



ALBANIAN HELSINKI COMMITTEE
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REPORT ON THE SITUATION OF RESPECT FOR HUMAN RIGHTS AND FREEDOMS IN ALBANIA DURING 2016



Kingdom of Sweden



CIVIL
RIGHTS
DEFENDERS

**REPORT ON THE SITUATION OF RESPECT
FOR HUMAN RIGHTS AND FREEDOMS
IN ALBANIA DURING 2016**

Tirana, April 2017

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Prepared by:

1. Att. Elton Frashëri, Jurist of the Legal Clinic, AHC
2. Att. Erida Skëndaj, Executive Director, AHC
3. Mr. Niazi Jaho, Legal Advisor of AHC

Assisted by:

1. Valentina Kabili, Project Assistant, AHC

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Prin: Intergrafika

Author: ©Komiteti Shqiptar i Helsinkit

Rr. Brigada e VIII-te, Pallati “Tekno Projekt”
Shk 2 Ap 10, Tirana-Albania
Kutia Postare nr.1752
Tel: 04 2233671
Cel: 0694075732
E-mail: office@ahc.org.al
Web site: www.ahc.org.al

Dear readers,

The year 2016 was full of dynamic developments, with the considerable changes in the legal framework for reforming the justice system particularly standing out. Justice reform is expected to restore the confidence of the public in the judicial system. Citizens' attention is focused on vetting of judges and prosecutors, which will be realized in three components: evaluation of assets, control of the figure, and evaluation of professional abilities.

The Albanian Helsinki Committee (AHC), as part of civil society, was active in protecting the rights and freedoms of citizens in keeping with its mission. AHC acted in some of the areas that are priorities in its three-year Strategy and, at the same time, are a priority for the opening of accession negotiations for the country to become part of the European family.

For AHC, 2016 was a year filled with activity and outreach, new responsibilities and challenges, diverse activity and tangible, professional and impartial contributions for citizens and vulnerable groups of our society. The number of citizens addressing AHC during this year increased and so did the need to increase the professionalism in addressing their complaints. During this year alone, AHC addressed the European Court of Human Rights with 4 petitions, seeking the reinstatement of violated rights sanctioned in the European Convention of Human Rights.

AHC has been present in different cities of the country, conveying its reactive and awareness-raising voice for the entire public opinion. We thank the print and broadcast media that echoed the important activities of AHC about the rights and freedoms of citizens and for strengthening the rule of law.

AHC's activity would not have been possible without the support of the the members of its leading bodies, the General Assembly and the decision-making Board, the staff of the organization, the correspondents in 7 districts of the country, our activists and volunteers, observers and experts who contributed with dedication and high activism, and with impartial and professional expertise.

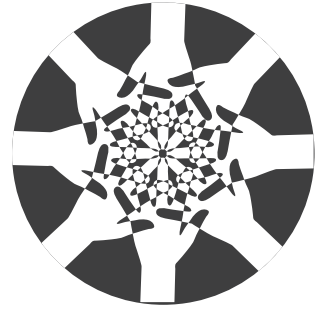
We would also like to thank the donors who have financially supported AHC's activity during this year, having confidence in our serious, honest and responsible implementation of different contemporary initiatives in the area of human rights and freedoms, namely the Civil Rights Defenders, the European Union, the Embassy of the Netherlands in Albania, the Open Society Foundation for Albania, the USAID project "Justice for All," the Embassy of the United States of America in Albania, the Human Rights Institute in Budapest, etc.

Sincerely,

Erida Skëndaj

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1. INTRODUCTION

The situation of respect for fundamental human rights and freedoms in Albania is monitored and reported continuously by domestic and international organizations, while evaluating the level of the country's development in terms of the functioning of the rule of law and the progress of its integration into the European family.

AHC has been continuing for some years now the tradition of preparing its annual Report on the respect for human rights and freedoms in Albania. The report contains facts and conclusions about the situation of respect for human rights and freedoms for 2016¹ and its purpose is to address the problems, inform the broad public, institutions and international organizations accredited to the country, encourage public office bodies for respect for the legal framework and improve their activity to protect and effectively guarantee citizens' rights.

The findings and observations that resulted from the verification of complaints as well as the thematic observations carried out by AHC, mainly in courts and prosecutor's offices, institutions for the execution of penal decisions, premises of the State Police, government bodies at the national and local level, served as the basis for drafting this report. Also, the report reflects information covered in the media on cases of violation of citizens' rights and freedoms or events that may have an impact on enjoying and exercising these rights, as well as reports or studies by other domestic civil society organizations and international bodies.

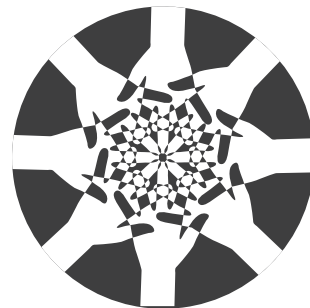
During 2016, AHC addressed 290 complaints by citizens claiming violations of rights, addressed state institutions in 325 cases to address recommendations or to make them aware of the problems highlighted during the monitoring activity of AHC, and reacted publicly through press statements in 46 cases. AHC realized 188 verifications, including monitoring in prisons, pre-trial detention facilities and police commissariats, prosecutor's offices, Municipal Police, the Tirana University Hospital Center, other institutions of the public administration, verifications in the field, and conducted monitoring of trial hearings in 16 cases, etc. For the reinstatement of the violated rights, AHC has addressed relevant state institutions, domestic courts, the Constitutional Court and the European Court of Human Rights (ECtHR).

During 2016, AHC provided legal critique for the 7 material draft laws on the justice system and 9 other draft laws that were reviewed by various standing parliamentary committees. We also provided our views regarding the manner of annual reporting in the Assembly of

¹ The findings resulted from information secured until the end of December 2016

constitutional or legal institutions, such as the People's Advocate and the High Inspectorate for the Declaration and Audit of Assets and Conflict of Interest. In our evaluations for the annual reports of these institutions, we paid special attention to providing constructive critiques for better protection of the rights and freedoms of citizens.

AHC also contributed to the legal education and awareness of citizens, with special attention to the novelties produced by reform in the justice system and the law on public notification and consultation. The sensitization of citizens and transparency before the public are important indicators of the development of democracy.



2. EXECUTIVE SUMMARY

AHC has reacted continuously about the conditions and treatment of persons deprived of their liberty in the prison system, cases of violation of the safety of convicts and detainees in this system, cases of violence toward women and children, the need and importance for citizens of reforming the justice system and electoral reform, the taking of efficacious preventive measures against criminality, etc.

Overcrowding in prisons and especially in pre-trial detention facilities is disturbing while, in our opinion, the remand measure of arrest in prison could be implemented to a lesser extent. The conditions of rooms where persons deprived of their liberty in Institutions for the Execution of Penal Decisions in Saranda, Lushnja, Rogozhina, Fushë-Kruja, and Fier do not enable full respect for human dignity as a result of overcrowding, lack of beds, inappropriate bedding sets, hygiene tools, etc. At the special institution of Zaharia, Kruja, conditions are at the level of inhuman and degrading treatment. AHC has recommended to responsible institutions to close down this institution.

More than 64% of the complaints addressed to AHC during the year came from citizens who are detainees or inmates complaining about inappropriate conditions and the violation of their rights by the prison administration. About 21% of complaints have to do with the violation of the individual's rights by the activity of justice bodies, but especially the courts. Citizens complain mainly about unjust court decisions due to corruption, violation of due legal process, dragged judicial processes or complaints to not benefit from reduced sentences or parole, the failure of state institutions to execute final court rulings, etc.

In some cases, AHC represented citizens in national and international courts. During the period May – July 2016, AHC addressed the European Court of Human Rights (ECtHR) with 4 complaints, upon authorization by individuals, about respect for the right of citizens to access to justice, the right to the conduct of a legal process within reasonable deadlines, the right to the prohibition of torture, inhuman or degrading treatment, prohibition of discrimination, etc.

Accommodation in the prison system of about 175 mentally ill persons remanded to the medical measure of “Compulsory medication in a medical institution” represents a serious violation of their rights and has caused an aggravation of the condition of their mental health. One of the case we are representing in the Strasbourg Court aims at solving this endemic problem that the Albanian state has failed to provide an effective solution to for about 20 years.

Citizens face cases of careless medication, injury to health and loss of life in road accidents,

caused in some cases also due to the lack of signage and the lack of proper infrastructure of roads, crimes against life, structural problems persisting in the health care system such as lack of medication or of medical infrastructure. Reactions by AHC and the organization Together for Life for the lack of medication L-Asparaginase for children suffering from leukemia contributed to the positive reaction of the Ministry of health for securing this medication.

There is a need to increase measures for the prohibition of discrimination and the integration of marginalized society groups. Citizens of the Roma and Egyptian communities living in the municipalities of Tirana, Durrës, Fier, Berat, Shkodra, and Kruja do not possess minimal information about their rights and the tools to seek them. Part of the Roma children does not follow compulsory education or drop out of school. A considerable number of persons from among these communities collect urban waste as the only way to generate some incomes. Possibilities of employment and vocational training for these citizens are scarce. Social housing programs offered for vulnerable families of the Roma community, whose unlegalized houses were demolished, have failed to effectively and sustainably guarantee a calm family living. The lack of a definition for the subsistence level through legal and sub-legal acts has influenced the reduction of the quality of life of these communities and has led to an avoidance of full responsibilities by the state for providing sufficient aid for families in need.

The approval of the Action Plan for persons with different sexual orientation represents a positive step. However, the sensitization of the public about accepting these persons in the society remains at low levels, including the presence of discriminatory conduct by public employees.

Monitoring conducted in the judicial system highlight that impunity of senior officials remains high for criminal offenses in the field of corruption and misuse of duty. Respect for the right to due legal process and the quality of justice has not seen progress due to misadministration, lack of access to justice, complaints about the lack of professional integrity of some judges and prosecutors, and the perception of widespread corruption in justice bodies. In different judicial processes that AHC monitored, it resulted that defense lawyers assigned by the court or prosecutor's office often carry out their duties formally and there was lack of professionalism. In particular, detainees and inmates complain about the poor quality of defense by these lawyers. The establishment of vetting institutions in accordance with the constitution and the law represents the most important step for citizens who seek to regain their trust in the justice system institutions.

Official data indicate a wide spread of the phenomenon of domestic violence, particularly toward women. Also violence toward children during 2016 was disturbing, especially in residential centers for children at the pre-school system and the lower education levels. Coordination between responsible institutions for referring and addressing these cases as well as judicial protection has not always proven effective.

In spite of continuous efforts by state police, the situation of the cultivation and trafficking of narcotics was disturbing during 2016. According to security analysts, Albania remains a country of origin of the cultivation of marijuana, which year after year produces a chain of criminal effects. This phenomenon requires the intensification of anti-narcotics operations

throughout the country and better coordination between state police and the prosecutor's office. The implementation of a contemporary criminal policy that responds to the different forms of criminality, including sophisticated ones and organized crime ones, while respecting the proportionality of measures as a function of humanizing criminal law, remains a need that was not addressed effectively during 2016.

AHC continued to sensitize groups of interest and to monitor the implementation of an important law that envisages the obligation of public bodies to make public notifications and publicly consult about various draft acts, draft strategies and policies of public interest. Based on the monitoring carried out in 20 central institutions (19 Ministries and the Prime Minister's Office), it results that consultations on draft acts are not conducted in accordance with established procedures and deadlines and, in some cases, has a formal character. In the majority of cases, the executive and legislative branches consult draft laws in very tight deadlines and groups of interest do not become familiar with those recommendations taken into consideration and the summary of reasons for the rejection of those recommendations that were not accepted. Unlike in the case of the law on access to information, the law on public notification and consultation has been implemented in slow steps.

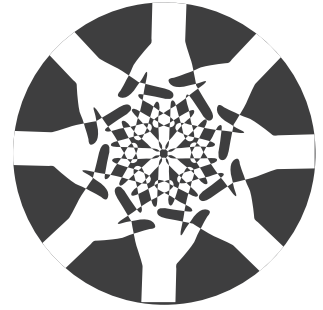
AHC also followed the preparations for the 2017 parliamentary elections. In April of 2016, we submitted to the ad hoc Parliamentary Committee on Electoral Reform 32 proposals for amendments to the Electoral Code. The delays and lack of complete consensus between the different sides to reflect on time all the recommendations provided by OSCE/ODIHR were indicators that efforts to realize the electoral reform during 2016 were not driven by the popular demand to fulfill legal standards for free and fair elections.

Media in general remained influenced by politics, the political-economic interests of their owners and contractual and employment conditions for journalists do not appear to be in accordance with the law in every case. The complaint of a journalist dismissed from work in a private television station, for the investigation conducted into the circumstances of the death of the juvenile in the Sharra Landfill, as well as the censuring of this video, led to our reaction that investigative journalism cannot exist without the sources of information.

Although there were no incidents with defenders of human rights, we found that the environment in which many non-profit organizations work and carry out their activities seeks to hamper the activity of these organizations. Statements made in some cases against civil society actors, in our opinion, contribute unjustly to lower confidence by citizens in the civil society and divert or minimize attention from causes protected by civil society through protests, peaceful rallies or other public activities.

Damage to forests, as a result of cutting of trees without any criteria, the exploitation of river beds, causing damage to their natural flow, the delivery of construction waste on natural water reserves such as rivers and lakes, the release of polluting gases in the air as well as other abusive acts, have caused considerable harm to the environment. Responsible government bodies, at the national and local level, have not been able to react adequately in order to prevent such actions. Furthermore, bodies of the criminal justice system, in our opinion, have not been effective in terms of bringing the perpetrators of criminal offenses in the area of the environment before justice.

3. MAIN FINDINGS



3.1 The right to life and health

The right to life is a fundamental right and a precondition for enjoying and exercising effectively any human freedom or right². The state has the obligation to protect the life and health of citizens with particular attention to preserving public order and safety of citizens, protection against road accidents, provision of adequate health care services, provision of a clean and healthy environment, etc.

The implementation of a contemporary penal policy that responds to the different forms of criminality, including sophisticated and organized crime forms, while respecting the proportionality of measures as a function of humanizing criminal law remains a need that was not addressed effectively during 2016.

Complaints by citizens published in the media or addressed to AHC during 2016 are an indicator that they face serious problems with regard to respect for the right to life, such as: careless or inadequate medication; traffic accidents as a result of infrastructural problems, driving while drunk or lack of signage – according to INSTAT there is a 12.7% increase in the first six months of the year compared to the previous year; murder or injury with firearms, inside the family or related to the activity of criminal organizations, for which the organization SAS (Small Arms Survey) ranks Albania second in Europe; trafficking in human beings, whereby according to the European Commission Report, Albania is one of the five non-EU member states with the highest number of registered victims of human trafficking, while final court rulings on cases of human trafficking have increased in recent years; lack of health care in the penitentiary system; structural problems that continue to affect the health care system such as lack of medications or medical tools/infrastructure, etc.

In spite of public investments carried out during 2016 in providing health care services in some regional hospitals, such as in Elbasan, Shkodra, Tirana, etc., with orthopaedic services, oncology services, emergency services, etc., there are still serious deficiencies in guaranteeing quality professional health care services, especially with regard to the modernization of medical equipment and infrastructure. In this regard, we think the phenomenon of corruption among medical personnel, a widespread perception among the Albanian

² Article 15 of the Constitution: “Fundamental human rights and freedoms are indivisible, inalienable, and inviolable and stand at the base of the entire juridical order. The organs of public power, in fulfillment of their duties, shall respect the fundamental rights and freedoms, as well as contribute to their realization.”

society – has had a negative impact.

The media reported continuously during this year as well about hospitals and clinics of public health care services in completely inappropriate infrastructure conditions. Hospital centers lack equipment, such as the cochlear implant that enables hearing in children, specific orthopaedic tools or lack of medications, forcing citizens to secure them privately. There have also been cases of concerns raised by citizens about the lack of necessary hearing in public hospitals, including the hospital of Korça, verified by AHC³, in the sanatorium services, in spite of the specifics of illnesses treated by this service.

During 2016, AHC addressed the case of an 11-year old child, diagnosed with the severe illness of malign tumor of the peripheral nerve sheath. He had been treated and followed by the Onco-Haematology Service at the “Mother Teresa” Tirana University Hospital Center (TUHC). He had not been medicated according to the relevant medical protocol due to the lack of medicaments provided by the public hospital service, leading to the family securing part of the cure with personal incomes in spite of the high financial cost.

In cooperation with the organization Together for Life, through a request, AHC set in motion the Commissioner for Protection against Discrimination (CPD) after observing indirect discrimination by the TUHC, due to the absence of the medicament L-Asparaginase for children suffering from leukemia. In December 2016, the CPD accepted the AHC request and observed indirect discrimination, recommending that the TUHC undertake measures to supply the medicament L - Asparaginase at the proper quantity and at the right time.

AHC also followed other cases, reacting through official letters to the Ministry of Health, conveying concerns about the lack of medical hearing aids for minors. In May 2016, AHC presented a freedom of information request to the Ministry of Health about claims published in the print media that a considerable number of children were at risk of losing hearing entirely due to the failure to secure the cochlear hearing implant. In order to protect the health of this vulnerable group, together with the association Together for Life, AHC continued to follow the case legally with the Commissioner for Freedom of Information and at the Administrative Court of First Instance in Tirana in order to ensure necessary information on the problem of the lack of the medical device.

Domestic violence also remains disturbing in terms of its spread in society. Women, minor children, the elderly or marginalized groups are the most frequent victims of this phenomenon. The use of violence toward women still appears very disturbing, with some cases leading to the death of the victim as a result. Often times, violated women do not report the violence used on them to competent authorities or withdraw their referrals due to the economic insufficiency to make a living or due to social mentality.

According to data from the Ministry of Social Welfare and youth, for the period January – September 2016, 3195 cases of domestic violence were reported, which marked an increase compared to the previous year. Meanwhile, AHC monitored during the period July – October 2016 about 97 criminal and civil judicial hearings on “*Domestic Violence*”, “*Issuance of*

³ Verification conducted on 17.01.2017 in the Sanatorium Service, Korça Regional Hospital.

Protection Order” and “*Issuance of immediate protection order*”, the findings of which are addressed more extensively in the sub-section on issues of gender discrimination.

Failure to enforce traffic rules, lack of awareness of citizens about the importance of respecting them, inherited or instant conflicts over property issues, as well as clashes between rival groups of criminal organizations, especially in trafficking of narcotics, remain defisive factors in the violation of the citizens’ right to life, in spite of continuous efforts by State Police against such forms of criminality.

It is positive that during 2016, there was a lack of cases of bloodfeuds in the country and there were less accidents at work due to the violation or lack of technical and safety precautions, mainly in hydropower stations, mines, construction sites, etc. AHC received complaints by representatives of oil trade unions about the failure of contractors of public administration bodies to fulfill their financial obligations to these workers.

Referring to the European Commission Report⁴, the legal framework for the fight against **human trafficking** has been further developed and sanctions have been harshened, but work remains to be done toward alignment with the *acquis* of the EU. The EC deems that Albania should increase its efforts to prevent human trafficking, *paying particular attention to unaccompanied children and children victims of trafficking, particularly street children*. The number of convictions for these criminal offenses remains low, with only two final court rulings deciding on imprisonment out of 38 cases reported by the police in the first half of 2016. During the year, there were also cases of police operations that led to the flagrant arrest of citizens, mainly managers of nightclubs, due to suspicions of running premises for the exercise or exploitation of prostitution.



3.2 The right to elect and be elected

In September 2016, AHC monitored in a limited manner only the municipal by-election for Mayor of Dibra Municipality. Among others, we found a relatively tense political environment due to mutual accusations by representatives of the coalitions and there were claims of intimidation, engagement of the public administration of the institutions of the municipality in the electoral campaign, claims of vote-buying, etc.

Based on verification in the field, AHC observers found that the voter list posted in the Voting Centers (VCs) that we monitored did not contain the date of their announcement. AHC’s partial monitoring highlighted that in 2-3 cases there were claims of the absence of voters’ names in the voter lists, which were addressed by issuing the relevant ZEAC verification and the direction of citizens to the court.

In some cases, voters lists were posted in inappropriate and not easily accessible places for voters or they were placed in public premises, mainly education institutions, that were closed in the afternoon and did not allow voters to freely check the voter lists. Meanwhile,

⁴ Communication of 2016 on EU Enlargement Policies

we found some improvements with regard to the voter lists, the reduction of party influence on electoral administration bodies, voter conduct, or the extensive coverage of the electoral process in the media⁵.

During 2016, AHC followed the progress of the ad hoc Parliamentary Committee on Electoral Reform and submitted to the Committee 32 proposals for amendments and improvements to the Electoral Code, in accordance with the OSCE/ODIHR recommendations. The activity of this Committee for reviewing and reflecting OSCE/ODIHR recommendations and for drafting and approving in a timely manner the necessary amendments to the Electoral Code featured delays. A concern was raised that these delays may affect the principle of inclusivity, which requires engagement and contribution also by civil society actors and experts of the field. Furthermore, it is our opinion that these delays will lead to the incomplete reflection of OSCE/ODIHR recommendations, which may lead to the realization of a partial electoral reform.



3.3 Right to property

Article 41 of the Constitution envisages the right to property as part of individual rights and freedoms. The Constitution envisages the confinement of the right to property only for public interest, while the state should guarantee in every case the essence of this right due to its importance in a democratic society with a functioning market economy.

Complaints addressed to AHC during 2016 indicate that about 9% of citizens complain about the violation of the right to property. Some concrete complaints addressed during the monitoring activity of AHC include: claims of low levels of compensation for expropriations, as a result of works in the context of the TAP gas pipeline in the municipalities of Korça, Berat, or Fier, as well as claims of damages caused by the construction of roads on the project roadmap. The main forms in which AHC has addressed these complaints included verifications on the field, legal counseling and institutional interventions. There have also been cases of complaints by inhabitants of other municipalities in the country, claiming that compensation of expropriations for public interest did not take place on time and at the required level.

Problems remained with regard to the housing of the Roma community, with some families of this community displaced in a forced manner from the Bregu i Lumit area in Tirana as a result of the need to implement the plan for the passage of the Tirana Municipality ring road passing through the space where some of the houses of this community were located. The institutional practice of their relocation by state authorities, national and local, without first taking measures to shelter these citizens, led to reactions by inhabitants and civil society organizations, including AHC.

In December 2015, the Assembly approved the new law no. 133/2015 “On the treatment of properties and the conclusion of the process of property compensation.” The law entered into force in February of last year and has been appealed to the Constitutional Court

⁵ http://ahc.org.al/web/images/Raporte/AL/Final_Raport_Zgjedhjet_Kryetar_Diber_1.pdf

by interest groups, which claim a violation of the principle of juridical certainty and the principle of the equality of the treatment of owners. By decision no. 1, dated 16.01.2017, the Constitutional Court decided to partially accept the request and to declare unconstitutional article 6, item 3 and 5 of the law no. 133/2015 “On the treatment of properties and the conclusion of the process of property compensation” and the refusal of the rest of the request. According to the European Commission⁶, Strategy 2012-2020 on property rights should be improved toward coordination between the processes of return, compensation and legalization of properties. The overlapping of properties should be addressed for fast resolution through digitalization in registration and planning of properties.



3.4 Freedom of the Media

Media is an important factor in the fight for justice and against poverty as well as for giving a voice to society’s most vulnerable groups. Guaranteeing a free media also helps the public debate and increases the responsibility of elected representatives and other officials who should place themselves at the service of people.

During 2016 as well, we appreciated and exploited information provided through the media and on the basis of it we conducted further verifications and, in some cases, also some public reactions.

There is data, although yet to be verified, that there are still journalists working in informality, whose salaries are not paid regularly and who do not benefit social and health benefit contributions. On the occasion of the world media freedom day, the Albanian Helsinki Committee, the ProLGBT association and Civil Rights Defenders made a joint call for respect for freedom of the press and the prohibition of censorship and self-censorship.

The complaint of a journalist dismissed from work in a private television station, for the investigation conducted into the circumstances of the death of the juvenile in the Sharra Landfill, as well as the censoring of this video, led to our reaction that investigative journalism cannot exist without the sources of information. AHC also reacted in May 2016 to raise concern about the case of the use of violence against a sports reporter.

According to the freedom of the media index in the world for 2016, Reporters without Borders stated that Albania did not mark progress and ranks in the same spot as in the previous year, precisely 82nd out of 180 analyzed countries worldwide. Such data require reflection and attention by regulatory authorities in the field of the media, journalists, representatives of non-profit organizations protecting citizens’ rights and freedoms and the civil society in general.

According to the European Commission report for 2016⁷, the country is considered moderately prepared with regard to respect for freedom of speech, while there has been no progress compared to the previous year in this regard. The procedure for the selection of the General Director of Albanian Radio Television, through a simple parliamentary majority after three rounds, as envisaged in the amended law, is seen by the EC as causing a controversy over its ability to guarantee a politically equidistant personality.

6 Communication of 2016 on EU Enlargement Policies, p. 79

7 Communication of 2016 over EU Enlargement Policies, p.26.

In specific cases, AHC raised concern also in an institutional way with the Commissioner for the Right to Information and Personal Data Protection over the lack of ethical and professional standards in journalism, which have led to violation of personal data and privacy rights.



3.5 Justice

3.5.1 Reform in the Justice System

During 2016, we found progress, particularly with the approval of constitutional amendments for reforming the justice system, with the votes of all Assembly members. AHC expresses appreciation for domestic contribution and expertise and especially the engagement of international assistance.

Furthermore, a legal package of 7 material laws was approved, which envisages detailed rules for the re-evaluation of judges, prosecutors and legal advisors (otherwise known as the ‘vetting’ process), the general organization of the judiciary, the prosecutor’s office, the status of judges and prosecutors, the organization and functioning of the Constitutional Court, the creation of specialized institutions for the fight against organized crime and anti-corruption, the creation of new institutions for the governance of the justice system and 27 other draft laws are in the process of preparation that are related to Justice Reform.

At the end of 2016, the Constitutional Court of the Republic of Albania decided to reject the petition on the observation of unconstitutionality of the vetting law, relying especially on the *amicus curiae* (advisory opinion) of the Venice Commission, requested on its initiative by this court.

According to the European Commission, the recommendations addressed in the last year did not see progress in implementation with regard to the filling of vacancies in the High Court and in administrative courts; the effective use of the unified case management system, and the timely publication of all judicial decisions together with their practice.

AHC deems that it is a priority to fully approve and implement the entire legal package for reforming the justice system, with broad parliamentary consensus⁸ and with the participation of and consultation with groups of interest. This is the only manner in which an efficacious judicial system that maximally respects human rights and freedoms, in particular the right to due legal process, may be established.

3.5.2 Complaints about the Judiciary and the Prosecutor’s Office

During the year, AHC received a large number of complaints⁹ regarding the activity of justice bodies, compared to 2015. In concrete terms, 21% of the total of complaints addressed to AHC have to do with claims of violations of individual’s rights by the activity of justice

⁸ Press Statement of AHC, dated 22.07.2016: “We applaud the consensual approval of Justice Reform”

⁹ Second in terms of quantity with a number of 40 complaints.

bodies, especially the courts. Citizens complain mainly about unjust judicial decisions, corruption in the system ranks, violation of due legal process, dragging out of judicial process or complaints about not benefiting from sentence reductions or parole, failure of state institutions, including the prosecutor's office and the General Directory of Prisons (GDP), to execute final court rulings.

As observed in previous years, the monitoring conducted by AHC in some courts about cases related to corruption, domestic violence, or the verification of sporadic complaints, it has resulted that often, judicial processes have been dragged out due to the absence in the trial hearing of the prosecutor, the defense lawyer and, in some cases, of the judge of the case. Often trial hearings were held in judges' offices, which do not have the adequate space and conditions for the accommodation of the parties and the presence of the public, thus violating the solemnity and publicity of the adjudication. There have also been cases when AHC observers have been obstructed from being present in the judicial hearings that should have been open to the public. AHC observers have also encountered inappropriate behavior and violation of ethics during the judicial process due to the interference of parties or their representatives, the lack of attention of judges or the parties, the violation of the impartiality of the judge toward the parties, etc. Meanwhile, it is worth mentioning the 2016 Progress Report of the European Commission on Albania, which finds that *"The 2000 code of ethics for judges has had no concrete impact on their accountability, although professional ethics is one of the subjects covered by the initial training program of the School of Magistrates... There is insufficient monitoring of judges and prosecutors' observance of ethical standards and integrity..."*.

In research studies realized in the context of the implementation of projects in the field of Justice, AHC has found the application of the principle of *"Abbreviated adjudication"* even in those cases when the criminal offense has produced very serious consequences to health or to citizens. AHC remains of the opinion that the Criminal Procedure Code needs to be amended and a unified practice for courts is needed in order to avoid favoritism by reducing the given sentence by 1/3 for persons who repeat offenses or pose a high social threat.

Procedural violations during investigations as well as unjust or arbitrary decisions by the criminal prosecution body represent about 5% of complaints addressed to AHC during 2016, by citizens in pre-trial detention, under investigation or unsentenced. In its institutional communication, AHC has found some level of improvement by the prosecutor's office toward transparency and information, but in concrete cases, some prosecutor's offices have demonstrated hesitation in providing requested information. The dragging out of investigations, failure to respect procedural rights of persons under investigation or defendants for responding to memos or written requests, as well as the lack of notification on decisions to extend the investigation deadline have been raised as concerns by some citizens.

The proper functioning of the prosecutor's office, the independence and moral and professional integrity of prosecutors are essential for the effectiveness of criminal prosecution and for increasing the punishability of crimes at high levels of the public and political administration. Referring to the EC Report¹⁰, the Prosecutor General's Office (PGO) only un-

10 EC Communication on Albania 2016, p. 72.

dertook disciplinary measures of “*reprimand*” only toward two prosecutors, upon proposal by the Council of Prosecutors. One prosecutor was sentenced by the Serious Crimes Court with imprisonment for the offense of corruption and another prosecutor was suspended from his job due to a video where he was implicated as a suspect for a corrupt act in a case he was investigating.

The High State Audit, HIDAACI, and the People’s Advocate, through annual reports or public statements, have expressed criticism about the refusal of prosecutors to initiate criminal prosecution or to drop cases especially on high-level officials that they had referred to the prosecutor’s office.

3.5.3 Free legal service

The right to effective defense in a judicial process is an essential element of due legal process, envisaged in the Constitution and the European Convention of Human Rights. For over a decade, AHC continues to provide legal services for groups in need. During 2016, beneficiaries of legal aid have been persons deprived of their liberty, members of the Roma and Egyptian communities, women, persons with disabilities, persons lacking financial means to afford a lawyer, etc. AHC and some other NPOs continued to contribute in this regard, in the context of support provided by various donors.

Judicial processes monitored by AHC indicate that lawyers assigned by the court and the prosecutor’s office often carry out their defense duties formally and lack of professionalism has been noticed. In particular, detainees and convicts complain about the poor level of their defense by such lawyers. AHC considers that there needs to be regulation of the manner in which defense lawyers are assigned by the case prosecutor for the defendant or the person under investigation, during preliminary investigation. Current regulation leads to unilateral selection of such defense lawyers and, as a result, failure to respect the requirements for due legal process.

The Legal Aid Commission is an institution established at the Ministry of Justice and, according to law, should provide free legal services for citizens who cannot afford it. This Commission cannot meet all the citizens’ needs for free legal services, which has led to lack of trust among citizens about its efficiency. Representatives of the Commission raise the concern that this is the result of a lack of adequate budget assigned by the state for its activity.

AHC continued to monitor the situation of respect for human rights in the country, aiming at the prevention of potential violations and the reinstatement of violated rights. In this regard, one of the tools used was the provision of legal services in the context of the free Legal Clinic. We devoted particular attention to listening to, verifying and resolving citizens’ complaints. During 2016, AHC staff addressed 290 complaints, which were handled through phone calls, e-mail, letters or face-to-face meetings. The subject of complaints continued to be dominated (about 40% of the total) by inappropriate conditions and the violation of convicts’ rights, failure to provide health care services in the prison system, etc. About 21% of the complaints have to do with the courts and prosecutor’s offices, as mentioned earlier in this report. Complaints about defense lawyer services and property

conflicts, especially claims about disproportionate compensation in the process of expropriations saw an increase, reaching about 19% of the total.

Petitioners belong to different age groups but all are adults, different cities spread around the country, particularly linked with the location of the penitentiary institutions, not excluding cases of citizens from Kosovo, emigrants or foreign citizens deprived of their liberty. Individuals who addressed AHC to raise their concerns belong to **both genders**, with **adult males dominating** the majority with about **84%**. About 11% of petitions come from citizens belonging to minorities, mainly persons from the Roma minority.

We have placed particular focus on the provision of free legal services in cases of strategic litigation, whereby interventions on a specific case intend to provide a solution for a broader group of person in the same situation or in a similar situation as the person being represented. During 2016, AHC presented four requests to the Strasbourg Court, the target of which is, among others, the undertaking of general measures by this Court in order to request the Albanian state to amend legislation or institutional practices not in conformity with the European Convention of Human Rights.

The Strasbourg Court admitted the AHC petition to Undertake a Temporary Measure according to Rule 39 of this Court and ordered Albanian state authorities to immediately ensure required medical treatment to convict *F.Z.* Meanwhile, the Constitutional Court of Albania admitted the AHC petition on the same issue, to find violation of due legal process, as a result of the failure of the General Directory of Prisons and the Ministry of Health of the final judicial ruling to provide health care services to the convict within a reasonable deadline.

3.5.4 Fight against corruption and its impunity

Corruption in our country and its impunity remain disturbing problems for citizens who have lost their confidence in justice bodies. This has been highlighted by several domestic and international organizations, mainly through reports published during 2016. Often, the diplomatic corps accredited to Albania has made strong statements about this phenomenon, with an emphasis on corruption spread in the justice system tied with corruption at the political level.

The fight against corruption is one of the 5 main priorities that the country needs to fulfill in the context of European integration. In its Report on Albania for 2016, the EC noted a *positive trend since 2010 in the number of **investigations, prosecutions and convictions** in the fight against corruption involving junior or middle-ranking officials, even though the track record remains low overall, especially regarding corruption cases involving high-level officials.*

In the Transparency International Report for 2016, Albania ranks 83rd out of 176 countries included in the index, estimated with 39 points, thus marking an improvement of 17 slots¹¹. The “Freedom House” report¹² on Albania finds that convictions for high-level officials or

11 http://www.transparency.org/neës/feature/corruption_perceptions_index_2016

12 <https://freedomhouse.org/report/freedom-world/2016/albania>

judges with regard to corruption or abuse of office are rare.

The monitoring of trial hearings for corruption was at the focus of AHC activity during 2016. The monitoring of over 50 trial hearings in the courts of Tirana and Durrës, regarding the criminal offense of corruption, showed:

- a) about 77 % of them began late;
- b) 13 % of the hearings were held in the offices of the first instance court judges;
- c) the average length of adjudication was 138 days due to procrastination originating from the absence of the representative of the prosecutor's office, the defendant or his/her defense lawyer, the absence of members of the panel of judges needed to form the necessary quorum, failure to effectively notify witnesses summoned in the hearing, the absence of experts or interpreters, the need to reformulate the request for adjudication, etc.
- d) the remand measure of "arrest in prison" was applied in 50% of the cases, with 80% of defendants investigated/tried under this measure belonging in almost all cases to the low leadership and executive levels¹³ ;
- e) sentences issued for cases of corruption or abuse of office tend to be light and disproportionate vis-à-vis the social threat of the criminal offenses.

There needs to be proactive investigation and effective prosecution in order to increase the number of cases of financial investigation and asset confiscation, particularly against organized crime in the public sector, helped by corruption¹⁴ .

AHC appreciates initiatives of the civil society and the investigative media which have highlighted and followed corruption cases for the good of public interest. Referring to a research study conducted in the beginning of 2016 by BIRN, the 81 judges of the country's appeals courts have assets worth 2 billion ALL invested in real estate, business companies or large cash amounts in banks, 80% of which cannot justify with their incomes¹⁵ .



3.6 Rights of persons deprived of their liberty

During this year too, AHC monitored the activity of institutions of the State Police, the Institutions for the Execution of Penal Decisions, and gave priority treatment to complaints by persons deprived of their liberty, which generally dealt with health care services, transfers, prohibition of torture and inhuman treatment, living conditions, the manner of awarding leave, protection of physical integrity and safety of inmates, respect for rights related to family relations, correspondence, etc.

More than 64% of complaints to AHC come from detained and convicted citizens who complain about inappropriate conditions and the violation of their rights by the prison administration. 33% of petitioners claim failure to provide adequate health care services

13 <http://ahc.org.al/new/wp-content/uploads/2016/12/raport-studimor24.12.16.pdf>

14 Communication of the EC in the Report on Albania in 2016.

15 <http://www.reporter.al/investigime/>

and inappropriate living conditions in the institution. In spite of the small number, there have also been concerns related to the transfer to another institution or room, violation of correspondence, or the arbitrary manner of monetary awards for work of prisoners, etc. Also, 28% and 25% of complaints by persons deprived of their liberty refer respectively to violations related to articles 3 (prohibition of torture and inhuman treatment) and 8 (right to respect for privacy and family life) of the ECHR.

AHC appreciates the reduction of the number of claims by detainees or convicts for the use of violence in Institutions for the Execution of Penal Decisions.

AHC submitted to relevant institutions a large number of recommendations and suggested the undertaking of measures for the implementation of legislation in force, which were generally considered constructively. Institutions such as the General Prosecutor's Office, the Ministry of Justice, the General Directory of Prisons, IEPDs and other institutions responded to raised issues about the activity in the context of respect for the rights of persons deprived of their liberty, informing them about measures taken or their follow up. In particular, we point out the cooperation with the General Directory of Prisons, the transparency demonstrated and the reflections of this institution toward problems raised by AHC. There have also been cases of some state institutions not responding with regard to AHC recommendations or information was not complete.

AHC is of the opinion that the Internal Control Service of Prisons (ICS) as a structure that prevents, discovers or documents criminal activity carried by employees in uniform or not in the prison system, needs to intensify controls and oversight for a powerful fight against abuse in the prison system. AHC recommends that this body demonstrate greater objectivity and impartiality.

Corruption in the penitentiary system remains a serious concern of inmates, a phenomenon addressed in the European Commission's 2016 Report on Albania. In some cases, inmates and detainees claimed of abusive prices of items sold in institution stores and the purchase of these items without a cashier's receipt or corresponding invoice. Corruption is also claimed in the creation of favorable conditions within the institution's premises to obtain better services and in securing rewarding permits or special permits, the presentation by the institution of reports that influence judicial decisions for the reduction of sentences or the application of parole.

3.6.1 Respect for the rights of persons deprived of their liberty in Institutions for the Execution of Penal Decisions

a) Overcrowding

During 2016 as well, overcrowding in penitentiary institutions remained disturbing, particularly during the second half. Overcrowding in pre-trial detention facilities was particularly disturbing, while the remand measure of arrest in prison is applied on defendants in considerable numbers. International standards envisage that this measure should be enforced as a last resort or an extraordinary measure. Alternative sentences are applied in

relatively few cases by the courts.

Although the law “On the electronic supervision of persons whose mobility is limited by court decision” was approved in 2011 and supervision began functioning in 2013, there are still problems with its effective implementation. The level of enforcement of this law has not managed to lead to a reduction of overcrowding in the prison system. Failure to enforce electronic supervision for perpetrators of domestic violence has had fatal consequences in some cases published by the media, thus failing to prevent very threatening offenses, which AHC has had public reactions about.

The approval of the law on amnesty at the end of the year benefited a total of 700 inmates. AHC submitted recommendations to the Probation Service and the prosecutor’s office to realize effective communication for the release of inmates or detainees who benefited from the amnesty. In some cases, we found delays in terms of the implementation of this law and both institutions pointed the finger at the other. The increase of alternative sentences by justice bodies remains a challenge for offenses that pose a low level of social threat and unaffected by short-term criminal policy.

b) Conditions and infrastructure

Problems with inappropriate infrastructure and poor material conditions remained; in some of the monitored penitentiary institutions, these conditions might lead up to inhuman and degrading treatment.

In more concrete terms, we found too small cells, lack of natural, artificial lighting, humidity, wear, lack of heating, ventilation, inmates or detainees sleeping on the ground due to overcrowding, lack of mattresses, sleeping clothes, bathrooms without doors, filthy toilets with worn out hardware, cells with broken windows or without glass, etc. We encountered these problems in the penitentiary institutions of Saranda, Lushnja, Rrogozhina, Fushë-Kruja, Tepelena, Zahari (Kruja) and Burrel. In some of these institutions, problems were related to the old infrastructure of the buildings, which were constructed before 1945. For the Zaharia institution in Kruja, AHC recommended that it be closed as its conditions are at the level of inhuman and degrading treatment for inmates diagnosed with different illnesses and citizens remanded to medical measures.

In some cases, security in the prison system was violated and, as a result, inmates or detainees lost their lives or sustained harm to their health. The killings and any other incident require a comprehensive, complete and objective investigation by the prosecutor’s office as the prison system should undertake all necessary measures for the protection of life and health. Guarantees and mechanisms for the protection of life and health of citizens who are confined should be effective.

The monitoring of confinement places for juveniles showed that greater care is needed to improve hygiene in some rooms/premises where minors stay. The establishment of concrete objectives in individual sentence plans for each juvenile and further work of multi-disciplinary teams with them would be a factor with a positive impact for the achievement of these objectives.

The General Directory of Prisons (GDP), with support from the Ministry of Justice, needs to undertake measures for respect for legal parameters of rooms, appropriate beds and beddings, open and wide premises for airing, heat for premises, and supply of hygiene items for every inmate, as prescribed by law, in respect of human dignity.

c) Rehabilitation and psycho-social care

Rehabilitation aims at reintegrating inmates in the society and represents one of the main objectives of contemporary criminal policy, whose purpose is to fight recidivism or repetition of the criminal offense by the convict.

Prison personnel, particularly those tasked with the implementation of programs for education, training and other activities prescribed by law, have a very important role in the rehabilitation of inmates. Recruitment in the prison system does not enable the employment of persons with integrity, qualified and financially motivated. It is a known fact that in our prisons, time after time, certain officers were dismissed or prosecuted for corruption or abuse of office. Such cases were also observed during 2016 among high-level officials in this system.

Although this is not a generalizing finding, it is our assessment that part of the personnel in the prison administration does not possess yet the necessary knowledge about criminal legislation, penitentiary legislation, United Nations minimal regulations for prisons, special knowledge in the area of criminology, contemporary methods about building fair rapport with inmates, the prevention of suicides or internal conflicts between certain inmates. During 2016, AHC continued to train prison personnel in order to build their capacities through international and domestic expertise, with particular focus on the human treatment of persons suffering from mental health problems, in keeping with Albanian legislation and international standards.

Monitoring conducted by AHC highlights the need for the conduct of a wider array of educational, sports, and rehabilitation activities, including the guaranteeing of meetings with family members without violating the essence of this right through wiretapping or lack of physical contact, prevention of discrimination of inmates and detainees, especially those belonging to the LGBT and Roma communities, etc.

We also found that inmates/detainees were placed in isolation or observation facilities not in accordance with the criteria prescribed by law or beyond the envisaged deadlines. We have received a series of complaints about the creation of obstacles for convicts who meet the legal criteria to benefit from rewarding leave. These problems violate not only the rights of persons deprived of their liberty but also harm the process of their rehabilitation.

d) Health care services

Based on our monitoring, we highlighted some problems related to health care services, part of which were carried over from previous years. In more concrete terms, we noticed a lack of medicaments, qualified medical personnel, caretaking and sanitary personnel, creation of delays or lack of provision of health care services for persons deprived of their

liberty from inside and outside the prison system. This system still faces challenges with guaranteeing effective, professional and complete health care services through the registration of inmates without delay in the compulsory health insurance scheme, the provision of a broader range of medicaments and medical tools, as well as the completion or increase of personnel with specialized medical staff depending on specific needs.

During 2016, the number of persons for which the court decided to drop the criminal case and issue the measure of “*Compulsory medication in a medical institution*” increased to 175. For over two decades, the majority of these persons are kept in violation of the law in the prison system (*SPHI - Special Prison Health Institution, and IEPD - Institution for the Execution of Penal Decisions, Kruja*), where they may not obtain specialized health care services.

Although the issue has been laid as a problem seeking an urgent solution, there is no special institution for this purpose, as prescribed by law no. 44/2012, “*On mental health*” and the Criminal Code. This situation creates discrimination and the conditions for inhuman and degrading treatment for those persons kept in prisons, in conditions that do not meet the requirements for their treatment according to pertinent health care protocols. The People’s Advocate and specialized human rights organizations observed the same issues in their reports.

In June 2016, AHC petitioned the European Court of Human Rights with a complaint about the violation of fundamental rights of a citizen (A.S.), against whom the court had remanded to the medical measure of “*Compulsory medication in a medical institution*”, and who is kept, in violation of the law and article 3 of the Convention, in the prison system. The petition was directed at the European Court of Human rights because domestic courts had not found an effective solution for the petitioner and the raised issue.

3.6.2 Respect for citizens’ rights and freedoms by police structures and in border crossing points

Complaints by citizens about use of physical or psychological violence by police officers saw a reduction by almost half compared to the previous year. Specifically, 3% of complaints to AHC during 2016 had to do with this complaint.

Some of the complaints addressed arbitrary actions by the Tirana municipal police or claims of use of violence by its officers, in the context of the sequestration of unregistered motorized vehicles used by members of the Roma community working as individual collectors of recyclable urban waste.

Concerns raised in the media or by partner civil society organizations as well as complaints raised directly by citizens served us to conduct some monitoring missions in the Directory of Police in Tirana, the Kurbin Commissariat and the Tirana Municipal Police.

AHC also conducted some observations in Border Crossing Points during 2016 and found that conditions for the reception of refugees as well as hygiene-sanitary conditions improved considerable compared to previous years, but Albania still needs to increase its accommodating capacities for receiving irregular emigrants and asylum seekers, mainly

near the border with Greece¹⁶.

AHC has signed cooperation agreements with the General Directory of State Police, which cooperated and created all necessary access for the conduct of monitoring in all of the visits that we conducted. Based on monitoring carried out in the security premises of police commissariats during the previous year, it resulted that rooms had very limited space, lacked sufficient natural or artificial lighting, had no airing possibilities, no adequate bathrooms, lacking appropriate hygiene conditions, having old and unclean mattresses, and in some cases, no personal beds; such conditions have elements and could lead to inhuman or degrading treatment. It is our assessment that it is necessary to make continued investments to improve the infrastructure.

Furthermore, in some cases, we observed the violation of the right to be informed and to become aware of the rights that the law prescribes for accompanied, detained or arrested persons in police premises. Respect for rights during accompaniment, detention or arrest of persons, eliminating any form of the use of violence and maltreatment, remains a challenge for State Police and shows the need for the continued training and strengthening of professional capacities and the moral integrity of employees.

In spite of efforts by police structures to prevent and fight against criminality, citizens need more security and effective protection against crime, especially organized crime, the cultivation and trafficking of narcotics, abuse of office and corruption by public officials.



3.7 Equality and prohibition of discrimination

Equality and the prohibition of discrimination are fundamental rights envisaged in article 18 of the Constitution and article 14 of the ECHR.

During 2016, civil society organizations were active in setting to motion the Commissioner for Protection against Discrimination (CPD), through requests for observing discrimination in cases that they had highlighted and evaluated in the course of their activity. These initiatives were undertaken mainly by organizations with a focus on protecting the rights of women, persons with disabilities, as well as the rights of the Roma and Egyptian communities. There needs to be higher activism by organizations protecting other vulnerable groups that are victims of different forms of discrimination. In the meantime, we have suggested continuously to the Commissioner for Protection against Discrimination to increase the number of reviewed cases of discrimination upon its own initiative.

3.7.1 *Gender-based discrimination*

AHC found that during 2016 as well, the situation of discrimination against women and violence toward them were disturbing.

While the strengthening of policies for gender equality generally progressed, their im-

16 EC Communication on Albania, 2016, p. 85.

plementation remains a challenge. With the amendments of 2015 in the Electoral Code, there is an improvement of women's participation in decision-making. However, greater participation of women is required in key political positions, public administration and the judicial system.

According to data from the Ministry of Social Welfare and youth, for the period January – September 2016, 3,195 cases of domestic violence were reported, marking an increase compared to 2015. In its reports, the European Commission emphasized the need for improving services for domestic violence victims, in terms of quality, quantity, access and geographical coverage. Gender-based violence toward women requires better coordination between state bodies and community services at all levels in order to increase efficiency in the fight against it.

AHC conducted a monitoring of 97 criminal and civil trial hearings on “*Domestic Violence*”, “*Issuance of protection order*”, and “*Issuance of immediate protection order*”, during the period July – October 2016. Our monitoring highlighted the following:

- 70 % of the victims are female;
- divorce, use of alcohol, grave economic conditions and property conflicts are the main causes for the used violence;
- violence is exercised physically and psychologically, in a systematic manner and for a long time;
- 37% of the cases were dropped because the suing party (women) failed to present themselves in the first trial hearing, after deciding to not appear or declare that the conflict does not exist anymore;
- in 40% of the cases, the violator had 8-9 year education;
- *arrest in prison* and *obligation to appear before a police officer* were the reman measures issued most often on defendants;
- violators appear to be recidivistic, mainly for the same offense;
- the majority of the criminal cases are prosecuted with abbreviated trial procedures and there is a lack of preventive measures and effective protection mechanisms, with the phenomenon considered an ordinary one;
- some of the domestic violence cases that escalated to serious consequences highlighted police negligence in the initial phase when the victim appeared to seek help from these bodies (referring to testimonies of violated women during trial).

Referring to CPD reports, discrimination in employment due to pregnancy, birth, health conditions or family relations, by both public institutions and private subjects, remains problematic. AHC addressed some complaints of discrimination in labor relations by female workers, by submitting administrative requests for responses and a decision within legal deadlines by the CPD.

3.7.2 Discrimination due to disability

Persons with disabilities continue to face difficulties in education, employment, health care, social services and low participation in decision-making positions. The last year saw cases of maltreatment toward these citizens, for which AHC reacted, as was the case published in the investigative media whereby persons with mental health problems were kept

in chains in the Shkodra Development Center.

The legal framework for persons with disabilities is seen as partially compliant with the United Nations Convention for the Rights of Disabled Persons. In particular, article 12 of the Convention, is yet to be adopted in domestic legislation, thus weakening any opportunity for the disabled person to make decisions who has been assigned a legal custodian. In more concrete terms, the right legislative measures are yet to be taken for guaranteeing efficient and appropriate standards for preventing abuse by the legal custodian, in order to respect the legal capacity of persons with disabilities to have access to property and to inherit property, to control their own financial matters and to have equal access to bank loans, mortgage or other forms of financial loans, and to ensure that this category of citizens is not arbitrarily confined in terms of its properties. Domestic law should envisage clearly that the representation of interests by the legal custodian should maximally respect the rights, will and preferences of persons with disabilities.

AHC applauds the approval of the Action Plan 2016 – 2020 for persons with disabilities. Municipalities and line ministries should appoint a responsible official for disability matters, as envisaged in article 14 of law no. 93/2014 “*On the inclusion and accessibility of persons with disabilities*”.

AHC addressed complaints by citizens who claimed discrimination and arbitrary actions for benefiting payments by Medical Commissions for Determining Ability for Work (MC-DAW). There have been cases when individuals with permanent disability were expelled from the pension system due to their inability for work. Furthermore, for some months now, AHC is following legally the case of a minor with hearing impairment and the immediate need for a cochlear implant device. Pursuant to the administrative route for addressing the case, AHC also filed charges in the Tirana Administrative Court of First Instance and is in a trial process, against the Ministry of Health, TUHC and the Fund for Securing Compulsory Health Insurance, with the Commissioner for Protection against Discrimination being a third party, in order to declare discrimination due to the physical disability of hearing impairment of the minor, the provision of health services and supply of the cochlear implant, and the payment of remuneration damages caused to him, in order to guarantee the right to appropriate medical treatment and a calm private and family life of the affected citizens.

It is worth mentioning that there are no data about the implementation of measures of a positive nature seeking the integration of persons with disabilities. The infrastructure of educational, health care, judicial or public administration institutions does not adequately meet the needs of this community for access to offered services.

In spite of the obligation envisaged in article 47, item 2, letter a), of Law no. 97/2013 “*On audio-visual media in the Republic of Albania*”, audio-visual media service (national and local) providers did not make progress in guaranteeing the use of sign language for persons with hearing impairment disabilities.

3.7.3 Discrimination of minorities

The Ministry of Foreign Affairs has established a working group that seeks to draft an in-

clusive law on the protection of minorities. The ministry has realized several consultation processes, with the inclusion also of minority associations, civil society organizations and international bodies. Some of these communities reacted by pushing for an expansion of characteristics on the basis of which the government awards minority status, referring to the Framework Convention for the Protection of Minorities.

About 10.7 % of complaints to AHC come from citizens belonging to minorities or the Egyptian community. Petitioners mainly claim violation of their privacy and family rights as well as of the right to non-discrimination. AHC monitored in the field the respect for the right to life and health, education, shelter, and employment of the Roma and Egyptian community in the municipalities of Tirana, Durrës, Fier, Berat, Shkodra and Kruja. Our monitoring missions showed:

- Contacted citizens did not have the necessary minimal information about their rights and the tools to seek them;
- In spite of vaccination campaigns by Regional Public Health Directories, a part of the children are yet to be vaccinated;
- Failure of part of the community children to attend basic compulsory education;
- The majority of persons capable for work actually work as individual collectors of urban waste, uninsured and at potential risk due to the lack of hygiene conditions;
- There is no efficiency in the provision of vocational courses and tailored market orientation;
- Lack of infrastructure for sewage and water supply in the areas they live in;
- There are numerous septic tanks near houses and they could pose a risk of infective diseases or other harmful illnesses.

Worn-out infrastructure conditions inside and outside the houses of Roma and Egyptian inhabitants require that the criteria for their housing be eased so that they may benefit from social housing programs and the implementation of the strategy through coordinated relevant policies between relevant central and local institutions. Only the Ministry of Education and Sports responded positively to the issues observed by our monitoring, by engaging to increase its attention on improving the situation in the area of compulsory education.

The process for the collection of recyclable waste, massively by the Roma and Egyptian communities has seen numerous complaints by these citizens toward the Tirana Municipal Police for discriminating behavior, leading to a violation of their dignity and often even their physical integrity. The informal provision of work at the Sharra Landfill for these citizens has been inappropriate due to poor working conditions, the distance from their place of residence and the unaffordable cost of transport, as well as payments that are several times lower than in other collection sites.

In the public reaction of August 10, 2016, about the tragic incident where a 17-year old minor was found dead in the mentioned landfill, AHC recommended among others that employment alternatives offered to citizens from the Roma and Egyptian community should be safe for their lives and health and respond to the economic needs of them or their minor or adult family members they are responsible for. Regarding this issue, AHC also

addressed the Commissioner for Protection against Discrimination to request an administrative investigation *ex-officio* by this institution into whether the prohibition of this individual activity for these citizens represents a discriminatory approach, considering the fact that consequences could be very harmful as it would interrupt the only opportunity of these families to earn income and worsen the daily lives of the members of this community who live in miserable conditions. In fact, the majority of them do not have a safe shelter as a considerable number of families from the Roma and Egyptian communities at the Bregu i Lumit area in Tirana were forcefully displaced from the barracks they lived in due to public infrastructure works without first guaranteeing effective and timely housing programs for all the affected citizens, thus violating the essence of the right to a calm private and family life for part of them.

3.7.4 *Discrimination of persons with different sexual orientation*

In the field of rights of lesbian, gay, bisexual, transsexual and intersex persons (LGBTI), the approval of the action plan for the rights of this category of citizens for the period 2016 – 2010 represents a positive step. The following years will be decisive in terms of evaluating the efficiency and implementation of this plan with regard to envisaged interventions at several levels, including legislative, policy, programming and service developments, training of professional staffs and service providers, as well as of actors dealing with public education/information and awareness, with special focus on LGBTI and human rights NPOs.

In spite of a series of sensitizing activities carried out during 2016, public awareness and societal acceptance of this community remains at low levels. Also, there have been cases of discriminating behavior by public administration employees toward members of this community in the course of carrying out their public functions. Donations fully cover the “Shelter” center in terms of housing services, food, clothing, psychological help, etc., for members of the LGBTI in need.

Amendments to the family code to present the concept of cohabitation of same-sex couples are yet to be approved.

During 2016, AHC addressed several institutional interventions, enabling also a meeting in its offices between members of the LGBTI community and the Internal Affairs and Complaints Service (IACS) at the Ministry of Interior due to claims of discriminating and arbitrary behavior by State Police officers of the Shkodra Police Directory. The IACS found that the conduct of police officers was in violation of professional ethics and standards.

3.7.5 *Discrimination of minors*

During 2016, the Ministry of Social Welfare took the initiative to draft a new law for children’s rights and protection that seeks to establish an effective child protection system and to strengthen the reactive power of the system for the prevention and protection of children from all forms of violence. In the course of drafting by the Ministry as well as during the review in Assembly standing committees, there was broad consultation and inclusive debate with civil society organizations. In the context of Justice Reform, there was an initiative to draft and consult a special code for juveniles in conflict with the law. For both

draft acts, AHC contributed actively with legal critique in order to improve the quality of provisions and standards for children's rights.

The media, particularly investigative media, reported on cases of physical and psychological violence of teachers toward children attending the pre-school and elementary level education system. There have also been very flagrant cases of abuse toward these children that dismayed public opinion. AHC reacted publicly to highlight that this situation is an indicator of the fact that the existing measures were not efficient in terms of preventing and striking this phenomenon. Principals of schools or heads of higher education structures need to undertake immediate and necessary measures to prevent violence toward students, in any form that it may appear. Also, problems raised by different children's rights and human rights organizations do not appear to have always found effective solutions from relevant public institutions.

The "National Study on the prevalence of disability for children"¹⁷, of the organization Save the Children, publicized in December 2016, showed that in a sample of 13,000 interviewed families, 10% of children had at least once high-level difficulty in their functioning or development, mainly with regard to sight, hearing, walking, speaking, memory, self-care, communication, selfcontrol, acceptance of differences, relationship building, concentration, group play and socialization.

102 children live or work on the street and their families were taken under protection in the first half of 2016. Services offered for these families include counseling, child enrolment in schools, kindergartens and daycare centers, applications for financial assistance and health care. Nevertheless, there is still a need for improving mechanisms for the data collection and reporting as well as inter-sector coordination.

Adequate planning, budgeting and re-education of minors in conflict with the law remain an issue that did not receive proper attention and engagement from policymakers and law enforcement institutions. AHC emphasizes the great importance that information and education of children about human rights.



3.8 The right to be informed

In spite of progress seen with regard to the implementation of the new access to information law, public bodies very often do not implement the obligations deriving from this law and do not have the right understanding thereof.

During 2016, about 7% of complaints to AHC had to do with the violation of the right to be informed, namely failure to provide responses for requests/complaints by convicts from penitentiary institutions, lack of information from the prison administration about the amnesty/pardon, non-transparent procedures from the central and local public administration bodies, lack of information from the courts or the prosecutor's office, and especially the

¹⁷ <https://albania.savethechildren.net/news/national-study-prevalence-disability-for-children>

lack of information for convicts or damaged parties about the progress of investigations, extension of deadlines, etc.

The violation of the right to information is often reported as a secondary violation that accompanies another violation related to rights in the prison system, the judicial system, benefiting from public services, etc.

In the absence of an official response from the Ministry of Health about the lack of hearing aids for minors with hearing impairments, AHC wrote to the Commissioner on Access to Information and Protection of Personal Data who did not accept our complaint. We appealed the decision of the Commissioner in the Administrative Court of first instance, which accepted the AHC request and asked the Commissioner to conduct an administrative investigation into the violation of the right to information from the Ministry of Health, at the same time setting a positive precedent for similar cases. In spite of this precedent, the Commissioner has been very active in addressing complaints raised by different organizations and individuals, mostly observing a violation of the right to be informed.

In its communication on Albania for 2016, the European Commission found that based on observations conducted during the first six months of the year, the local government was willing to provide information with regard to decision-making by the municipal council but there was less transparency on financial matters or legislation.



3.9 The right to be consulted (participation of groups of interest in decision-making processes)

The public consultation process enables a large number of persons, representatives of civil society, business, media, academia, the public in general and institutions to contribute to the preparation of legislation, strategies or policies of public interest and also creates the possibility for public bodies drafting them to become familiar with their views and suggestions.

During 2016, AHC monitored the Assembly website with regard to the process of public notification and consultation. The Assembly's Civil Society Coordinator creates possibilities for the participation of the public in attending hearing sessions in Parliamentary Committees. The minutes of meetings of these Commissions do not appear to show always a public consultation process with interest groups on different draft laws. Organizations protecting human rights are not always consulted even on draft laws affecting human rights. Consultation deadlines often are very tight and do not make consultation effective but rather make it formal. While interest groups express their views about the draft project text under review in parliamentary committees, amendments proposed by the members of these committees to these draft laws are not subjected to public consultation. In the majority of cases, the discussion and review of these amendments is done without debate and inclusion of the public or interest groups.

In October 2014, the Assembly of Albania approved law no. 146/2014 "On public notification and consultation." In the second half of 2016, AHC undertook the initiative to increase the awareness of groups of interest about becoming familiar with and the implementation

of this law and to monitor its implementation by 19 ministries and the Prime Minister's office. The preliminary findings highlighted that the understanding of the law on public notification and consultation is not correct. The process for public notification and consultation is reported based on the old tradition and there are no concrete indicators that shed light on the manner in which the legal procedure of public notification and consultation was done. The electronic register where all draft laws should be published, in order to enable access and active contribution by the public, was never made fully functional during 2016. On the other hand, it results that positive pressure that groups of interest should exercise to encourage their participation in the consultation processes is at very low levels. One thing that clearly demonstrates this is the fact that the Commissioner for Access to Information and Personal Data Protection does not appear to have been set to motion based specifically on the law on public notification and consultation.

During 2016, AHC provided its remarks and suggestions on a series of draft laws, including the legal package in the context of Reform in the Justice System. among other things, AHC contributed by providing legal critique on the draft law *"On guaranteeing the integrity of persons who are elected, appointed or exercise public functions"*, *"On the state exam for the lawyer's profession"*, *"On some amendments and additions to the Criminal Code"*, *"On social care services in the Republic of Albania,"* *"On the probation service"*, *"On the protection of whistleblowers"*, *"On children's rights and protection"*, *"On the draft law on professional standards"*, *"On the popular legislative initiative in the Republic of Albania"*, and also provided its views or concrete suggestions regarding the manner of annual reporting in the parliament by constitutional or legal institutions, such as the People's Advocate, the High Inspectorate for the Declaration and Audit of Assets and Conflict of Interest (HIDAACI).



3.10 Respect for the right to organize and freedom of assembly

Several protests and hunger strikes in different areas of the country, generally administered in a peaceful manner by State Police, took place during 2016.

Although there were no incidents with human rights defenders, we notice that the environment in which many non-profit organizations work and conduct their activity in some cases seeks to obstruct the activity of these organizations. Statements or reactions made in some cases that civil society organizations misuse donations, have an unjust impact on reducing the public's trust on the activity of civil society and divert attention from the causes that civil society defends through protests or peaceful rallies.

During 2016, AHC addressed a complaint by inhabitants of the Potom village, Çorovoda Municipality on the obstruction of the right to rally for damages caused by works for the construction of the Trans-Adriatic Pipeline (TAP). Our verification of the concern showed that the claim was unfounded due to the withdrawal of the inhabitants from their request to rally. We also noticed that police officers in the area did not have information on the legal standards regarding respect for this right.

The European Commission¹⁸ considers that compared to 2015, Albania made little progress in respect for the right to rally and organize.



3.11 Protection of the Environment

Damage to forests, as a result of cutting of trees without any criteria, the exploitation of river beds by harming their natural flow, the dumping of construction waste in natural water resources such as rivers and lakes, the release of polluting gases in the air and other abusive behavior caused considerable damage to the environment. Responsible bodies of national and local government did not manage to react adequately for the prevention of these actions. Furthermore, criminal justice bodies were not effective in terms of bringing before criminal justice the perpetrators of criminal offenses in the area of the environment.

AHC conducted two verification missions in the village of Visokë, Mallakastër Municipality and the village of Potom, Çorovodë Municipality, where it found respectively lack of drinkable water or real potential for pollution of well water, exploited by village inhabitants. State institutions need to intervene urgently in order to guarantee the hygiene parameters of water resources used by inhabitants as an alternative in the absence of public water supply services. It is also necessary to guarantee this service in populated areas by investing considerably in building the necessary infrastructure.

The collection and processing of urban waste, according to standards, away from inhabited areas and the minimization of environmental pollution by industrial activity in Tirana, Elbasan, Patos, etc., remains a need that should be effectively addressed by responsible state institutions, in sustainable consultation with experts of the field and the population at the local level.

Lastly, AHC considers that environmental pollution is not only a positive obligation of the state but also requires broader awareness and sensitization of citizens to not harm it but rather contribute to protect it.

¹⁸ EC Communication on Albania, 2016

