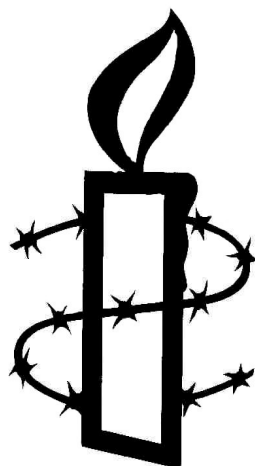

amnesty international

Republic of Albania
Submission to the UN Universal
Periodic Review
Sixth session of the UPR Working Group of the
Human Rights Council
November-December 2009



Executive summary

In this submission, Amnesty International provides information under sections B, C and D as stipulated in the *General Guidelines for the Preparation of Information under the Universal Periodic Review*:¹

- In Section B, Amnesty International calls for the introduction of a law criminalising domestic violence;
- Section C highlights Amnesty International's concerns about human rights violations in the context of Albania's failure to fully implement a civil law on the protection of women from domestic violence; and the failure to guarantee the rights of orphans, including to adequate housing;
- In section D, Amnesty International makes a number of recommendations for action by the government.

¹ Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I adopted 27 September 2007.

Republic of Albania

Amnesty International submission to the UN Universal Periodic Review

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B. Normative and institutional framework of the State

Domestic violence

The fact that domestic violence has not been recognized as a criminal offence in Albania has serious consequences: it results in the violation of the right to physical and mental integrity, and in some cases a violation of the right to life,² and it may not be treated with the seriousness it deserves.³

In Amnesty International's view, by making domestic violence a specific crime Albania would emphasize society's condemnation of this pervasive and unacceptable abuse of human rights. Moreover, to combat domestic violence effectively it is important to have sound data on its incidence and on measures taken to prevent and punish it. Court records provide one source of such information, and by making domestic violence a specific offence the authorities would facilitate the collection of such data. The incidence of domestic violence is not clearly revealed in court statistics relating to prosecutions and convictions for offences defined in specific articles of the Criminal Code. It is thus impossible to identify how many prosecutions or convictions for murder, assault, threat and other criminal acts were related to domestic violence.

C. Promotion and protection of human rights on the ground

1. Lack of effective implementation of the law "On Measures against Violence in Family Relations"

There continues to be a lack of mechanisms and procedures to ensure the effective implementation of the law "On Measures Against Violence in Family Relations", [hereafter referred to as the Domestic Violence Law] adopted by Parliament in December 2006. The law entered into force on 1 June 2007, accompanied by the "National Strategy on Gender Equality and the Eradication of Domestic Violence 2007-2010", published in July 2007 by the Ministry of Labour and Social Affairs.

The Domestic Violence Law establishes a mechanism to provide victims of family violence with a protection order, which may be granted by a civil court on the petition of a victim of such violence. The court must hear the petition within 15 days. There is also a provision for emergency protection orders to be issued within 48 hours by a court, if the abuser presents a "direct and immediate threat to the security, health or well-being" of the victim. The Court must hold a further session within 20 days to decide whether to prolong or dismiss the order.⁴

² In July 2008, for example, at least four women were reportedly killed by their husbands/male partners.

³ While Amnesty International does not in all circumstances call for domestic violence to be made a specific offence, in some country contexts Amnesty International supports calls for additional legislation on domestic violence, making it a specific offence.

⁴ A protection order may include, *inter alia*, the removal of the perpetrator from the house inhabited by the victim, prohibiting the perpetrator from approaching within a certain distance the victim or other members of the family, prohibiting the abuser to enter or stay in the temporary or permanent residence of the victim, or any part thereof,

In July 2007, Tirana District Court issued the first emergency protection order under the provisions of the Domestic Violence Law. In this case, the court issued a protection order for two weeks and prohibited a man from threatening, attacking or communicating directly with his ex-wife and two children. At the subsequent court hearing, two weeks later, the court prolonged the protection order for a further three months.

At present there appear to be no overall statistics showing the number of protection orders issued by the courts. Statistics relating to protection orders are based on figures issued by police sources, and refer to cases in which police assisted victims of domestic violence in petitioning for a protection order.

In August 2008, the press reported that Tirana District Court had issued 200 protection orders in the first eight months of 2008. However, it is possible that the figure refers to the number of petitions for protection orders presented to Tirana District Court, rather than the number of protection orders (both emergency and regular) actually issued. An examination of cases listed on Tirana District Court website in the period April to June 2008 reveals that in the majority of cases protection orders were not issued, either because complainants withdrew their petitions or failed to respond to summonses to appear in court. The reasons for withdrawal are not stated. According to a press report in March 2009, the police had assisted 400 women, who had reported incidents of domestic violence, in filing applications for protection orders in the first three months of 2009.⁵

According to Tirana District Court records and press reports the great majority of petitioners are women (wives/partners, or former wives/partners) and the alleged abusers are men (husbands/partners or former husbands/partners); in many cases violence against women is also accompanied by violence against the couple's children. There are also cases in which fathers or mothers have petitioned for protection against violent sons, or women required protection from their husbands' relatives. Only exceptionally have men filed for protection against women.

Amnesty International is concerned that the relatively high number of protection order cases dealt with by Tirana District Court is not characteristic of the rest of Albania. This is largely due to the greater availability in Tirana of information about the Domestic Violence Law, the presence there of NGOs offering legal advice, counselling, shelter and other assistance to victims, the early establishment of a specialist police unit dealing with domestic violence, as well as urban erosion of traditional attitudes to women and family roles. Between January and September 2008, only three petitions for protection orders were presented to Berat District Court; two of these were subsequently withdrawn by the victim, while the third was dismissed because the victim failed to come to the court hearing.

Measures taken to promote implementation of the law

Article 25 of the Domestic Violence Law required the government to issue supporting legislation (implementing regulations) within three months of the law coming into force. The United Nations Development Programme (UNDP) in Tirana, within the framework of its project "Violence against Women", has assisted the government in implementing this by preparing the required draft acts which were officially presented to the government in September 2007. Some of these acts have been introduced, but others are still under revision by government officials.

Some ministries have taken a number of practical steps to promote awareness, and implementation, of the Domestic Violence Law. For example, in 2007 the Chief of the State Police reportedly issued written

regardless of any property or possession rights the perpetrator may have over these, placing women together with children in temporary shelters or providing victims with access to rehabilitation programmes, ordering the abuser to participate in rehabilitation programmes.

⁵ "Rritet dhuna në familje, në tre muaj 400 gra denoncuan burrat", *Panorama*, 19 March 2009.

instructions ordering all police officers to investigate carefully every report of domestic violence. In November 2007, a specialist unit dealing with domestic violence and the protection of minors was established within the Tirana police force. Similar specialist police units are now operating in a number of other larger cities, but no comprehensive coverage exists, particularly in rural areas.

Statistics: the incidence of domestic violence

It is as yet too early to assess the effectiveness of the Domestic Violence Law and other measures in combating domestic violence.

In December 2008, according to press reports, the police had registered 615 reported incidents of domestic violence during that year. Amnesty International considers that these figures reflect only a very small proportion of the true number of incidents, given that most women, particularly in rural areas, are still extremely reluctant to report domestic violence. Yet data indicates that there has been an increase in reported incidents since the introduction of the law; in 2007, for instance, police reportedly received only 274 reports involving domestic violence.

While it is possible that the increase in reported cases of domestic violence points to an actual increase in incidents of domestic violence, NGOs and police sources tend to interpret the increase as a greater willingness on the part of abused women in urban areas to report domestic violence. According to police sources, Tirana accounted for 50 per cent of reported cases of domestic violence in the first six months of 2008, while elsewhere the taboo against reporting domestic violence still remained strong.

The failure to prosecute of cases of domestic violence

Relatively few cases of domestic violence lead to criminal prosecutions, unless they result in death, serious injury or threats to life, in which case there is a duty on the prosecutor to initiate a prosecution. If the physical injury inflicted is light (defined, under Albanian law, as an injury which makes the victim unfit for work for less than nine days), the public prosecutor is not required to initiate a prosecution; it is the victim who must initiate the prosecution. Victims are often reluctant to do this for fear of reprisals or other family pressures, and few such cases are heard by the courts.

In the absence of a specific criminal offence, cases of domestic violence are prosecuted under applicable offences defined in the Criminal Code, for example, murder, assault and threat. Court statistics do not reveal how many of these prosecutions and convictions are related to domestic violence. So far, police records provide the best information, but this relates only to the *initiation of criminal proceedings*, and not to the outcome of the criminal investigation or of any trial proceedings. According to police sources, in Tirana between January and May 2008, criminal proceedings related to incidents of domestic violence were started against 51 men; in most cases the perpetrators remained free pending investigation.

In the last two years there has been an increase in the number of suicides in Albania, which has raised public concern. This has led to a greater awareness of domestic violence as a contributing factor to suicides. In December 2007, Tomor Merja was convicted of having induced his wife, by repeated ill-treatment, to commit suicide; he was sentenced to 20 months' imprisonment. Press reports at the time suggested that this was a legal precedent, or at least a new court practice. Since then there have been further prosecutions of men on charges of having induced their wives/partners to commit suicide by their ill-treatment of them. According to an NGO in Elbasan which counsels and assists victims of domestic violence, in January 2008 alone, there were 12 registered cases in Elbasan district of attempted suicide by women victims of domestic violence.

2. Failure to guarantee the rights of orphans

As a state party to the UN Convention on the Rights of the Child (CRC), Albania is required to respect, protect and fulfil the rights of children, including the rights of orphans and other children temporarily or permanently

deprived of parental care, to “special protection and assistance provided by the State” throughout their childhood, i.e. until the age of 18, as well as their other rights, including to education, and to protection from neglect, ill-treatment and sexual abuse or exploitation.⁶

Without family support, orphans and other children deprived of parental care are among the most disadvantaged members of Albanian society. The inherent vulnerability of their situation is liable to be exacerbated by factors such as childhood trauma, institutionalization and inadequate preparation for independent adult life. In general such children under-achieve educationally and risk a life in poverty and social exclusion.

In Albania there is strong social pressure on relatives to take over the care of children if their parents have died or for other reasons are unable to look after them. There are therefore relatively few children in orphanages – about 650 at present.⁷ Of these, about 300 are in nine state-run institutions, segregated by age, under the responsibility of the Ministry of Labour and Social Affairs; the rest are in private institutions run by NGOs and foundations.

Formerly, most children in orphanages were so-called “biological” orphans, meaning that both parents were deceased. However, at present the great majority of children are “social” orphans. This term includes children born outside marriage whose mothers are unable to raise them, children who have been abandoned by their parents, and children taken into care by court order because their parents are temporarily, or permanently, unable to look after them. In most such cases it is poverty and associated factors such as emigration, marriage breakdown, mental or physical illness, imprisonment or the consequences of domestic violence or blood-feud, that have resulted in these children being placed in state care.

In March 2005, the Committee on the Rights of the Child stated that it “*remain[ed] concerned that children may be ... placed in institutions by parents in difficult economic situations.*” The Committee recommended that Albania “[t]ake effective measures to strengthen support to families by developing a comprehensive child-centred family policy to enable families to care for their children at home”.

In 2005, experts of the Social Services Department of the Ministry of Labour and Social Affairs, in a document setting out strategy for the next five years, identified a number of problems related to the care of orphans in state institutions.⁸ Some of these related to lack of investment in orphanages (poor quality services, infrastructure and staffing); others to matters such as the frequent transfer of children from one orphanage to another because of their segregation by age, the low level of educational achievement of children, the failure to prepare them for independent life, and their vulnerability to sexual abuse and exploitation. A greater reliance on family-type care, including foster-care and early adoption, and the decentralization of social services were the main solutions envisaged.⁹

Certain of the problems listed in the strategy document amount to a breach of Albania’s obligation to provide special protection and care to orphans, but also, more specifically, to violations of the right to an education that will develop “*the child’s personality, talents and mental and physical abilities to their fullest potential*” and prepare the child “*for responsible life in a free society*” and of the child’s right to protection from sexual exploitation and abuse.¹⁰

⁶ Article 20 of the CRC.

⁷ Figure cited by the Ministry of Labour and Social Affairs, reported in the Albanian press (*Metropoli*) on 27 February 2009. (The total population of Albania is estimated to be 3.5 million.)

⁸ In general, the problems identified in this document are less acute in private institutions, which tend to be organized on a family-home type basis, and where children are looked after in smaller groups, with less segregation by age.

⁹ From *The Strategy of the Social Services 2005 to 2010*: mpcs.gov.al/images/stories/files/strategjia-sherbimeve-sociale.doc

¹⁰ See Article 29 1(a) and (d), and Article 34 of the CRC.

In partial fulfilment of the strategy set out above, the government has made it its aim to reduce long-term institutional care for children and has recently initiated a pilot project (in two cities, Tirana and Shkoder) to encourage families to foster children whose parents are temporarily unable to care for them. It has also undertaken to increase financial assistance to relatives who care for such children. However, the results of these initiatives remain to be seen.

Failure to protect and fulfil the rights of children deprived of parental care to special assistance and protection up to the age of 18

Although the state's duty to provide special protection and assistance extends to the age of 18, in practice children in state care generally leave orphanages at the age of 14 or 15 years, and continue to secondary school, usually a vocational school.¹¹ Here they are the responsibility of the Ministry of Education, and in addition to education, receive free accommodation in the school's residence hall (*konvikt*), meals, and a small allowance for clothes and personal necessities. For children who do not wish, or are not able, to attend secondary school, the state makes no provision, although legally those who have not yet completed primary education have the right to stay on in orphanages until the age of 17.

Although the state supplies children deprived of parental care with their most essential material needs, life in the *konvikt* fails to offer the individual care, support, and supervision of their studies crucial to adolescents. As a result, many children drop out of school, or attend their courses only fitfully, undermining their future chances of employment. The importance of such supervision is underlined in Article 28.1 (e) of the CRC which requires measures to be taken to "...to encourage regular attendance at schools and the reduction of drop-out rates".

By its failure to implement its obligations, the state renders these children vulnerable to exploitation. Young girls, in particular, are targeted by traffickers, who take advantage of the fact that they do not have parents to care for them. Their immaturity, their need for affection, security and material well-being, make them easy prey. Others may be drawn into crime.

Failure to implement the right of children deprived of parental care, as they reach adulthood, to adequate housing

The right to adequate housing is enshrined in a range of international human rights treaties to which Albania is a party, including the International Covenant on Economic, Social and Cultural Rights (Article 11.1).¹²

Its specific responsibilities with regard to the housing of orphans are laid down in the law "On the Status of Orphans" which defines the criteria for being recognized as an orphan, the rights deriving from this status (including at Article 17 the right to priority with housing) and the procedures for obtaining it.¹³ The same law requires the state to assist orphans in obtaining employment.

Under the law "On Social Programmes for the Housing of Inhabitants of Urban Zones", adopted in 2004, orphans, up to the age of 30, are among the especially vulnerable social groups to be granted priority in access to social housing.¹⁴ In general there is a great housing shortage, with over 40,000 families registered as homeless, and as yet almost no social rental housing.

As a result, many orphans are denied access to adequate housing, and failing something better, they cling to what they have – the residence hall, or semi-derelict areas of these halls. According to the National Association of Orphans of Albania, there are over 300 people who grew up in state care, mostly aged between 25 and 40 years, living in such residence halls or other inadequate or temporary housing. In residence halls

¹¹ The more academic secondary school alternative to vocational school is the "general secondary school" (the gymnasium). These do not have their own residence halls. However, foreign donors have assisted two orphanages in Tirana and Shkodër in providing accommodation within or near the premises of the orphanage for a limited number of youngsters of secondary school age.

¹² In its General Comment 4 on Article 11.1, the Committee on Economic, Social and Cultural Rights (CESCR) stipulates that "*Disadvantaged groups must be accorded full and sustainable access to adequate housing resources*" and that "*States parties must give due priority to those social groups living in unfavourable conditions by giving them particular consideration*, paras.8 (e) and 11.

¹³ Law no. 8153 of 31 October 1996.

¹⁴ Law no.9232 of 13 May 2004.

they live two to four to a room, generally in conditions of misery, sharing unhealthy communal shower and toilet areas.

In Amnesty International's view, the situation in which these "adult orphans" accommodated in residence halls are living represents a grave failure to meet several of the criteria for "adequate housing" set out by the CESCR in its General Comment 4, in particular those of accessibility, habitability, affordability and security of tenure. By its failure to fulfil its legal obligation to ensure adult orphans adequate housing, the state also undermines their ability to access other human rights, such as the right to family life, to work, to dignity and personal integrity. It thereby exposes them to a vicious circle of poverty and social exclusion.

D. Recommendations for action by the State under review

Amnesty International urges the Albanian government:

With regard to the duty to protect women from domestic violence

- To take active steps to amend the Criminal Code and introduce a specific offence of domestic violence;
- To ensure that a nation-wide system of recording reports of domestic violence is established and implemented, that statistics are regularly made public and this information is used to inform government policy in combating domestic violence;
- To ensure, in partnership with other ministries and municipal authorities, awareness of the provisions in the Domestic Violence Law for the issuance of protection orders;
- To take steps to investigate why petitions for protection orders have been withdrawn and adopt measures to ensure that the protection order mechanism is more effective, including by issuing statistics on the number of such orders requested, granted and of any prosecutions relating to breaking of such orders;
- To ensure the completion and introduction of all remaining supporting legislation required to implement the Domestic Violence Law;
- To make funds available to centres providing legal and other assistance to victims of domestic violence.

With regard to the right of adult orphans to adequate housing

- To take prompt and effective measures to ensure that orphans, on attaining adulthood, are granted their right to adequate housing, in accordance with national law and international human rights treaties to which Albania is party;
- To devise strategies and take measures for the progressive fulfilment of the right to adequate housing of all disadvantaged groups, including by allocating funding, in accordance with the requirement of Article 2.1 of the ICESCR, to the maximum of available resources, in cooperation with international partners, where necessary;
- To support by funding, training and monitoring, the capacity of municipal councils to implement social housing programmes, in accordance with government decentralization policy;
- To declare that Albania considers itself bound by Articles 16 (the right of the family to social, legal and economic protection), 30 (the right to protection against poverty and social exclusion) and 31 (the right to housing) of the Revised European Social Charter.

With regard to the right of orphans to “special protection”

- To fulfil the rights of orphans to “special protection” throughout their childhood (that is, up to age of 18), as well as their other rights, including to education, and to protection from neglect, ill-treatment and sexual abuse or exploitation, as set out in the Convention on the Rights of the Child.

Appendix: Amnesty International documents for further reference¹⁵

Albania: Violence against women in the family: "It's not her shame", AI Index: EUR 11/002/2006, March 2006.

Albania: "No place to call home" adult orphans and the right to housing, AI Index: EUR 11/005/2007, November 2007.

¹⁵ This document is available on Amnesty International's website: <http://www.amnesty.org/en/region/albania>