

ALBANIAN JUDGES ON HUNGER STRIKE, January 1998

For the past three weeks eight judges have been on hunger strike in the Albanian capital Tirana in protest against what they believe to be a purge of the judiciary by the ex-Communist-led government.

The facts are these:

Between 1994 and 1995 the Albanian government appointed 95 judges and 125 prosecutors who had qualified with diplomas for their posts in short, six-month courses. These courses were prepared by the law faculty of Tirana University in co-operation with experts from the Council of Europe which also provided funding of \$1.8m .

The judges who qualified in this way were appointed to the lower courts in Albania where they have worked for the past four years with minimal complaint. There has not been any noticeable extra recourse to the appeals process to overturn their decisions nor to the Constitutional Court for absence of due process. During this time they complemented their original courses by undertaking periods of extra study both in Albania and abroad.

Yet the official Albanian news agency ATA claims that these judges " have often been attacked for incompetence" and that they have "insufficient schooling". They are branded in official publications of the government installed in July, 1997, as "the six-month judges" terminology eerily reminiscent of soubriquets like the "gang of four" in Communist China. What ATA does not say is that until the late eighties lawyers, including judges and procurators, received no formal legal training under the Communist regime only courses in Marxism/Leninist legal theory, i.e. that the law was the instrument of the ruling class. The six-month courses were the first attempt to bring the Albanian legal system up to acceptable international standards as approved by the Council of Europe.

Articles 5, 19, 20, 40 and 48 of a draft law on the judiciary published on 20th December 1997 stipulated that all advocates, prosecutors and judges must have completed a full course of law (a minimum period of 4 years) in an approved law faculty. As this draft law failed to acknowledge the status of their diplomas and as it had a retrospective dimension the judges appointed after the six-month courses considered themselves to be the victims of constructive dismissal. It is anticipated that 300 judges and 125 prosecutors will be removed by this proposal which became law on 23rd December 1997. One of the judges, Luan Daci, has been formally dismissed already.

On 4th January eight judges put into effect their threat to go on hunger strike to protest against this breach of judicial independence. They were also protesting another change in the law which altered the composition of the High Council of Justice. 9 out of 13 judges will now be political appointees reversing the weighting under [the previous non-Communist government (1992-97).

In the first few days of their strike the judges lodged in the Catholic church of St. Anthony in Tirana but the priest asked them to leave after intimidation from the police. They are now housed in Ali Pash Gucia Street where their protest has entered its fourth week.

British Helsinki Human Rights Group members visited the eight judges on 16th and 21st January to hear their account of the strike and to monitor their condition. In the five days between the two visits their condition had deteriorated rapidly. On the second visit, only two of them were able to answer questions coherently. Agim Ibraj had been taken into hospital with a stomach haemorrhage and returned with medicines on 15th January. However, when doctors decided he needed further treatment and that another hunger striker needed hospitalization for anaemia the main hospital in Tirana refused to admit them saying there

was no bed-space. Although they were young and fit these men have rapidly failing health and their death must be imminent if no solution is found to the present impasse.

The judiciary is not alone in facing a purge. In practice, large parts of the public service have already been subject to arbitrary dismissal. In addition to the police, army and regular civil service, the British Helsinki Human Rights Group's rapporteurs met librarians, archivists and museum staff who had received one-sentence letters of dismissal from the Prime Minister, Fatos Nano, which offered no reasons for their removal. Dismissal without warning has become commonplace. The current assault on the judiciary marks an intensification of the new regime's attempt to consolidate control of all institutions in its hands.

Responses:

The Albanian Government:

The Albanian Minister of Justice, Thimio Kondi, has responded with fierce criticism and abuse to criticisms of his proposals to change judicial personnel. While seeming to relent by offering the "six-month judges" places on future training programmes he has not stated that they can continue serving as judges while they take of in any further education these judges for professional misconduct or incompetence before the Cassation Court they fear not only for their future positions but also for the very independence of the Albanian judiciary. The composition of the Constitutional Court and the Cassation Court are under threat and their members' integrity and loyalty to the country has been challenged by claims by government ministers that, among other things, they are "spies." These fears are only compounded now that the High Council of Judges is composed of a majority of political appointees. The Albanian government seems unable to understand the importance of the principle of separation of powers. Prime Minister, Fatos Nano, has said that it is more democratic for parliament to control the judiciary than the profession itself. Furthermore, all judges may be subject to tests of competence as yet to be determined and supervised by as yet unnamed examiners.

The Opposition:

Since the shooting of its MP Azem Hajdari in Parliament in August, 1997, the main opposition Democratic Party of Albania has not taken its seats in the Parliament. Many of its members have been the victims of politically-inspired attacks and murder in the last few months and it is fighting on many fronts for survival. With little recourse to the official media and sidelined by the international community the DP and its allies have limited opportunities to address the plight of the judges.

Information Blockade:

One reason why so little has been heard about the hunger-striking judges (and former political prisoners who are on strike against the readmission of former Sigurimi secret police personnel to all branches of the public service) is that access to the Internet is tightly regulated in Albania. The only non-governmental internet-server, the Albanian Open Society Foundation, is not adding new subscribers from the current opposition or independent NGOs to its subscriber-list. Only strictly non-political addresses and so-called GONGOs (Government-organised [or approved] non-governmental organisations seem to have access to the Albanian Open Society's server. This makes obtaining reliable and up-to-date information from other than pro-government sources very difficult.

The International Community:

The lack of interest of diplomats, international human rights groups and journalists in the fate of the hunger strikers is striking. Various delegations from the OSCE, the European Parliament and the Council of Europe have visited Albania during the hunger strike. In fact, two of the seriously weakened men were obliged to go to the luxury Rogner Park Hotel in Tirana to meet a visiting OSCE delegation (which chose not to leave its precincts to go to their less salubrious lodgings). The Council of Europe has expressed its concern which is not surprising since by unilaterally overturning CoE-approved and funded programmes the Albanian government is seriously challenging the Council's legitimacy. However, the OSCE for its part seems to be pursuing a different agenda by urging the Albanian Parliament to adopt a new constitution which would abrogate all former legal structures like the Constitutional Court and the judiciary as a whole. Given the OSCE-approved two-thirds majority held by the current government, pushing through a new constitution is tantamount to approving its arbitrary exercise of power against anyone holding office before who does not satisfy any criteria established to suit the new regime's purposes. It should be remembered that the Minister of Justice, Mr Kondi, was a vociferous opponent of putting a constitutional draft to the Albanian people in 1994.

Human Rights Organizations:

The Albanian Helsinki Committee was extremely active in the months leading up to the collapse of the last government in 1997 when it alleged all manner of human rights abuse in the country. It received generous funding from foreign sources to pursue its activities. However, since the Socialists returned to power in July 1997 they have remained remarkably silent despite allegations of serious human rights abuse. Certainly, no member of the Albanian Helsinki Committee has visited the hunger strikers to hear their concerns. Foreign groups like Human Rights Watch/Helsinki and the International Helsinki Federation have been distinguished by their silence in public about this impending tragedy. Considering the daily death-toll in politically-related violence the lack of attention by international human rights groups to Albania's continuing agony is deeply disturbing.

Comments:

After the fall of its Communist government Albania was not alone in seeking to replace discredited public officials with fresh blood. East Germany also conducted a thorough process of lustration throughout its legal and educational system as well as the civil service. Many, including Albanians themselves, would argue that the extreme nature of Albanian Communism legitimated such a process. Even so, in many walks of life people continued to occupy positions they had done in the past and no thorough-going purge in fact took place.

By turning its back on the principles that underpin the sufferings of the Albanian hunger strikers the international community is setting a dangerous precedent. Any time a regime changes it is now implicitly authorized summarily to dismiss any group of people it does not like and replace them with its own appointees. By deftly shifting the goal posts and stressing the urgency of a new constitution the OSCE, in particular, is irresponsibly absolving the Albanian government from respecting its obligations under the present constitution and international law. This does not contribute to acceptance of OSCE mediation among many Albanians and may even engender hostility to its representatives.

The Albanian government itself should take the lead and scrap the retrospective element of the law on the judiciary and allow all serving judges and prosecutors to remain in their posts. A tit-for-tat situation where whole ranks of personnel are replaced every time a government changes is against acceptable standards in modern democracies founded on the rule of law.

The Albanian government should also not, as has been alleged, harass the families of the striking judges. It should also afford the 8 men the basic medical care that they require. Members of the present government might reflect that its supporters abandoned a hunger strike after only 3 days in May, 1996. The continuing protest of the 8 judges might rank as fanaticism in the eyes of supporters of the new regime but to many others it is a potentially explosive act of selflessness and bravery.