

25 October 2006

H.E. Aldo Bumci
Minister of Justice
Ministry of Justice
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Dear minister

Thank you for taking the time to meet with us last week. We were glad to hear of your political support in principle for the decriminalisation of defamation in Albania. We were concerned, however, at some of the practical problems you mentioned, in particular relating to the 'legal case' for decriminalisation of defamation. We would like to take this opportunity to elaborate on our arguments for decriminalisation.

We acknowledge that individual dignity is one of the founding values of the State of Albania. However, the Constitution also protects the right to freedom of expression. An appropriate balance must therefore be found between these two, sometimes conflicting, values.

It is important also to consider that Albania is a party to the European Convention on Human Rights and that, pursuant to articles 5 and 122 of the Constitution, international law takes precedence over the Albanian Constitution. The European Court of Human Rights, the body set up to supervise implementation of the Convention, has laid down a number of general principles with regard to defamation. It has stressed that sanctions for defamation must always be proportionate to the gravity of the defamatory remarks in question. Importantly, in every defamation case featuring imprisonment before it so far, it has held that imprisonment is a disproportionate sanction. This in itself is a significant blow to the current criminal defamation regime in Albania, which still maintains imprisonment as a possible sanction.

In addition, the European Court of Human Rights has strongly urged restraint in the use of the criminal law to restrict expression. It has frequently reiterated the following statement, originally made in a defamation case:

"[T]he dominant position which the Government occupies makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means are available for replying to the unjustified attacks and criticisms of its adversaries or the media." (Castells v. Spain, 24 April 1992, Application No. 11798/85).

In light of the fact that civil law alternatives are readily available and in successful use in many European countries, this statement casts a



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significant shadow of doubt over the legitimacy of criminal defamation laws per sé. The fact that no criminal defamation case from Albania has been pursued in Strasbourg to date must certainly not be taken as quiet acquiescence in the status quo.

The position taken within the human rights system of the United Nations has been even more categorical. The UN Human Rights Committee, the body responsible for overseeing implementation of the International Covenant on Civil and Political Rights, the main UN human rights treaty which Albania is a state party to, expressed serious concern about Albania's defamation regime in its Concluding Observations of 2 December 2004. It recommended the introduction of appropriate "legal mechanisms" to protect freedom of expression, clearly implying that the current, criminal, defamation regime fails to strike the correct balance.

As you are aware, numerous intergovernmental bodies have followed up on these legal findings and have called specifically on Albania to reform its defamation laws. The UN Special Rapporteur on Freedom of Opinion and Expression, appointed by the UN Commission on Human Rights, called on the Albanian government to decriminalise its defamation regime as long ago as January 2001, following a visit to the country. In 2004, the Parliamentary Assembly of the Council of Europe asked the Albanian authorities to "repeal or substantially review the criminal defamation laws and reform civil defamation laws, in order to prevent their abusive application" (Resolution 1377 (2004) 'Honouring of obligations and commitments by Albania'). In its Stabilisation and Association Report 2004, the European Commission noted with concern the tendency of Albanian government officials to influence media reporting "through systematic recourse to defamation suits" and called on Albania to "bring [its] defamation law into full compliance with European standards".

In addition, there have been numerous calls on all States who retain criminal defamation laws to abolish them. For example, the UN Special Rapporteur on Freedom of Opinion and Expression, appointed by the UN Commission on Human Rights, has repeatedly called on all States to repeal criminal defamation laws in favour of appropriate civil defamation laws. The Commission on Human Rights' annual resolutions on freedom of expression note its concern with "the abuse of legal provisions on criminal libel". And the three special international mandates for promoting freedom of expression – the UN Special Rapporteur, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression – called on States to repeal their criminal defamation laws in their joint Declarations of November 1999, November 2000 and again in December 2002.

We are firmly of the opinion that, read together, the foregoing provides ample basis in international law for arguing that Albania should abolish its criminal defamation regime and replace it with appropriate civil laws. We acknowledge that certain countries in western Europe, such as France, Germany and the United Kingdom, retain criminal defamation laws on their statute books. However, it is important to bear in mind that in some of these countries, such as the United Kingdom, these laws have fallen into disuse; whilst in others, safeguards have been put in place to ensure that no abuse is made of them. It is also important to point out that many of these countries have found their laws condemned by the European Court of Human Rights: in *Colombani v. France*, for example, the Court criticised a French law that allowed foreign heads special protection in criminal defamation law as anachronistic.

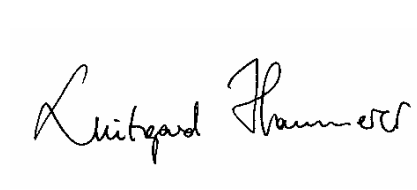
Article 19 of the Universal Declaration of Human Rights:

'Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers'


We therefore strongly urge you to act to decriminalise defamation as a priority. Practice in other European countries who have decriminalised defamation shows that ordinary citizens have no difficulty enforcing their rights through the civil law system; there is no evidence of delays or of people finding it hard to protect their reputations through civil law.

We would be more than happy to discuss this matter in more detail with you and your legal advisers.

Sincerely,

A handwritten signature in black ink that reads "Luitgard Hammerer". The script is cursive and somewhat stylized.

Luitgard Hammerer

A handwritten signature in black ink that reads "Peter Noorlander". The signature is very stylized and abstract, with a large loop at the top.

Peter Noorlander