. They ambushed me and started hitting me as strongly as they could in the face and body. They kept swearing at me, but didn't say why. I did not recognize them, but noticed that they wore camouflage jackets and boots that are often used by the police forces. Also, they were professionals, knew how to beat someone. I fell on the ground and they continued to hit me until I lost consciousness. The last thing I remember was one of them saying, "Let's go, he's finished." . . . I came to my senses about an hour later and had to crawl home.

Terziu left Albania secretly the next day, with his wife and three children, and has not returned since. Terziu told Human Rights Watch that he did not file charges or complaints against his attackers in any of the cases because he did not believe that they would be brought to justice. Terziu had good reasons to be skeptical. The Albanian police and prosecutorial authorities had repeatedly failed to investigate consistent and credible allegations that the Elbasan police, whose director at the time Edmond Koseni has openly boasted of his "iron fist" approach to securing public order, is responsible for committing serious human rights abuses, including torture and deaths in police custody as a result of torture. Over the four years of Koseni's tenure the Albanian authorities ignored repeated calls by Albanian and international human rights groups to properly investigate such allegations, and bring those responsible to justice.¹¹ Indeed, shortly after his appointment in October 1999, Prime Minister Ilir Meta reportedly praised Koseni in a meeting in Elbasan as "the symbol of [his] governance."

In December 2001 Koseni and his bodyguard Xhafer Elezi were dismissed from the police and indicted by the General Prosecutor for a case of alleged battery and torture. At the time of this writing a court had put Koseni under house arrest, pending trial. Elezi, who evaded the investigation for several months, was arrested in April 2002 by the Elbasan police. Elezi was reportedly convicted in his absence

¹⁰ Human Rights Watch telephone interviews, New York, December 5, 2001.

¹¹ See, for example, Amnesty International, "Albania: A disturbing pattern of disregard for basic human rights," December 21, 2000; available on the World Wide Web at www.amnesty.org.

in 1999 by an Italian court for trafficking in human beings and involvement in organized prostitution.¹² He served as Koseni's bodyguard until the end of 2001, although he has been the subject of an international arrest warrant issued by the Italian authorities since 1998.

The Attack on Artan Hoxha

Artan Hoxha is a journalist working for *Shekulli* [The Century]. In late 1999, as a reporter with *Gazeta Shqiptare*, Hoxha was investigating two stories that turned out to be rather risky. One of them involved a sizeable theft of Albania's gold reserves, which made headlines for weeks in the Albanian press. The other concerned a less publicized but equally massive tax evasion scheme involving oil imports through the port of Durrës.¹³ In both cases he was following threads that he believed led to high-level politicians.¹⁴

Hoxha's investigative journalism did not go unnoticed. One night in November 1999 he became the victim of an armed attack, which was clearly related to his investigations into one of the two affairs (or both). Four people broke into his apartment shortly after midnight and held him at gunpoint for about half an hour, threatening him repeatedly with death. Two of the attackers wore black facemasks, while the other two were barefaced. They ordered Hoxha to hand them over "all [his] files and floppy disks." However, they only took with them two files of documents, one labeled "Oil Smuggling," and the other "Treasury Theft." Hoxha informed the police the next morning and provided them with descriptions of the attackers. The police investigation into the case led nowhere; according to the police, Hoxha had inadvertently damaged the attackers' fingerprints.¹⁵

The Attack and Detention of Flamur Hasbegu

On June 1, 2000 Taulanta Boja and Flamur Hasbegu, respectively a reporter and cameraman for the *Albanian Television Network 1 (ATNI)*,¹⁶ were asked by their editor to interview the head of police in Berat (southern Albania). While Boja entered the police station to request a meeting with the police chief, Hasbegu stopped to take some archive footage of the building. As soon as he started filming, a man in civilian clothes, who Boja and Hasbegu later identified as Ilir Ngresi, chief of the criminal section of the Berat police, came out of the police station and asked Hasbegu whether he had authorization to film the station.¹⁷ Below is the description of the rest of the incident, which Hasbegu gave to Human Rights Watch:

I said I was an *ATNI* cameraman, showed him my press card, and replied that we do not need authorization for something like that. But he suddenly grabbed my right arm, dragged me violently inside the courtyard of the police station and yelled, "Who gives a shit about *ATNI*!" I took my camera off my shoulder and held it down, but did not turn it off. Then as soon as we entered the building, he punched me in the nose and started swearing at me like crazy "So, who the fuck do you think you are that you can tape

¹² Zylyftar Bregu and Poli Hoxha, "Koseni's Bodyguard, Convicted by Italians for Prostitution," *Gazeta Shqiptare*, January 8, 2002.

¹³ According to Hoxha, the big oil importers were taking advantage of an Albanian government decision to exempt oil destined for Kosovo from customs fees. In collusion with customs officers in Durrës and at the Kosovo border crossings, the importers declared that the oil would be sold in Kosovo, but then sold it within Albania or in third countries. Hoxha claims that about 200 68,000-liter tankers evaded customs fees in this way. Human Rights Watch interview with Artan Hoxha, Tirana, November 16, 2001.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ *ATNI* is a Tirana-based television station with a political orientation that is very close to the opposition Democratic Party.

¹⁷ Hasbegu identified Ngresi after describing him to local residents of Berat and recognized him later on numerous occasions when Ngresi appeared on TV or in newspaper photographs.

the police? You think it's normal, huh?" But he wouldn't let me talk. Then he asked to see my press ID for a second time and told me to hand him the tape. So I turned the camera off and gave him the tape.

Then he took me to the restrooms to "clean my face," because my nose was bleeding. I thought he would let me go. But when we approached the door of the restrooms he punched me again in the nose and pushed me inside and slapped me on the face, several times. . . . Then four or five policemen, some in uniform and some in plainclothes, came into the bathroom and started hitting and kicking me from all sides, fifteen or twenty times. I began to fear the worst. Ngresi—they all called him "Chief Iliri"—stood at the door opening and watched, and kept swearing at me. This went on for about twenty minutes. They even tried to get my camera, which I was still holding. One of them kicked my right arm, I had a fracture Then they locked me up in a cell. After about twenty minutes Ngresi came back, took me to a back door, threw an old police jacket on my head and said, "Next time I see you around here you'll get an even better treatment." I learned later that Taulanta had alerted the DP section in Berat, and they had protested with the police against my detention.¹⁸

With his camera on, Hasbegu recorded part of the incident until Ngresi asked for the tape he had been using. Boja, the *ATNI* reporter who was teaming with Hasbegu on the day of the incident, managed to get the tape back that same day, following a long and animated argument with Ngresi. Human Rights Watch viewed the tape, which was consistent with Hasbegu's account of the incident and revealed Ngresi's extremely offensive and intimidating language and attitude.¹⁹ A medical report issued after the incident confirmed that Hasbegu had suffered a fracture of his right arm, and serious emotional distress. He was unable to work for about six weeks.²⁰

ATNI sent a written protest to the then-minister of public order, Spartak Poçi, demanding that Ngresi and the other Berat police officers responsible for the incident be disciplined. It also aired the video footage and gave the incident extended coverage on its news editions.²¹ *ATNI* also informed the Organization for Security and Cooperation in Europe (OSCE) Presence in Albania; the OSCE human rights and press officers interviewed Hasbegu the day after the incident. The OSCE staff noticed during the interview that Hasbegu had a swollen nose and his right arm was in a plaster cast.²²

This notwithstanding, both the ministry and the public prosecutor's office failed to contact Hasbegu or *ATNI* and failed to take any action whatsoever against Ngresi or anyone else involved in the incident. Based on the information available to Human Rights Watch, Ngresi and the other police officers responsible for Hasbegu's ill treatment should have been charged, under section 250 of the Albanian Criminal Code, with the illegal deprivation of Hasbegu's liberty.²³ A section 250 indictment does not require a criminal complaint by the victim.

¹⁸ Human Rights Watch interview with Flamur Hasbegu, Tirana, November 5, 2001.

¹⁹ Although the videotape showed little more than the dark corridors of the police station—because Hasbegu had been holding the camera down and lighting was insufficient—the sound recording was clear.

²⁰ Human Rights Watch interview with Flamur Hasbegu, note 18 above.

²¹ Human Rights Watch interview with Sokol Oildashi, *ATNI* director, Tirana, November 5, 2001.

²² Human Rights Watch interview with staff of the Press and Public Information Office of the OSCE Presence in Albania, Tirana, November 1, 2002.

²³ Section 250 of the ACC made it a crime for a person who "performs a state function or public service" to "commit [arbitrary] actions or give arbitrary orders . . . which encroach upon the liberty" of another person. At the time the crime was punishable by up to seven years of imprisonment. Upon Hasbegu's complaint, the attackers could have also been charged with aggravated battery (ACC, sec. 90). Hasbegu did not file a battery complaint, however, for fear of reprisal.

The Detention of Kujtim Boriçi

Kujtim Boriçi is a professional journalist who has served as *Shekulli's* correspondent for the Elbasan prefecture since 1995. On September 23, 2001 Boriçi published in *Shekulli* a critical article about the performance of the Elbasan construction police in connection with the demolition of unauthorized buildings constructed in the town of Librazhd (southeastern Albania).²⁴ The article referred to critical remarks by the mayor of Librazhd, who had complained that the Elbasan construction police (who are responsible for the Librazhd area) had ignored his pleas to act promptly against abusive constructions.²⁵

In the morning of September 26, Boriçi and several other Elbasan-based reporters traveled to nearby Librazhd to cover a "day of demolitions" announced by the police. Boriçi related to Human Rights Watch what happened when the group of journalists approached a building, close to the town bridge, that was being demolished:

We didn't get closer than fifteen to twenty meters because we know that the Elbasan police do not like to be watched. As soon as the chief of the [Elbasan] construction police, Nezir Kapllani, noticed us, he ran toward us and started shouting at the police squad: "I don't want those journalist bastards around, they are ruining the police. . . . I want them behind bars!" Then he told something to the head of the rapid reaction squad, Edmond Skëndo. Right after this, Skëndo and his group surrounded us and told me that I was under arrest. When I asked what for, he replied, "for having offended the construction police." . . . My colleagues insisted that they go with me into the police van, but the police threw them out of the van and ordered them to leave the demolition site. They said they had orders to take me alone.²⁶

Boriçi was taken to the Librazhd police station and was held there for about thirty minutes. He was released only after *Shekulli's* publisher in Tirana protested to the Ministry of Interior. Before leaving the police station, Boriçi demanded to know from the head of the Librazhd police, Kujtim Ozuni, the grounds for his arrest. Ozuni refused to give any reasons and warned him to "leave the police alone" if he wanted to avoid future troubles.

Haxhi Balliu, the Elbasan correspondent for the daily *Dita*, was together with Boriçi on the day of the incident until the latter's arrest. In a separate interview with Human Rights Watch he gave a consistent account of the incident. Balliu added that Librazhd Police Chief Ozuni had quietly followed Boriçi's arrest from a nearby location:

My brother happened to be passing by and challenged him as to why the police were arresting journalists. He replied by hitting my brother with a police truncheon, yelling that "that was the least they deserved."²⁷

²⁴ The Albanian construction police are a special Ministry of Public Works police corps created in the 1990s to deal with a wave of unauthorized constructions and other construction code violations.

²⁵ Kujtim Boriçi, "Mayor Blames Construction Police," *Shekulli* (Tirana), September 23, 2001.

²⁶ Human Rights Watch telephone interview with Kujtim Boriçi, New York, December 21, 2001.

²⁷ Human Rights Watch telephone interview with Haxhi Balliu, New York, December 21, 2001.

Cases Related to the 2001 Elections

The following incidents, which occurred during the election period of June-July 2001, represent some of the most serious cases of police brutality against the Albanian media researched by Human Rights Watch. However, they do not provide an exhaustive picture of the harassment suffered by the media—especially the media affiliated with the opposition—during the election period. The editors of *RD*, *ATNI*, *TV Shijak*, and other outlets told Human Rights Watch that their journalists and crews were routinely harassed and censored during the election. Typically, the police prevented them from covering SP campaign activities, events on different polling days and at various locations, and police conduct throughout the election period. Although Human Rights Watch was not able to independently investigate all these allegations, the incidents described in this section suggest that they were part of widespread and possibly coordinated actions on the part of central and local authorities to control the flow of information about the conduct of elections and the electoral campaign.

The Attack on the “Election Cameraman”

Iilir Mati (real name withheld for his protection) is a freelance cameraman based in a provincial town of Albania, who covered the June 2001 general election campaign for a private television station. In one of the first days of the campaign, Iilir was asked to cover a SP rally in which several SP leaders participated. In the middle of the rally, a group of opposition supporters nearby started a protest against the government and the SP. Iilir described to Human Rights Watch what happened when he tried to follow the course of the opposition protest:

I noticed that some of the police forces that were securing the [SP] rally—there was quite a heavy police presence in the square—some of them moved quickly toward the opposition protest. I ran in the same direction and stood about twenty meters away from the police chain that had surrounded the opposition crowd. At that point the police launched an action to disperse the crowd forcefully. I was busy taking footage of the scene from across the street when a policeman approached me and asked which station I was working for. But then he noticed the station's logo on my camera and, without waiting for my answer, punched me twice in the head and back. He was one of the [elite] Rapid Reaction Force (RRF) that had traveled from Tirana for the occasion, you can recognize them from their all-black uniforms.²⁸ I managed to run away, hiding behind a nearby newspaper kiosk. . . . But after awhile I noticed the same RRF guy was keeping an eye on me, so I handed over the camera and the tape to a colleague who took them to a safe place. . . . It was about 12:30 p.m..

. . . Then I walked about twenty meters away from the kiosk and mingled with a group of bystanders on the sidewalk. After ten minutes I noticed a police van that was slowly moving toward us, with its sliding back door opened. Before I had any time to think, the van stopped suddenly at my feet, two RRFs jumped out, grabbed me by the hair, and dragged me into the van. The van left speeding, then stopped abruptly to get another five or six RRFs and drove away from the town center. . . . They began hitting me with truncheons and punching and kicking, all at the same time. One of the two policemen who dragged me into the van yelled at me, "Where is the tape, the tape you were using before?" . . . They kept hitting me from all sides until I fainted. . . . When I came back to my senses, at about 3:00 p.m., I was lying in a bed at my brother's home. I had no idea how I got there.²⁹

²⁸ Albanian regular police wear blue uniforms.

²⁹ Human Rights Watch interview, November 9, 2001.

Someone from the town saw Ilir lying by a road in the outskirts of the town and alerted Arian Hoxha (not his real name), Ilir's friend and neighbor, who was interviewed separately by Human Rights Watch. Arian found Ilir semi-conscious, with blood on his face and clothes, and drove him to Ilir's brother's home:

I didn't take him to his own home because I knew the police had been looking for him. Before I received the call [from the person who saw Ilir first], at about 1:00 p.m., I was walking past a [shop] that Ilir owns in our neighborhood and saw seven to eight police entering the shop. They found Ilir's [business] partner there. . . . They were shouting at him and hit him several times, then dragged him out of the shop and pushed him into a police van. They kept beating him in the van as they drove away. . . . Then I learned that the same police van had been looking for Ilir earlier at his home.³⁰

Ilir told Human Rights Watch that the police had indeed been to his home, where they had found and threatened his mother. Then they had visited his shop and asked his partner about the "tape with footage from the rally." In fact, the partner fell victim to an unfortunate coincidence that had made things much worse for him: when the police entered the shop, its TV was tuned to the station for which Ilir worked and was already showing Ilir's rally footage. At first the police thought that the partner was playing back the tape, but they became infuriated when they realized that the footage was being broadcast nationally.³¹ Another journalist saw Ilir's partner emerge from the police station at about 2:30 p.m. that day; he had a bruised face and told the journalist that the police had beaten him up continuously at the shop, on the way to the police station, and inside the station.³²

None of those interviewed by Human Rights Watch regarding this case were willing to give their names or any other details that could lead to their identification for fear of reprisal by the police.

The Attack on the Election Commissioner

Shortly after the June 24 elections, Ilir and the journalist who had witnessed his partner's injuries received information that the police had arrested and beaten up an opposition election commissioner in a nearby commune. Ilir and the journalist secretly interviewed the commissioner at his home, shortly after his release. The police had taken the commissioner to a police station for having allegedly threatened an SP commissioner, but had not charged him with any offense. They had kept him unlawfully for more than twenty-four hours and subjected him to repeated beatings. Ilir filmed the bruises and other signs of beating on the commissioner's body and sent the footage to several television stations, which broadcast it widely. Within hours the police went back to the commissioner's home, dragged him out of his bed, and took him to the police station, where he was subjected to another round of beatings. Ilir and the journalist, who revisited the commissioner, told Human Rights Watch that he had been beaten up so badly that "you could hardly see a spot of white flesh on his body. He was all red from the beatings."³³

The Detention of Enis Fani

Enis Fani is a freelance cameraman based in Durrës, Albania's second largest city. Fani works for several television stations and covered the June 2001 electoral campaign in the Durrës area for *ATNI* and *TV Shijak*. On June 15, 2001, while he was following the activities of the opposition candidate Hajdar Kovaçi, Fani witnessed a confrontation between Kovaçi and the Durrës police. A police squad, headed by an officer known by Fani, stopped Kovaçi's vehicle, without apparent reason, requested to see the car documents, and told Kovaçi that they would have to take the car to the police station for further

³⁰ Human Rights Watch interview, November 9, 2001.

³¹ Human Rights Watch interview, November 9, 2001.

³² Human Rights Watch interview, November 9, 2001.

³³ Human Rights Watch interviews, November 9, 2001.

verification. Kovaçi protested that the police had arbitrarily “taken for verification” several vehicles used by his campaign staff and that he was being harassed by the Durrës police for political reasons. Fani started to videotape the exchange between the candidate and the head of the squad with his non-professional camera. Fani told Human Rights Watch that before long, one of the policemen pushed down his right hand, with which he was holding the camera, telling him that “it is not allowed to tape police activities.”

I replied that I was a journalist and that I was not aware of any such law [that prohibits taping the police]. But he threatened to take my camera away, so I pretended I turned the camera off and went on filming by casually holding the camera down. After a few minutes, however, the same policeman noticed that the camera was on, so he grabbed my arm and dragged me into a police vehicle. . . . They took me to the police station; on the way to the station I overheard a senior officer ordering [the head of the squad], over the police radio, to “bring the camera guy to the station.” . . . They let me go after about two hours, without interviewing me or saying anything. But they confiscated both the camera and the tape, although I insisted to know why on earth they needed to keep the camera.³⁴

Fani was released only after the director of *ATNI* in Tirana, Sokol Olldashi, requested an explanation of his arrest from the deputy minister of public order.³⁵ In this case, the police failed to follow even the most basic procedures, such as registering his detention or checking his identity. Fani believes that the police held his camera in order to obstruct his coverage of the ongoing electoral campaign; he received the camera back only one month later. Fani echoed Kovaçi’s complaints about the “coordinated” police harassment suffered by the candidate’s staff; Fani himself decided to stop using his personal car during the campaign because of the frequent police checks. According to Fani, a friend whose car Fani had borrowed for some time was also detained and had his car held by the police “for verification of documents” without any wrongdoing on his part.

Denial of access to government institutions and information

Many print and electronic media editors interviewed by Human Rights Watch, especially from the opposition media, said that government officials often and arbitrarily deny their reporters physical access to government institutions or access to government information. Such information embargoes are typically imposed in apparent retaliation for critical reporting by a given media outlet or journalist. Neritan Alibali, editor-in-chief of *Republika*, the opposition Republican Party daily, described the scope of the problem:

It is almost impossible to write something critical of a minister or even a ministry generally without expecting some form of reprisal by government officials. They will either refuse to talk to any of our journalists, will order the ministry guards to keep them off or sometimes will have their bodyguards threaten them. At one point in 2000 fifteen of *Republika's* eighteen reporters had been “blacklisted” by one or more central agency; the remaining three were new arrivals. . . . It makes balanced reporting extremely difficult because [government officials] refuse to comment on what we write about their work. Then they sue us for libel but they can't have it both ways.³⁶

Alibali told Human Rights Watch that *Republika* reporters had been denied access to the Ministries of Finance, Culture, Health, Transportation, Public Works, and Privatization, among others. One typical

³⁴ Human Rights Watch interview with Enis Fani, Tirana, November 6, 2001.

³⁵ Human Rights Watch interview with Sokol Olldashi, note 21 above.

³⁶ Human Rights Watch interview with Neritan Alibali, Tirana, November 13, 2001. *See also*, Neritan Alibali, “*Republika* red-circled,” *Republika*, August 18, 2000.

incident involved Matilda Tërpollari, a social affairs reporter for *Republika*, who was threatened by a bodyguard of then-Minister of Health Leonard Solis. What triggered the minister's reaction was an article by Tërpollari regarding unlicensed dental clinics that operated in violation of the law.³⁷ The article was balanced and moderate, and included statements by a ministry specialist. Nevertheless, Solis called Alibali more than once and pressured him not to publish the piece. When *Republika* decided to go ahead and publish the article, Tërpollari told Human Rights Watch in a separate interview, it did so at a cost:

I went to see the minister's spokesperson the next day. I was talking to her when a bodyguard entered the office, grabbed my arm and shouted, in a very threatening tone, "Get out of here! And I don't want to see you around this ministry any more." Then he took me forcefully out of the building.³⁸

Tërpollari said she did not return to the Ministry of Health for about a month; when she did, no one from the staff would talk to her, including the minister's spokesperson. More than twenty other reporters, working for both partisan and independent media, told Human Rights Watch that they routinely face similar hostility and intimidation by government officials at all levels. "You really don't feel safe walking in the street after you publish something critical," Tërpollari said.³⁹

In a similar case, Redin Hafizi (*RD*) was denied access to a joint press conference of the Albanian prosecutor general and his Italian counterpart. The Albanian prosecutor's spokesperson, Ardian Visha, singled Hafizi out of a group of reporters and ordered the police, in full view of his colleagues, to take Hafizi out of the conference room. Hafizi told Human Rights Watch that he believes he was targeted for publishing an offensive statement that Visha had made about a senior European Union official at an earlier press conference.⁴⁰

Such restrictions on access to information from the government may violate the constitutionally guaranteed freedom of information. (See below section on Albanian constitutional law.) Similar problems arise from the failure of the court system to make judicial decisions available to reporters and the public at large. Although in principle copies of court decisions must be publicly available,⁴¹ internal court regulations, an inherited culture of bureaucratic secrecy, and political motives make it impossible or extremely cumbersome for the press to obtain court decisions.⁴² Human Rights Watch staff witnessed firsthand such difficulties in the process of collecting documentation relevant to the defamation trials reviewed in this report. In one of the cases, the administrative staff of the Tirana District Court even declined to provide the journalist defendant with a copy of the judgment in his own case. The Tirana Court of Appeals failed to respond to a written request by Human Rights Watch for copies of several its judgments.⁴³

Chilling Effects of Violence and Intimidation

The violence and intimidation targeting the Albanian media has unsurprising chilling effects on coverage. The negative impact is compounded by the fact that those responsible for preventing and investigating such attacks—such as local police chiefs—are themselves often the worst perpetrators. The general climate of impunity for police abuses takes its toll on press freedoms, as well.

³⁷ Matilda Tërpollari, "Dental Clinics, the Government's Missing Teeth," *Republika*, August 16, 2000.

³⁸ Human Rights Watch interview with Matilda Tërpollari, Tirana, November 13, 2001.

³⁹ *Ibid.*

⁴⁰ Human Rights Watch interview with Redin Hafizi, New York, December 12, 2001.

⁴¹ *See* Law on the Right to [Receive] Information About Official Documents (no. 8503, dated 30.06.1999).

⁴² Human Rights Watch interviews, among others, with Neritan Alibali, Pandi Gjata, and Artan Hoxha, Tirana, November 2001.

⁴³ Human Rights Watch letter to Muharrem Kushe, Chief Judge, Tirana Court of Appeals, November 28, 2001.

In the worst cases, journalist victims of official repression, suffering persistent attacks, have been forced to leave the country altogether. Others are so intimidated that they will not allow their ordeal to be made public for fear of the consequences—in other words, they are so intimidated that they dare not raise their voices in defense of their own rights.

Media freedoms are fundamental because they are essential to the preservation of the rights of all. If the Albanian press is prevented from reporting freely on human rights violations—be those deaths in police custody or harassment of opposition candidates in a general election—then the chilling effects go much deeper than press freedoms: they affect the freedoms of all Albanians.

In late 2001 the Albanian Ministry of Interior demonstrated a new willingness to address impunity and corruption within the police force. It set up and publicized a special telephone line for complaints against police abuses, and disciplined a number of police agents and officers on the basis of citizen complaints. The ministry should prioritize action against any future interference with media freedoms.

DEFAMATION TRIALS

Summary of Findings

While the physical violence and harassment suffered by journalists are perhaps the most dramatic violation of media freedom in Albania, the threat of defamation suits may have an equally pernicious effect. This part of the report reviews six cases that resulted in the convictions by Albanian courts of five journalists for defamation against politicians and officials of the governing Socialist Party. These cases include all major defamation actions brought by senior political figures or government officials against journalists and adjudicated in 2000 or 2001. A small number of similar, more recent cases that had not reached a final judicial resolution by the end of 2001 have not been included in the report. Three of the journalist defendants in the cases discussed here worked at the time for an opposition party newspaper, while the other two write for unaffiliated newspapers. The editor-in-chief of *Rilindja Demokratike* is a defendant in two cases. In four of the cases the journalist defendants were found liable under both criminal and civil defamation laws, and were ordered to pay both penal fines and civil damages.

The analysis of the six cases reveals a pattern of serious violations of press freedoms, and of the right of Albanians to be informed on matters of public interest. It also exposes a huge gap between the degree of protection granted to freedom of expression by the Constitution of Albania and international human rights treaties ratified by Albania, and the capacity or willingness of the Albanian judiciary at all levels to enforce and guarantee those freedoms.

The violations of media freedom that emerge in the defamation cases are a result of shortcomings in both the relevant legal framework and its application by the Albanian courts. To begin with, Albanian law includes criminal sanctions, up to a maximum of two years of imprisonment, for criminal insult and criminal libel offenses. Human Rights Watch maintains that, as a matter of principle, criminalization of defamation is an unnecessary and disproportionate measure that, in itself, violates freedom of expression and media freedom. It serves no legitimate aims that cannot be sufficiently protected by private law remedies. In addition, some of the criminal defamation offenses in Albanian law, such as insult or defamation of public officials, are so undefined or vague that they leave wide open the possibility that criminal sanctions will be indiscriminately used to sanction legitimate speech. In fact, and perhaps inevitably, Albanian courts do abuse this unfettered discretion. For all these reasons, Human Rights Watch considers that defamation should be completely decriminalized in Albania.

A seriously flawed part of Albanian criminal defamation laws are those provisions that provide special protection to public officials, including government officials of all levels. Whereas private victims of defamation are responsible for making their own criminal defamation cases, state officials enjoy the assistance of public prosecutors in prosecuting their alleged defamation. The active involvement of public prosecutors, the state's criminal investigation arm, in defamation actions brought by public officials is inconsistent with international standards, and has a seriously chilling effect on press freedom, one that deters investigative journalism and undermines the media's public watchdog role. Such privileged standing of public officials goes against the established principle in international human rights law that press freedoms are wider, not narrower, vis-à-vis politicians and government officials than the ordinary citizen. The offenses of official defamation should be abolished without delay.

Albanian civil defamation laws, which make harm to reputation a tort, suffer from even greater vagueness and lack of defined standards than the criminal laws. The case law of Albanian courts has not reduced the legal uncertainty that surrounds their application. Thus, the courts and lawmakers have failed to establish clear and adequate standards of liability, burden of proof, and compensation in civil defamation cases. Such failures, coupled with the judiciary's emerging tendency to order highly punitive and disproportionate damage awards against journalists, makes the need for a thorough reform of civil defamation laws in Albania pressing. Such reform should include the introduction of a statutory cap on the amount of civil awards for non-material harm to reputation.

Apart from the letter of defamation laws, the six cases described in this report show that the Albanian courts' application of the law is of even greater concern. In the context of criminal defamation cases, one of the most serious violations is derogation from the principle that a criminal defendant is presumed innocent. In five out of the six defamation trials in this section the courts placed the burden of proof on the journalist defendants. In all five cases the defendants were convicted for failure to prove the truthfulness of their statements and/or their good faith. These cases suggest that, unless a defendant can prove that the allegedly defamatory statement is true, Albanian judges tend to conclude not only that the statement is false, but that it was also made in bad faith (that is, with knowledge of such falsity). (See, for example, *Kryemadhi v. Patozi*.) This includes those cases where the statement at issue was an opinion or value judgment, which, almost by definition, are not susceptible to the requirement of proof. In sum, Albanian courts presiding over defamation cases have generally reversed the presumption of innocence into a presumption of guilt.

Similarly, courts frequently make the erroneous assumption that journalists who refuse to disclose their sources have acted in bad faith and are therefore guilty of malicious defamation. The courts fail to acknowledge that the journalists' right to protection of their confidential sources is an essential part of press freedoms. (See, for a clear case in point, *Kryemadhi v. Patozi*.) Albanian lawmakers should adopt legislation that specifically establishes that principle and bars judges from drawing negative inferences from a journalist defendant's refusal to disclose the identity of their sources.

All six judgments reviewed in this section also suffer from poor reasoning and insufficient evidence on the record to justify the criminal and civil sanctions imposed on the journalist defendants. Some cases, in which the judges failed to take into account relevant evidence beneficial to the defendant, suggest judicial bias against the defendant. (See *Hoxha* and *Hafizi* cases.) In yet other cases, the analysis reveals serious violations of the defendant's due process rights, such as the right to be heard or the right to counsel. (See *Hoxha* and *Kryemadhi* cases.)

The greatest shortcoming, however, of the Albanian courts' approach to these cases is probably their failure to acknowledge the human rights implications that are bound to arise from the application of defamation laws. This is, more simply, a failure to take rights seriously. In none of the six cases did any of the courts, at any level of the judicial pyramid, seek to balance a public person's right to reputation

with freedom of the press and the general democratic interest in promoting public debate. Such insensitivity to the importance of rights is also apparent in the judges' failure to address the defendants' arguments based on the Albanian Constitution or the European Convention on Human Rights and Fundamental Freedoms. In fact, the courts largely ignored the rich jurisprudence of the European Court of Human Rights.⁴⁴

The performance of the High Court, Albania's highest ordinary court with special responsibility for enforcing fundamental rights, is particularly disappointing. The High Court summarily dismissed, without discussion, the appeals filed by the defendants in three of the cases under review—in spite of the serious human rights violations committed by the lower courts. (For a detailed discussion of the High Court's performance, see *Kryemadhi v. Patozi*.)

Overview of Legal Standards

Freedom of Expression in International Law and Practice

Freedom of expression is a fundamental human right essential to individual self-fulfillment as well as the effective functioning of a democratic society. It is specifically guaranteed by article 19 of the International Covenant on Civil and Political Rights (ICCPR) and, in similar language, by article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).⁴⁵ Article 10 of the European Convention recognizes that:

[e]veryone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

The second part of article 10 establishes that the exercise of those freedoms can only be subject to restrictions that “are prescribed by law and are necessary in a democratic society” in order to protect specific public and private interests, such as “the reputation or rights of others.” The European Court has determined that the evaluation of any such restrictions presents the court “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.”⁴⁶ Restrictions can only be permissible under Article 10 if warranted by a “pressing social need” and if proven to be proportionate to the legitimate aim pursued.⁴⁷

The European Court has established particularly strong protections for press freedoms and press defendants. It reviews sanctions against the press in the light of what it calls “the pre-eminent role of the press in a State governed by the rule of law,” and the right of the public to receive information and ideas:

⁴⁴ Some important tenets of the European Court's case law in the area of defamation are the following: politicians and government officials enjoy more limited rights to reputation vis-à-vis press criticism than ordinary people; opinions and value judgments are generally granted greater protection than statements of fact (in that no one can be required to prove the truth of an opinion); statements on matters of public interest are entitled to special protection; and freedom of expression covers not only content or subject matter, but also the forms and methods in which individuals chose to express themselves. See below, section on Freedom of Expression in International Law and Practice. The judgments reviewed in this report did not seem to take these and other relevant principles into account in any fashion.

⁴⁵ Albania has ratified both the International Covenant (on October 4, 1991) and the European Convention (on October 2, 1996); the Albanian constitution makes the European Convention part of Albanian constitutional law. In view of the European Convention's special relevance in the Albanian domestic legal system, the jurisprudence of the European Court of Human Rights will be covered in more detail in this section. The Strasbourg-based European Court has final authority over the interpretation and application of the European Convention.

⁴⁶ *The Sunday Times v. the United Kingdom*, Judgment of April 26, 1979, Series A no. 30, para. 65.

⁴⁷ *Handyside v. the United Kingdom*, Judgment of December 7, 1976, Series A no. 24, paras. 48-50.

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.*⁴⁸

For these reasons, the press is entitled to the greatest protection under the convention when it covers matters of public interest. An important element of this general principle is, according to the European Court's case law, that the reputational rights of politicians and government officials are entitled to less protection vis-à-vis the press than those of private citizens. In the words of the court, a politician "inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must display a greater degree of tolerance"⁴⁹

That politicians and other public figures relinquish part of their rights to reputation and privacy, and must therefore tolerate, as a matter of law, wider and more intense scrutiny of their conduct is well established in international human rights law. The Inter-American Commission on Human Rights expounded on this principle in its report on *desacato* [contempt] laws: "[I]n democratic societies political and public figures must be more, not less, open to public scrutiny and criticism. ... Since these persons are at the center of public debate, they knowingly expose themselves to public scrutiny and thus must display a greater degree of tolerance for criticism."⁵⁰ According to the Siracusa Principles on the limitation of civil and political rights, the restriction clauses in article 19 of the ICCPR "shall not be used to protect the state and its officials from public opinion or criticism."⁵¹

The European Court has reviewed more than a dozen cases in which journalists and others have been convicted by the domestic courts of states party to the convention for various types of defamation offenses. In applying the general clauses of article 10 to these cases, the court has established several important principles. A central theme of the European Court's defamation case law is the distinction made by the court between statements of opinion (or value judgments) and statements of fact. "The existence of facts can be demonstrated, whereas the truth of value-judgments is not susceptible of proof," the court held in the landmark *Lingens* case.⁵² It follows that a journalist cannot be required by law to prove the truthfulness of a supposedly defamatory opinion; such a requirement, and any punishment based on the defendant journalist's failure to meet it, would be "itself an infringement on freedom of expression."⁵³ The same applies generally to statements that reflect public opinion.⁵⁴

Value judgments on matters of public interest deserve therefore a very high level of protection—unless made in bad faith, based on grossly inaccurate facts, or expressed in a particularly insulting fashion. Not

⁴⁸ *Castells v. Spain*, Judgment of April 23, 1992, Series A no. 236, para. 43. (Emphasis added.)

⁴⁹ *Oberschlick v. Austria*, Judgment of May 23, 1991, Series A no. 204, para. 59. See also, *Lingens v. Austria*, Judgment of July 8, 1986, Series A no. 103.

⁵⁰ Inter-American Commission on Human Rights, Annual Report 1994, *Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights*, OEA/Ser L/V/II.88, Doc. 9 Rev (1995). *Desacato* laws (also known as contempt laws) were used in a number of Latin American countries to punish speech deemed to be insulting or threatening to public officials. The Commission concluded that such laws serve no legitimate aim and are inconsistent with free expression in a democratic society.

⁵¹ Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, Principle 37. The Siracusa Principles were adopted in a broad meeting of experts convened in 1984 by the United Nations Center for Human Rights and other organizations.

⁵² *Lingens* case, note 49 above, at para. 46.

⁵³ *Oberschlick* case, note 49 above, at para 63.

⁵⁴ See *Thorgeirson v. Iceland*, Judgment of June 25, 1992, Series A no. 239.

every strongly worded statement, however, will fall outside the protective sphere of article 10. As the European Court has consistently affirmed, freedom of expression:

applies not only to “information” or “ideas” that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no ‘democratic society’.⁵⁵

Freedom of Expression under the Albanian Constitution

Freedom of expression and media freedoms are expressly guaranteed by article 22 of the Albanian Constitution (1998), which establishes the following:

1. Freedom of expression is guaranteed.
2. Freedom of the press, radio and television is guaranteed.
3. Prior censorship of means of communication is prohibited.

Article 23 of the constitution supplements article 22 by providing for a general “right to information”:

1. The right to information is guaranteed.
2. Everyone has the right, in compliance with law, to obtain information about the activity of state organs, and of persons who exercise state functions.⁵⁶

The constitution recognizes that most fundamental rights are not absolute and can be restricted “by law, in the public interest or for the protection of the rights of others.” Such restrictions must, however, be “in proportion to the situation that has dictated [them]” and “in no case may exceed the limitations provided for in the European Convention on Human Rights.”⁵⁷ This latter provision is important for freedom of the media in Albania because the European Convention and the jurisprudence of the European Court spell out in more detail the legitimate grounds for restricting those freedoms.

By virtue of the “European Convention” clause of the Albanian Constitution, the European Convention operates as a minimum threshold of protection of basic rights. Albanian courts can always provide a higher lever of protection than that granted by the convention, but they cannot, as a rule, allow for restrictions of rights that would not be permissible under the convention.⁵⁸ It is therefore fair to say that the Albanian Constitution has incorporated the substantive provisions of the European Convention.

The status of the European Convention in the Albanian legal system is reinforced by the fact that the Albanian Parliament has ratified the convention and its substantive protocols. As such, these international instruments “constitute part of the internal legal system” and even prevail, in case of conflict, over ordinary Albanian laws.⁵⁹ In other words, Albanian judges must apply the provisions of the European Convention and give them priority over inconsistent domestic legislation.

⁵⁵ *Handyside* case, note 47 above, at para. 49.

⁵⁶ A 1999 statute implements the general clauses of article 23 by providing for a general right to access official documents and by establishing standards and procedures for its enforcement. *See* Law 8503, note 41 above.

⁵⁷ Constitution, art. 17.

⁵⁸ In some respects, such as the prohibition on prior censorship, the Albanian Constitution does seem to grant greater protections than the European Convention, which contains no such express prohibition.

⁵⁹ Constitution, art. 122. Article 122 provides: “1. Any ratified international agreement constitutes part of the internal legal system after it is published in the Official Journal of the Republic of Albania. It is directly applicable, except when it is not self-executing and its application requires the adoption of a law. . . . 2. An international agreement ratified by law has priority over the laws of the country that are incompatible with it.”

Lastly, the Albanian Constitution sets up a multi-tiered system of judicial review, with the Constitutional Court at its top. The Constitutional Court reviews and strikes down statutes and other norms that are incompatible with the constitution or a superior international agreement. Ordinary judges cannot strike down statutes. They do exercise, however, a significant degree of constitutional review by virtue of a constitutional obligation not to apply laws that they consider to be unconstitutional. In such cases, ordinary courts must suspend the proceedings and send the question of constitutionality to the Constitutional Court, which makes a final and binding decision on the fate of the statute.⁶⁰ When possible, ordinary courts can avoid such a referral by interpreting statutes in ways that are compatible with the constitution and international human rights treaties.

However, individuals who believe that their constitutional rights have been violated by a statute or judicial decision have limited access to the Constitutional Court. They can file a complaint directly with the Constitutional Court only for alleged violations of their “constitutional due process rights.”⁶¹ If the alleged violation involves a substantive (as opposed to a procedural) right, such as freedom of expression, the only way to have the constitutional question reviewed by the Constitutional Court is through a referral by an ordinary judge.⁶² If an ordinary court is not persuaded that the statute is unconstitutional, the individual plaintiff is left with no further constitutional remedy. As a result of this arrangement, the ordinary judiciary, with the Supreme Court at its top, tends to exercise a degree of “negative judicial review” in the area of substantive rights. Upon exhaustion of domestic remedies, individuals can also take Albania to the European Court for violations of their rights under the ECHR. This option, however, is very underused in practice and the European court has yet to take its first Albanian case.

Breaches in Law

Albanian Criminal Defamation Laws

The Albanian Criminal Code (ACC) includes at least five provisions that can be characterized as criminal defamation laws. These are simple insult, simple libel, insult [of public officials] related to their public function, libel [of public officials] related to their public function, and libel of the president of the republic.⁶³

Section 119 of the ACC criminalizes insult:

1. The intentional insult of a person shall be a criminal misdemeanor punishable by a fine or up to six months of imprisonment.
2. The same offence, when committed publicly, to the detriment of several [more than one] persons, or more than once, shall be a criminal misdemeanor punishable by a fine or up to one year of imprisonment.⁶⁴

⁶⁰ Constitution, art. 145.2.

⁶¹ Constitution, art. 131(f).

⁶² The Albanian Constitutional Court has not developed anything akin to the doctrine of “substantive due process” in U.S. constitutional law. So far Albanian due process is strictly procedural.

⁶³ ACC, sec. 119 (*fyerja* in Albanian), sec. 120 (*shpifja* in Albanian), sec. 239 (*fyerja për shkak të detyrës* in Albanian), sec. 240 (*shpifja për shkak të detyrës* in Albanian), and sec. 241 (*shpifja ndaj Presidentit të Republikës* in Albanian), respectively. *As amended* by Law no. 8733 of January 24, 2001 [hereinafter Law 8733]. Both *fyerja* and *shpifja* are terms of art in Albanian, with a defined legal meaning (*see* below); the terms “insult” and “libel” are used as the closest English equivalents.

⁶⁴ The Albanian word translated as “publicly” is *botërisht*, literally “to the entire world.” The statutory range for fines applicable to misdemeanors is from 50,000 to five million lekë (U.S. \$360-36,000). ACC, sec. 34, *as amended* by Law 8733. The courts enjoy wide discretion to set the level of fines in each case.

Section 119 does not define insult, though, and does not clarify what constitutes a “publicly committed” insult. According to a leading Albanian criminal law commentator, Albanian courts have interpreted insult to include “humiliating, immoral or ridiculing words, images or gestures,” which can consist of things such as caricatures or sketches. Judicial practice has found defendants guilty of public insult for insolent words uttered in the presence of as few as seven or eight persons.⁶⁵ An insult disseminated through mass media is always considered to be a public insult punishable under the second paragraph of section 119.

Section 120 of the ACC defines and criminalizes libel in the following terms:

1. The intentional dissemination of utterances [or] any other information, which are knowingly false, [and] which damage the honor and dignity of a person shall be a criminal misdemeanor punishable by a fine or up to one year of imprisonment.
2. The same offense, when committed publicly, to the detriment of several [more than one] persons, or more than once, shall be a criminal misdemeanor punishable by a fine or up to two years of imprisonment.

Section 120 defines libel narrowly and sets a rather high threshold of evidence. A defendant can be found guilty under section 120 if it is proven that the defendant (a) disseminated utterances detrimental to another person’s public esteem, (b) which are false and (c) sufficiently concrete, and (d) that he or she did so in full awareness of their falsehood.⁶⁶ In other words, truth of defamatory statements is a complete defense in a section 120 action. So is the lack of a malicious, defamatory intent on the part of the defendant; under the ACC criminal libel cannot be committed by negligence. Thus, a newspaper that publishes false and defamatory statements cannot be held criminally liable if the publication was made in good faith or due to simple failure to check the accuracy of information.

Insult and libel against public officials are defined under Chapter VIII of the ACC on Crimes against the Authority of the State. The key elements of these offenses—intentional insult or intentional dissemination of false information—are essentially the same as in general insult and general libel. The two Chapter VIII provisions differ in that they provide special protection to persons “who perform a state function or a public service” and become victims of defamation for reasons “related to their state activity or public service.” Sections 239 and 240 apply, therefore, only to cases in which the nature or substance of the defamatory allegations against public officials is connected to their official activities. The protected category is usually construed very loosely by the Albanian courts: for example, courts have applied sections 239 and 240 to defendants accused of defaming public schoolteachers or medical personnel in the public health system.⁶⁷ Likewise, in practice the link between the nature of the defamatory statement and the victim’s official activity can be blurred or remote.

Punishments for libel against public officials are the same as those applicable to general libel, including the higher punishment for public libel. The sanctions applicable to insult of public officials, however, are 100 percent higher than those applicable to simple insult.⁶⁸

Both general and official defamation offenses are part of a limited category of crimes that can only be investigated and prosecuted upon the alleged victim’s request. (This is an exception to the general rule of Albanian criminal procedure that crimes are prosecuted automatically, upon notice, by the public

⁶⁵ Ismet Elezi, *Criminal Law, Special Part*, Vol. I (Tirana: Luarasi Publishing House, 1995), pp. 119-120.

⁶⁶ *Ibid*, p. 121. Professor Elezi argues that dissemination of defamatory statements that are true can, under certain circumstances, be considered an insult, but not libel.

⁶⁷ Elezi, *Criminal Law*, Vol. II, pp. 54-57.

⁶⁸ The stricter sanctions were part of the January 2001 amendments to the ACC. *See* Law 8733, sec. 56.

prosecution offices.) The differences between general and official defamation proceedings are greater than the similarities, however. Public officials who bring defamation complaints under ACC sections 239/240 enjoy significant procedural privileges compared to private citizens who can only bring section 119/120 actions. Under section 239/240, alleged victims who are public officials need only file a complaint with the police or a public prosecutor, who then takes over the case. Once a section 239/240 complaint is filed, the public prosecutor becomes responsible for its investigation and for pursuing the case in court in the same way that typical prosecutions are handled.⁶⁹ A private citizen, on the other hand, has to file a section 119/120 complaint directly with the court and has the burden to “prove the charges” in the course of the trial—as a so-called “damaged-accuser.” There is no pre-trial investigation; the prosecutor may simply “participate in the adjudication of such cases” and is free to recommend that the defendant be either acquitted or found guilty.⁷⁰

Human Rights Watch opposes, generally and as a matter of principle, all laws that make defamation a criminal offense. The social stigma and criminal sanctions associated with such laws, especially those that provide for prison sentences, have a profound chilling effect on media freedom and democratic debate in general. Criminal defamation laws are frequently used and abused by governments and the powerful to harass, intimidate and punish the critical media. In addition, criminal sanctions for defamation are excessive, disproportionate and unnecessary. One’s honor and good reputation are deeply personal interests, and their protection, while legitimate, can be adequately secured by means less restrictive than criminal sanctions. Non-criminal means of redress, such as carefully tailored, private law remedies, provide sufficient protection for genuine victims of defamation. Criminal defamation laws are often remnants of repressive regimes and should have no place in states committed to freedom of expression and democratic openness.

Human Rights Watch calls for the repeal of all criminal defamation laws in force in Albania. The following discussion of those laws, and of their application in six cases, should not be construed as undermining that basic premise. Indeed, this analysis is based upon, and lends support to, the belief that criminal defamation is inherently inimical to free expression.

Albanian criminal defamation laws include certain provisions that are particularly threatening to freedom of expression. To begin with, the procedural privileges granted by Albanian defamation laws to public officials, who can avail themselves of the resources and authority of the public prosecution machinery, are unjustified. Such privileges have the effect of giving public officials greater protection than private citizens from potentially legitimate criticism involving issues of public interest. Because of their very definition, sections 239 and 240 of the ACC protect the reputation of public officials in the context of their official activities; they are also designed to protect the authority of the state as an institution. This paradoxical approach runs against the well-established principle in international law that government institutions, politicians and government officials must be more open to public criticism and press scrutiny than private citizens, not less. As the Inter-American Commission noted in its report on *desacato* laws, special protection for government officials “inverts the fundamental principle in a democratic system that holds the Government subject to controls, such as public scrutiny, in order to preclude or control abuse of its coercive powers.”⁷¹

In addition, there is always the danger that powerful politicians and government officials will abuse the authority of the police and public prosecutors in order to intimidate journalists and prevent legitimate criticism. Such danger is even more significant in countries like Albania, where public prosecutors are far from being insulated and protected from improper influences. In fact, the cases described in this report

⁶⁹ Albanian Code of Criminal Procedure (ACCP), sec. 284.

⁷⁰ ACCP, sec. 59.

⁷¹ See Report on *Desacato* Laws, note 50 above.

suggest that such prosecutorial abuses do occur in the investigation of section 239/240 defamation cases brought by Albanian politicians against the press. The fact that Albanian courts have inflated the category of section 239/240 “public officials” is another reason for concern. Finally, the practical privileges enjoyed by public officials are even more untenable if one considers that politicians and other public figures are usually in a much better position than private citizens to respond publicly to unfair criticism and to undo or mitigate damage to their reputation.

Even in the absence of such procedural privileges for public officials, the existence of insult and libel against public officials as separate offenses, distinct from simple insult and libel, is similarly unjustified. The *raison d’être* for such special crimes is not the need to protect the dignity and reputation of the individual public official, but the abstract “reputation of the state.” But such interference with freedom of expression that is unrelated to protection of individual fundamental rights or compelling public interests cannot be deemed “necessary in a democratic society.” The authority of a democratic state is better served by making public servants more, rather than less, subject to public scrutiny.

Albanian Civil Defamation Laws

Under the Albanian Civil Code, a person who has suffered “harm to the honor of his personality” has a right to compensation (also referred to as non-pecuniary or moral damages).⁷² Since the Civil Code does not clarify the standard of liability for civil defamation, general standards of tort liability apply: the defendant is liable if he or she has caused an “illegal damage” and has acted with fault. The damage is illegal “if it results from the infringement or violation of another person’s rights or interests that are protected by the juridical order or good custom.”⁷³ Fault may result from either deliberate wrongful acts or negligence.

It is not clear whether the truthfulness of a defamatory statement or good faith can be a defense in a defamation case. In practice, Albanian courts do appear to assume that proving the truth of a defamatory statement exempts the defendant from liability. A greater source of legal uncertainty is the failure of Albanian law to provide any guidance on the quantification of moral damages. Nor does Albanian case law on civil defamation, which is rather undeveloped, shed too much light on these issues. The judgments in the civil defamation cases that are analyzed in this section include very little or no discussion of liability standards or the methodology used for setting the level of damage awards.

Article 10 of the European Convention requires that any restrictions on freedom of expression “be prescribed by law.”⁷⁴ To meet this requirement, the European Court has held, any such restriction must be “formulated with sufficient precision to enable the citizen to regulate his conduct.”⁷⁵ The vague definition of harm to one’s reputation and the significant uncertainty surrounding the standards and level of liability in Albanian civil defamation law raise serious concerns whether the Civil Code provisions meet the ECHR’s foreseeability test. The inability of the media to reasonably predict the boundaries of “permissible defamation” leads them to err on the safe side; it also gives Albanian judges wide discretion to apply civil defamation laws in ways that can be easily abused to sanction protected speech. The cases discussed below illustrate the risks of such indefinite laws.

⁷² Albanian Civil Code, sec. 625(a) (hereinafter Civil Code).

⁷³ Civil Code, sec. 608.

⁷⁴ The Albanian Constitution includes a similar standard. See note 57 above and accompanying text.

⁷⁵ *The Sunday Times* case, note 46 above, at para. 63.

Breaches in Legal Practice

Case of Petro Koçi v. Astrit Patozi

In 1999 Petro Koçi, a former minister of interior and Socialist Party executive, brought criminal and civil defamation actions against Astrit Patozi, editor-in-chief of *Rilindja Demokratike* (*RD*). The object of the lawsuits was an article published by *RD*, which alleged that Koçi was constructing a gas station and referred to him as the “bandit Petro Koçi.”⁷⁶ The article was signed by a certain Fadil Molla. Koçi claimed that he did not own or have any interest in any gas station business.⁷⁷ He filed both a section 119 complaint for criminal insult, for having been called a “bandit,” and a section 120 charge for criminal libel regarding the gas station allegations.

A judge of the Tirana District Court concluded that Fadil Molla was a pseudonym and accepted the charges against Patozi after the *RD* informed the court that no person with such name worked for *RD*. The single-judge court held that Koçi had failed to provide any evidence that the allegations about his gas station interests were “completely false,” and acquitted Patozi of the libel charges.⁷⁸ This is the only case among those reviewed in this report in which the court considered that the damaged-accuser has the burden to prove all elements of a libel offense, including the falsity of the allegations made by the defendant. The judge found the only piece of evidence provided by Koçi, a copy of the article, to be insufficient.

The district court found Patozi guilty, however, of section 119 insult, and ordered him to pay a 30,000-lekë (U.S. \$220) fine. The judge held that calling Koçi a “bandit” was an unjustified attack against his “honor and dignity.” The judgment did not discuss whether the use of that term constituted an expression of an opinion, and whether that opinion was based on factual allegations that were susceptible of proof. The *RD* article referred to Koçi as a “bandit” because of his alleged role in the 1997 revolts that took place in southern Albania against the then-Democratic Party government—which the DP has condemned as an armed rebellion to overthrow the constitutional order. The article accused Koçi of having “burned down public institutions” in Fier (southern Albania), and of financing the gas station he was allegedly building with “the money he robbed during the armed uprising.” It also carried a photograph with the caption “Petro Koçi ... leading the mob in March 1997.” In view of the factual nature of the allegations underlying the “bandit” characterization, the district court should have required Koçi to prove their falsity.

In contrast with international and European human rights law, the district judge considered the fact that Koçi was at the time a leading SP politician to be an *aggravating* circumstance against Patozi. By the same token, the court failed to take into account the public interest in the subject addressed in the article—a factor that under the European Convention might justify wider latitude for media commentary. At the time, the 1997 unrest continued to generate intense political and public debate, as an extremely controversial series of events interpreted in opposite directions on the left and right of the political divide. The judgment made no reference whatsoever to the constitutional protection of press freedom and made no attempt to justify its holding in light of those constitutional principles.

In spite of the extreme nature of the term used by *RD* to describe Koçi, the Albanian Constitution and European Convention protect not only moderate expression but also speech that is likely to “offend, shock

⁷⁶ Fadil Molla, “Petro Koçi and Gjolek Malaj begin construction in Tirana,” *Rilindja Demokratike*, September 10, 1999.

⁷⁷ Although there is, of course, nothing wrong with owning a gas station, gas stations were a very lucrative business in Albania during the 1990s, and obtaining licenses for operating gas stations was widely viewed as something that involved widespread favoritism or corruption.

⁷⁸ Judgment of May 26, 2000 (no. 361), Tirana District Court (unpublished).

or disturb.”⁷⁹ In a similar case, the Spanish Constitutional Tribunal reviewed the conviction of a journalist who had called the king of Spain a “fascist” in a critical article about the government’s policies on the world soccer championship. Overturning the conviction, the Spanish Tribunal wrote:

The maximum scope that freedom of ideology has in our Constitution must be pointed out, since it is the basis, together with the dignity of the person and his inviolable, inherent rights, of all other fundamental rights and freedoms⁸⁰

Patozi appealed the criminal sentence to the Tirana Court of Appeals, but this upheld his conviction.⁸¹ So too did the High Court, which summarily dismissed Patozi’s second appeal as “legally unfounded.”⁸²

The civil part of Koçi’s lawsuit was tried by another judge of the Tirana District Court in 2001. Patozi claims that he was not notified of the case, and was completely unaware at the time that the district court was adjudicating the civil lawsuit against him.⁸³ Human Rights Watch was unable to verify these allegations because of lack of access to the record of the civil case and the full text of the civil judgment.⁸⁴ It appears, however, from a summary of the court orders in the case (known as *dispozitiv i vendimit* in Albanian) that the district court judge ordered Patozi to pay Koçi 750,000 lekë (approximately U.S. \$5,360) in damages.

Such a huge award by Albanian standards—equal to more than fifty average monthly salaries—appears to be highly punitive and grossly disproportionate to the supposed offense. It is also inconsistent with the assessment of Patozi’s criminal liability by the criminal trial judge, who imposed a relatively moderate criminal fine.⁸⁵ The fact that Koçi took no steps to mitigate the damage to his reputation, for example by requesting *RD* to publish an apology or a rebuttal, makes the civil award appear even more excessive.

Case of Ndre Legisi v. Artan Hoxha

In August 1999 *Gazeta Shqiptare* ran a story about the dismissal of the Durrës chief of the police intelligence service, Krenar Kasa, by the minister of interior.⁸⁶ The author of the article, staff reporter Artan Hoxha, alleged that Kasa had been fired following a high-level meeting convened by the minister, in which Kasa had accused Ndre Legisi and Namik Dokle of being “implicated in smuggling [activities] that go through the Durrës port.” At the time, Legisi was a Member of Parliament and SP executive, while Dokle was the deputy speaker of parliament (and also a member of SP). The article quoted an unnamed official of the Ministry of Interior as saying that, encouraged by the minister to come forward with specific names of politicians involved in illegal activities, “Kasa named Legisi and Dokle, who, according to Kasa, have connections with smuggling channels.”⁸⁷ The title of the article, “Legisi and Dokle smugglers,” appeared also as a prominent headline on the daily’s front page. The next day *Gazeta*

⁷⁹ See note 55 above and accompanying text.

⁸⁰ *Punto y Hora*, Spanish Constitutional Tribunal 20/90.

⁸¹ Judgment of July 3, 2000 (no. 306), Tirana Court of Appeals (unpublished).

⁸² Judgment of October 6, 2000 (no. 338), High Court (unpublished).

⁸³ Human Rights Watch interview with Astrit Patozi, Tirana, November 26, 2001.

⁸⁴ Judgment of April 4, 2001, Tirana District Court (unpublished). Although the administration of the Tirana District Court generally accommodated Human Rights Watch’s investigation, its staff were unable or unwilling to give Human Rights Watch access to court records and judgments in a number of cases, including this one.

⁸⁵ The 30,000-lekë fine was less than one-sixth of the statutory maximum applicable to misdemeanors (200,000 lekë) that was available to the criminal trial judge at the time (before the January 2001 amendments to the ACC). See note 64 above.

⁸⁶ Artan Hoxha, “Legisi and Dokle smugglers,” *Gazeta Shqiptare*, August 11, 1999. The main function of the police intelligence service (*Shërbimi Informativ i Rendit* (SHIR) in Albanian) is to investigate corruption, criminal ties, and other wrongdoing within the ranks of the Albanian police force.

⁸⁷ The phrase used in Albanian is *fijet e kontrabandës*, literally “threads of smuggling.”

Shqiptare published a letter from Legisi, who denied the allegations and expressed his intent to bring a defamation action against Hoxha.

Both Legisi and Dokle filed ACC section 240 charges against Hoxha with the Tirana prosecutor's office for libel related to their respective public functions. (Dokle dropped the charges later for unknown reasons). A judicial police officer named Bledar Çuçi summoned and questioned Hoxha, who felt obliged to disclose one of his sources at the Ministry of Interior: Sofokli Duka, at the time general director of the police intelligence service and Kasa's direct superior.⁸⁸ After questioning Duka, Çuçi recommended that the case prosecutor close the investigation on the ground that the "fact did not constitute a criminal offense." Çuçi's memorandum on the case, on file with the Tirana District Court, states:

"Sofokli Duka was interrogated [by me] and admitted the fact that, in the relevant meeting [in the ministry] several people were named as tied to smuggling, including Ndre Legisi ... and also [admitted] that he confirmed this information to the journalist Artan Hoxha."⁸⁹

Acting on Çuçi's recommendation, the case prosecutor, Shkëlqim Laze, closed the investigation with a similar reasoning: Hoxha had not committed libel because he had only publicized the true fact that a police intelligence agent had made allegations against Legisi in a closed meeting with the minister of the interior. The prosecutor decided that Hoxha could not be held liable for the headline "Legisi and Dokle smugglers" because he was "not responsible for choosing the headline."⁹⁰

In mid-December 1999, however, the chief prosecutor for the Tirana district, Dolores Velaj, overruled the case prosecutor's decision and ordered the reopening of the criminal case against Hoxha.⁹¹ Velaj appointed a new prosecutor to the case and instructed him to question Legisi, Kasa, and *Gazeta's* editor-in-chief, and also investigate whether the editor-in-chief was criminally liable for defaming Legisi. The new prosecutor interrogated Hoxha several more times and eventually filed section 240 charges against him with the Tirana District Court. No charges were filed against the editor-in-chief.

Velaj's order gave no reasons whatsoever for overruling the first case prosecutor and reopening the case against the journalist. Under Albanian criminal procedure, the victim of a crime can appeal to the competent court of law against a prosecutorial decision to terminate an investigation against a suspect without bringing charges.⁹² Legisi filed no such appeal when Hoxha's investigation was terminated. Instead, it appears from the case record that he complained to the Tirana chief prosecutor. Even if Velaj's overruling order, which followed Legisi's complaint, was not strictly unlawful,⁹³ the lack of any justification in that order raises serious questions as to whether Velaj exercised her discretion properly and impartially.

At the trial, Duka testified that he had talked to Hoxha about the ministry meeting, but had told him that Legisi's name had come up "in another context" unrelated to smuggling. Kasa testified that he had spoken in the meeting of "a former police officer ... who abused Legisi's name" but without alleging that Legisi himself was involved in any illegal activities.⁹⁴ Hoxha asserted that he had received the initial

⁸⁸ Human Rights Watch interview with Artan Hoxha, Tirana, November 5, 2001.

⁸⁹ Memorandum on facts and evidence regarding criminal proceeding no. 1438 (on file with Tirana District Court).

⁹⁰ Decision to terminate criminal proceeding no. 1438 of October 25, 1999 (on file with Tirana District Court).

⁹¹ Order of December 15, 1999 (on file with Tirana District Court).

⁹² ACCP, sec. 329.1.

⁹³ As a general rule, the decisions of a prosecutor can be changed or quashed by his or her superior in the hierarchy of the prosecutorial system. ACCP, sec. 24.5. It is not clear, however, whether this general rule applies to decisions of a case prosecutor to terminate criminal proceedings, and, if yes, whether there are any time limits for so doing.

⁹⁴ Transcripts of the testimonies are part of the case file.

information about the meeting discussion from another person, whose identity he could not disclose, and that he had contacted Duka as a confirmation source. Hoxha maintained that he had correctly quoted Duka in the article.

The evaluation of such conflicting evidence by the district court is rather unconvincing, as is the court's reasoning generally. The single-judge court held that "the existence of all elements of the [libel] offense had been proven" and found Hoxha guilty of criminal libel.⁹⁵ The four-paragraph judgment fails to discuss the *mens rea* element of criminal libel: whether the evidence presented in the trial proved beyond a reasonable doubt that Hoxha published allegations that he knew were false, with the malicious intent to defame Legisi. As already noted, it is not enough, in an Albanian criminal libel case, to prove the falsity of defamatory allegations. The fact that Hoxha contacted Duka to verify his primary information, and the discrepancy between Duka's statements to the first case prosecutor and his testimony at the trial, appear to raise at least a reasonable doubt about the existence of such a malicious intent in Hoxha's mind.⁹⁶ The court opinion relied in part on Kasa's testimony that he had not been contacted by Hoxha before the publication of the article, but Hoxha never claimed to have received the information about the meeting discussions directly from Kasa. Hoxha did nevertheless refer to having been part of an off-the-record discussion that Kasa had with several reporters about his dismissal, the day before Hoxha's article was published—which Kasa did not deny.⁹⁷

It is not clear from the judgment whether the court imposed the burden of proving the elements of the offense upon the defendant or the accuser. But irrespective of this, the district court attached no importance to the fact that the references in the article to Legisi's alleged implication in smuggling were much more indirect and qualified than the headline suggested; it also failed to consider whether, as is customary in the Albanian media business, the headline might have been chosen by someone other than the indicted journalist.

On the procedural side, Hoxha claims that he and his lawyer were denied the right to be present and make concluding remarks at the final court session, held on May 31, 2000, in which the court disposed of the case. This was because, for personal reasons and without notifying the defendant, the judge anticipated the beginning of the last session by one hour. "By the time we showed up the judge had already delivered the sentence and was about to leave the courtroom," Hoxha told Human Rights Watch. In fact, the transcript of the last session of the trial fails to indicate the starting and ending times, although this is specifically required by section 345.1 of the ACCP. The transcript indicates that the judge "took notice of the defendant's absence" and appointed a court-available defense counsel just for the final hearing. Such one-session appointments of defense lawyers, which appear to be a rather typical practice in the Tirana district court, raise serious questions as to whether the defendant's constitutional rights to counsel were preserved.⁹⁸ For Hoxha, who had been represented by a counsel of his own choice throughout the trial, the last-minute appointment of a counsel wholly unfamiliar with his case was a clear violation of his right to counsel. Rather unsurprisingly, Hoxha's court-appointed counsel agreed with the

⁹⁵ Judgment of May 31, 2000 (no. 375), Tirana District Court (unpublished).

⁹⁶ In line with the defendant's right to be presumed innocent, a general principle of Albanian criminal law establishes that "every doubt regarding the charges shall be assessed in favor of the defendant." ACCP, sec. 4.

⁹⁷ Anila Prifti, a reporter with *Koha Jonë* who was also present at the same meeting, confirmed Hoxha's participation therein. Prifti told Human Rights Watch that Kasa gave no specific names to the reporters, but did relate that he had alerted the minister of certain politicians' possible implication in smuggling activities. Human Rights Watch interview with Anila Prifti, Tirana, November 17, 2001.

⁹⁸ Article 31 of the Albanian Constitution guarantees to every defendant in a criminal trial "the right ... to have sufficient time and facilities to prepare his defense ... [and] to be defended by himself or with the assistance of a legal defender chosen by him."

requests made by the prosecutor in his final remarks (the so-called *pretenca*), including for a guilty finding, but asked the court to impose a “more lenient sentence.”⁹⁹

The district court judge ordered Hoxha to pay a 30,000-lekë (\$220) criminal fine. Hoxha appealed the sentence to the Tirana Court of Appeals, which upheld the district court decision in full.¹⁰⁰ The appeal judgment failed to address any of the objections raised by Hoxha’s appeal, including arguments about the procedural violations of the last session and the relevant case law of the European Court of Human Rights.

Unable to pay the criminal fine, Hoxha asked his newspaper to pay it, but the newspaper refused. Hoxha has been notified that the unpaid fine will be converted into thirty days of imprisonment. Although he has not been jailed so far, he fears that that could happen at any time.¹⁰¹

Case of Monika Kryemadhi v. Astrit Patozi

In August 2000 Monika Kryemadhi, head of the Socialist Party youth organization and spouse of Prime Minister Ilir Meta, brought criminal and civil defamation charges against the editor-in-chief of *Rilindja Demokratike*, Astrit Patozi, and two reporters of the same newspaper, Redin Hafizi and Shemsi Peposhi. Although a judge of the Tirana District Court heard all three cases in the same trial, the objects of the charges were three separate articles that were each written by, or attributed to, one of the defendants. Even though it can be argued that some of Hafizi and Peposhi’s respective allegations or criticism of Kryemadhi were overlapping, there was no claim or finding that they conspired to defame Kryemadhi. The article for which Patozi was sued stood completely alone. In view of these circumstances, the joinder of the three cases into one appears to have been unjustified.¹⁰² For this reason, they will be discussed separately in this section, starting with Patozi’s case.

In July 2000 *RD* published on page five an article with the headline “Monika, six thousand dollars a month only at the Rogner” and the deck “Where does the prime minister’s spouse find all this money?”¹⁰³ The article, signed “RD,” alleged that Kryemadhi spent thousands of dollars every month at one of Tirana’s most exclusive hotels. The anonymous author quoted an unnamed “employee” of the hotel as saying that “the bills of the prime minister’s wife go anywhere between 300,000 and 500,000 lekë” on an average day, and that she was “a daily customer” at the hotel. Then the article went on:

In fact, that sum [\$6,000] may not be so huge if one compares it to [the proceeds] of a smuggled tractor-trailer or a cannabis shipment; but if one has to trust Prime Minister Meta when he says that he is fighting corruption, it is a hell of a lot of money. ... There have been rumors for a long time that the prime minister’s spouse is deeply implicated in corruption, abusing not only her husband’s position but also her own, old and new, connections. ... It is appalling to see that such huge expenses, which are five times greater than the Meta family’s official income, are little more than pocket money for the prime minister’s lady. ... But it is easy for Monika to spend all this money, which goes into the pockets and safes of her household simply because her husband is the prime minister.

⁹⁹ Judgment 375/00, note 95 above.

¹⁰⁰ Judgment of July 19, 2000 (no. 347), Tirana Court of Appeals (unpublished).

¹⁰¹ Human Rights Watch interview with Artan Hoxha, note 88 above. At the time a criminal fine that was not paid within the legal deadline was converted into prison time, at the rate of one day per 1,000 lekë. (Law 8733 changed the rate to one day for 5,000 lekë.)

¹⁰² In Albania, joinder of criminal cases is possible under certain defined circumstances. See ACCP, secs. 79 and 92. However, none of those appear to apply to the charges brought by Kryemadhi, and the district court judgment is completely silent on the joinder issue.

¹⁰³ “Monika, six thousand dollars a month only at the Rogner”, *Rilindja Demokratike*, July 21, 2000.

Kryemadhi brought section 120 criminal libel charges against Patozi as editor-in-chief of the newspaper. A judge of the Tirana District Court held that Patozi “produced no evidence to prove the truthfulness of the statements made in the article” and found him guilty.¹⁰⁴ Patozi claimed that revealing the name of the hotel employee who provided the information to *RD* would have certain and serious repercussions for that person. More importantly, however, Patozi’s counsel argued that shifting the burden of proof to the defendant—rather than requiring the damaged-accuser to prove both the falsity of the factual allegations and the defendant’s malicious intent—violated the constitutional principle of presumption of the defendant’s innocence.

Patozi’s burden of proof challenge is compelling. Both the Albanian Constitution and the ACCP establish that a defendant in a criminal case “shall be presumed innocent so long as his guilt is not proven by final judicial decision.”¹⁰⁵ The requirement that the prosecution must bear the burden of proving all elements of a criminal offence is a direct outcome of the presumption of innocence. The European Court of Human Rights has expressly made this point in interpreting the ECHR’s “presumption of innocence” clause:¹⁰⁶

[Paragraph 2 of article 6] requires, inter alia, that when carrying out their duties, the members of a court should not start with the preconceived idea that the accused has committed the offense charged; the burden of proof is on the prosecution, and any doubt should benefit the accused. It also follows that it is for the prosecution to inform the accused of the case that will be made against him, so that he may prepare and present his defense accordingly, and to adduce evidence sufficient to convict him.¹⁰⁷

The fact that section 120 criminal libel charges are not brought and investigated by the public prosecution, but directly by the victim, does not eliminate the presumption of innocence. Indeed, article 59 of the ACCP provides that the damaged accuser is entitled to “participate as a party to the trial [in order] to prove the charges” Despite any similarities with private actions, section 120 charges are criminal charges that may lead to criminal sanctions and all the social stigma that comes with them. By turning the presumption of innocence upside down in the *Kryemadhi* cases, the district court violated the defendants’ fundamental right to a fair trial under the Albanian Constitution and the ECHR.

In Patozi’s case the court also violated his right to protect journalistic sources. The judge dismissed Patozi’s refusal to reveal the identity of the hotel employee as “without any legal basis.” While there is no general provision in Albanian law that protects journalists from compulsory disclosure of their confidential sources,¹⁰⁸ protection of sources is an essential element of internationally guaranteed press freedoms. The European Court in Strasbourg, for one, has described such protection as “one of the basic conditions for press freedom” in a democratic society, and held that “limitations on the confidentiality of journalistic sources call for the most careful scrutiny.”¹⁰⁹ An enforceable right to withhold the source of

¹⁰⁴ Judgment of November 1, 2000 (no. 687), Tirana District Court (unpublished) (hereinafter Judgment 687/00).

¹⁰⁵ Constitution, art. 30; ACCP, sec. 4. See also note 96 above.

¹⁰⁶ Article 6.2 of the ECHR provides that “[e]veryone charged with a criminal offense shall be presumed innocent until proved guilty according to law.”

¹⁰⁷ *Barbera, Messegue and Jabardo v. Spain*, Judgment of December 6, 1988, Series A no. 146, para. 33.

¹⁰⁸ The ACCP provides limited protection for “professional journalists” who appear as *witnesses* in criminal trials: journalists are entitled not to disclose the “names of persons from whom they have received information in the course of exercising their profession.” However, if the information received by such persons “is indispensable to prove a criminal offense and the truthfulness of such information can only be established through the identification of the source,” the court may order the journalist to disclose the source’s identity. ACCP, sec. 159.3.

¹⁰⁹ *Goodwin v. the United Kingdom*, Judgment of March 27, 1996, Reports 1996-II, Vol. 7, para. 40.

information received in confidence is particularly critical to the ability of the press to investigate cases of official corruption and government abuse.

In the context of a criminal defamation case with a journalist as defendant, the court should not only refrain from ordering the latter to disclose confidential sources, but also from making any negative inferences as a result of the defendant's refusal to do so. In Patozi's case, however, the district judge did make such a negative inference, holding that the defendant's refusal to disclose his source "indicates that such [exonerating] evidence does not exist, that the allegations in the article are untrue, *and* are made with the intention to harm the honor and dignity of the accuser." (emphasis added)

The district court may have also erred in evaluating the nature of the critical remarks in the article. It found, for example, that the article included "allusions that the monies [allegedly spent by Kryemadhi at the hotel] are proceeds of corruption and drug trafficking." But the references to smuggling and drug trafficking in the article are rhetorical statements that do not amount to direct accusations. As the European Court has consistently noted, "journalistic freedom covers also possible recourse to a degree of exaggeration, or even provocation."¹¹⁰ In addition, article 10 of the European Convention "protects not only the substance of the ideas and information expressed, but also the form in which they are conveyed."¹¹¹

Lastly, the district judge failed to take into account that the alleged victim and her spouse were high-profile politicians, and that official corruption generally is a matter of intense public debate in post-communist Albania. In other words, the district court did not even begin to strike a balance between the accuser's legitimate right to reputation, on one side, and on the other, the defendant's freedom of expression and the right of the public to be informed on issues of general concern.

The district court ordered Patozi to pay a 100,000 lekë (\$720) criminal fine.

Having found Patozi guilty of malicious criminal libel, the district court proceeded to hold him liable under civil defamation laws and awarded Kryemadhi 600,000 lekë (about \$4,300) in non-pecuniary damages. In addition, the court ordered Patozi and the other two defendants to arrange for the publication of a summary of the judgment, at their own expense, in seven daily newspapers and seven television stations for two days. The cumulative cost of such publications is estimated at several hundred dollars. In estimating the damage caused by each of the defendants, the district judge considered "their respective articles, [the fact of] their publication in a newspaper as well as the social position of the plaintiff."¹¹²

A finding of criminal liability in a case like Patozi's practically preempts discussion of a whole range of issues that an Albanian court would have to resolve in a stand-alone civil defamation case—the most important of which involve the applicable standards of proof and liability. Given the generally higher thresholds of proof and liability applicable to criminal cases, it is possible to imagine that a defendant may be acquitted of criminal defamation charges and nevertheless held liable under civil defamation laws. Yet, domestic courts and lawmakers in an increasing number of countries have established that, at least in cases that touch upon issues of public interest or involve politicians or government officials, standards of proof and liability in civil defamation trials should be as high as those applicable to criminal trials. In

¹¹⁰ See, for example, *Prager and Oberschlick v. Austria*, Judgment of April 26, 1995, Series A no. 313, para. 38.

¹¹¹ *Oberschlick* case, note 49 above, at para. 57. This case involved the publication by an Austrian journalist of the text of a criminal denunciation against a politician, who was accused by a group of citizens of violating an Austrian law that prohibited National Socialist activities.

¹¹² Judgment 687/00, note 104 above.

such cases, courts in many countries require the plaintiff to prove that the statement was false and made recklessly or negligently.¹¹³

Such legal protections reflect an acknowledgment of the critical mission of the press in a democratic society. The media have a duty to inform the public on matters of general concern and, under modern conditions of competition and information habits, they often cannot afford to withhold publication of a story until they are completely sure that every fact alleged is true. In addition, once in court, journalists may often be unable to prove the truthfulness of a statement that is, in fact, true. This is particularly relevant when they write about official abuse and corruption, whose investigation is often dependent on their ability to guarantee the anonymity of insiders and other confidential sources.

In view of these considerations, the insufficient evidence on the record and the flawed reasoning of the district court, the civil award against Patozi also appears to have been reached in error. The amount of the award, which is equivalent to more than sixty average monthly salaries in Albania, is particularly excessive and punitive, especially considering that the factors relied upon by the court to assess the damage to Kryemadhi's reputation were vague and unsubstantiated.

Patozi appealed the district court judgment to the Tirana Court of Appeals. On appeal Patozi's counsel argued, among others things, that the district court had violated his client's right to be presumed innocent by shifting the burden of proof in the criminal libel case. The three-judge appeals court upheld the trial judgment in full, dismissing the defendant's presumption of innocence challenge as "unfounded in law."¹¹⁴ It did not elaborate, failing to address Patozi's specific arguments based on the Constitution and the ACCP. The appeals judges similarly dismissed, without comment, Patozi's argument that the district court had violated his right not to disclose confidential sources.

Patozi appealed further to the High Court.¹¹⁵ The High Court dismissed the appeal as "inadmissible," without hearing the parties and without providing reasons.¹¹⁶ The High Court ruling is of concern

¹¹³ The United States Supreme Court, for example, held in a landmark decision that public officials can recover civil damages for defamation related to their official conduct only if *they* prove that (1) a defamatory statement is false and (2) was made with "knowledge that [it] was false or with reckless disregard of whether it was false or not." *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), at 279-80. By virtue of this holding, the American court shifted the burden of proof from the defendant to the plaintiff, and set a high threshold of liability even for publication of untrue or inaccurate facts. Likewise, in Germany, a civil defamation plaintiff bears the burden of proving both the falsity of factual statements, and the willful or negligent failure of the press defendant to check the facts properly. In Austria, the burden of proving that statements of fact are untrue is also on the civil plaintiff; but even if the plaintiff meets that burden, press defendants can still prevail if they prove that the inaccurate statements were made in good faith and touch upon an issue of public interest. Similar defenses of "good faith," "due diligence" or "reasonableness" in checking facts are available to the press in many other countries. See Comparative Analysis of Press Law in European and Other Democracies, in *Article 19: Press Law and Practice* (United Kingdom, 1993), pp. 266-70.

¹¹⁴ Judgment of December 19, 2000 (no. 554), Tirana Court of Appeals (hereinafter Judgment 554/00). This holding is inconsistent with the decision of the Tirana Court of Appeals in the *Koçi v. Patozi* case, which, only five months earlier, had upheld the interpretation of the district court judge that the accuser must bear the burden of proof in a criminal libel case.

¹¹⁵ Judgment of May 8, 2001 (no. 240), High Court (unpublished) (hereinafter Judgment 240/01).

¹¹⁶ A court of appeals decision can only be appealed to the Albanian High Court on limited, defined grounds. The most important of those grounds is "the failure [of the lower court] to comply with, or apply correctly, the penal law or other legal norms that must be taken into account in applying the penal law." ACCP, sec. 432. The High Court panel assigned to hear an appeal decides preliminarily whether the appeal is "admissible"—that is, whether the grounds invoked fall under one of the categories set forth in section 432—in a closed-door session. ACCP, sec. 433. The admissibility panel has no discretion as to whether to hear an appeal that clearly meets the criteria of section 432. Moreover, an admissibility session cannot address the merits of the case.

because Patozi's appeal raised important issues of substantive criminal law, constitutional law, and international human rights law that appear to meet the admissibility requirement under Albanian law. In fact, the Albanian High Court has come under increasing criticism from the legal community for routinely abusing the inadmissibility hearings either for "efficiency" reasons—by actually deciding the *merits* of an appeal in a single session, avoiding debate, and ignoring the need for reasoned judgments—or in order to avoid hearing a politically or otherwise sensitive case.¹¹⁷ The handling by the High Court of the Patozi appeal, and the fact that all appeals to the High Court in the cases discussed in this report were dismissed in a similar fashion, lend support to those allegations. The failure of the five-judge High Court panel to provide any reasons as to why Patozi's appeal was inadmissible—other than concluding that "none of the grounds set forth in [the admissibility provision] of the ACCP ... exist"—is particularly striking. Such failure may well amount to violation of the requirement in the Albanian Constitution that "judicial decisions ... be reasoned."¹¹⁸

If in fact embedded in the High Court's admissibility decision are its conclusions on the merits, then the dismissal of Patozi's appeal, without giving him or his counsel the opportunity to make his case before the High Court, raises serious questions as to whether the judgment preserved the defendant's rights to a fair trial under the European Convention and the Albanian Constitution.¹¹⁹ According to the established jurisprudence of the European Court,

... the Convention does not ... compel the Contracting States to set up courts of appeal or of cassation. Nevertheless, a State which does institute such courts is required to ensure that persons amenable to the law shall enjoy before these courts the fundamental guarantees contained in Article 6.¹²⁰

Such article 6 guarantees include everyone's right "to a fair and public hearing" in the course of the "determination of his civil rights and obligations or of any criminal charge against him" (Article 6.1); as well as, in a criminal case, the defendant's right "to defend himself in person or through legal assistance of his own choosing" (Article 6.3(c)). The European Court has suggested that admissibility hearings, which also exist in other European countries, may not be subject *per se* to the article 6 requirements.¹²¹ However, to the extent that the Albanian High Court "determined" Patozi's criminal and civil liability *on the merits* of the case—and it is difficult to believe it did not do so given the nature of his appeal—it violated his fair trial rights. The same can be concluded if the High Court, for extra-legal reasons, avoided deciding the case on the merits altogether.

The dismissal of Patozi's appeal by the High Court without a full, open, and adversarial discussion of its merits is unfortunate for two additional reasons. The Albanian Constitution assigns the High Court the special role to ensure the "unification of judicial practice" in order to enhance legal certainty.¹²² The *Kryemadhi* cases gave the High Court the opportunity to settle the differences of interpretation among and within the lower courts regarding the burden of proof in criminal libel cases. Its failure to make an authoritative ruling on the matter, consistent with the presumption of innocence and other due process rights, left a dangerous degree of legal uncertainty hanging over the head of the Albanian media.

¹¹⁷ Human Rights Watch interviews with practicing attorneys and legal scholars, Tirana, November 2001.

¹¹⁸ Constitution, article 142.1.

¹¹⁹ Had the High Court panel held the appeal admissible, the defendant's counsel would have been able to address the panel in an adversarial oral hearing. ACCP, sec. 437.

¹²⁰ *Delcourt v. Belgium*, Judgment of January 17, 1970, Series A no. 11, para. 25.

¹²¹ See P. van Dijk, G.J.H. van Hoof, *Theory and Practice of the European Convention on Human Rights*, 3rd ed. (The Hague: Kluwer Law International, 1998), p. 423.

¹²² Constitution, article 141.2. The five-judge panel could have triggered the unification procedure by referring the issue to the High Court *en banc*.

The second and more important reason is related to the special constitutional responsibility of the High Court to guarantee substantive fundamental rights.¹²³ By refusing to address the defendants' constitutional free speech challenges, the High Court panel failed to remedy the rights violations committed by the lower courts. And given the barriers to individual applications to the Constitutional Court, the High Court squandered the last opportunity the Albanian judicial system had to do so.

Case of Monika Kryemadhi v. Redin Hafizi

The object of the civil and criminal actions against Hafizi was an article about the accidental death of two workers in a quarry located in Zall-Dajt (east of Tirana) in which, it was alleged, Kryemadhi had a property interest.¹²⁴ According to the article, the two victims were untrained workers who were killed while preparing one of the explosions used to obtain the stone. The article quoted statements by Zall-Dajt villagers that Kryemadhi acted as the "boss" of the quarry and visited the site often "in a sport utility vehicle to monitor the work." The article also suggested that Kryemadhi was indirectly liable for the two deaths:

... ten days before the incident Ilir Meta's spouse, blinded by the profits of the [quarry], had fired the dynamite experts and experienced miners, and replaced them with strapped [untrained] fellows that are in abundance in that area. One of the fired dynamite experts related that Monika fired them because they refused to accept a salary reduction.

The article went on to claim that the "massive explosions" and the "lack of the most basic technical security" at the quarry could one day "blow up an entire village." It concluded by accusing the quarry management of failure to pay workers social security and other benefits as required by law.

RD published also, on the same page, the facsimile and full text of a letter allegedly sent to the newspaper by Adem Mancaku, brother of one of the victims, Bajram. The letter charged that "Ilir and Monika had killed [Adem Mancaku's] brother and his friend" and reflected many of the other allegations contained in Hafizi's article.

Kryemadhi asserted that she had nothing to do with the quarry and brought a section 120 criminal libel action against Hafizi. She claimed moral damages, as well. By the time the trial started in September 2000, Hafizi had left Albania indefinitely. The district court proceeded to try him *in absentia* and appointed a counsel to defend him.¹²⁵ According to Hafizi, the court-appointed counsel made no effort whatsoever to contact him or his family, still in Albania, throughout the duration of the trial.¹²⁶ He only learned of the court-appointed counsel through press reports. The case record indicates nevertheless that editor-in-chief Patozi and his counsel made occasional requests and arguments in Hafizi's defense in the course of the joint trial.

The Tirana District Court found Hafizi liable, both criminally and in tort, for failure to prove the truthfulness of his allegations and lack of malicious intent.¹²⁷ The court ordered him to pay an 80,000-lekë (\$570) criminal fine to the state and 500,000 lekë (\$3,570) in moral damages to Kryemadhi.

¹²³ See note 62 above and accompanying text.

¹²⁴ Redin Hafizi, "Two Deaths in Property of Meta Couple," *Rilindja Demokratike*, August 5, 2000.

¹²⁵ The Albanian Constitution authorizes trials *in absentia*, by way of exception, against "persons who evade justice." Constitution, article 33.2.

¹²⁶ Human Rights Watch interview with Redin Hafizi, note 40 above. Hafizi claimed also that he was not "evading justice," but could not return to Albania because of credible life threats that caused him to leave Albania in the first place.

¹²⁷ Judgment 687/00, note 104 above.

The court's ruling relied heavily on the testimony of Adem Mancaku,¹²⁸ who denied having written the letter published in *RD* and stated that, to his knowledge, the owner of the quarry was a person other than Kryemadhi. Patozi responded by arguing that, irrespective of who the official owner was, quarry workers and other knowledgeable sources consistently told *RD* reporters that Kryemadhi appeared to be the "real boss." Patozi failed, however, to produce Mancaku's letter, which he claimed had been faxed to the newspaper and had since been lost.¹²⁹

The district court apparently interpreted Mancaku's testimony and *RD*'s failure to produce the letter to raise doubts as to whether Hafizi's allegations were made in good faith, but the district judge rejected several requests (by Patozi) to hear and consider countervailing evidence offered to prove Hafizi's lack of malicious intent. For example, the judge did not admit as relevant evidence three videotaped interviews with Zall-Dajt residents who echoed many of the allegations in Hafizi's article.¹³⁰ Patozi argued that the taped interviews were relevant because Hafizi had visited the area together with the *ATNI* team, and they had interviewed, on and off the record, many of the same people. In an interview with Human Rights Watch, Hafizi played an audiotape containing what he described as his interview with Selman Dajti, one of the persons appearing also on *ATNI*'s broadcast.¹³¹ To Hafizi's question about the ownership of the quarry, Dajti replied: "They say it is Ilir Meta's company ... we see his wife driving to [the village] all the time"

According to the trial record, the district judge refused to admit the *ATNI* videotape, arguing that witnesses must appear personally before the court to testify. The judge failed to consider whether the content of those interviews was relevant to the question whether, *at the time*, Hafizi had had good reasons to believe the truthfulness of the statements in his article—which, in turn, is central to the issue of the existence of a criminal defamatory intent. The court's exclusion of this evidence was also inconsistent with Albanian criminal procedure, which authorizes the introduction as evidence of relevant "documentation that represents facts, persons or objects through photography, video recording, audio recording or any other means."¹³²

Having declared the videotape inadmissible, the judge also declined a request by Patozi's counsel to hear the testimony of the *ATNI* team and other reporters who had been investigating the incident together with Hafizi. The request was denied on the ground that only new evidence can be introduced during the concluding session of the trial. While the testimony offered by Patozi was in fact new, the judge inexplicably held that it had already been offered and declared inadmissible.¹³³ In view of the court's earlier remarks regarding the difference between videotaped and live testimony, such reasoning is startlingly inconsistent. This probably occurred later to the judge himself, who found different arguments to justify his decision in the written judgment: he wrote that Patozi failed to produce the exact addresses of the requested witnesses, and that, in any event, the latter would have nothing relevant to say because Hafizi had not quoted any of them in the article. Such reasons are even less convincing than those given

¹²⁸ Mancaku was initially sued by Kryemadhi as a co-defendant in the case. Kryemadhi dropped the charges against him following his testimony in court.

¹²⁹ In an interview with Human Rights Watch, Hafizi confirmed Patozi's account that *RD* received the letter via fax. Hafizi said the letter was sent from the offices of a humanitarian organization in the Zall-Dajt area. No one from that organization was summoned to testify during the trial.

¹³⁰ Trial transcript (on file with Tirana District Court). The three interviewees were Adem Mancaku, Selman Dajti (Bajram Mancaku's brother in law), and a villager unrelated to the victims of the mine accident. The unrelated villager stated on camera that Kryemadhi was widely known to the residents as the "head" of the quarry business. Human Rights Watch obtained a copy of the taped interviews, which were taken by an *ATNI* team.

¹³¹ Human Rights Watch interview with Redin Hafizi, note 40 above. The voice identified by Hafizi as Dajti's appeared to Human Rights Watch's researcher to be the same as that attributed to Dajti on the *ATNI* video.

¹³² ACCP, sec. 191.

¹³³ Transcript of November 1, 2000 hearing (on file with Tirana District Court).

in respect of the videotape. The repeated refusals of the judge to admit evidence potentially favorable to Hafizi, coupled with the inconsistent grounds he invoked for these decisions, raise serious questions about the impartiality of the trial.

In view of the above considerations, the court's shifting of the entire burden of proof to the defendant, and the failure of Hafizi's court-appointed counsel to contact his client, both the criminal and civil sanctions against Hafizi are unjustified. Irrespective of whether Kryemadhi had anything to do with the quarry, the case record raises more than a few reasonable doubts as to whether Hafizi "intentionally disseminated knowingly false" allegations against her.

It is not clear from the court of appeals' joint judgment whether Hafizi's court-appointed lawyer appealed the district court ruling. No appeal was filed on his behalf with the High Court.

Case of Monika Kryemadhi v. Shemsi Peposhi

Kryemadhi brought civil and criminal defamation charges against Shemsi Peposhi for the following passage in an article he published in *RD*, three days after Hafizi's piece:

Kryemadhi ... must publicly respond to the accusations against her, starting with the railway coaches, the people she surrounds herself with, the two victims in Zall-Dajt, the amount of money spent for the renovation to her taste of [a government residence] in Durrës, and several privatization deals also in Durrës.

The accusations are very concrete and public ... [that she] abuses money, arranges illegal privatizations in favor of her relatives, that her relatives violate the law by abusing the name of the prime ministerial couple, [and] she has been accused as the manager of a [stone quarry] where two citizens lost their lives, and this is a crime.¹³⁴

The district court judge concluded, without any further discussion, that Peposhi, like the other two defendants, "failed to prove [the truthfulness of] what he wrote, which clearly indicates that the allegations he wrote were not true [and] were published with the sole purpose to harm the honor and dignity of the accuser."¹³⁵ Thus the judge improperly reversed the burden of proof in the case and neglected the complete lack of any evidence on the record regarding Peposhi's supposedly malicious intent. Moreover, the trial judge failed to weigh several elements that distinguish Peposhi's case from the other two brought by Kryemadhi.

Peposhi's piece was essentially a public challenge to Kryemadhi to respond to accusations that had been previously made by other reporters within and outside the *RD*. In that and other respects, Peposhi's case is similar to the case of a radio journalist in Luxembourg who was sanctioned by the domestic courts there for quoting parts from an article, written by another journalist, that were deemed defamatory of forest wardens and engineers.¹³⁶ The relevant part of the quote included the following statement by an unnamed "authoritative source from the [forestry] industry": "I know of only one person [among all of Luxembourg's forest wardens] who is incorruptible."¹³⁷ The Luxembourg courts held Thoma, the radio

¹³⁴ Shemsi Peposhi, "Kryemadhi Chooses Street Language As Escape Hatch," *Rilindja Demokratike*, August 8, 2000. The reference to "railway coaches" is about allegations, published by *RD* and other dailies in December 1999, of abuses in the purchasing of Austrian coaches for the Albanian railways.

¹³⁵ Judgment 687/00, note 104 above.

¹³⁶ See *Thoma v. Luxembourg*, Judgment of March 29, 2001, European Court of Human Rights (unpublished, available at <http://www.echr.coe.int/Eng/Judgments.htm>).

¹³⁷ *Ibid.*, at para. 10. Although neither Thoma, nor the original source, accused any specific individual by name, the Luxembourg courts held that, due to the absolute nature of the statement and the small size of the country, "those against whom the accusation was made are sufficiently identifiable."

journalist, liable under *civil* defamation laws for failing to “formally distance himself” from the statements of the print journalist.

Acting upon Thoma’s complaint, the European Court of Human Rights held that Luxembourg had violated his freedom of expression under article 10 of the Convention. The court started the analysis by underscoring the weight that it attached to the fact that Thoma’s broadcast was contributing to an important public debate:

[T]he topic raised in the [radio] programme was being widely debated in the Luxembourg media and concerned a problem of general interest, a sphere in which restrictions on freedom of expression are to be strictly construed. The Court must, accordingly, exercise caution when, as in the instant case, the measures taken or penalties imposed by the national authority are such as to dissuade the press from taking part in the discussion of matters of public interest¹³⁸

The European Court referred then to a principle it established in the *Jersild* case:

[P]unishment of a journalist for assisting in the dissemination of statements made by another person ... would seriously hamper the contribution of the press to discussion of matters of public interest and should not be envisaged unless there are particularly strong reasons for doing so.¹³⁹

By applying these general standards to the circumstances of Thoma’s case, the court concluded that the Luxembourg authorities had failed to produce such “particularly strong reasons.” In particular, the court held that a “general requirement for journalists systematically and formally to distance themselves from the content of a quotation that might insult or provoke others or damage their reputation was not reconcilable with the press’s role of providing information on current events, opinions and ideas.” The court considered it sufficient that Thoma had properly attributed the statement to the original author, even though he did not formally distance himself from its substance.¹⁴⁰

The European Court’s *Thoma* holding is relevant and applicable to Peposhi’s case. Like Thoma’s broadcast, Peposhi’s request was made in the background of a vivid public debate about Albania’s widespread official corruption, and it addressed allegations made against Kryemadhi as the prime minister’s spouse and a high-profile politician in her own right. As Peposhi noted in his appeal brief to the Albanian High Court, “it is the most normal thing for a journalist to demand from a public person of his country to respond to allegations the press has made against [that person].”¹⁴¹ In contrast to the *Thoma* case, Peposhi did not explicitly quote and attribute the allegations to which he referred, but the reference was implicit, and, in view of the broad publicity that the original allegations had received, the original source of the allegations Peposhi referenced was clear.

The circumstances of Peposhi’s case included one additional element that the court should have considered in Peposhi’s favor. Peposhi published his challenge to Kryemadhi to respond to “concrete allegations,” following a strongly worded statement from Kryemadhi in response to *RD*’s allegations about the quarry affair. Kryemadhi’s statement referred to *RD* as the “town crier of Sali Berisha [head of

¹³⁸ *Ibid*, at para. 58.

¹³⁹ *Jersild v. Denmark*, Judgment of September 23, 1994, Series A no. 298, para. 35. *Jersild*, a television reporter, was punished by the Danish courts for airing interviews with several extremist youths who made racist remarks against blacks and immigrants.

¹⁴⁰ *Thoma* case, para. 64.

¹⁴¹ Shemsi Peposhi, Appeal to the High Court (on file with Human Rights Watch).

the opposition Democratic Party] ... who fabricates and disseminates most monstrous lies against [her].” Her statement also attacked Berisha personally, calling him, among other things, a “psychopath,” “degenerate,” “evildoer,” “fascist,” and “addicted criminal.” The statement, which Kryemadhi read on public television, concluded with her decision to sue *RD* for defamation and to use the judgment money, “once the court determines the scandalous falsity” of the accusations, “to buy a bag of pills for the mentally sick Sali Berisha.”

The European Court has held that the threshold of tolerance toward journalistic commentary must be proportionally higher if the press is reacting to inflammatory or provocative statements made by a politician or other public figure. Thus, in the *Oberschlick* case, the leader of the Austrian Liberal Party advocated that the family allowances paid to Austrian women should be raised to encourage them not to seek abortions, while allowances paid to immigrant mothers should be reduced by 50 percent. In response, Oberschlick accused the politician of inciting national hatred and trying to advance National Socialist policies. The European Court, recognizing that the journalist’s allegations were grave and provocative, held nevertheless that “[a] politician who expresses himself in such terms exposes himself to a strong reaction on the part of journalists and the public.”¹⁴²

The German Federal Constitutional Court adopted a similar reasoning in the *Schmid-Spiegel* case, in which an atypical plaintiff, *Der Spiegel* magazine, accused a prominent judge of defamation. The judge had reacted to an article that attacked his integrity and qualifications by characterizing *Der Spiegel* as the political equivalent of pornography. The German court ruled that the judge’s derogatory statements were a legitimate counter-attack.¹⁴³

In view of these considerations, the district court’s findings that Peposhi was guilty of criminal and civil defamation both appear unjustified. As in the other cases discussed above, the civil damage award of 500,000 lekë (\$3,570) was also extreme.

Case of Skënder Gjinushi v. Pandi Gjata

In March 2000 the daily *Koha Jonë* published a full-page interview with Dhori Kule, a former secretary general of the Albanian Social-Democratic Party (SDP).¹⁴⁴ Both the title of the interview (“Gjinushi, This Dangerous Mafioso in Politics”) and the deck (“All SDP Leaders and MPs Have Appointed Family Members to Embassies”) appeared also as main headlines on the daily’s front page. Kule, who claimed in the interview to have been unjustly removed from his position as secretary general, accused the SDP’s top leadership and cabinet members of nepotism, corruption, violation of party bylaws, and byzantine purges of dissenters within the party. Kule was particularly critical of Skënder Gjinushi, the SDP chair and speaker of parliament at the time. He accused Gjinushi, among other things, of proposing ministers and making important decisions without consulting the party, abolishing the position of secretary general in order to get rid of Kule, and supporting allegedly corrupted SDP ministers.

Shortly after the publication of the interview, Gjinushi brought section 240 charges for libel related to his public function against Pandi Gjata, the *Koha Jonë* reporter who interviewed Kule. Human Rights Watch was unable to obtain access to Gjinushi’s complaint.¹⁴⁵ However, the court judgment and the fact that Gjinushi took no action against Kule suggest that Gjinushi’s complaint focused on the choice of the title, rather than the text of the interview itself.

¹⁴² *Oberschlick* case, note 49 above, at para. 61.

¹⁴³ 12 Federal Constitutional Court 113 (1961).

¹⁴⁴ “Gjinushi, This Dangerous Mafioso in Politics,” *Koha Jonë*, March 11, 2000.

¹⁴⁵ The administration of the Tirana District Court told Human Rights Watch that they could not locate the case file, which, they said, could have been forwarded to the High Court. As a result, Human Rights Watch did not have access to the full record of the case, including Gjinushi’s complaint and the transcript of the hearings.

According to Gjata, who formerly covered court cases for his newspaper, the office of the Tirana public prosecutor investigated the case “with unusual diligence and intensity.” The case prosecutor summoned Gjata, over a period of three months, about a dozen times for interrogations that lasted between thirty minutes and one hour each. Although he told prosecutors that the title of the interview had been chosen by *Koha Jonë*’s editor-in-chief and that he had had no input in that decision, they pressured him throughout the investigation to confess to intentional libel against Gjinushi.¹⁴⁶

A judge of the Tirana District Court found Gjata guilty of official libel and sentenced him to pay a 20,000-lekë (\$140) criminal fine. The single-page judgment reasoned that “the [headline] is not consistent with the interview” and that “every departure from the interview ... is a violation of journalistic ethics.” The district judge suggested that, instead, the newspaper could have referred to the piece as “‘Interview with Dhori Kule’ or something like that.”¹⁴⁷

The district judge’s reasoning is seriously flawed under Albanian and international law. As already noted, the central element of criminal libel under the ACC is the dissemination of *false*, derogatory statements. The *Gjata* judgment failed even to identify the supposed falsities, apparently to be found in the headline, for which the defendant was held liable. Indeed, the word “false” or any equivalent term does not appear at all in the judgment.

By the same token, the district court failed to substantiate another key element of criminal libel under Albanian law: that a libelous statement be “concrete.”¹⁴⁸ The distinction between statements that are concrete and non-concrete is similar to the distinction between opinions and statements of fact made by the European Court. The court has consistently held that it is impossible for a journalist to prove the truth of an opinion or value judgment, and to require him to do so is “itself an infringement on freedom of expression.”¹⁴⁹ The court has carved out a limited exception to that general rule to the extent that an opinion is based on, or suggests that it is based on, factual allegations.¹⁵⁰

The *Gjata* court did not discuss the nature of the impugned headline and did not determine whether it was an opinion based on false statements of fact. Indeed, the court did not require Gjinushi to prove the falsity of any allegations in the interview or headline, including any facts that could have been construed as the basis of the headline.

Considered in context, the headline describing Gjinushi as a “dangerous mafioso *in politics*” can hardly be interpreted as implying that Gjinushi was involved in any mafia-style or other criminal activities. The context of the headline and the interview suggest that the word *mafioz* was used, as it is often used in Albanian, to denote some sort of Machiavellian attitude in political or social life. While it can still be offensive and derogatory even in that context, it is taken as figurative speech rather than literally. *Koha Jonë*’s editor-in-chief at the time, Nikollë Lesi, who formally assumed full responsibility for the formulation of the headline, asserted that it was chosen because it best represented, in his opinion, “the gist of Mr. Kule’s interview.”¹⁵¹ Under the circumstances of the case, the district court could have regarded the strongly-worded headline as falling nevertheless within the protected sphere of Lesi’s

¹⁴⁶ Human Rights Watch interview with Pandi Gjata, Tirana, November 1, 2001.

¹⁴⁷ Judgment of December 18, 2000 (no. 805), Tirana District Court (unpublished).

¹⁴⁸ See note 66 above and accompanying text.

¹⁴⁹ *Oberschlick* case, note 49 above, at para. 63.

¹⁵⁰ See, for instance, the *Thorgeirson* case, note 54 above, pp. 27-28. The issue in this case was whether a journalist who had published articles about police brutality could be convicted for calling unnamed police officers “brutes in uniform.”

¹⁵¹ “Journalist Gjata in Front of Gjinushi’s Shackles,” *Koha Jonë*, December 6, 2000. Under this headline, the newspaper published the text of an affidavit that Lesi addressed to the district judge presiding over Gjata’s case.

editorial discretion; there is no indication in the court judgment that the court even considered this possibility.

Which brings us to the issue of Gjata's personal liability. The district judge held that Lesi's complete assumption of responsibility for the selection of the supposedly defamatory headline did not exempt Gjata from liability.¹⁵² On the contrary, the judge argued, "this assertion ... strengthens the evidence on Gjata's guilt by indicating that he has lied in the name of other persons, without experiencing himself a specific event or representing ... what he has learned by others, always indicating the source [of such information]." Such a conclusion might have had something to do with the fact that Lesi, who was also a member of parliament at the time, could not be indicted unless parliament first lifted his parliamentary immunity.

The district court decision was quashed, at Gjata's request, by the Tirana Court of Appeals, which remanded the case for retrial by another judge of the Tirana District Court.¹⁵³ The Court of Appeals instructed the trial judge to consider the relevance of Lesi's affidavit.¹⁵⁴

Chilling Effects of Defamation Laws and Judicial Decisions

This section reviewed some of the most prominent defamation trials involving Albanian media professionals in recent times. Similar actions against journalists, which may not receive the same level of publicity, are brought regularly by government officials at different levels of the central and local administrations. The flaws and violations documented here provide a representative picture of the Albanian judiciary's failure to guarantee media freedoms. The impact of such failures goes well beyond the work and freedom of the individual journalists sanctioned in specific cases. While obviously serious, their burden is only the visible tip of the iceberg: unjust defamation trials "chill" the entire media environment by fostering self-censorship and widespread uncertainty about the limits of legitimate criticism. By shrinking the sphere of protected speech, the Albanian judiciary's handling of such cases undermines democratic debate and good governance in general.

The existence of criminal libel, which carries a maximum punishment of two years in prison, is particularly threatening to a free press. While Albanian courts have been more likely to impose penal fines than prison sentences in the recent past, the latter are far from falling into disuse. In October 2000, Ndrekë Gjini of *Rilindja Demokratike* was sentenced to two months of imprisonment for libel against a Ministry of Interior official; the sentence was suspended (converted to probation for eighteen months) on the condition that he would not commit an equally serious or more serious offense during that period.¹⁵⁵

Paradoxically, Albanian criminal law makes criticism of public officials more risky than criticism of ordinary citizens. In defamation cases involving public officials, journalists face a full-fledged criminal investigation carried out by the public prosecutor's office. The two journalists that went through such an investigation in the cases discussed above related to Human Rights Watch that the interrogations took a heavy psychological toll and had a profoundly disruptive effect on their professional lives.¹⁵⁶ The investigations and the trials also caused their respective newspapers to stop pursuing several high-risk inquiries.

¹⁵² The relevant part of Lesi's affidavit stated: "The title of Dhori Kule's interview ... was decided by myself in my capacity as director of *Koha Jonë* Journalist Pandi Gjata has not [contributed] a single letter to the said title."

¹⁵³ Judgment of April 9, 2001 (no. 157), Tirana Court of Appeals (unpublished).

¹⁵⁴ It appears that Gjinushi subsequently took the case to the High Court, which sent it back to the Tirana Court of Appeals for reconsideration. The Court of Appeals ultimately declared Gjata not guilty. Human Rights Watch telephone interview with Pandi Gjata, New York, May 9, 2002. Human Rights Watch was unable to receive copies of these judgments by the time this report went to press.

¹⁵⁵ Judgment of October 19, 2000 (no. 644), Tirana District Court.

¹⁵⁶ See above, Human Rights Watch interviews with Artan Hoxha and Pandi Gjata.

Money judgments, both penal fines and civil awards, are no less effective tools for promoting self-censorship. Unpaid criminal fines are usually converted into prison time, and unpaid damages can be forcefully recovered. Convicted journalists rarely pay fines or damages, both because they cannot afford to pay the high judgments and wish to protest what they perceive, often rightly so, as free speech violations. In reality conversion orders (into prison time) usually go unenforced and civil awards against the press unrecovered. However, a recent judicial trend toward increasingly higher damages in civil defamation trials raises fears that this may change in the future. In any event, the more serious concern is that such judgments, which can be enforced at any time, hang like a Damoclean sword over the head of the opposition and critical-minded press.¹⁵⁷

Two of the journalists convicted in the *Kryemadhi* cases, Redin Hafizi and Shemsi Peposhi, left Albania indefinitely during or after their trials. Both of them told Human Rights Watch that the libel indictment was among the key circumstances that caused them to leave. “I have lived through some very difficult times in the 1990s,” Peposhi said, “but the trial was the final drop.”¹⁵⁸

GOVERNMENT MISUSE OF STATE ADVERTISING

State advertising is critical to the financial survival of many Albanian dailies, especially those that are not affiliated with, and subsidized by, a political party.¹⁵⁹ For reasons related to the structure of the Albanian media industry and the general development of the Albanian economy, state advertising accounts for a disproportionately large share of the total advertising space sold by the Albanian press. A study of advertising trends in five major dailies, conducted by a journalists’ association in September 2001, found that the five newspapers sold 42 percent of their total advertising space to state agencies and corporations.¹⁶⁰ For some of the papers, such as *Gazeta Shqiptare* with the second biggest circulation, state advertising accounted for more than 50 percent of the total.¹⁶¹ In other words, those newspapers sold more advertising space to the government than to the private sector. Such a trend was confirmed by a more comprehensive statistical study, carried out by the Organization for Security and Co-operation in Europe’s (OSCE) mission in Albania, which monitored the make-up of advertising in eleven daily newspapers over a two-week period.¹⁶² The OSCE study found that an average 45.4 percent of all advertising space sold by the dailies was state advertising. The ratio was higher than 50 percent for one party daily and two unaffiliated dailies, and above 70 percent for the Socialist Party newspaper.¹⁶³

¹⁵⁷ Albanian journalists and their associations are generally well aware of such threats. See, for example, Albanian Free Media Forum, “Prime Minister Meta Is Orchestrating A Campaign Against the Independent Press,” Tirana, November 6, 2000 (on file with Human Rights Watch) (statement by representatives of seven media outlets protesting, among other things, some of the defamation judgments discussed in this report).

¹⁵⁸ Human Rights Watch telephone interview with Shemsi Peposhi, New York, December 4, 2001.

¹⁵⁹ State advertising includes advertisements or public announcements, such as public procurement offers, paid by national or local government agencies. As used in this report, it also includes commercial advertising by state-owned or state-controlled corporations, such as Albanian Telecom, the Albanian Electrical Energy Corporation (KESH), or the Albanian Postal Service, which are subject to public procurement laws and regulations.

¹⁶⁰ Albanian Free Media Forum, *Analysis of Advertising Space in the Albanian Daily Press*, September 21-28, 2001 (on file with Human Rights Watch).

¹⁶¹ The circulation numbers used in this report are taken from AMI, *Monitoring Albanian Media*, note 1 above, at p. 8. For the full list of circulation numbers for each daily, see Appendix A.

¹⁶² OSCE Presence in Albania, *Monitoring of State and Private Advertising in Albanian Daily Newspapers*, November 5-18, 2001 (on file with Human Rights Watch).

¹⁶³ State advertising made up 51 percent of all advertising space at *Albania* and *Korrieri*, 53 percent at *RD*, and 72 percent at the Socialist Party’s *Zëri i Popullit* (*ZP*). *Korrieri* is among the four top-circulation dailies.

Such significant financial leverage over the press can be easily abused by the government in the absence of mechanisms that can effectively ensure the fair and non-discriminatory allocation of state advertising. Unfortunately, such mechanisms either do not exist or are inadequate in Albania. As a result, distribution of state advertising is often manipulated for political purposes and, in the worst cases, for outright financial blackmail. A dozen editors-in-chief and media managers from both opposition and unaffiliated media outlets told Human Rights Watch, in separate interviews, that the Albanian government routinely uses advertising to pressure the critical press or interfere with their editorial freedom. All of them had been, at one point or another, subject to such pressures and interferences. Many of them viewed the excessive dependence of the Albanian media on government money, and the ways such dependence is abused by government officials at various levels, as among the biggest threats to press freedom in Albania.

The Legal Framework—and Its Pitfalls

The purchasing of advertising space by government agencies and state-controlled corporations is public spending. It is therefore governed, as a rule, by Albania's laws and regulations on public procurement. These regulations require that a full-fledged public bid (known as an "open tender") be organized for all public advertising purchases of more than one million lekë (about \$7,000); and a "limited tender" for all purchases smaller than that amount.¹⁶⁴ Offers made by the bidding service providers must be evaluated in accordance with criteria and specifications set forth in advance by the public agency involved. Required specifications other than the price of the service must be "as objective and quantifiable as possible;" the weight to be given to each element of the offer and the method of evaluation of the offers must also be known before the bidding. The price of the service must account for at least 80 percentage points in all cases.¹⁶⁵ In the overwhelming majority of cases, public agencies use the two criteria of price and circulation to evaluate the advertising offers of bidding newspapers.¹⁶⁶

One of the largest categories of state advertising in the daily press includes public invitations to bid (for goods and services generally) and other legally required public announcements. The Public Procurement Law, which governs all public spending, requires that open tender invitations must be advertised in "at least two national newspapers with a large circulation."¹⁶⁷ The law does not define, though, what constitutes "large circulation." While the aim of the provision is to limit the circle of eligible newspapers, its vagueness renders it almost useless. Similarly, the Law on Expropriations requires that notices of public takings be published "in one newspaper with nationwide distribution and one local newspaper, for one week."¹⁶⁸ If no local newspaper exists in the locality where the expropriation will take place, some agencies (such as the Ministry of Transportation) opt for publication in two national newspapers.¹⁶⁹ But again, the law provides no specific guidance for determining the eligible newspapers. Such loopholes in the legal framework make it easier for government officials in charge of public advertising to abuse their discretion for either political or personal reasons.

¹⁶⁴ Law on Public Procurement (no. 7971, dated July 26, 1995), *as implemented* by the Council of Ministers' Decision no. 335, of June 23, 2000, secs. 1-2. A limited tender is a procedure whereby a limited number of bidders (no less than three) are invited to make offers. Law 7971, sec. 36.

¹⁶⁵ Council of Ministers' Regulation on Public Procurement (no. 1 of January 1, 1996), section III(b).3.

¹⁶⁶ One of the greatest technical obstacles to the fair application of state advertising laws in Albania is the lack of reliable circulation data. Almost all newspapers tend to inflate their circulation numbers when they bid for advertising contracts. Government agencies usually rely on numbers provided by printing houses. Such numbers reflect, however, the amount of copies *printed* by any given newspaper, not the number of copies that are actually sold at the end of the day. Anecdotal evidence suggests that many newspapers routinely print more copies than they can actually sell.

¹⁶⁷ Law 7971, *as amended*, sec. 25.

¹⁶⁸ Law on Public Interest Expropriations (no. 8561 of December 25, 1999), sec. 15.1.

¹⁶⁹ Human Rights Watch interview with Miranda Shuli, Director of Infrastructure, Ministry of Transportation, Tirana, November 12, 2001.

An exception to the general lack of clarity in this area is the civil service law, which provides that advertisements of job vacancies in the central and local administration must be “published in the two newspapers with the widest circulation.”¹⁷⁰ But even faced with such an unambiguous provision, the Department of Public Administration and the other agencies responsible for the publication of vacancy advertisements do not always comply.

In many cases the legal requirements are completely bypassed or ignored. A particularly creative way of avoiding an open tender, for example, is the artificial chopping up of advertising contracts into amounts smaller than one million lekë. While many state-controlled corporations and government agencies spend tens of thousands of dollars every year for advertising purposes, very few of them allocate advertising contracts through open, competitive bids.¹⁷¹

The great majority of state advertising is allocated through limited tenders. In such cases procurement regulations require that three or more advertising providers be invited to bid; the participating providers must be selected “in a non-discriminatory fashion and the number of invited bidders must, whenever possible, be sufficient to ensure effective competition.” The participants may be selected out of a list of interested bidders held by the procuring agency, which must update the list every six months. The agency is required to “accept offers from [those on the list] who request to participate in the limited tender.”¹⁷² Such lists are often used, however, to handpick the providers without competition, and without even notifying the other list members.¹⁷³

This is, for instance, how the Ministry of Transportation selected the newspapers that carried in October and November 2001 a large amount of expropriation notices related to highway construction.¹⁷⁴ Ministry officials told Human Rights Watch that the selection was made by the ministry spokesperson in conjunction with an *ad hoc* expropriation commission. The ministry justified the non-competitive “process” by reference to an executive regulation that mandates the expropriation commission to “arrange for the publication” of the expropriation notice.¹⁷⁵ Nothing in the regulation suggests, however, that the commission should make the actual selection of the advertising providers or, even less so, that such selection should be non-competitive. A number of newspapers complained to Human Rights Watch that the Ministry of Public Works had handpicked newspapers in a similar fashion for the publication of another large amount of expropriation notices.¹⁷⁶ In addition, Human Rights Watch observed that identical advertisements of that ministry took twice as much space—and therefore cost the ministry twice as much—in some newspapers, such as the largely pro-government *Korrieri*, than in others.¹⁷⁷

¹⁷⁰ Law on the Status of Civil Servants (no. 8549, of November 11, 1999), secs. 13.3 and 15.3.

¹⁷¹ Human Rights Watch interviews, among others, with *Gazeta Shqiptare*, *Koha Jonë*, *RD*, *Republika*, *Shekulli* and *Tema* managers, Tirana, November 2001.

¹⁷² Law 7971, *as amended*, sec. 36.

¹⁷³ Human Rights Watch interviews, note 171 above.

¹⁷⁴ Human Rights Watch interview with Reiz Mulita, Spokesperson, Ministry of Transportation, Tirana, November 7, 2001. Mulita declined to comment on the total cost of the advertising campaign.

¹⁷⁵ Council of Ministers’ Decision (no. 126, dated March 23, 2000) on the Composition and Operational Procedures of the Special Commission on Expropriations, sec. 3.

¹⁷⁶ The publications, which also ran in October and November 2001, were related to the construction of public cemeteries and other projects. Human Rights Watch was unable to discuss the allegations with Argjir Kristulla, head of the expropriation commission at the Ministry of Public Works. Kristulla cancelled two appointments with Human Rights Watch and remained unavailable thereafter.

¹⁷⁷ See, for example, the November 4 and 6, 2001 editions of *Korrieri*.

An Egregious Case Of Official Abuse—the National Privatization Agency

The following case illustrates how even the most competitive and transparent bidding procedure, the open tender, can be abused in Albania by government officials in charge of advertisement publications. In April 2001, the National Privatization Agency (NPA), one of the largest government advertisers, invited daily newspapers to bid for the allocation of ten million lekë (ca. \$70,000) earmarked for the publication of privatization advertisements over a one-year period. The amount was to be distributed to the three best bidders. A publications commission appointed by the NPA director decided that *RD*, *Tema* and *Gazeta Shqiptare* made the winning offers. Shortly afterwards, however, the NPA director notified the three winners that the tender results had been cancelled, without providing any explanation.¹⁷⁸ *Tema* claimed that the only motive of the cancellation was the government's political hostility toward that newspaper. NPA staff maintained that the results had been cancelled following the verification of the circulation numbers presented by the winning newspapers, which were found to be inflated—but they gave no convincing reasons as to why, following the cancellation, the winners had not been selected in accordance with the accurate circulation numbers.¹⁷⁹

Six months later the NPA published a new invitation to bid for the same services. On October 22, a new publications commission, headed by NPA lawyer Bledar Doracaj, opened the bidders' sealed offers in the presence of staff from the four participating dailies. *Gazeta Shqiptare*, *ZP*, and *RD* offered to carry NPA ads at a price of 13 lekë/cm², while *Koha Jonë* offered its services at 20 lekë/cm². According to their respective circulation numbers and the formula for the evaluation of the offers, *Gazeta*, *ZP* and *RD* appeared to be the clear winners.¹⁸⁰ On October 24, however, Doracaj summoned representatives of the four dailies and informed them that the commission had disqualified *Gazeta's* bid; as a result, the winners were the three remaining bidders. Doracaj refused to provide any reasons for *Gazeta's* disqualification.¹⁸¹ On October 29, the NPA director informed *Gazeta* that the commission had disqualified its offer “for failure to complete the [bid] documentation pursuant to the relevant requirements”—without more. According to information *Gazeta* received informally from NPA staff, the fatal failure had in fact been a trivial omission: it had omitted the phrase “per issue” after the circulation figure in one of the application forms.

Gazeta staff suggested that its bogus disqualification by the NPA commission might have been related to its recent criticism of an influential cabinet member—or to corruption within the NPA.¹⁸² Human Rights Watch filed with the NPA a formal request for access to the tender documentation under the Albanian freedom of information law.¹⁸³ To date the NPA has provided only its final decision, including only a summary reference to *Gazeta's* disqualification.¹⁸⁴

¹⁷⁸ Human Rights Watch interviews with *Tema*, *RD*, and *Gazeta Shqiptare* managers, Tirana, November 2001.

¹⁷⁹ Human Rights Watch interview with Mirela Meko, head of the NPA Department of Procedures, and Rahela Reçi, head of the NPA Department of Statistics, Tirana, November 12, 2001. Meko was the head of the tender commission, and Reçi was a member.

¹⁸⁰ *Gazeta* declared an average circulation of 12,500 copies per issue, *Koha Jonë* 10,500 copies, *ZP* 7,000 copies, and *RD* 5,000 copies. The price element of the offer accounted for 80 percentage points—in other words, was four times more important than circulation numbers. Human Rights Watch interviews with *Gazeta Shqiptare* managers, Tirana, November 13, 2001.

¹⁸¹ According to the Public Procurement Law, a government agency can “disqualify” a bidder upon a finding that “the information provided [by the bidder] regarding its qualifications or the data relevant to the evaluation of its offer are inaccurate or incomplete.” Law 7971, *as amended*, sec. 12.6.

¹⁸² Human Rights Watch interview with Adrian Angoni, Executive Director, *Gazeta Shqiptare*, Tirana, November 13, 2001.

¹⁸³ Law 8503. See note 41 above, and accompanying text.

¹⁸⁴ The NPA director Kozeta Fino denied Human Rights Watch's initial request, claiming that the requested documentation was confidential under Albanian law. Human Rights Watch replied, explaining why it disagreed with NPA's interpretation of the law. (For the text of the second letter to Kozeta Fino, see Appendix C.) Human

Discriminatory and Politically Motivated Allocation of State Advertising

A good way to assess the fairness of state advertising allocation is by comparing the amount of such advertising that goes to party-affiliated newspapers. The three party-affiliated dailies in Albania, *ZP*, *RD* and *Republika*, have about the same circulation (respectively 5,167, 5,333 and 5,000 copies per issue) and charge the same standard advertising fee (20 lekë/cm²). They also compete on the same national market. Given that price and circulation are, under Albanian law, the two key factors that must be considered in granting advertising contracts, it should be expected that the three party dailies receive roughly the same amount of state advertising.

That is not the case. A number of recent studies conducted by different organizations between January and November 2001 reveal that *ZP*, organ of the governing Socialist Party, consistently receives a much greater slice of the state advertising pie than the opposition's *RD* and *Republika*. Thus, according to a month-long survey carried out by a Tirana-based sociological center, in January 2001, *ZP* received twice as much state advertising as *RD* and 2.3 times more than *Republika*.¹⁸⁵ The OSCE analysis referred to above found that, over a two-week period in November 2001, *ZP* received a daily average of 3.5 pages of state advertising, while the *RD* and *Republika* received 2.1 and 1.75 pages, respectively. In contrast, *RD* carried 30 percent more private-sector advertising than *ZP* during the same period. Human Rights Watch research found that in October and November 2001 *ZP* benefited from generous advertising purchases by the Albanian Telecom, KESH, the Ministry of Public Works, and the Customs Service, among others; this was not the case with *RD* and *Republika*.

The clearest case of misuse of state advertising for political reasons in the recent past involves *Shekulli*, Albania's best-selling daily. *Shekulli* staff told Human Rights Watch that the newspaper faced a drastic decrease in the amount of allocated state advertising as a result of changes in its editorial policy. They asserted that the decrease was in retaliation for *Shekulli*'s lack of support for Prime Minister Ilir Meta's reappointment in September 2001 and its increasingly critical stand toward the second Meta cabinet thereafter.¹⁸⁶ According to *Shekulli*, government officials at many government agencies did not even try to hide their motives and repeatedly threatened to withdraw all state advertising if *Shekulli* continued to pursue its new editorial orientation. Government officials interviewed by Human Rights Watch, including the government spokesman Thoma Gëllçi, denied that the government was systematically discriminating against *Shekulli*.¹⁸⁷

Statistics suggest the contrary, however. It is undisputed that *Shekulli* received a significant amount of state advertising before the autumn of 2001. In January 2001, *Shekulli* received more state advertising than any other Albanian daily: about 24 percent of the total advertising space bought by the government

Rights Watch also relayed the issue of the information request to the Albanian People's Advocate (ombudsperson), who is authorized by the Albanian freedom of information law to "oversee [its] implementation." The People's Advocate looked into the matter and concluded that NPA's refusal to give Human Rights Watch access to the requested documentation violated the law; he recommended to the NPA to release the information. Ermir Dobjani, People's Advocate, letter of January 17, 2002 (on file with Human Rights Watch). In response to the recommendation of the People's Advocate, the NPA provided Human Rights Watch with a copy of the final decision on the winning bids. The decision, however, stated only that *Gazeta Shqiptare*'s bid was disqualified for being "not in conformity with the invitation to bid," without providing any further explanation.

¹⁸⁵ See Vasfi Baruti, "The War of the Media: How the Albanian Press Informs Its Readers," *Tema*, February 11-12, 2001 (hereinafter "Eureka" survey). Dr. Baruti heads the "Eureka" Sociological Center, which carried out the statistical survey.

¹⁸⁶ Human Rights Watch interviews with *Shekulli*'s publisher, Koço Kokëdhima, and its editor-in-chief, Robert Rakiplari, Tirana, November 5, 2001.

¹⁸⁷ Human Rights Watch interview with Thoma Gëllçi, spokesman of the Council of Ministers, Tirana, November 14, 2001. See also above, Human Rights Watch interviews with Reiz Mulita and Miranda Shuli.

in the daily newspaper market.¹⁸⁸ The picture was similar in September 2001, when *Shekulli's* editorial orientation started to change. In the period September 21-28, *Shekulli* carried a total of 2.34 square meters of state advertising, second only to *Gazeta Shqiptare* with 2.55 square meters.¹⁸⁹ Things had changed dramatically by mid-November 2001, when the OSCE survey found that *Shekulli* was receiving an average of only 1.8 pages of state advertising per issue. During the same period the Socialist Party's *ZP*, whose circulation is less than one-fourth of *Shekulli's*, received almost twice as much state advertising (an average of 3.5 pages per issue). *Shekulli* lagged also far behind the other top circulation dailies: *Gazeta Shqiptare* and *Korrieri* with four pages of state advertising per issue each, and *Koha Jonë* with 4.1 pages per issue.¹⁹⁰ Even the *RD* did better than *Shekulli*, with 2.1 pages per issue. Within a few months *Shekulli's* market share of state advertising fell to 6.7 percent.¹⁹¹ A Human Rights Watch survey of all major newspapers revealed that, in November 2001, the "pariah" newspaper was boycotted by almost all major government advertisers, including the Ministries of Transportation and Public Works, the Department of Public Administration, the Albanian Telecom, KESH and the Postal Service.

The degree and circumstances of *Shekulli's* lost state advertising leave very little doubt that its boycott by the government advertisers—many of which cut longstanding business relationships with the newspaper within a very short time—was systematic and coordinated. In spite of their denials, none of the government officials interviewed by Human Rights Watch provided any convincing justification for *Shekulli's* precipitous loss of favor with their respective agencies or government advertisers generally.¹⁹² *Shekulli's* claims that the boycott was politically motivated appear even more justified if one considers that, under Albanian law, large categories of state advertising *must* be published in one or more "large circulation" or "top circulation" newspapers. If such laws had been applied fairly by government advertisers, *Shekulli*, which is Albania's top circulation daily by a large margin, would have received in November 2001 far more state advertising than it actually did.

While the government's abuse of its financial leverage was most clear in *Shekulli's* case, that is by no means an isolated occurrence. Following the publication of a critical article in *Gazeta Shqiptare* about the quality of road construction, for example, a director in the Ministry of Transportation ordered the cancellation of any future deals with the newspaper and transferred advertising to another daily. He also froze the payment of eight months' worth of advertising fees the ministry owed *Gazeta Shqiptare*.¹⁹³ In a similar case, Albanian Telecom terminated without cause and without explanation an advertising contract with *Republika*, which was intended to cover the entire year 2000. The contract was terminated in October 2000 after *Republika* had published a series of articles critical of the Ministry of Economy and Privatization, which oversees Telecom.¹⁹⁴ Newspaper editors interviewed by Human Rights Watch provided many other specific examples of financial retaliation by officials at all levels of government, although few of them were willing to speak publicly about issues that would most likely trigger another wave of reprisal.

¹⁸⁸ See "Eureka" survey, note 185 above.

¹⁸⁹ Free Media Forum study, note 160 above. During the same period *Korrieri* carried a total of 2.32 square meters and *Albania* 2.21 square meters of state advertising.

¹⁹⁰ The top four dailies (*Shekulli*, *Gazeta Shqiptare*, *Korrieri* and *Koha Jonë*) charge the same standard advertising fee of 30.3 lekë/cm².

¹⁹¹ A small part of the lost market share, compared to January 2001, should be attributed to the establishment of two new dailies, *Korrieri* and *Dita*. Without counting the latter newspapers' market shares in November, *Shekulli's* share among the other nine dailies was 8.2 percent, about one-third of its January 2001 share.

¹⁹² See Human Rights Watch interviews, note 187 above.

¹⁹³ Human Rights Watch interview with Artur Sokoli, media manager, *Gazeta Shqiptare*, Tirana, November 13, 2001.

¹⁹⁴ Human Rights Watch interview with Neritan Alibali, note 36 above.

State Advertising as Subsidies to the Media—and the *Korrieri* Affair

In June 2000, the Albanian Council of Ministers (CoM) authorized the allocation of sixty million lekë (about \$430,000) to nine dailies and three weekly magazines for the publication of “government propaganda materials.”¹⁹⁵ The “propaganda materials” were public awareness advertisements on issues such as AIDS or environmental protection, which the involved newspapers agreed to carry a given number of times during a one-year period. According to the government, the lump sum was allocated to the twelve periodicals in proportion to their respective circulation numbers provided by the printing houses.¹⁹⁶ The opposition claimed that the allocation was biased in favor of the “pro-government” press. Such claims were justified to some extent. Most notable was the exclusion of the right-wing *Tema*, the only major political weekly that was not included in the project. The opposition press also protested the timing of the decision, denouncing it as an attempt to buy the mainstream press before the municipal elections scheduled for October 2000.

In spite of its public education purposes, the government purchase of \$430,000 worth of advertising space was essentially an extensive subsidy for the Albanian press industry. Such subsidies are not necessarily inimical to a free and independent press. The Committee of Ministers of the Council of Europe, for example, has recognized that public subsidies may be necessary to ensure the financial viability of the print and broadcast media, and to enhance media pluralism and diversity. But aware of the potential threats to media freedoms associated with such subsidies, the Committee of Ministers emphasized that any such aid should be “granted on the basis of objective and non-partisan criteria, within the framework of transparent procedures and subject to independent control.”¹⁹⁷ The need for such an independent control mechanism is critical in Albania where the press lacks a tradition of independence and the government holds a potentially threatening position in the advertising market.

Such dangers were illustrated in the October 2001 Albanian Government allocation of ten million lekë to *Korrieri*, through a decision similar to that of June 2000. Six million lekë were earmarked for the publication of “government propaganda materials” and four million for a newspaper supplement about “Albania’s most distinguished achievements” to be published on the occasion of Albania’s Independence Day (November 28).¹⁹⁸ The decision triggered unanimous protests by the rest of the press. In response, *Korrieri*’s publisher, Aleksandër Frangaj, declared that the government subsidies to his newspaper were only fair because *Korrieri*, which was established in March 2001, had not benefited from the first round of aid.¹⁹⁹ This does not explain, however, why this second round of aid did not include the other newly-established *Dita* as well as, for the second time, *Tema*, which had become a daily in the interim. The reason may have been that, unlike *Korrieri*, *Dita* and *Tema* were increasingly critical of the Meta government.

The government spokesman told Human Rights Watch that the money allocated to *Korrieri* was not a subsidy, but compensation for contractual services. He conceded, however, that the supplement on “Albania’s achievements” would be prepared by an American newspaper, and that *Korrieri* would only be responsible for printing and distributing it as a separate brochure. He told Human Rights Watch that *Korrieri* was chosen as the owner of the only printing establishment in Albania with the technology

¹⁹⁵ Council of Ministers’ Decision (no. 317) of June 23, 2000. *Koha Jonë* and *Shekulli* were given ten million lekë each, *Gazeta Shqiptare* and *Albania* seven million each, *ZP* and *RD* five million each, *Republika*, *Ekonomia*, and the weekly *Intervista* two million each, *Gazeta 55* one million, and two weekly magazines, *Klan* and *Spektër*, six and three million, respectively.

¹⁹⁶ Human Rights Watch interview with Thoma Gëllçi, note 187 above.

¹⁹⁷ Recommendation No. R (99) 1, Committee of Ministers, Council of Europe, “Measures to Promote Media Pluralism” (Adopted by the Committee of Ministers on January 19, 1999).

¹⁹⁸ Council of Ministers’ Decision (no. 569) of October 24, 2001.

¹⁹⁹ “Publisher Lesi: Meta’s Fatal Mistake,” *Dita*, November 6, 2001. The article included comments by six newspaper editors.

required to print a high-quality, color publication. There are, however, other printers in Albania that can ensure the same printing quality as “Print 2000,” where *Korrieri* is printed.²⁰⁰ In addition, the use of an entirely non-competitive procedure by the Albanian government to assign the contract to *Korrieri* (the so-called direct procurement procedure) makes the transaction even more suspicious. Under public procurement laws, the Council of Ministers can authorize purchasing of competitive services through direct procurement only in “special cases of emergency or force majeure.”²⁰¹ As many critics of the affair pointed out in the Albanian media, it is difficult to see how a publication tied to the foreseeable Independence Day can qualify as either. Last, but not least, the government failed to provide any justification for the larger part of the sum allocated to *Korrieri* for the publication of “government propaganda materials.”

In sum, there are strong reasons to conclude that the *Korrieri* transaction was a governmental favor to a newspaper that was generally supportive of the Meta government.

Effects of Abusive Allocation of State Advertising

Albanian media professionals see their excessive dependence on state advertising revenues, and the governmental abuse of such financial leverage, as a very significant threat to their freedom and independence. The campaign against *Shekulli*, Albania’s biggest daily, is an indicator of how severe such financial pressures can be and how systematically and aggressively they can be pursued. Even in the absence of a coordinated campaign, media outlets frequently fall prey to retaliation by government officials or institutions irritated by public exposure of their performance or integrity.

Financial pressures can have chilling effects on a free press as profound as those brought about by physical assaults or prison sentences. This is clearly the case in post-communist Albania’s fiercely competitive media market, with its thirteen news dailies catering to a small nation of three million. Although more subtle than physical or legal intimidation, financial blackmail is more pervasive and equally effective. It forces newspaper publishers to rein in their editorial staff and, by many insider accounts, is a major contributor to self-censorship or lost independence among Albanian press professionals. Discriminatory government subsidies, be they through advertising or other creative channels, distort competition in the press market by giving an unfair edge to the government’s favorite outlets.

Advertising money is not the only mechanism abused by the government to inflict financial headaches on the critical media. Almost all media close to the opposition complain that government officials (such as tax or custom or safety inspectors) harass private businesses that advertise in their newspapers or TV stations, pressuring them to stop “financing” the opposition media. As a result, many businesses sympathetic to opposition-affiliated media prefer to support them through private donations, rather than advertising in their pages.

²⁰⁰ Human Rights Watch interviews with Albanian media managers, Tirana, November 2001.

²⁰¹ Law 7971, *as amended*, secs. 17.3 and 19.

CONCLUSION

Despite significant improvements over the last decade, violations of media freedom continue to occur in Albania. Particularly serious are the acts of violence and intimidation against journalists of various affiliations. Often perpetrated or instigated by law enforcement officers and government officials unaccustomed to or intolerant of democratic openness and accountability, such attacks are a chilling and unfortunate reminder of Albania's recent totalitarian past. The government should take determined and sustained action to overcome that legacy of disrespect for freedom of expression and other fundamental rights. Most urgently, the Albanian government should end police impunity; the authorities should conduct prompt and impartial investigations into all allegations of police abuse against the press and others, without requiring victims to file official complaints. The public prosecutorial system, headed by the general prosecutor, must make the investigation of serious human rights violations by law enforcement personnel a permanent priority.

Judicial convictions for defamation that contravene international human rights law constitute a growing threat to media freedom and public debate in Albania. Criminal and civil defamation actions have become the Albanian politicians' favorite device for curbing criticism and investigative reporting. Unfortunately, the Albanian courts routinely side with the powerful, imposing increasingly higher fines against media professionals and abdicating their constitutional prerogatives to uphold the fundamental rights of all. Principled legislative action and judicial courage is required to reverse this trend, including the deletion of defamation offences from the Criminal Code and a thorough reform of civil defamation laws. It will be a greater challenge to make Albanian courts take fundamental rights seriously. This will require extensive human rights training—to start, the key parts of European and international human rights jurisprudence should be made available in Albanian for judges and legal professionals at all levels. It will also require greater oversight of the judiciary's human rights performance, most preferably by the higher courts (the Constitutional Court and High Court), the academia, and the civil society.

The international community has an important role to play, as well, by holding Albania to fundamental human rights standards, including those on freedom of expression. The European Union, in particular, should live up to its commitment to “mainstream” human rights issues into its special relationship with Albania (the stabilization and association process).²⁰² The Council of Europe should assist Albania to close the gap of non-compliance with its commitments under the European Convention on Human Rights, and to train its judges in the case law of the European Court of Human Rights. The OSCE, with its special commitment to free expression, election expertise, and field presence throughout Albania, is in the best position to monitor violations of media freedom in a timely and systematic fashion. Investigations into media harassment must become a priority for election monitoring missions. The same applies to subtler—and hence less obvious—forms of interference with media freedom and independence, such as financial pressures applied by the government through various “creative” channels (politically motivated misallocation of state advertising, selective subsidies, and the like). Last, but not least, the international community should do more to assist the development of an objective, ethical and, professional press in Albania, able to resist undue pressures from private and government interests alike.

²⁰² The stabilization and association process is a process whereby Albania and other countries of the Western Balkans have agreed to undertake sustained political and economic reforms in exchange for special trade relations with, and the longer-term prospect of full membership in, the European Union. See generally, *The EU's Actions in Support to the Stabilization and Association Process*, available on the World Wide Web at http://www.europa.eu.int/comm/external_relations/see/actions/index.htm.

APPENDIX A: CIRCULATION AND AFFILIATION OF NEWS DAILIES

TITLE	CIRCULATION*	AFFILIATION
1. <i>Shekulli</i>	22,167	Unaffiliated, center left
2. <i>Gazeta Shqiptare</i>	9,667	Unaffiliated, center
3. <i>Korrieri</i>	8,000	Unaffiliated, center left
4. <i>Koha Jonë</i>	7,833	Unaffiliated, center left
5. <i>Albania</i>	5,750	Unaffiliated
6. <i>Rilindja Demokratike</i>	5,333	Democratic Party
7. <i>Zëri i Popullit</i>	5,167	Socialist Party
8. <i>Tema</i>	5,000	Unaffiliated, right
9. <i>Republika</i>	5,000	Republican Party
10. <i>Gazeta 55</i>	4,833	Unaffiliated, right
11. <i>Dita</i>	3,000	Unaffiliated
12. <i>Ekonomisti</i>	1,000	Unaffiliated
13. <i>Ekonomia</i>	500	Unaffiliated

* Taken from the Albanian Media Institute, note 1 above. The figures represent the average circulation per issue for the first semester of 2001, and were calculated on the basis of data provided by the printing houses.

APPENDIX B: LETTER TO ALBANIAN MINISTRY OF INTERIOR*

November 21, 2001

Mr. Engjëll Hysi
Director, Department of Public Relations
Ministry of Public Order
Bulevardi “Dëshmorët e Kombit”
Tiranë

Dear Mr. Hysi:

I am the Albania researcher for Human Rights Watch, a New York-based organization dedicated to the protection of human rights worldwide. Human Rights Watch is currently preparing a report on violations of press freedoms and journalists’ rights in Albania. One of the issues we are researching includes physical abuses, arrests, threats, and other unlawful actions against journalists that are directly or indirectly related to their profession. We would therefore like to request that the Ministry of Public Order provide us with any information you have or may secure regarding the following incidents, which implicate the police directly or in their capacity as criminal investigators. We make this request for comment and information for two reasons: first, to double-check the accuracy of the specific allegations below; and, secondly, to appraise any internal investigations that your ministry may have conducted regarding the responsibilities of police personnel involved in these incidents. In the latter case, we would like to be informed about the conclusions of any such investigations and any disciplinary measures that may have been ordered against those found responsible.

We would like to point out that we have received the following information from the involved journalists or third sources; they are still being researched and do not represent any final findings by Human Rights Watch. We are confident that your explanations will assist us in reaching objective and impartial conclusions on the following cases:

1. On June 1, 2000 Flamur Hasbegu, a cameraman working for the ATN1 television, was detained by the then-head of criminal investigations in Berat, Ilir Ngresi, while he was taking archive footage of the Berat police station from the outside. According to Hasbegu, he was “abducted” from the street, without being informed why, and taken forcefully inside the police station, where he was beaten and threatened for about thirty minutes by Ngresi and several other policemen under his orders. Mr. Hasbegu suffered several physical injuries, including a broken arm. Hasbegu audio recorded part of the incident using the camera he was using at the time of the detention, and I personally listened to the recording. Hasbegu and ATN1 told us that they made an official complaint with the Ministry of Public Order,¹ and also informed the OSCE Presence in Albania regarding the incident.
2. On November 14, 2000 the deputy editor-in-chief of *Rilindja Demokratike*, Nebil Çika, along with two other employees of the same newspaper were stopped and detained by the Tirana police as they were traveling with a private car. The detention occurred around 11.30pm, at a distance of about 300 meters from the newspaper premises, which the three had just left at the end of their working day. According to Çika, the police dragged them forcefully out of their car, took them behind a kiosk in the vicinity of [a monument in Tirana] and physically abused them for about fifteen minutes; for

* Translated from Albanian.

¹ Letter of Kujtim Rama, Director of ATN1, to the Minister of Public Order Spartak Poçi (dated June 2, 2000).

several minutes masked policeman held them at gunpoint and threatened to kill them. After Çika told the police that he was an *RD* journalist, the policemen threatened them by saying “We’ll wipe you out, all you Berisha’s bastards!” etc. Before letting them free, the police confiscated a recorder they found in the car. According to Çika, the police gave no reasons for detaining them. The incident was published in *RD*.

3. On June 15 Enis Fani, who was covering at the time the electoral campaign in Durrës for the ATN1 television, was detained by the rapid reaction squad of the Durrës police. Fani was filming an incident between the rapid reaction squad and a “Union for Victory” [opposition] candidate. Following his arrest, Fani was held for more than two hours in the Durrës police station. According to Sokol Olldashi, the ATN1 manager, the police released Fani only after Olldashi reached a senior officer in the Ministry of Public Order, following several unsuccessful attempts to receive information from the Durrës police directly. The police gave Fani no reasons for the arrest, and confiscated the videotape he was using. *Tema* newspaper ran a story the next day about the incident.
4. According to several press reports, the Elbasan correspondent of the *Shekulli* newspaper, Kujtim Boriçi, was abused and threatened several weeks ago by the head of the Elbasan construction police during a police operation in Librazhd. It appears that the motive of the threats was related to critical articles by the journalist regarding the activities of the Elbasan construction police. It appears that the journalist has also protested against the actions of the [regular] police in Elbasan. Any information you can provide on the circumstances of the case, or any possible inquiries into the actions of the construction police chief and the regular police would be appreciated.
5. On September 4, 2000 the *RD* correspondent in Durrës, Margarita Ferro, was threatened and physically abused for about thirty minutes in her office, located inside the local Democratic Party premises, by three persons identified as Leonard Duka and two Tepshi brothers. The three attacked Ferro for reasons related to her [journalistic activity]—namely, articles she published in *RD*. Ms. Ferro has filed a criminal complaint against the three attackers with the Durrës police. We would like to be informed about the outcome of the criminal investigation into this case.

We can be reached by fax at +1.212.736.1300, by e-mail at pavlid@hrw.org or by ordinary mail at the following address:

350 Fifth Avenue
New York, NY 10118
U.S.A.

I can also be reached in New York at the telephone number +1.212.216.1268. Thank you for your cooperation.

Sincerely,

Darian Pavli
Human Rights Watch

APPENDIX C: LETTER TO NATIONAL PRIVATIZATION AGENCY*

December 5, 2001

Ms. Kozeta Fino
General Director
National Privatization Agency
Bulevardi "Dëshmorët e Kombit"
Tiranë

Re: Your reply of November 19, 2001 (prot. no. 3139/1)

Dear Ms. Fino,

Thank you for your reply of November 19, 2001 regarding our application for access to copies of the documentation related to the public bid organized by your agency for advertisements in the daily press. We feel obliged to inform you, however, that we do not find the legal reasons invoked against our application to be convincing or consistent with our interpretation of the relevant Albanian legislation.

According to the Albanian Law on the Right to [Receive] Information on Official Documents, all agencies of the state administration and public entities "are obliged to release all information related to an official document, unless otherwise provided by law."¹ Hence, as a general rule, the public is entitled to receive information on all official documents access to which has not been limited or prohibited by special legislation.²

According to your reply, section 14 of the [executive] Regulation on Public Procurement (no. 335 of June 23, 2000) bars the release of the documentation we have requested.³ We believe, however, that the latter provision is not of a prohibiting character; its goal is to regulate record-keeping and enable internal financial control by the competent authorities.

This argument is also consistent with the Public Procurement Law, which includes a provision almost identical to section 14 of Regulation 335.⁴ Section 10 of the Public Procurement Law makes it clear that procurement records must "be made available, upon request, to any interested person, once the winning bid has been made public." Given that the winners of the relevant tender have been determined, we see no reasons for denying Human Rights Watch access to the requested procurement records. This interpretation is in harmony with the letter and spirit of the Albanian public procurement law,⁵ the freedom of information law as well as the general principles of transparency, accountability, and legality that are binding upon the public administration of a democratic country.

* Translated from Albanian.

¹ Law on the Right to [Receive] Information on Official Documents (no. 8503 of June 30, 1999), section 3.2.

² Articles 2(c) and 2(ç) of Law 8503 define "public" as "any individual or legal entity, domestic or foreign." This provision grants both Human Rights Watch, as a foreign legal entity, and myself personally, as an Albanian citizen, the right to apply for access to the documents referred to above.

³ Article 14 provides: "The procuring agency shall maintain, and make available to [financial] control authorities, the procurement registry, records [*procesverbal*] and complete documentation for all public procurement deals it concludes."

⁴ See Law 7971, *as amended*, art. 10.3.

⁵ Section 10.1 of Law 7971 refers also to the need to maintain "sufficient information to enable controls regarding compliance with the provisions of this law."

For these reasons we request, pursuant to section 15 of the freedom of information law, that you reconsider your initial decision and provide us with copies of the requested documentation. We remain willing to cover the costs associated with this request.

We can be reached by fax at +1.212.216.1860 or by mail at the following address:

Human Rights Watch
350 Fifth Avenue, 34th Floor
New York, NY 10118
United States of America

I can also be reached at the telephone number +1.212.216.1268 or e-mail address pavlid@hrw.org.

Sincerely,

Darian Pavli
Human Rights Watch

cc: Mr. Ermir Dobjani, People's Advocate

ACKNOWLEDGEMENTS

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