

Albanien (83)

58

Previous

27 APR. 2005

ALBANIA

Obligations under the UN Convention against Torture - a gap between law and practice

Introduction

In 1994 Albania ratified the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN Convention against Torture). It thereby undertook the legal obligation to implement its provisions – above all, to prohibit and prevent torture and ill-treatment under all circumstances. A state which has ratified this Convention is required periodically to submit reports on its implementation of the UN Convention against Torture to the UN Committee against Torture (CAT).

Amnesty International has repeatedly urged the Albanian government to submit these reports, the first of which was due in 1995, the second in 1999 and the third on 9 June 2003. The organization therefore welcomed the Albanian government's joint initial, first and second report (hereafter referred to as the state report) which was submitted to the CAT in June 2003.(1) The CAT has scheduled the examination of the state report for its 34th session, in May 2005.

The state report details legislation and other measures and institutions designed to promote and protect human rights, in particular the right to freedom from torture and ill-treatment, which have been introduced in Albania since the end of one-party communist rule in 1991. It is, however, less informative as to the extent to which these legislative and other measures have in practice been effective.

The following report is not intended to analyse all aspects of the state report. Instead it focuses on certain key concerns related to weaknesses in Albanian legislation when measured against the requirements of the UN Convention against Torture and other international human rights standards. Above all, it is intended to draw attention to the gap between law and actual practice, and the consequent violation of Albania's obligations to implement the UN Convention against Torture. It illustrates with a number of cases what Amnesty International believes is a pattern of police ill-treatment of detainees. Further, it points to a failure, in many cases, to carry out prompt, thorough and impartial investigations into complaints and to bring those responsible to justice.

Amnesty International has earlier documented its concerns in relation to police ill-treatment and to inhuman and degrading conditions of detention in police stations in Albania in a number of reports, including: *Torture and ill-treatment – an end to impunity?* (AI Index: EUR 11/001/2001), and *Inhuman and Degrading Detention Conditions in Police Stations – Steps towards Reform* (AI Index: EUR 11/001/2004).(2)

Amnesty International recognizes that police officers in Albania are exposed to constant dangers, as their death toll in recent years amply demonstrates: according to official statistics, 189 were killed between 1990 and the end of 2002, and since then there have been further killings. They operate in an environment in which acts of violence and other lawlessness are not exceptional, and they are poorly paid. These factors, however, cannot justify their resorting to the torture or other ill-treatment of detainees. On the contrary, they point to the need for a well-trained and decently paid police force, with the proper equipment and resources to enable it to effectively combat crime, a police force which respects the rule of law and resorts to the use of force only when and as legislation allows, in accordance with international standards.(3)

Summary of Amnesty International's concerns

1. Numerous incidents of police ill-treatment, at times amounting to torture.
2. The reluctance of prosecutors to invoke Article 86 of the Criminal Code (dealing with torture and other inhuman or degrading acts) against police officers and other state officials.
3. The formulation of Articles 86 and 87 of the Criminal Code which is too vague, and does not incorporate all the elements of the definition of torture as set out in Article 1 of the UN Convention against Torture, as well as other acts which do not amount to torture but which constitute cruel, inhuman or degrading treatment and punishment, as set out in Article 16 of the Convention.
4. Violations of the rights of detainees guaranteed by international and domestic law – violations which undermine safeguards against torture and ill-treatment.
5. Failures to investigate promptly, thoroughly and impartially complaints of torture or ill-treatment and to bring those responsible to justice, resulting in impunity for police officers;
6. The absence of state reparation, including fair and adequate compensation, for victims of torture and ill-treatment inflicted by police or other law enforcement officials.

Amnesty International's concerns have much in common with those expressed by the Human Rights Committee in November 2004. Following its consideration of the initial report of Albania on its implementation of the International

Covenant on Civil and Political Rights, the Human Rights Committee noted its concern *"about allegations of arbitrary arrests and detention, the excessive use of force by law enforcement officials, ill-treatment of detainees in police custody and use of torture to extract confession from suspects"*. The Human Rights Committee further stated that *"It regrets that acts of torture by law enforcement officials are considered as 'arbitrary acts' only and treated accordingly. It is also concerned that despite several cases of investigations and punishment of those responsible for ill-treatment, many cases have not been investigated properly and compensation to victims has not been provided (art. 7)."* It also recommended that: *"The State party should take firm measures to eradicate all forms of ill-treatment by law enforcement officials and ensure prompt, thorough, independent and impartial investigations into all allegations of torture and ill-treatment. It should prosecute perpetrators and ensure that they are punished in a manner proportionate to the seriousness of the crimes committed, and grant effective remedies including compensation to the victims."*(4)

Incidence of torture and ill-treatment

Amnesty International is concerned that police ill-treatment of detainees, including children – mainly during, and in the first hours after, arrest – is still common in Albania. Some remand and convicted prisoners have also alleged ill-treatment. Victims of ill-treatment have sometimes suffered injuries so severe as to require medical treatment or even hospitalization; certain incidents have undoubtedly amounted to torture.

In the period from the beginning of 2002 to the end of November 2004 Amnesty International learned of over 105 incidents in which police are alleged to have tortured or ill-treated one or more persons – an average of 35 incidents a year. Allegations of this kind were made against various branches of the State Police force, including officers of the Order Police, the Criminal Police, Traffic Police, Special Police Forces and the Judicial Police (the latter is the body which carries out the investigation of criminal offences under the direction and supervision of the prosecution office). The torture and ill-treatment complained of usually consisted of punches, kicks, and beating with truncheons or other weapons.

The majority of these incidents were reported in the press, others were reported by Albanian human rights organizations, by victims themselves or their lawyers. Most of the allegations were made by people who were released within 24 hours of arrest, and were consequently in a position, if they wished, to obtain medical confirmation of injuries that were still fresh, to file a formal complaint, and to make their grievances known to the media. As their early release indicates, in most cases they were not charged with any offence, or had committed minor misdemeanours. Although it is possible that not all of these allegations were well-founded, it is likely that an even greater number of genuine incidents of this kind went unreported and did not result in the filing of formal complaints. This is in part because public confidence in the effectiveness of the judicial system is low, but also because it is often difficult to obtain evidence to support complaints. Torture and ill-treatment often take place without witnesses, or in the presence of other police officers who may be reluctant to testify against their own colleagues. Thus the allegations of which Amnesty International has learned do not present a complete picture of the problem of police ill-treatment.

There is also another category of detainee – those who have committed, or are suspected of, serious crimes, and who remain in detention. The report of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Albania in 2001 indicated that the ill-treatment in such cases had been particularly brutal.(5) Yet allegations of torture or ill-treatment by this category of detainees seem to be rarer. One of the explanations for this may be that these detainees often do not have access to relatives or a lawyer for at least several days following arrest, during which time the marks of injury may have healed or faded; unless severely injured they are unlikely to be examined by a doctor while in police custody.

Amnesty International notes that remand and convicted prisoners, although they frequently complain of detention conditions, relatively rarely complain of ill-treatment by the police who guard them. This suggests that such ill-treatment is not common. However, the state report cites the observation of the People's Advocate (Albanian Ombudsperson) regarding the scarcity of complaints against prison staff (including complaints of ill-treatment) received by the People's Advocate from convicted prisoners: that they are not fully aware of their rights, and that their isolation makes them reluctant to complain about misconduct by prison staff, for fear of possible reprisals.(6)

Positive measures

Against this background, however, it should also be emphasized that various measures have been taken to prevent torture and ill-treatment by law enforcement officials. These positive developments have often been fuelled by the work of Albanian non-governmental organizations,(7) the People's Advocate, and experts of international governmental organizations. They include human rights training for police officers, monitoring of conditions and treatment of detainees in police stations, legal and other assistance for children in detention, the medical examination of remand prisoners on entry to Prison 313 in Tirana. A recent welcome step was taken in November 2004 by the Ministry for Public Order which published the telephone numbers of 12 district offices of the Police Internal Inspectorate Service available to persons wishing to report abuses by the police.

In May 2004 a section dealing with violations of children's rights was opened at the Office of the People's Advocate. Additionally, the Ministry of Justice has undertaken to introduce a system of juvenile justice, by drafting a *"legislative package"*, which would establish prosecutors and judges specifically responsible for dealing with offenders who are minors, as well as re-education centres for these minors. This legislation was reportedly due to be sent to the government for approval in December 2004.(8) In June 2004 Amnesty International was informed that UNICEF and the OSCE intended to assist in the establishment of a course at the School for Magistrates for judges and prosecutors working with children.

The definition of torture in the Albanian Criminal Code does not conform to that in the UN Convention against

Torture

Article 4 of the UN Convention against Torture requires states to "ensure that all acts of torture are offences under its criminal law", while Article 16 requires states similarly to prohibit "other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture". Albania's state report to CAT correctly emphasizes that the Constitution, Criminal Code, Criminal Procedure Code and internal police regulations all prohibit torture. However, Amnesty International is concerned that Article 86 of the Albanian Criminal Code (CC), dealing with the crime of "torture and other degrading or inhuman treatment", does not include the specific elements which define an act of torture as set out in the UN Convention against Torture. Under Article 1 of the Convention torture is defined as:

"any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."

By contrast, Article 86 CC simply states that: "Torture, as well as any other degrading or inhuman treatment is punishable by five to ten years' imprisonment." In effect it practically fails to define torture, both in its physical and mental forms, gives no indication of the element of motivation (to obtain information or confession, to punish, intimidate, coerce or for any reason based on discrimination) and fails to incorporate as an essential element of this offence that it is committed by, or at the instigation of or with the consent or acquiescence of, a public official or other person acting in an official capacity.(9)

Prosecutors reluctant to use Article 86 dealing with torture

In practice, prosecutors are reluctant to use Article 86 CC, and the vague formulation of this article, in Amnesty International's view, facilitates this trend. The figures given in the state report show that in 2001 there were no prosecutions under Article 86, while in 2002 two people were investigated on a charge under Article 86. Significantly, however, 15 people were in 2001 convicted under Article 87 which punishes "Torture, as well as any other degrading or inhuman treatment, when it has inflicted handicap, mutilation or any permanent harm to the well-being of a person, or death" by 10 to 20 years' imprisonment.(10) These figures suggest that because of the stigma attached to torture (and the correspondingly heavy penalties), acts of torture and other ill-treatment tend to be prosecuted as such only if they result in permanent injury or death. Furthermore, as there is no breakdown of these figures, it is not apparent how many of the 15 persons convicted under Article 87 were police officers or other public officials – Article 87, like Article 86, does not apply only to public officials.

- The only recent case known to Amnesty International in which police officers were tried on charges under Article 86 concerned E.K., and his bodyguard and driver, Xhafer Elezi. E.K., at the time of the alleged offence, was chief of police of Elbasan district, and a number of complaints of ill-treatment had previously been brought against him, although he had not been charged. In this case, the two defendants were accused of having in December 2001 beaten Naim Pulaku, who was admitted to hospital because of the injuries he sustained; they were also charged with entering the hospital the following day and assaulting and threatening him as he lay in bed. In November 2003 E.K. was acquitted. Xhafer Elezi was sentenced to eight years' imprisonment under Article 86; he was also found guilty of possessing an unlicensed weapon. The court gave him a combined sentence of 10 years' imprisonment, which included an unserved sentence imposed earlier by a court in Torino, Italy in 1999 for pimping. On appeal his sentence was reportedly reduced to eight years' imprisonment.

Torture and ill-treatment characterized as "arbitrary acts" (Article 250 CC)

In general, if police officers have been prosecuted at all in connection with torture or other ill-treatment they have tended to be prosecuted under Article 250 CC dealing with "Arbitrary Acts". Figures given in the state report show that in 2002, 20 defendants were charged under Article 250 whereas criminal proceedings under Article 86 were started against only two defendants.(11)

Under Article 250 "Committing acts or giving orders which are arbitrary, by an official acting in a state function or public service while exercising his duty, which affect the freedom of citizens" is punishable by a fine or up to seven years' imprisonment.

Although this formulation is so broad as to cover a wide range of offences, in practice an "arbitrary act" is usually a euphemism for police ill-treatment or even torture. The preference for the use of this article in cases of police ill-treatment may in part be because it explicitly states that the offender is a state or public official, but also perhaps because it is a less serious offence and carries a lighter penalty (in practice, generally a fine). Amnesty International notes that the published records for Tirana District Court (one of 29 district courts) show that from 1 January 2002 to 1 December 2004 there were no convictions under Article 86, and only one case was referred to this court, which ruled that it did not have competence to try the case.(12) In the same period no cases were sent to this court for trial under Article 87. By contrast, the court heard 22 cases of police officers prosecuted under Article 250, 10 of them resulting in convictions – almost all of these cases concerned complaints of police ill-treatment.(13) The sentences imposed in these 10 cases were, with two exceptions, fines ranging from 20,000 to 150,000 leks (€155 to €1,170 at current rates). Only two defendants were sentenced to prison sentences (of one month and two months respectively), and both these sentences were suspended.

The following cases demonstrate that Article 250 has been invoked by prosecutors even when the acts concerned appear to have amounted to torture, or to "cruel, inhuman or degrading treatment or punishment":

- According to press reports, on 13 May 2004 Beqir Kaba, aged 19, was arrested and taken to Peshkopi police station after a neighbour accused him of theft. He later alleged that when he denied the accusation police officers beat him with rubber truncheons on his back, shoulders, legs and hands, twisted and pulled at his beard and his ears with pincers, and threatened to kill him. He was released the following day without charge. Photographs, taken five days after the incident, reportedly clearly showed severe bruising on various parts of his body, and a medical forensic examination later confirmed injuries inflicted by a "heavy instrument". Beqir Kaba filed a complaint against five police officers. Local police at first denied that he had been ill-treated, but criminal proceedings were later started against two police officers on a charge of "arbitrary acts".(14)
- According to Sabaudin Çela, on 5 March 2002 he was forced at gun-point into a car by Alnor Hasa, chief of Crime Police of Vlora, and two or three other men (civilians, not police officers), who believed he had information about a murder. They drove him to the outskirts of Vlora where, he alleged, he was brutally beaten and burned with cigarettes. Afterwards he was driven back into town and left unconscious in the street, where he was found by a neighbour and later taken to hospital for treatment of his injuries. Two days after this incident a representative of Amnesty International interviewed Sabaudin Çela in hospital and observed clear injuries, including marks which, according to Sabaudin Çela, were cigarette burns. In November 2003 Alnor Hasa was convicted of "arbitrary acts" and sentenced to two years' imprisonment by the District Court of Vlora.

Caption
Sabaudin Çela © AHRG

Violations of legal provisions relating to arrest and detention which facilitate the torture and ill-treatment of detainees

Under Article 11 of the UN Convention against Torture, Albania is obliged to keep under systematic review interrogation rules, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment, with a view to preventing any cases of torture.

Torture and ill-treatment most frequently take place during arrest and during detention in police custody. The legal safeguards provided for a person at the time of arrest and in police custody - and the strict enforcement of these safeguards - are therefore crucial both to protect the detainee, and to protect police officers from false allegations of ill-treatment.

International human rights treaties and standards require, *inter alia*, that following arrest people be granted the following rights:

- to be informed immediately of the reasons for arrest or detention;(15)
- to inform family or a third party of arrest and place of confinement;(16)
- access to a lawyer;(17)
- access to a doctor, including one of the detainee's choice;(18)
- the right to be informed of their rights;(19)
- the right to be informed promptly of any charge;(20)

Albanian law guarantees most of these rights. However, the right of access to a doctor is not guaranteed and the detainee does not have the right to notify relatives following arrest, rather it is the judicial police who are required to notify the detainee's relatives without delay.(21)

In practice, detainees have frequently complained that these rights, and other procedural safeguards, are disregarded. For example, in December 2004 the Albanian Helsinki Committee (AHC) visited remand quarters in police stations in Fier and Kruja and reported that most detainees stated that they had not been informed of their rights at the time of their arrest.(22) The issue of the right of access to a lawyer appears to be particularly problematic: in June 2004 lawyers in Shkodër went on a one-day protest strike claiming that police, prosecutors and judges systematically violated legal and procedural rights, including the detainee's right of access to defence counsel from the moment of arrest, and the right to free, confidential communication with defence counsel. These violations, which exacerbate the isolation of the detainee, leave him or her vulnerable to torture and ill-treatment by police.

The following are some examples:

- On the evening of 29 July 2004 Klajdi Yzeiri and his cousin were arrested and taken to Vlora police station after police found they did not have with them full documentation for the car in which they were driving. When Klajdi Yzeiri's uncle, Lulëzim Yzeiri, went to the police station to explain that it was his car and its documents were in order, he too was arrested. The three men were held overnight at the police station. Lulëzim Yzeiri later filed a complaint that their request for access to a lawyer had been refused and that Klajdi Yzeiri had been severely beaten by police that night, an allegation which he supported with a medical forensic certificate and photographs. Their lawyer also stated that the detainees had not been informed of their rights, had been held beyond the legal time limit (10 hours) in such cases and had not been permitted

to notify their family. The men were subsequently charged with resisting police officers.

Caption
Klajdi Yzeiri © private

- Merita Kola [f], aged 22, was arrested on 23 July 2004 on a charge of trafficking for prostitution. In a letter she subsequently sent to the Prosecutor General and the People's Advocate she protested her innocence. She further reportedly wrote: "After they arrested me, they took me to Burrel police station, where at 11.30pm I was questioned without a lawyer". She alleged that (named) police officers swore at her, slapped her and kicked her in the stomach until she lost consciousness; they then revived her by pouring water on her. One officer allegedly tore the ear-ring from one of her ears, causing heavy bleeding, and the chief prosecutor of Burrel allegedly threatened her. Following the publication of her allegations in the press on 6 August 2004, Merita Kola was released and charges against her were dropped.(23)

Violations of the rights of children in detention, including the right not to be subjected to torture or ill-treatment

In Albania penal responsibility starts at 14 years, and the age of majority is 18 years. The international standards set out in international treaties to which Albania is party oblige Albania to provide children (defined as any person below the age of 18) in detention with conditions and procedural guarantees geared to their special needs. The UN Convention on the Rights of the Child(24) requires Albania to ensure that "*No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment*" (Article 37(a)). It also stipulates that children accused or recognized as having infringed the penal law shall be treated in a manner consistent with the promotion of their sense of dignity and worth. Children are entitled to all the fair trial guarantees and rights which apply to adults, and to some additional special protection. The Convention on the Rights of the Child also states that detention and imprisonment of a child "*shall be used only as a measure of last resort and for the shortest appropriate period of time*" (Article 37(b)).

In practice it appears that international standards, and the provisions of Albanian law, are not always respected. For example, Amnesty International has learned of cases in which, in violation of Albanian law, children have been questioned by police, whether as suspects or as potential witnesses, in the absence of a parent, guardian or lawyer. It is also reported that their parents have not always been immediately informed of their arrest. Albanian human rights organizations defending children have observed that children are frequently physically or psychologically tortured or ill-treated by police following arrest and in police custody.(25) However, Amnesty International welcomes reports that Tirana police stations now routinely contact the Children's Human Rights Centre of Albania (CRCA) when a child is arrested in Tirana, and allow the child access to CRCA representatives. This arrangement appears to have a generally preventive effect, although instances of the ill-treatment of children in custody in Tirana still reportedly sometimes occur. Moreover, according to the CRCA, and other sources, the ill-treatment of children by police persists elsewhere in Albania. In the following cases, police officers in Vlora, Gjirokastrë, Korça and Burrel, and a prosecutor in Burrel, are alleged to have tortured or ill-treated children psychologically or physically in order to obtain confessions, information or testimony from them. In one case a minor alleged that he was raped with a truncheon.

- M.C., aged 16, from Vlora, was arrested in the summer of 2002, and subsequently charged with murder, a charge he denied. When visited by the CRCA he alleged: "They [police officers] put me in the police van, they didn't tell me where we were going. After driving for some 20 minutes we stopped and they took me out. Then they kept asking me if that was the place where I committed the murder. I kept saying that I hadn't committed a murder and they kept slapping and punching me. I started to cry. Then they told me to take my clothes off. One of the police officers approached me from behind and started beating me on the back with a truncheon. Then another police officer ordered me to bend over and he put the truncheon in me ..."(26)
- S.T., aged 17, and his younger brother, E.T., aged 15, were arrested in 2004 on a charge of armed robbery, and held in pre-trial detention in Gjirokastrë police station. S.T. subsequently alleged to representatives of the CRCA that after they were arrested he and his brother were taken to the office of the Judicial Police in the police station, where they were questioned separately. "The police [four uniformed police officers] kept asking where we had hidden the gun and the money. One of them slapped me, another kept punching me in the face and chest. A third got a truncheon and kept beating my legs and back. The fourth punched me when the others were tired. This went on for some four hours. I told them right at the beginning where I had put the gun and money, but they didn't believe me. A few hours later – I remember it was night-time – they sent me to the office of the Chief of the Public Order Police, where I met their boss. He and the others beat and punched me again. There was blood on my face, but they didn't care. They did the same to my young brother..."(27)
- V.S., the 14-year-old sister of Merita Kola (see above), reportedly told journalists that following her sister's arrest in July 2004 she had several times been taken in for questioning about her sister at Burrel police station. She alleged that police officers had asked her if her sister intended to traffic her, a suggestion which had shocked her, and that the district chief prosecutor had intimidated her and sexually humiliated her by threatening to send her for examination to find out whether she was a virgin. (28)

The following case highlights the extreme importance of rigorously observing legal procedures with regard to the interrogation and/or detention of children, both for their protection and to ensure that any statements given by them cannot be subsequently challenged as resulting from earlier coercion by police or prosecutors.

- In June 2003 Gjergj Bedulla, a Jevgjit ("Egyptian" - a minority sometimes described as assimilated Roma) from Korça, was arrested on a charge of trafficking three children to Greece to work as beggars. The main evidence in this case was the testimony which the three children gave to Korça District Court in July 2003 under a procedure called "securing evidence", at the request of the prosecutor. This procedure allows for testimony to be heard as evidence in court before the main trial takes place, in the presence of the judge, prosecutor and counsel for the defence. One of the grounds for using this procedure is if the prosecutor (or defendant) has reason to believe that pending the main trial the witness may be swayed by threats or bribes not to testify or to give false evidence. In this case, defence counsel appealed against the use of this procedure, on the grounds that the children were being illegally held at Korça police station, and were therefore vulnerable to pressure by the judicial police or prosecutor. However, the court heard the children's testimony without waiting for Korça Appeal Court to rule on the appeal.

The three children subsequently informed the Albanian Human Rights Group (AHRG) that they wished to retract their testimony, which they claimed they had given as a result of police coercion. In particular, they alleged that at various times during 2003 they had been held at Korça police station for up to two weeks and that during this time officers of the Anti-trafficking Bureau of Korça police questioned them without their parents or a lawyer present. They also alleged that the police officers had threatened and ill-treated them to make sign statements falsely incriminating Gjerg Bedulla.

Proceedings in this case have been closely followed by AHRG, which informed the authorities about the children's allegations and about various procedural violations.(29) At the main trial, which started in October 2003, defence counsel asked the court to exclude their testimony, on the grounds that it had been obtained under illegal conditions. He also asked the court to re-examine the children, and to accept as evidence a video-recording in which the children recounted their alleged ill-treatment to an AHRG representative.

In March 2004 Korça District Court convicted Gjerg Bedulla and sentenced him to 12 years' imprisonment. He appealed against his conviction, and in June 2004 Korça Appeal Court sent the case back for re-trial. At the start of the re-trial, in October 2004, the children confirmed to the court that they wished to withdraw their previous testimony, again alleging that they had given it as a result of psychological or physical ill-treatment. The court refused these requests.(30)

As yet no investigation has been started into the children's allegations.

The duty of the state to undertake a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture or other ill-treatment has taken place

Under Articles 12, 13 and 16 of the UN Convention against Torture Albania is obliged to ensure that its competent authorities undertake a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture or any other acts of cruel, inhuman or degrading treatment or punishment have been committed; it is also required to ensure that individuals who claim to be victims of such acts have the right to complain to, and to have their case promptly and impartially examined by, its competent authorities.

Amnesty International considers that the Albanian authorities frequently fail to respect the State's obligations under Articles 12 and 13. Although in a number of cases internal police investigations have resulted in police officers receiving disciplinary punishments, judicial investigations, if they are undertaken at all, tend to be inconclusive. Even in cases where alleged or suspected torture or ill-treatment has had fatal consequences, numerous obstacles may stand in the way of a thorough and impartial investigation which establishes the truth. In the following case, investigation proceedings and a trial at which neither the defendant, witnesses nor forensic experts were directly examined in court, failed to establish how a 17-year-old in pre-trial detention came to be fatally injured.

- Eriguert Çeka, aged 17, was arrested in May 2004 and remanded in custody on a charge of theft. He was detained at Rrëshen police station, in a cell with his brother and two other persons. On 5 July 2004 he became severely ill, and in the early hours of the next morning he was taken in a coma to Tirana Military Hospital where he died on 8 July 2004. A medical forensic examination found that he had suffered injuries to his head caused by a hard object and that his death was due to a cerebral haemorrhage. An investigation was started and two police officers were arrested on 10 July. One of them, Gjon Reci, was charged with "arbitrary acts" and contravening service rules; the prosecutor subsequently dropped the charge of "arbitrary acts", retaining a charge of "contravening guard service rules, with serious consequences" (Article 41.2 of the Military Penal Code).(31) Gjon Reci rejected the charge against him and pleaded not guilty. The case was tried by Tirana District Court under the procedure for a "shortened trial", at the request of the defendant. Under this procedure the court judges the case solely on the basis of evidence obtained in pre-trial proceedings, contained in the case dossier, without directly examining the defendant and witnesses. A defendant convicted under this procedure benefits by a reduction of a third of the sentence.(32)

On 10 December 2004 Tirana District Court convicted Gjon Reci of contravening guard service rules under Article 41.1. of the Military Penal Code. The court found that it could not be concluded that this contravention had serious consequences. Gjon Reci was sentenced to a year's imprisonment, reduced to eight months.

In its decision (no.278), the court found that on 5 July Eriguert Ceka and a cell-mate, K.M., quarrelled about some trivial matter and came to blows. Two police officers, Viktor Shtjefanaku and Gjon Reci, took them out of their cell, escorted them to an interrogation room, reprimanded them and told them to make peace. Police officer Viktor Shtjefanaku then returned to the cell to question the two remaining cell-mates about the quarrel. Police officer Gjon Reci and Eriguert Ceka, who remained in the room, exchanged sharp words. The court notes that in the prosecutor's request for the case to be tried "it is stated that Gjon Reci slapped, kicked and roughly pushed Eriguert Ceka to get him into the corridor". The court quoted a statement by K.M. (who remained in the room) on 11 July: "When Gjon pushed Eriguert Ceka out of the room, he again continued to hit him, for I heard the sound of slaps and Eriguert replying: 'Don't hit me' ... a few seconds later I heard a bang which seemed to me like the collision of a person with an object ... [Then] I heard Endriket (Eriguert Ceka's brother) yelling: 'What have you done to my brother?' ... I immediately came out of the room and saw Eriguert Ceka lying on the floor ...". However, the court noted that in an earlier statement on 7 July, K.M. had simply stated that when Eriguert Ceka went into the corridor he collided with the wall and fell unconscious. Gjon Reci denied having slapped or roughly pushed Eriguert Ceka against a wall, and stated that Eriguert Ceka had suddenly himself banged his head against the wall and then fallen to the ground.

Although the court noted that the most important matter for the court to resolve was the reason for Eriguert Ceka's death and who had caused it, the court concluded that this had not been incontrovertibly established. Instead the court listed a series of possibilities which "[could] not be excluded": that Eriguert Ceka had injured himself for reasons unknown, or that as a result of the blows exchanged with K.M. he had lost consciousness and had injured his head while falling, or that police officer Gjon Reci had slapped and pushed him against a wall causing him to fall and injure himself. As a result, the court found that Gjon Reci had contravened the rules of guard service (by leaving the cell area of the police station where he was on guard duty to go the interrogation room), but that it had not been proved that this contravention resulted in Eriguert Ceka's death.

Amnesty International considers that the decision to try the case under the "shortened trial" procedure meant that the court could not adequately test the three hypotheses which the court itself put forward to account for Eriguert Ceka's fatal injuries. In Amnesty International's view a direct cross-examination in court of the defendant, and of witnesses including Viktor Shtjefanaku, Eriguert Ceka's cell-mates and medical forensic experts, might have established whether Eriguert Ceka had reason to cause himself injury, whether K.M. or the defendant had violently struck Eriguert Ceka, and whether the nature of Eriguert Ceka's injuries supported one of the three hypotheses rather than the others.

Eriguert Ceka was a child and as such the Albanian state had a special duty of care towards him. Amnesty International considers that the state not only failed in this duty, it also abdicated its responsibility to discover how he came to be injured and – if his injuries were not self-inflicted – to punish the culprit or culprits. His parents have the right to know how their child was fatally injured and the right to compensation for the state's failure to protect him.

Official indifference and prosecutorial inertia

Albanian law requires public officials, who in the course of their duties become aware that a person has been tortured or ill-treated, to file a written denunciation with a prosecutor or judicial police officer, even if the perpetrator has not been identified.⁽³³⁾ There is a similar obligation for medical personnel.⁽³⁴⁾ In practice, however, it seems that compliance with this legal requirement is rare. According to a practising lawyer: "*In many cases defendants who are brought to court from the police stations [to be remanded in custody] have been ill-treated and bear visible marks of ill-treatment... At these court sessions the only witnesses to the injuries are the lawyer, the judge and the prosecutor. The lawyer protests but the others keep their mouths shut.*"

In general, it is the victim who files a complaint of torture or ill-treatment. Although in most cases the prosecutor will open an investigation, this may be largely a formal matter, and Amnesty International believes that such investigations are often not prompt, thorough and impartial, and as a result few offenders are brought to justice. This view is borne out by observations made by the People's Advocate's annual report of 2002. Referring to complaints related to police ill-treatment received in 2002, the report expressed satisfaction that the People's Advocate's recommendations had been acted upon: disciplinary measures had been taken against 12 police officers, and the Prosecutor's Office had opened investigations against 24 police officers. Nonetheless, the outcome of these investigations had in some cases been less than satisfactory: the report noticed a "*tendency on the part of prosecutors to 'close', suspend or annul investigations [even] when it is obvious that police officers have committed penal offences*".⁽³⁵⁾

The experience of practising lawyers bears out these conclusions. In January 2003 the president of the Bar Chamber of Gjirokastrë publicly complained that in 2002 Gjirokastrë lawyers had sent five complaints concerning the ill-treatment of their clients by police officers to the district prosecutor but that so far no-one responsible had been brought to justice. He specified that the ill-treatment had taken place in the corridors and cells of police stations.⁽³⁶⁾

Amnesty International notes that the Parliamentary Assembly of the Council of Europe has, *inter alia*, recommended the Albanian authorities to "put procedures in place for mandatory investigation of all complaints of mistreatment or

torture by the police".(37)

Difficulties the victim may encounter in obtaining photographic and medical evidence in support of allegations of ill-treatment

Medical evidence is one of the strongest forms of evidence which victims of torture or ill-treatment can present in court. At times it may be the only corroborative evidence available to the victim. As noted earlier, in most instances ill-treatment takes place during arrest or the first hours of custody, when detainees are not guaranteed the right of access to a doctor. If the detainee is shortly afterwards released, he or she may secure a medical or medical forensic certificate confirming injuries, or have photographs taken. In other cases, however, the detainee will remain in custody for two to three days (sometimes longer) before being brought before a court, by which time the injuries may have disappeared or faded. Even when they are visible, without the cooperation of the prosecutor or judge it will be difficult for the victim to obtain evidence – even photographic evidence. The lawyer cited above complained that when a defendant is brought to court to be remanded in custody: "... the only witnesses to the injuries are the lawyer, the judge and the prosecutor... Who is going to allow you to photograph a defendant who has been ill-treated?"

- On 4 November 2003 Altin Dani was arrested by police in Tirana after he failed to respond to their order to stop the car he was driving. Ten days earlier he had been given a suspended prison sentence for another offence, and it is alleged that police officers were dissatisfied that he had not been punished more severely. Altin Dani was taken to Tirana Police Station no.2 where, according to his lawyer, two police officers beat him with a chair leg, as the result of which he reportedly sustained a black eye and bruising to various parts of his body, including his genitals. He was charged with resisting the police officers and appeared in court on 6 November, where he was remanded in custody. Police officers frustrated his lawyer's attempts to get journalists present at the court to take photographs of his injuries, in order to obtain evidence of his ill-treatment.(38)

The following cases indicate that in some instances medical professionals may not have the necessary independence to resist local pressures in situations where their findings may be used as evidence of police ill-treatment in court. It is also possible that they may not always have the necessary expertise to carry out their duties competently.

- On 7 April 2003 Afrim Saliu was allegedly severely beaten by a police officer and his driver, as a result of which he was admitted with injuries to Elbasan hospital. According to a complaint dated 9 April 2003, signed by his brother Shpend Saliu, the details of his injuries were noted in his hospital file, but doctors were reluctant to sign them. *"The forensic doctor tries to postpone an examination of the report, the chief of the surgical department refuses to issue a certificate, though he admits [my brother] is injured and needs medical care. We took the hospital notes secretly ..."*
- Gazmend Tahirlari, aged 35, was arrested at his home by police on 3 January 2003. On the way to Korça police station he became ill and was taken to Korça hospital, where he died the following day. The death certificate issued by the hospital attributed Gazmend Tahirlari's death to alcohol-induced coma and cerebral contusion, apparently confirming police sources which attributed his death to excessive drinking. However, a hospital doctor, R.D., who had examined Gazmend Tahirlari prior to his death, had entered in the medical notes that the patient had symptoms which he concluded had been caused by physical violence. He later alleged that some of his medical colleagues had criticized his notes and told him that he was making trouble for them. On 8 January he was dismissed by the hospital director.

Gazmend Tahirlari's family denied that he had been drunk and stated that they saw police officers beat him while arresting him. They appealed to the People's Advocate who supported their demand for the exhumation of the body and its examination by experts from the Central Service for Medical Forensic Expertise in Tirana. These concluded that: *"The prime cause of death ... was a cerebral contusion of a traumatic character due to blows with a hard object (punches, kicks etc.,) to the face [of Gazmend Tahirlari], who was in a moderate state of intoxication."*

As a result of this finding, in March 2003 a police officer, Lorenc Balliu, was sentenced *in absentia* to 16 years' imprisonment for the murder of Gazmend Tahirlari; another police officer was sentenced to three years' imprisonment for "arbitrary acts"; four other officers received prison sentences of up to five months for failing to report a crime.

In the aftermath of this case, the People's Advocate made a recommendation to the Central Service for Medical Forensic Expertise, based in Tirana, to issue instructions that in cases arising outside Tirana in which a police officer is accused in connection with a death, a medical forensic specialist from the Central Service should always be present, in addition to the local medical forensic expert, at the post-mortem examination.(39)

Incomplete medical forensic certificates

Amnesty International has seen a number of medical forensic certificates with the findings of experts of the state

medical forensic service on the examinations of people who alleged that they had been ill-treated by police. These certificates rarely contain information other than a record of the injuries observed and a reference to the object judged to have caused these injuries. As a consequence they offer less assistance as evidence in criminal proceedings than they might. They do not comply with the recommendations of the CPT, that all medical certificates drawn up after the examination of a detainee showing injuries contain:

(i) *a full account of the statements made by the person concerned which are relevant to the medical examination (including his description of his state of health and any allegations of ill-treatment)* [emphasis added]

(ii) a full account of objective medical findings based on a thorough examination, and

(iii) *the doctor's conclusions in the light of (i) and (ii), which should also indicate the degree of compatibility between the allegations made and the objective medical findings. "This will enable the competent authorities, in particular the prosecutors, to assess in an appropriate manner the information contained in the medical certificate."* [emphasis added](40)

Anonymity and consequent impunity granted to masked police officers

Police officers serving in the Special Forces and the Rapid Intervention Forces are allowed by law to wear masks during operations, in order to conceal their identity and protect them from subsequent reprisals.(41) However, the use of these masks, and the anonymity they afford, have also frustrated attempts to investigate and bring to justice officers alleged to have ill-treated detainees. In December 2002 the People's Advocate proposed amendments to the law which would ensure that in such cases the anonymity afforded by masks is lifted. (42) In June 2003 the Prosecutor General sent a letter to the Parliamentary Commission for Legislation similarly urging amendments. "The law at present guarantees the secrecy of operations and the anonymity of those who carry out these police operations. This makes it impossible for us to investigate cases in which complaints have been made concerning the use of force and other violations of the law by Special Forces and Rapid Intervention Forces" he wrote.(43) As yet, the law has not been amended.

In 2002 Tirana District Prosecutor's Office, acting on the recommendation of the People's Advocate, opened an investigation into a complaint by four convicted prisoners. They claimed that on 22 April 2002 masked police officers of the RENE division of the Special Forces had beaten them with sticks and metal objects while transporting them in a police van from Durrës Police Station to Prison 302 in Tirana. A medical forensic examination supported their allegations. However, the investigation was subsequently suspended on the grounds that members of these Special Forces legally enjoyed the right of anonymity while carrying out their duties, and the prosecutor therefore could not identify the officers.(44)

Denial of the right to reparation, including fair and adequate compensation

Under Article 14 of the UN Convention against Torture, Albania is obliged to "ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation".

Article 44 of the Constitution guarantees compensation to persons who have suffered damages due to illegal action, or lack of action, by state employees and bodies. However, there are no provisions in Albanian law recognizing state liability for the compensation of victims of torture or other ill-treatment inflicted by police officers or other public officials. In practice, the only remedy available to victims of torture (or their relatives, if the victim has died) is to file a civil suit for compensation. To follow this route requires confidence in the judicial system, financial means to engage a lawyer or access to the limited resources of legal aid programmes provided by a few NGOs, and patience. Amnesty International does not know of any such cases, although there may have been some. In December 2001 the People's Advocate recommended to the government and competent parliamentary commissions to implement Article 44, by drafting legislation setting out the criteria and method of calculating compensation. This recommendation has not yet been implemented.(45)

Recommendations

Amnesty International calls on the Albanian government and competent authorities to ensure that Albania's obligations under international human rights law are *implemented* by means of the following measures, many of which have been previously recommended by the CPT, the People's Advocate and Albanian human rights organizations:

A. Legislation and relevant regulations

- The amendment of Articles 86 and 87 of the Albanian Criminal Code so as to ensure that they incorporate all the elements of the definition of torture as set out in Article 1 of the UN Convention against Torture, as well as other acts which do not amount to torture but which constitute cruel, inhuman or degrading treatment and punishment, as set out in Article 16 of the Convention;

- The adoption, following detailed consultation with relevant experts, of legislation introducing a juvenile justice system which guarantees the protection of the rights of the child, in line with international human rights law and standards;

- The adoption of legislation providing for state liability for reparation, including fair and adequate compensation, to victims of torture and ill-treatment or their families;

- The amendment of Law no. 8292 of 25 February 1998 so as to ensure that the right of members of Special Forces and Rapid Intervention Forces to anonymity is lifted in cases where they are alleged to have committed human rights violations;
- The introduction of specific legal provisions guaranteeing the right in law of persons taken into custody by police to be examined by a doctor including, if they so wish, by a doctor of their own choice, and the right of detained persons to inform their family or friends of their arrest, detention and place of confinement from the very outset of custody;
- The introduction of a Code of Conduct for Police Interrogations, in compliance with relevant international human rights standards;
- The revision of regulations concerning the information to be contained in medical forensic certificates.

B. Preventing impunity

- Prosecutors and judges should exercise their legal competence to initiate investigations whenever a person brought before them alleges torture or ill-treatment and whenever there are reasonable grounds to believe that an act of torture or ill-treatment has occurred, even if no formal complaint has been made;
- All complaints of torture or ill-treatment by police or other law enforcement officials should be promptly, thoroughly and impartially investigated; on completion, the methods and the findings of such investigations should be made public promptly;
- Prosecutors should be directed to prosecute all acts of torture or other physical or mental ill-treatment by police officers or other law enforcement officials under Articles 86 and 87 of the Criminal Code;
- Any police officer or other law enforcement official reasonably suspected of responsibility for torture or ill-treatment should be brought to justice; if proven guilty, the sentence imposed should be commensurate with the gravity of the crime;
- Victims or their families should receive reparations, including fair and adequate compensation, and where relevant, the means for as full rehabilitation as possible;
- Statistics on complaints of torture or other ill-treatment against police officers or other law enforcement officials, and how they have been dealt with, should be regularly published, in order to identify patterns of violations and establish appropriate remedial action.

C. Safeguards against torture and ill-treatment during arrest and in custody

- Police officers to be reminded that no more force than is necessary should be used when apprehending a person and that once the person apprehended has been brought under control, there can be no justification for striking or otherwise ill-treating or humiliating him/her;
- Police officers should be required to identify themselves to the person arrested and, on demand, to others witnessing the event. Police officers and other officials who make arrests should wear name tags or numbers so that they can be clearly identified; they should immediately inform the person of the reasons for their arrest;
- Police officers should be reminded to respect the legal provisions safeguarding the rights of detainees at the point of arrest and in custody. Namely, all detainees should be immediately informed, orally and by means of a written form, in a language they understand, of their rights, either on arrest or immediately after arrival at a police station. The detainee and the police officer should be required to confirm, by appending their signatures to the form, that the detainee has duly received this form and an explanation of his or her rights. Failure to observe these provisions and to safeguard the rights of detainees should be appropriately sanctioned;
- Detainees should be guaranteed prompt and regular access to lawyers and doctors (including a doctor of their choice) and should be given the right to notify their families from the very outset of custody. Meetings with lawyers and doctors should take place in conditions of confidentiality;
- Special emphasis should be placed on the obligation of police officers to safeguard the rights of children in detention and any violation of these rights should be severely sanctioned;
- All detainees should undergo a medical examination within 24 hours of being remanded in custody, and if this examination reveals injuries, they should be immediately re-examined by medical forensic experts;

D. Training for police officers, prosecutors and judges and medical forensic experts

- Police officers should be provided with the necessary technical resources and professional skills to carry out their duties; training programs should be subject to regular review, so as to ensure that police officers of all ranks are given practical training in how to implement national law and international human rights law and standards both in their daily duties and in situations of emergency, with particular emphasis on non-violent measures of law enforcement;

- Forensic medical experts should be provided with the resources and specific training necessary for the diagnosis of all forms of torture and other ill-treatment, and the certificates in which they set out their findings should include all relevant information as recommended by the CPT.

- Pending, and following, the introduction of a juvenile justice system, police officers, prosecutors and judges should be given specific training on the treatment of child offenders.

(1) CAT/C/28/Add.6

(2) <http://web.amnesty.org/library/Index/ENGEUR110012001?open&of=ENG-ALB>;
<http://web.amnesty.org/library/Index/ENGEUR110012004?open&of=ENG-ALB>

(3) For relevant international standards, see the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders in September 1990.

(4) Concluding observations of the Human Rights Committee, CCPR/CO/82/ALB, paragraph 13

(5) CPT/Inf (2003) 11 <http://www.cpt.coe.int/documents/alb/2003-11-inf-fra.htm>

(6) CAT/C/28/Add.6, paragraph 91 (b)

(7) These include the Albanian Centre for Human Rights (ACHR), Albanian Helsinki Committee (AHC), Albanian Human Rights Group (AHRG), Albanian Rehabilitation Centre for Trauma (ARCT), the Children's Human Rights Centre of Albania (CRCA), the Legal Clinic for Minors.

(8) Gazeta Shqiptare, 21 November 2004

(9) The High Court of Albania has challenged the constitutionality of Articles 86 and 87 of the Criminal Code on the grounds that the definition of torture they contain does not conform to that laid down in international conventions. In response, in February 2004 the Constitutional Court of Albania ruled that international human rights law lays down a basic benchmark, but that states parties to such treaties are entitled to go beyond this minimum and adopt national legislation containing broader provisions.

(10) CAT/C/28/Add.6, paragraphs 149 (a) and (b) and paragraph 251 (a)

(11) CAT/C/28/Add.6, paragraph 251 (a) and (b)

(12) The case of E.K. and Xhafer Elezi referred to above.

(13) See Archives of Tirana Court of First Instance, <http://gjykata.altirana.com/>

(14) Panorama, 22 and 23 June 2004

(15) See Article 9(2) of the International Covenant on Civil and Political Rights

(16) See Rule 92 of the Standard Minimum Rules for the Treatment of Prisoners

(17) See, inter alia, Principle 1 of the Basic Principles on the Role of Lawyers

(18) See, inter alia, Principle 24 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

(19) See Principle 13 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

(20) See Articles 9(2) and 14(3) of the International Covenant on Civil and Political Rights

(21) Article 255 (4) CCP. In the case of children this notification is mandatory; otherwise, only with consent of the person detained.

(22) AHC statement, 11 December 2004

(23) Gazeta Shqiptare, 6 August 2004

(24) Ratified by Albania in 1992

(25) See CRCA, A report on the situation of children in Albanian police stations and pre-trial detention centres, Tirana,

May 2000; a report by the Legal Clinic for Minors, Tirana, March 2002; CRCA, No one to care, Tirana 2004

(26) See CRCA, No one to care, Tirana, 2004

(27) See CRCA, No one to care, Tirana, 2004

(28) Gazeta Shqiptare, 6 August 2004

(29) See AHRG statements of 23 March 2004 and 3 December 2004

(30) Information on this case provided by AHRG and by Gjergj Bedulla's defence counsel. Two representatives of Amnesty International observed the first session of the appeal hearing by Korça Appeal Court on 3 June 2004.

(31) Although the State Police is no longer part of the Armed Forces of Albania, police officers, with the exception of those employed by the Prison Police Service, are subject to the Military Criminal Code (MCC) for offences committed while on duty (see decision no.2 of the High Court of 30 June 2004). The MCC does not provide for the offences of torture or "arbitrary acts", but under Article 14 MCC, if the offence committed is not provided for in the MCC the (civilian) Criminal Code may be invoked instead.

(32) See Articles 403 to 406 CCP

(33) Under Article 281 CCP

(34) Article 282 CCP

(35) The People's Advocate, Annual Report 2002, page 141

(36) Gazeta Shqiptare, 31 January 2003

(37) Parliamentary Assembly of the Council of Europe Resolution 1377 (2004) – Honouring of obligations and commitments of Albania, <http://assembly.coe.int/Main.asp?link=http://assembly.coe.int/Documents/AdoptedText/ta04/ERES1377.htm>

(38) Shekulli, 7 November 2003 and subsequent information provided by Altin Dani's defence lawyer

(39) The People's Advocate, Annual Report 2003, page 114

(40) See paragraph 17 of the CPT report on its visit to Albania from 22 to 26 October 2001, http://www.cpt.coe.int/documents/alb/2003-11-inf-fra.htm#_Toc7338715

(41) Article 4 of Law no. 8292 of 25 February 1998

(42) The People's Advocate, Annual Report 2002, pp. 164, 165

(43) Gazeta Shqiptare, 8 June 2003

(44) The People's Advocate Annual Report 2002, pp.164, 165

(45) According to the People's Advocate's Annual Report 2003, p.25, the government requested the Ministry of Justice to prepare a draft law, but the Ministry had not yet completed this task.

Previous