



ALBANIAN HELSINKI COMMITTEE



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# REPORT ON THE SITUATION OF RESPECT FOR HUMAN RIGHTS AND FREEDOMS IN ALBANIA FOR 2019



TIRANË, MARCH 2020

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## CONTENTS

<b>Executive Summary .....</b>	<b>3</b>
<b>I. SITUATION OF RESPECT FOR HUMAN RIGHTS AND FREEDOMS DURING 2019</b>	
1. Implementation of Justice Reform .....	5
2. Fight against corruption and organized crime .....	7
3. Right to elect and to be elected .....	8
4. Vulnerable groups' access to justice .....	9
5. Rights of marginalized groups from the standpoint of AHC .....	9
6. Provision of free legal services to citizens, representation in domestic courts and the Strasbourg Court .....	10
7. Respect for the rights of persons whose liberty has been restricted .....	11
8. Approach of youth to religious tolerance .....	13
9. Freedom of peaceful assembly .....	13
10. Freedom of speech .....	14
11. Public consultation and inclusivity in decision-making .....	14
<b>II. ANNEX 1 .....</b>	<b>15</b>
<b>Categorized data for complaints addressed during 2019</b>	

## EXECUTIVE SUMMARY

**i.** During 2019, AHC undertook monitoring missions, awareness campaigns, public reactions in cases of violations of human rights, and exercised positive pressure on state institutions for them to take measures for the effective exercise and non-violation of these rights. AHC continued to provide free legal services for groups in need and represented successfully cases of public interest such as the pollution of Gjanica river at the Administrative Court of first instance in Tirana and two cases won at the Strasbourg Court.

**ii.** The vetting process represents one of the most important pillars of reform in the justice system. Until the end of December 2019, only 27% of the subjects had undergone the process in the first instance, while the Independent Qualification Commission has exhausted almost half of its mandate (2.5 years out of 5 years in total). Citizens' cooperation with the vetting process is proactive, an indicator of their confidence in its results.

**iii.** Maturity of the vetting institutions, complaints by Public Commissioners, IMO recommendations, and orientations issued by the Special Appeals College have contributed to a consolidation of jurisprudence of vetting and the addressing of controversial issues about different standards observed in the past. The criterion of assets is the dominating one that leads to the dismissal of a considerable number of subjects. In spite of improvements, implementation of the principle of proportionality on violations encountered in the criterion of assets, it may not be said that it has pursued a unified line of decision making by vetting bodies, particularly on subjects that have similar factual circumstances.

**iv.** During 2019, two important bodies of the justice system were not functional: the High Court and the Constitutional Court, thus obstructing citizens' access to these institutions. Vacancies have led to a considerable backlog of criminal, civil, and administrative cases at the High Court. Referring to data made available by the HPC and HJC, there have also been vacancies in the lower courts and prosecution offices, which has led to delays in the adjudication of cases.

**v.** The delay of about 20 months in establishing the High Judicial Council and the High Prosecutorial Council, the difficulties or delays that these institutions encountered in terms of supplies of infrastructure, personnel, and budget, led to their encountering a high work volume. The activity of the two Councils during 2019 enabled the approval of a series of normative acts that conditioned their effective decision making, the unblocking of the impasse for the appointment and assignment to duty of magistrates graduating at the School of Magistrates in past years, the approval of quotas about the admission to preliminary training of new magistrates at the School of Magistrates, the appointment of the General Prosecutor, the creation of the special prosecution office and court against corruption and organized crime (in spite of the challenges that they continue to face), etc. The activity of these Councils needs to address better during 2020 transparency of the materials of commissions of the Councils on official websites, the publication of transcribed minutes of meetings of the HPC and audio ones of the HJC, the determination of priority issues to be addressed by HPC during 2020, re-organization of the courts by the HJC, realization at a dynamic rate of procedures for the selection of members of the High Court by the HJC, particularly of members coming from the judiciary, etc.

**vi.** JAC's decision making highlights a low number of candidates that meet the formal and legal criteria and conditions both for the Constitutional Court and for High Justice Inspector, an indicator of the fact that these criteria are strong and human resources interested in these positions are insufficient to ensure competitiveness according to legislation in force.

**vii.** In accordance with legislation in force, it is our opinion that the HPC, HJC and JAC should draft strategic policies for filling vacancies in the justice system, which would convey confidence for the meritocracy and impartiality of the process among legal professionals and encourage young professionals who meet the criteria to run for these posts and to bring the changes demanded by

citizens with regard to delivering justice with impartiality, professionalism, transparency, and efficiency.

**viii.** The fight against corruption and organized crime needs to be intensified while the role of SPAK and the Special Court is decisive in this regard. These institutions were established late at the end of 2019. In our opinion, their activity during 2020 should convey to the public the confidence that the phenomenon of corruption and organized crime are punished impartially and not selectively, no matter what the affiliation, convictions, or official standing of the persons involved in these crimes. Also, the need arises for the Assembly to revise the legal framework about the need for internal corruption whistleblowing units because the implementation of legislation about whistleblowing and protection of whistleblowers is at very low levels.

**ix.** Elections for the local government bodies on June 30, 2019, took place in an unusual environment due to the boycott by opposition parties and in a very highly politicized situation, accompanied by different forms of pressure on voters on whether to exercise their constitutional right to vote. The political agreement reached between the parties in the context of electoral reform is positive because it enables the involvement of the opposition outside parliament. On the other hand, the manner in which the discussion of proposals by the different sides is being conducted about amendments to the Electoral Code violates transparency, inclusivity, and public consultation in the conduct of this important reform. To date, AHC finds that the parties have not demonstrated a real will for the full depoliticization of electoral administration bodies, including the CEC.

**x.** During 2019, AHC handled 187 complaints received from citizens. About 90% of these complaints have to do with the category of individuals whose liberty has been restricted. About 10% of complaints came from other citizens related to domestic violence, discrimination in labor relations, and complaints toward the justice system.

**xi.** Groups in need face different forms of discrimination with the most affected being representatives of the Roma and Egyptian minority, persons with different sexual orientation or because of their gender identity, women, and persons living in very poor living conditions and poverty. Domestic violence remains very disturbing, leading to the tragic loss of life of several women. Preventive mechanisms for domestic violence were not effective.

**xii.** In September 2019, the Strasbourg Court, in the case represented by AHC lawyers, *Prizreni vs. Albania* (petition no. 29309/16), found that the death of a convict in custody under the supervision of authorities was not effectively investigated by the prosecution office. AHC expresses its concern about the increase of the number of complaints by citizens about the use of violence inside closed institutions (prisons/ commissariats), namely 10 cases in 2019, compared to 3 complaints handled during 2018. Medical personnel visiting these citizens does not file denunciations to the prosecution office while the monitoring conducted by AHC highlights prosecution investigations that are not complete or comprehensive.

**xiii.** AHC has joined media organizations to discourage the approval of the legal anti-defamation package proposed by the Council of Ministers, which violates international standards and the principles of freedom of the media and freedom of speech. Also, together with 23 civil society organizations, we reacted to discourage the approval of the anti-KÇK legal package, because it violates the independence of the prosecution office and fundamental human rights and freedoms. Calls by organizations against these two packages were accompanied by indifference on the part of the executive and legislative branches and, in some cases, statements carrying insulting and intimidating tones toward them.

**xiv.** In general, the public consultation of legal initiatives remains problematic. It has formal connotation, is conducted within tight deadlines and in contravention of legal deadlines, and does not reflect the reaction of institutions to the suggestions provided by groups of interest and civil society organizations.

# **SITUATION OF RESPECT FOR HUMAN RIGHTS AND FREEDOMS DURING 2019**

## **THE FULL REPORT**

### **1. Implementation of justice reform**

AHC continued its professional and objective monitoring of the process of vetting of judges and prosecutors in the country. Statistical data on the progress of the vetting process until December 2019 indicate that for a period of almost 2 years, the first instance vetting body – the Independent Qualification Commission – issued 223 decisions on subjects of re-evaluation (judges, prosecutors, legal aides, etc.). The re-evaluation process continued at a relatively slow pace as only 27% of subjects underwent the vetting process in the first phase. Of these, 83 judges/prosecutors were dismissed from office and 97 were confirmed in their posts; for the remaining part, the vetting process was dropped or interrupted as a result of their resignation or retirement. Meanwhile, the Public Commissioner or the subject of re-evaluation exercised to the right to appeal to the College in 102 cases. The Special Appeals College issued decisions for 46 complaints. During the first half of 2019, there was an acceleration in the vetting process, in comparison to 2018. However, there was a slowing down of the work of the IQC during the period September-October 2019.

During 2019, citizens played an important role in the progress of the process, by submitting complaints to the vetting bodies and the International Monitoring Operation (IMO). Citizens' cooperation in the vetting process is viewed as proactive, which is an indicator of their confidence in its results.

Compared to the past, the standard of arguments for decisions issued by the IQC and SAC indicates improvement. This is also a result of the maturity in the experience of the institutions. SAC decisions have a better and more consolidated standard as regards the structure of the decision as well as its quality. Decisions of both the IQC and the SAC contain the opinion of minority or parallel opinions in a detailed manner.

The maturity of vetting institutions, IMO recommendations, and complaints by Public Commissioners have contributed to a consolidation of the jurisprudence of the vetting bodies. All of these factors, including the guidance provided by the Special Appeals College appear to have had a positive impact on the improvement and addressing of some controversial issues regarding the different standards observed in the past. We notice this in elements that have to do with the notion of the legitimate source of incomes, insufficiency of incomes, the timespan of the vetting process (whether the process will only extend over the time the judge/prosecutor was exercising his/her duties or also before it), inaccuracy in filling out the vetting declarations, and inaccuracies noticed through the years in the periodical asset disclosure statements that subjects presented to the HIDAACI, the comparison between these declarations, etc.). It is worth emphasizing that the College has processed two guiding methodologies with indicators and sub-indicators for the evaluation of the criterion of professional capabilities and a methodology for the evaluation of the criterion of assets. The request to elaborate standards for professional evaluation has been addressed by the IMO observer and Public Commissioners, who identified findings and deficiencies regarding cases reviewed by the IQC on the criterion of professional capabilities.

It is also a positive fact that all three vetting bodies have carried out an enhanced administrative investigation on all three criteria, not only on the data and findings resulting from the vetting

support bodies. Nevertheless, we still find that the criterion of assets is the dominating one that has led to the dismissal of a considerable number of subjects compared to the other two criteria. We cannot say that the application of the principle of proportionality on violations encountered in the criterion of assets has pursued a unified line of decision-making by the vetting bodies, particularly on subjects that have similar factual or procedural circumstances.

In spite of the indispensability of justice reform, based also on the information from competent institutions, it appears that stark vacancies were created in both courts and prosecution offices, which led to obstacles in citizens' access to the justice bodies. During 2019, two important bodies of the justice system were not functional: the High Court and the Constitutional Court. Vacancies created a backlog of a considerable number of criminal, civil, and administrative cases in the High Court.

At the end of 2018, by a delay of almost 20 months after the legal provisions, the two new governing bodies of the justice system were established: the High Prosecutorial Council (HPC) and the High Judicial Council (HJC). From the moment of their establishment, the two Councils encountered difficulties and deficiencies with regard to infrastructure, budgets, and necessary personnel. The Councils also faced a high volume of work with regard to important issues of governing the prosecutorial and judicial systems.

Some of the positive aspects noticed in the activity of the High Prosecutorial Council are:

- a) Creation of an official website, which is easily accessible, well organized, and simple to use.
- b) Approval of bylaws that were necessary for the Council to exercise its priority competences, such as: a) establishment of SPAK; b) selection of the General Prosecutor; c) rules having to do with the ethical and professional evaluation of subjects in the re-evaluation process.
- c) Permanent appointment of 8 prosecutors at the Special Prosecution Office against Corruption and Organized Crime and the appointment of the director of this prosecution office.

For the subsequent period, AHC deems it necessary for the HPC to address in its activity: fulfilling legal requirements for the publication of summaries of minutes of meetings, reasoning of decisions of an individual character, publication of materials regarding the activity of HPC's Standing Committees and Special Committees, the need to establish priority issues to be addressed by the Council during 2020, the need to further complete the Council's normative framework by approving relevant acts, etc.

Some of the positive aspects noticed in the activity of the HJC during 2019 are:

- a) Approval of the Strategic Plan 2019-2020, which sets a series of priorities;
- b) High volume of approval of numerous bylaws, as well as a series of individual and collective acts for judges;
- c) Creation of the Personal File and Register of Judges (in document and electronic form), etc.

Challenges for the HJC's activity during 2019 were issues such as: non-dynamic pace in the selection of non-judge candidates for HJC members, failure to start procedures to fill vacancies in the High Court, the need to improve the transparency of the HJC with regard to meetings of its standing and temporary committees, the need to further improve the official website, reorganization of the courts, the dynamic pursuit of procedures for the selection of High Court members,



particularly those representing the judiciary. Rules with regard to the transfer, delegation, and temporary transfers of judges by the HJC need to be harmonized, clarified, and improved further. The study of decisions and deliberations in plenary meetings did not clarify why the Council never used during the first half of 2019 temporary assignments according to article 59 of law no. 96/2016.

Although members of the Judicial Appointments Council (JAC) have been appointed twice in a row in the past years (2017 and 2018), this institution, without relying on any consolidated legal basis, did not function, which led to obstacles for the functioning of the Constitutional Court and the appointment of the High Justice Inspector. The JAC elected for 2019 was the first that began functioning fully. January 2019 marked the start of work of the JAC's activity.

During the first month of its work, the JAC's main activity was voluminous due to the preparation of its by-laws. After their approval, the JAC began procedures in order to fill vacancies in the Constitutional Court and the position of the High Justice Inspector. During the period January 15 – June 30, 2019, the JAC took 30 decisions regarding 20 candidates withdrawn from the race (HJI and CCC) and 14 decisions on 7 candidates banned from running (CC). Some of them withdrew due to the inability to submit documentation (for those who presented reasons in their resignations). The JAC's decision making on allowing the running of subjects who had expressed an interest in the CC and HJI, for the verification and ranking of candidates, took place during the second half of 2019 and the beginning of 2020. We notice a low number of candidates who meet the criteria and formal-legal criteria both for the CC and HJI, an indicator of the fact that these criteria are strict and that human resources interested in these positions are insufficient for guaranteeing high competitiveness among candidates. For instance, in some cases, the same names ran for some vacancies in CC members.

At the end of 2019, 3 vacancies in the Constitutional Court were filled, while there was also an unusual situation for the new reform in the justice system regarding the second vacancy in this Court. Two names appear "appointed" (one through silence and another by decree of the president). The creation of this impasse was the result of failure to respect the chronological order in filling the vacancies in this court, announced by the President and the Assembly, which was accompanied by:

- i) Lack of constructive and professional dialogue in the three constitutional institutions – President, Assembly, and JAC;
- ii) The submission by the President in November 2019 of a criminal referral to the Special Prosecution office SPAK against the JAC Chair, accusing him of the criminal offense of "Abuse of office;"
- iii) Consultation of the Venice Commission, an institution whose opinion has been solicited on the process for the appointment to the Constitutional Court submitted by the Speaker of the Assembly in December 2019 and followed by a similar request submitted by the President of the Republic in January 2020.

**Delays in the establishment of the High Justice Inspector (elected by the Assembly in January 2020), after a certain number of candidates failed to meet the formal-legal criteria, paralyzed the normal functioning of the disciplinary mechanism on judges and prosecutors during 2019.**

## **2. Fight against corruption and organized crime**

Since more than three years, law no. 60/2016 "On whistleblowing and the protection of whistleblowers" has entered into effect in the country. Among others, its purpose is to prevent and



strike corruption in the public and private sectors, encourage whistleblowing, and the protection of corruption whistleblowers.

In its monitoring of the activity of the High Inspectorate for the Declaration and Audit of Assets and Conflict of Interest (HIDAACI) and 11 line ministries, AHC found that **there appears to have been no internal whistleblowing in the line ministries. Meanwhile, until the end of 2019, there appears to be only one external whistleblowing case on the Ministry of Justice, submitted to HIDAACI as the institution responsible for reviewing these cases.**

The main reasons that led to the lack of whistleblowing by a not-so-small number of employees in the line ministries appear to be: lack of information on legislation regarding whistleblowing; lack of confidence that the whistleblowing would be reviewed impartially and professionally; fear of retaliation; existence of other parallel platforms for reporting/complaints, lack of facts or evidence for certifying corruptive acts, etc.

**The delayed establishment of SPAK at the end of 2019, due to the lack of candidates, and the effects of the vetting process, had an influence on slowing down the fight against corruption and organized crime.**

Reform in higher education did not address and therefore did not contribute to fighting corruption among leading officials, academic and logistics personnel in the higher education system. The survey conducted by AHC with a large sample of 1799 students of 4 universities in the country,<sup>1</sup> as well as cases published in the media, highlight the presence of corruption among academic and logistics personnel. There is concern about the reporting by surveyed students about sexual favors that their lecturers seek, with 25% of students (or 1 in four students) surveyed stated that they were the subject of requests or pressure for sexual favors by lecturers in exchange for grades.

### **3. The right to elect and to be elected**

With the assistance of 115 observers, AHC monitored the electoral process for the election of local government bodies on June 30, 2019. Reporting by observers was accurate and objective although the elections took place in a polarized and abnormal situation. The excessively politicized situation was accompanied by different form of pressure on voters, for them to exercise or not their constitutional right to vote. Compared to turnout of voters in previous parliamentary elections of 2017, we found a decrease of 23.76% in the number of voters; compared to elections for local government bodies in 2015, there were 24.9% fewer voters.

It is worth emphasizing that the pre-election process was accompanied by numerous incidents and acts of violence undertaken toward Zonal Election Administration Commissions (ZEACs). On voting day, in some municipalities of the country, AHC observers noticed a presence of unauthorized persons, in the internal premises of voting centers (VCs) and outside them but within the perimeter of the building where these centers were located. Meanwhile, the vote-counting process took place in a generally calm and transparent environment, but was characterized by delays in the creation of vote-counting groups (VCGs).

**During the monitoring, we found that opposition parties did not register as electoral subjects. The total number of candidates for Mayors in these elections was 97, of which only 11 were women. The figure indicates a low participation and representation, about 10% of women,**

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<sup>1</sup> “Aleksandër Moisiu” Durrës, “Aleksandër Xhuvani” Elbasan, “Ismail Qemali” Vlorë and “Luigj Gurakuqi” Shkodër

**running for mayors. Meanwhile, there was only one candidate for mayor in 31 municipalities.** The lack of alternative candidates and the fact that our legislation does not envisage a minimum of votes for winners (the winner shall be that candidate who got the most votes), led to the elections for these municipalities having no competition.

AHC paid special attention to the activity of the Parliamentary Special Committee on Electoral Reform. The polarized situation also influenced the marked slowing down of its work. The consulting activity of this committee had normal tones and stakeholders were summoned with very little advance notice to make their contributions to the process. AHC notes that OSCE/ODIHR's key recommendation for the depoliticization of all levels of election administration bodies was not reflected in the amendments proposed by the experts attached to this committee.

Regarding electoral reform, AHC has contributed with its proposals and suggestions, considering OSCE/ODIHR recommendations. In the reports for the last 3 elections, AHC also issued concrete proposals for all three drafts that the Electoral Reform Committee sent to it. It is a positive fact that recently, representatives of the opposition outside parliament are also participating in the meetings of this committee, although the political agreement achieved between the sides, the agreed deadline (March 15) and the manner in which the discussions are being conducted, have disallowed inclusiveness and consultation with civil society organizations and stakeholders of this electoral reform.

#### **4. Access of vulnerable groups to justice**

Approved in the context of justice system reform, the law no. 111/2017 "On juridical aid guaranteed by state" aims among others at creating a system for providing free juridical aid, ensuring equal access of all individuals to the justice system. **Although the law entered into force on June 1, 2018 (one year and a half ago), AHC finds that the process of its implementation has been accompanied by considerable delays in terms of the drafting and approval of its by-laws.**

During the period December 2018 – October 2019, AHC monitored the functioning of the scheme for offering primary free legal aid. Law no. 111/2017 envisages as part of the mechanism for providing primary legal aid: a) centers for the provision of primary legal aid services, b) legal clinics at higher education institutions, and c) non-profit organizations (NPOs) authorized by the Minister of Justice. Our monitoring highlighted that **only the Primary Free Legal Aid Services Center at Elbasan Municipality began functioning. With regard to NPOs, they are yet to be authorized by the Ministry of Justice although the by-laws and regulations for authorization procedures have already been approved. As a result, the financing scheme from the state budget for NPOs is yet to start. Legal clinics that are functional since before the law entered into force are placed at universities and do not have financial support from the state.**<sup>2</sup>

#### **5. Rights of marginalized groups from AHC's standpoint**

Marginalized groups continue to face different forms of discrimination. Among those most affected are representatives of the Roma and Egyptian minorities, persons with different sexual orientation or due to their gender identity, women, as well as persons living in very poor conditions. AHC

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<sup>2</sup> For more, please see: <https://ahc.org.al/wp-content/uploads/2019/12/Raport-Ndihma-Juridike-per-publikim--Komiteti-Shqiptar-i-Helsinkit.pdf>

notes that there is a need for a greater and more effective engagement of the state for fulfilling the social objectives envisaged in article 59 of the Constitution, for employment in appropriate conditions of persons able to work, to guarantee the highest different health, physical, and mental standards, for guaranteeing a healthy environment, for caring and assisting the elderly, orphans, and the disabled, etc.

In spite of changes in legislation, many Roma and Egyptian families, as well as other families in need, those that do not have adequate housing and continue to not get effective benefits from social housing programs. AHC has received and handled complaints about violation of rights from persons belonging to the LGBTIQ community and has referred them to responsible institutions.

The phenomenon of domestic violence continues to claim the lives of many innocent girls and women and to violate their physical and mental integrity. **Domestic violence referral mechanisms have not functioned properly while the denunciations by girls and women to state police bodies are not always given proper importance.**

Based on its handling of complaints over property issues, **AHC has noticed lack of respect for legal deadlines and procedures by the National Inspectorate for the Protection of the Territory (NIPT).**

The return of Albanian families and citizens to their country of origin because they did not meet the conditions for remaining in European Union countries or because they crossed the border illegally led to consequences and difficulties regarding their integration into labor, schooling, benefiting from social support programs, etc. In the course of its activity, with the support of a network of psychiatrists and psychologists, AHC is providing psychiatric, psychosocial, and psychological support for 44 citizens, of which 35 have returned from Germany or other EU countries. This assistance is also provided for citizens affected by the earthquake, for the purpose of their reintegration in social life, and their access to services by state institutions.

## **6. Offering free legal services for citizens, representation in domestic courts and the Strasbourg Court**

**During 2019, AHC processed 187 complaints from citizens. About 90% of these complaints came from individuals who have been deprived of their liberty.** Individuals in custody mainly complained about maltreatment by uniform staff of state police and in the prison system, lack of adequate medical treatment, violation of due legal process in justice bodies, violation of privacy and family life due to failure to consider their requests for transfers to institutions close to their families' places of residence. **About 10% of the complaints came from other citizens regarding domestic violence, discrimination in labor relations, and complaints on the justice system.**

In cases when we noticed violations of the rights and freedoms of these individuals, AHC addressed responsible state bodies with recommendations for reinstating violated rights. State bodies were mainly proactive in providing responses to official letters by AHC. It is worth highlighting as positive the cooperation with the General Directory of Prisons, which reacted on every complaint we referred to it, although in some instances, reflection on the addressed recommendations did not lead to changes in the addressed situation.

During 2019, AHC continued to pursue some special cases of human rights violations with the domestic courts and the Strasbourg Court. Pursuing these cases was done by providing free legal

services for individuals or directly by AHC, as a legitimate organization that represents citizens' public interests. **In this judicial practice, there were some successful solutions of cases, whereby we could highlight that courts demanded responsible administrative bodies to sanction the polluters of the Gjanica River and to rehabilitate the areas affected by the pollution; the obligation of health bodies to install cochlear implants, for juveniles with special hearing impairments, etc.**

The right to life and the right to protection of health are among the fundamental rights violated during the actions or inaction by representatives of the penitentiary system. **In September 2019, the European Court of Human Rights (ECtHR), in the case Prizreni versus Albania (Petition no. 29309/16), represented by AHC lawyers, found that the death of the inmate while he was deprived of his liberty under the supervision of authorities and the accusations of his brother about maltreatment were not adequately investigated by the prosecution office. The court found that Albanian authorities had failed to respect procedural guarantees of article 2 of the Convention, which guarantees the right to life.**

AHC devoted increased attention to the guarantee of respect for human dignity of special subjects, representatives of State Police and those of the National Bureau of Investigation. Special laws no. 95/2016, "On the organization and functioning of the institutions to fight corruption and organized crime" and no. 12/2018, "On the transitory and periodical evaluation of officers of the State Police, Guard of the Republic, and Internal Control and Complaints Service" envisage that the candidate's avoiding or refusal to undergo the polygraph test disqualifies him/her from running. In 2018, AHC addressed the Constitutional Court with a request to invalidate the provisions for the polygraph test as incompatible with the Constitution. In January 2020, AHC was notified that the College of the Constitutional Court decided to transfer the case for preliminary review to the Meeting of Judges. At present, we expect the formation of the necessary quorum at the Constitutional Court to review the request that AHC submitted.

During 2019, we noticed an increasing awareness of citizens as regards respect for the right to a clean environment. AHC lawyers represented successfully at the Administrative Court of First Instance in Tirana the public interest and claims of 3 inhabitants in order to force competent public authorities such as the National Environment Agency (NEA) and the State Environment, Forests, Waters, and Tourism Inspectorate (SEFWTI), on the use of competences that the law assigns to them toward operators polluting the Gjanica River. As a result of failure to exercise the right to appeal, the decision assumed final form and is currently in the process of execution.

In 29 cases, AHC reacted publicly through statements, open letters or opinions on important issues nad mainly on those that violated the rights and freedoms of citizens, including the violation of the important constitutional principle of the presumption of innocence. These reactions have also been reported by the media, thus contributing to raising the awareness of citizens and public authorities.

## **7. Respect for the rights of persons deprived of their liberty**

AHC conducted 33 monitoring missions in institutions for the execution of penal decisions (IEPD) and in the field, in order to verify complaints submitted by individuals and cases made public in the media. The access of AHC observers to IEPDs was unrestricted, in respect of the Cooperation Agreement, signed between the General Directory of Prisons and the Albanian Helsinki Committee. Onl in one case, AHC observers' access was limited when they sought to **become familiar with and verify health records, during the thematic monitoring at the Ali Demi IEPD (325), on July 30, 2019. This limitation is in violation of the agreement mentioned above.**

During 2019, AHC processed 10 complaints by detainees/convicts who claimed that they were physically violated by the staff in uniform of the state police or prison police. In some cases, AHC (forensic) observer experts found marks of violence on the bodies of inmates. **AHC expresses its concern about the increase in the number of referred complaints about the use of violence inside closed institutions compared to 3 complaints processed during 2018.**

**AHC conveyed the findings and conclusions of the verified cases of claims of use of violence officially to responsible state institutions. During the monitoring of these cases, we noticed that the recommendation of the Committee for the Prevention of Torture (CPT) was not implemented with regard to the obligation of medical personnel of penal institutions that examines these citizens to denounce complaints to the prosecution office within as reasonable a deadline as possible. In some cases when signs of violence were visible, AHC set into motion the prosecution office and sought information regarding the progress of criminal proceedings. Based on correspondence with the prosecution office, we find that the investigation of referred cases of use of violence was not complete and comprehensive.**

In some of the monitored IEPDs, inmates and detainees continue to remain in difficult conditions, especially with regard to infrastructure. AHC has noticed deficiencies in medical and psycho-social personnel in penitentiary institutions; also quite disturbing is the increase in the number of persons deprived of liberty who have mental health illnesses or problems. Overcrowding in some institutions remains troubling and it is worth mentioning the overcrowding encountered during a monitoring in the special institution (IEPD) in Zahari, Kruja. The maximal accommodation capacities in the institution are for 196 persons,<sup>3</sup> while in our monitoring visit in September 2019, AHC observers found 284 citizens accommodated there, that is 88 above the maximum capacity.

**AHC considers that the Transfer Order no. 9460/5, dated 02.10.2018 of the General Directory of Prisons and Order no. 2529, dated 03.04.2016 of the Ministry of Justice, for the transfer of 73 citizens remanded to “temporary hospitalization” or “compulsory medication” by the Prison Hospital (SPHI, Tirana) in IEPD Kruja, aside from the categorization of IEPDs, should also have referred to an analysis of the infrastructure, human resources, and functional capacities of IEPD Kruja. AHC recommends the revision of these orders and avoiding the *extra legal* reasoning in their contents. Persons remanded to medical measures of “compulsory medication” continue to be kept in violation of the law in the prison system and for this category, no special medical institution has been established. AHC wishes to bring to attention the continued requests, for several years, of AHC, the People’s Advocate, and the Committee for the Prevention of Torture for closing IEPD Kruja and the accommodation of persons remanded to medical measures to a special and specialized medical institution.**

**In the case of the Albanian citizen remanded to a medical measure Strazimiri vs. Albania (Petition no. 34602/16), the Strasbourg Court (ECtHR) decided unanimously that Albanian authorities failed for a very long time to secure a special medical institution for convicted persons suffering from mental health illnesses, whose liberty has been deprived on the basis of a judicial decision for compulsory medication. In this case, represented by AHC lawyers, the ECtHR found that the situation is in contravention of the legal obligations envisaged in domestic legislation and represents a structural problem for our country.**

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<sup>3</sup> <http://www.dpbsh.gov.al/newweb/?fq=brenda&gj=gj1&kid=19>

Better professional training of prison personnel, strengthening hiring conditions and criteria, both in terms of professional and moral integrity, increased salaries and reward vis-à-vis the difficult conditions they work in, are of special importance. **Frequent reshuffling in the prison administration, as happened during 2019, particularly at the senior leadership level, did not lead to improved performance and would not be recommendable in principle.**

## **8. Youth's approach to religious tolerance**

During 2019, AHC contributed to promoting and protecting the freedom of faith and religion in Albania, realizing a series of awareness activities such as forums with students and open classes with youth in 8 cities of the country, to discuss about different issues of religious tolerance and coexistence between Albanians.

The positive approach and acceptance of regular debates and discussions about freedom of religious faith by students and pupils facilitated the further engagement not only of schools, but also of civil society organizations regarding issues of religious faith.

AHC carried out a research study on the promotion of understanding, tolerance, and religious freedom in Albania, whose data relied among others on the results of interviews with a sample of 1.114 youths. In accordance with the tendency displayed at a European level, AHC found an increased tendency among youth to declare that they do not belong to any religious faith. Although the family continues to play an important role in religious orientation, 88% of those surveyed demonstrated a high level of tolerance and respect for the diversity in religious faiths. In the country, 56% of surveyed youth do not agree with the existence of special regulations that prohibit the use of religious attire in educational or public institutions in general. In terms of non-discrimination due to religious faith, the overwhelming majority of Albanian youth (about 86%) stated that they are treated equally, independently from religious affiliation. **AHC considers that this is a positive indicator of religious harmony, which the Albanian society is known for beyond the country's territory, a role that is often used as an example at the international level.**

Forums promoting religious tolerance organized by AHC highlighted that freedom of belief and religious faith continues to be one of the best distinguishing values and features of the Albanian society. **AHC recommends the encouragement and intensification of school activities that ensure an increased awareness about intercultural and interfaith dialogue, not only at the national level, but also at local levels.**

## **9. Freedom of peaceful assembly**

The year 2019 saw a number of protests/rallies by citizens, some of which were accompanied by violent elements and actions, in some cases also due to the influence or misuse of protests by political parties. AHC appealed repeatedly to citizens for peaceful rallies, in accordance with the constitution, and so as not to damage the cause they protest about. On the other hand, AHC reiterates the need to review the law on rallies (approved 18 years ago) because there have been cases of accompaniments or the start of criminal proceedings for defenders of human rights who have organized and participated in spontaneous assembly on which police was not alerted about. A spontaneous rally is not expressly envisaged as a form of rally in our legislation.

**Considering the problems of citizens in the so-called ASTIR area, as well as the different standards that had been pursued with regard to the legalization of their homes, AHC has**

reacted on the need to respect the obligations deriving from international legislation for consulting effectively with these inhabitants and for finding as fair and appropriate solutions as possible that guarantee adequate compensation and housing.

## **10. Freedom of expression**

AHC joined the most prominent media organizations in Albania to ask that the anti-defamation legal package proposed by the Council of Ministers not be approved because the package did not respect international standards and principles of freedom of the media and freedom of speech. Also, AHC initiated the initiative for signing the press statement by 37 organizations part of the international network – Civic Solidarity Platform – which called on the Albanian Government to withdraw the proposed draft laws. **AHC expresses appreciation for the support offered by 9 Helsinki Committees part of this network against the approval of this legal package.**

During 2019, there were instances of the use of discriminating, intimidating, offensive, and unethical language by representatives of the Assembly, although the latter approved the MPs' Code of Conduct. **AHC reacted publicly on the intimidating and offensive language used by one of the Assembly MPs toward the People's Advocate due to the latter's reaction for the protection of the rights of children with the Down syndrome.**

AHC continued to engage and collaborate with journalists and their associations also for the respect of their labor rights. In the context of the awareness campaign that AHC undertook regarding this issue, about 50 journalists benefited free legal counsel and 3 journalists are being represented in court for violations of their rights in labor relations.

## **11. Public consultation and inclusivity in decision-making**

AHC responded positively to 23 invitations for public consultations extended by the Assembly of the Republic of Albania, relevant parliamentary committees, line ministries, etc. We provided legal critiques on the resolution of human rights defenders, amendments for legislation on the penitentiary system, the periodical cross-sector strategy of Justice and action plan, proposed amendments to the Criminal Code, types and measures of judicial tariffs proposed by the HJC, etc.

During December 2019 and the first two months of 2020, a group of civil society organizations reacted continuously by asking the Assembly to consult the normative act with the power of law no. 1, dated 31.01.2020 "On preventive measures in the context of strengthening the fight against terrorism, organized crimes, serious crimes, and the consolidation of public order and safety." The act, approved by the Council of Ministers, was enacted in the absence of transparency and the principles of public consultation and inclusivity. Also, the review of this normative act by the two Parliamentary Committees (Committee of Laws and the Committee on Security Affairs) was realized without public consultation. AHC, together with 23 civil society organizations, noted that the act violates important constitutional principles such as the principle of the separation and balancing of powers, the principle of the independence of the prosecution office, as well as fundamental human rights and freedoms.

**Overall, it is problematic that consultation has formal tones and very tight deadlines, in contravention of legal deadlines as well as fact that bodies undertaking consultations are indifferent, to comments and suggestions provided by stakeholders in the lawmaking process.**



# ANNEX 1

## CATEGORIZED DATA ON COMPLAINTS PROCESSED DURING 2019



