

## ALBANIA 1998: Parliament versus Constitutional Court

While the world's attention has been focused on the recent unrest in neighbouring Kosovo, Albania's Socialist Party-dominated Parliament has taken its ongoing conflict with the Constitutional Court to a critical level. On 14 February, Parliament discharged Chairman of the Constitutional Court, Rustem Gjata, on charges that he had been a "voluntary collaborator" of the communist-era secret police, the Sigurimi. Two days later police officers, under orders from Interior Minister Neritan Ceka, physically removed Gjata from his office.

The sacking of the Chairman of the Constitutional Court by the Albanian Parliament not only serves as yet another attack on the independence of the judiciary, it also runs contrary to Albanian constitutional law. Article 22 of the Constitutional Provisions states that, "the Constitutional Court judge cannot be investigated, detained, arrested, or condemned without a prior authorization from the Constitutional Court." Therefore it is solely the Constitutional Court, and not Parliament, which has the authority to remove one of its members.

Chairman of the Cassation Court Avni Shehu, in an interview with Voice of America radio, underlined the illegality of Parliament's decision:

"If we refer to the Constitutional Law, then the Parliament's decision is groundless. This law defines the cases when the function of constitutional judge terminates. These are well-defined cases, and do not allow the termination of the function for other reasons. None of these causes defined in this Constitutional Law is mentioned in the Parliament decision. The chairman of the Constitutional Court is elected by the other judges' votes, and not by the Parliament. The Parliament has in its own competencies the nomination of some constitutional judges, but their discharges is not foreseen in the list of Parliament competencies."

Shehu, a respected legal scholar, also criticized the pretence under which Gjata was removed, stating that "(t)he law on Official Figures Scrutiny is not a constitutional law, but rather an ordinary law. When there is any conflict between the two laws, then the constitutional law is the one to be applied."

### Roots of the conflict

Though purges in the judiciary have been well-documented and carried out on a wide-scale basis since the former-Communist Socialist Party assumed power last July, the current conflict leading to the dismissal of Constitutional Court Chairman Gjata can trace its roots to a Court decision made last year with which Parliament was highly displeased.

Last November the Constitutional Court ruled on a law passed by Parliament which gave government the authority to appoint an administrator with wide-ranging powers to scrutinize companies it determined were engaged in unlawful business practices. The case was brought to the court by the owner of the VEFA company, which had operated as a money-lending and investment company. While the Court agreed in principle with the law, it struck down Article 7 as unconstitutional. This article granted the government-appointed administrator broad authority to block the assets of the firm being investigated. In its decision, the Court argued that assets should not be seized from a private company solely on orders from the executive; that is, without due process of the law.

This decision was sharply criticized in Parliament, and the Socialist-owned and government press began a campaign to discredit the Court. Members of the government openly accused the Constitutional Court at the time of being corrupt and of serving foreign intelligence agencies. Justice Minister Thimio Kondi himself ominously referred to the Court as a "destructive force" in Albania.

Within days Parliament passed an amendment to a different constitutional article which effectively negated the Court decision and affirmed the state's right to "control and to be owner of the property of the private subject for the protection of the interests of the damaged." Further, under this amendment the government-appointed administrator of any company in question has the right to freeze the past contracts signed by the company and the right to sell its property, entirely or partly, when the administrator considers it reasonable.

Also one week after this decision, Parliament passed an amendment to the Constitutional provisions stating that the normal rotation of three members of the nine-member court must take place within 30 days. This decision was made, according to the official news agency ATA, because the Court "has

violated consciously the Constitutional law until now," suggesting the move was one of Parliamentary revenge against a Court decision with which it did not agree.

The Constitutional Court, in turn, ruled that this rotation amendment was itself unconstitutional and that the rotation should take place on 18 May 1998, a date arrived at based on the appointment of judges who replaced the three judges who resigned in 1994. This stand-off appeared irreconcilable, and finally OSCE Ambassador Daan Everts agreed to attempt to help find a compromise. On 20 February Everts' efforts paid off and a compromise was reached, with the Constitutional Court agreeing to move the scheduled rotation up to take place on 31 March.

That same day, however, Speaker of Parliament Skender Gjinushi remarked that he did not consider the March 31 replacement of the three judges a "rotation," raising the spectre that Parliament would demand that three additional judges be replaced, providing the current government the opportunity to appoint a solid two-thirds majority to the Constitutional Court. Just days before Gjinushi's statement a British Helsinki Human Rights Group observer mission advised OSCE Ambassador Everts that, according to Constitutional Court Chairman Gjata, Parliament was planning to dismiss additional judges from the Constitutional Court. Everts rejected the suggestion out-of-hand.

Just one week after the compromise on the Court rotation, on 27 February, Speaker of Parliament Gjinushi told the official news agency ATA that, since the Court did not make the rotation within 30 days of the original November order, the Court was itself automatically suspended and therefore not legally competent to make decisions until after the 31 March compromised rotation date. He also promised at that time that Parliament would examine a request by the Scrutiny Commission to dismiss Court Chairman Gjata.

The Public Figures Scrutiny Commission took action against Court Chairman Gjata soon thereafter when, on 4 March, in a surprising and controversial move Scrutiny Commission Chairman Nafiz Bezhani went on state television to present his "findings" on Chairman Gjata, later telling Speaker Gjinushi to "remove Gjata or I will quit". Ironically, Bezhani has himself been accused of being a former agent of the Communist-era secret police in the port city Durres. It should also be noted that Parliamentarians are exempt from the Commission on Scrutiny of Figures.

On 14 March, Parliament moved against Constitutional Court Chairman Gjata, using police forces to keep him from returning to his offices.

## Responses

Immediately after the successful mediation of OSCE Ambassador Everts to arrive at a compromise rotation date, Constitutional Court Chairman Gjata and Chairman of the Socialist Party parliamentary group Pandeli Majko agreed to halt the escalating tension between the legislative and judicial branches of government and suspend the charges and counter-charges that had characterized the conflict. This compromise was unilaterally broken by the government when it allowed Scrutiny Commission Bezhani to present his "findings" on Gjata on state television, in itself a punishable offence under Albanian law.

On 7 March the Venice Commission ruled that the suspension of the Constitutional Court "is a solution which brings an unequal division; it is against the interests of all citizens of the state, by depriving them of the right of defending their constitutional rights, meanwhile...the state is deprived of the guarantees of one of the most important constitutional and democratic institutions." The Court remains suspended, however, and the draw to replace the three members took place on 16 March, two days after its Chairman was forcibly removed from office.

Parliamentary moves against other sectors of the judicial branch of government continue unabated. On 20 March the High Council of Justice dismissed Tirana court judge Qazim Gjonaj and advised fellow Tirana judge Skender Haluca of his imminent dismissal. Gjonaj was previously Chairman of the Tirana Courts until the High Council of Justice stripped him of that title three months ago. Several further dismissals are reportedly being planned by the High Council. The Socialist-dominated Parliament changed the law on the High Council of Justice, setting aside 70 percent of the seats for Parliament to appoint. Previously the majority of the High Council was chosen from within the legal profession itself. Prime Minister Fatos Nano has said that it is more democratic for Parliament to control the judiciary than the profession itself.

Radio Free Europe reported on 21 March that a high-ranking Council of Europe official expressed concerns about the independence of the judiciary in Albania and that the Council may consider suspending Albania's membership. The situation is alarming and it is to be hoped that the Council will maintain pressure on the government in Tirana to abide by European norms.