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RELEASED IN PART
B1, 1.5(B), 1.5(D)

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ACTION EUR-01

INFO	LOG-00	AID-01	BIB-01	CIAE-00	C-01	OASY-00	DODE-00
	DOEE-00	EB-01	HA-09	H-01	TEDE-00	INR-00	IO-16
	JUSE-00	L-03	ADS-00	MOFM-04	MOF-03	M-01	NSAE-00
	NSCE-00	OIC-02	OMB-01	PA-01	PM-02	PRS-01	P-01
	RP-10	SCT-03	SDEL-00	SIL-00	SNP-00	SP-00	SR-00
	SSO-00	SS-00	STR-16	TRSE-00	T-00	USIE-00	SA-01
	RPE-01	CORE-00	SNIS-00	NISC-02	/083W		
				-----EC6EAE	101812Z	/38	

R 101344Z SEP 93
 FM AMEMBASSY TIRANA
 TO SECSTATE WASHDC 3205
 INFO AMEMBASSY ROME
 USMISSION USNATO
 AMEMBASSY VIENNA
 AMEMBASSY LONDON
 USEC BRUSSELS
 AMEMBASSY ATHENS
 USMISSION USVIENNA

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DEPARTMENT ALSO FOR EUR/EE, EUR/EEA AND HA
 VIENNA ALSO FOR DAO - LTC GREATHOUSE
 LONDON ALSO FOR TREASURY - EMILY WALKER

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PAGE 02 TIRANA 02352 01 OF 03 101352Z
 E.O. 12356: DECL: OADR
 TAGS: PGOV, PHUM, KJUS, AL
 SUBJECT: JUDICIAL PERSONNEL AND DUE PROCESS IN
 ALBANIA

1. ~~CONFIDENTIAL~~ - ENTIRE TEXT.
2. SUMMARY: WITH THE RECENT ARRESTS OF SEVERAL POLITICAL FIGURES ON CORRUPTION CHARGES, EMBOFFS VISITED GOA AND NGO REPRESENTATIVES INVOLVED WITH LEGAL AND HUMAN RIGHTS ISSUES TO GET THEIR VIEWS ON CHANGES TAKING PLACE IN THE JUSTICE SYSTEM IN ALBANIA. OVERALL, THE JUDICIAL SYSTEM APPEARS TO BE RESPONDING TO THE NEW CHALLENGES, BUT IS HAMPERED BY THE LACK OF LEGAL SCHOLARS WITH AN

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UNDERSTANDING OF EUROPEAN OR AMERICAN LEGAL PROCEDURES. ECONOMIC DIFFICULTIES IN THE POST-COMMUNIST ERA HAVE ALSO LEFT THE COURTS WITHOUT ADEQUATE ADMINISTRATIVE SUPPLIES AND EQUIPMENT. THE STRUCTURE OF THE SYSTEM PROVIDES THAT CASES ARE NOT DECIDED BY JURY, BUT ONLY A JUDGE. THE EXPERIENCE OF THE JUDGE, THEREFORE, IS EXTREMELY IMPORTANT. ACCORDING TO ALBANIANS AND FOREIGNERS, THE CURRENT SYSTEM OFFERS A FAIR TRIAL AND GUARANTEES DEFENDANTS' RIGHTS. HOWEVER, A NEW CONSTITUTION, PENAL CODE, TIME, EXPERIENCE AND WESTERN ASSISTANCE ARE STILL NEEDED TO BRING ALBANIA'S JUSTICE SYSTEM UP TO WESTERN STANDARDS.
END SUMMARY.

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PERSONNEL CHANGES; CHIEF WANTS MORE GOA ATTENTION

3. EMBOFFS MET WITH [REDACTED] AND DISCUSSED THE IMPACT THAT RECENT REFORMS ARE HAVING ON THE FUNCTIONING OF THE JUDICIAL SYSTEM. [REDACTED]

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4. [REDACTED] FELT THAT THE LOWER COURT SYSTEM FOR THE DISTRICT OF TIRANA HAS A NUMBER OF PROBLEMS, PARTLY BECAUSE IT HAS NOT RECEIVED SUFFICIENT SUPPORT FROM THE MINISTRY OF JUSTICE DURING THE REFORM PROCESS. HE SAID NO OFFICIALS FROM THE MINISTRY HAD BEEN TO THE COURTS SINCE THE DEMOCRATIC PARTY CAME TO POWER 18 MONTHS AGO, MAKING SWEEPING PERSONNEL CHANGES. HE ADDED THAT THE COURT IS ALSO IN DIRE NEED OF SUPPLIES AND EQUIPMENT, AND DOES NOT HAVE ENOUGH SPACE FOR OFFICES OR COURT PROCEEDINGS. OFTEN TWO CIVIL CASES MUST BE HELD SIMULTANEOUSLY IN THE SAME ROOM ON EITHER SIDE OF A TABLE, LEADING TO A GREAT DEAL OF CONFUSION.

5. HOWEVER, ACCORDING TO [REDACTED] THE CHANGES MADE THUS FAR ENACTED HAVE GENERALLY BEEN POSITIVE. MANY PROMISING YOUNG PEOPLE HAVE BEEN BROUGHT INTO

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[REDACTED]

[REDACTED]

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THE SYSTEM; OF THE 26 JUDGES CURRENTLY WORKING IN
TIRANA'S LOWER COURT, ONLY TWO ARE HOLD-OVERS FROM
THE PRE-MARCH, 1992 COMMUNIST LEGAL SYSTEM. THE
NEW JUDGES HAVE LITTLE EXPERIENCE AND MOST HAVE
ONLY RECENTLY GRADUATED FROM LAW SCHOOL. "BUT IT
IS MORE IMPORTANT TO THE REFORM PROCESS THAT THEY
HAVE NO TIES TO THE OLD REGIME," STRESSED [REDACTED]

6. [REDACTED] IMPLIED THAT THE JUDGES IN THE CASES OF
"FAMOUS" INDIVIDUALS (RAMIZ ALIA, THE FORMER
PRESIDENT AND FATOS NANO, FORMER PM AND CHAIRMAN OF
THE SOCIALIST -- FORMER COMMUNIST -- PARTY) WOULD
FACE CONSIDERABLE PRESSURE. "IT IS EASIER TO DEAL
WITH LEADERS FROM THE OLD REGIME (E.G. MRS. HOXHA,
WIDOW OF THE FORMER DICTATOR) BECAUSE THEY NO
LONGER HAVE ANY POWER." FIGURES RECENTLY
ARRESTED, LIKE ALIA AND NANO, POSE QUITE A
DIFFERENT PROBLEM BECAUSE THEY STILL HAVE SOME
PUBLIC SUPPORT. EVEN IN RELATIVELY MINOR CASES,
JUDGES FACE CONSIDERABLE PSYCHOLOGICAL PRESSURE,
AND EVEN PERSONAL DANGER. TWO MURDERS TOOK PLACE
LAST YEAR IN THE CORRIDORS OF THE COURT BUILDING,
AS FEUDING PARTIES DECIDED TO TAKE JUSTICE IN THEIR

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[REDACTED]

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	DODE-00	DOEE-00	EB-01	HA-09	H-01	TEDE-00	INR-00
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	SR-00	SSO-00	SS-00	STR-16	TRSE-00	T-00	USIE-00
	SA-01	RPE-01	CORE-00	SNIS-00	NISC-02	/084W	

-----EC6EE0 101813Z /38

R 101344Z SEP 93
FM AMEMBASSY TIRANA
TO SECSTATE WASHDC 3206
INFO AMEMBASSY ROME
USMISSION USNATO
AMEMBASSY VIENNA

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AMEMBASSY LONDON
USEC BRUSSELS
AMEMBASSY ATHENS
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DEPARTMENT ALSO FOR EUR/EE, EUR/EEA AND HA

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OWN HANDS. [] CONVINCED THE GOVERNMENT TO POST
POLICE INSIDE THE COURT BUILDING FOR SECURITY
REASONS, BUT HE SAID THE POLICE HAVE LITTLE EFFECT.

B1

SCHOLARS NOTE AMERICAN/ALBANIAN LEGAL DIFFERENCES

[]

[] SIMILAR
ASSESSMENTS HAVE BEEN MADE BY OTHER ALBANIAN AND
FOREIGN LEGAL SCHOLARS IN ALBANIA. THEY NOTE THAT
DIFFERENT LEGAL TRADITIONS OF THE TWO COUNTRIES,
AND ALBANIA'S INTEREST IN ESTABLISHING A "EUROPEAN"
LEGAL SYSTEM BASED ON FRENCH, ITALIAN AND SWISS
MODELS, ACCOUNT FOR DIFFERING APPROACHES TO THE
NATURE OF TRIALS AND THE RIGHTS OF DEFENDANTS. THE
FOLLOWING IS A TYPICAL COURSE OF EVENTS FROM THE
TIME OF ARREST THROUGH TRIAL AND APPEAL:

-- UNLIKE IN THE PAST, THE POLICE NOW OFTEN MOVE
QUICKLY TO ARREST SUSPECTS; OTHERWISE THEY OFTEN
FLEE ALBANIA BEFORE THE TRIAL. (NOTE: ALBANIA HAS
NO EXTRADITION TREATIES WITH OTHER COUNTRIES.) THE
SUSPECT MAY SPEND MONTHS AWAITING TRIAL, BUT THIS

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IS DEDUCTED FROM ANY CONVICTION-RELATED SENTENCE.

-- AFTER ARREST, DEPENDING ON THE NATURE OF THE CRIME, A PROSECUTOR MUST BRING THE CASE TO TRIAL WITHIN THREE MONTHS. UNLIKE THE U.S., IN ALBANIA IT IS OFTEN PROSECUTORS WHO ASK FOR POSTPONEMENTS IN ORDER TO HAVE MORE TIME TO PREPARE. IN THE CASE OF MRS. HOXHA, IN WHICH HUNDREDS OF THOUSANDS OF DOCUMENTS WERE REVIEWED BY A SMALL PROSECUTING STAFF, ONE YEAR ELAPSED BETWEEN ARREST AND TRIAL.

-- DEFENDANTS ARE NOT ALLOWED TO PLEAD GUILTY. TRIALS ARE HELD IN ALMOST ALL CASES. ALBANIAN LEGAL AUTHORITIES FIND THE AMERICAN PRACTICE OF "PLEA BARGAINING" VERY UNSAVORY.

-- A STATEMENT BY THE DEFENDANT HIM/HERSELF ALWAYS BEGINS A TRIAL. DEFENDANTS ARE ALSO "REQUIRED" TO SPEAK IN THEIR DEFENSE, ALTHOUGH THE SOON-TO-BE-APPROVED CONSTITUTION SAYS HE/SHE IS "INNOCENT UNTIL PROVEN GUILTY" AND "NOT REQUIRED TO INCRIMINATE HIM/HERSELF."

-- THE PROSECUTOR THEN PRESENTS EVIDENCE AND CALLS WITNESSES. THE JUDGE AND AIDES, WHO SIT ON EITHER SIDE OF HIM DURING THE TRIAL, CAN ALSO PARTICIPATE IN EXAMINING THE WITNESSES.

-- CONSTITUTIONAL ISSUES IN A CASE CANNOT BE RAISED UNTIL THE CASE HAS BEEN APPEALED ALL THE WAY THROUGH THE COURT SYSTEM TO THE COURT OF CASSATION,

[REDACTED]

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THE HIGHEST APPEALS COURT. AFTER THAT POINT, IF A DEFENDANT FEELS THAT HIS/HER CONSTITUTIONAL RIGHTS WERE VIOLATED IN HIS/HER ARREST OR DETENTION, ONLY THEN CAN AN APPEAL TO THE CONSTITUTIONAL COURT BE MADE WHICH COULD THEN REVERSE THE CONVICTION.

-- BOTH THE DEFENDANT AND THE PROSECUTOR CAN APPEAL A SENTENCE. THE HIGHER COURT CAN DECIDE EITHER TO THROW OUT THE CONVICTION, REDUCE, OR INCREASE THE PRISON TERM OR FINANCIAL PENALTY LEVIED.

8. FOREIGN LEGAL SCHOLARS, INCLUDING VISITING AMERICANS, GIVE THE LEGAL SYSTEM GOOD INITIAL MARKS. THE CONSTITUTION AND A NEW PENAL CODE OF

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OVER 600 ARTICLES ARE BEING DISCUSSED IN THE LEGAL COMMITTEE OF PARLIAMENT. THE PENAL CODE RECENTLY ATTRACTED ATTENTION WHEN SIX JUDGES OF THE CASSATION COURT (HIGH COURT OF APPEALS) ISSUED A PROTEST THAT THEY HAD NOT BEEN CONSULTED IN ITS DRAFTING. INDEED, THE CODE IS FOR THE MOST PART THE ITALIAN PENAL CODE WITH MODIFICATIONS FOR ALBANIA. [REDACTED] AND FOREIGN SCHOLARS AGREED THE NEW CONSTITUTION IS ESSENTIAL FOR THE FUTURE

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	SR-00	SSO-00	SS-00	STR-16	TRSE-00	T-00	USIE-00
	SA-01	RPE-01	CORE-00	SNIS-00	NISC-02	/084W	

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DEVELOPMENT OF ALBANIA'S LEGAL FRAMEWORK.

PROGRESS UNDERWAY, JUSTICE BEING SERVED RIGHT NOW?

9 EMPLOYEES ALSO MET WITH [REDACTED]

B1

[REDACTED]
AGREED THAT THE TRAINING AND SELECTION OF JUDGES IS
PARAMOUNT FOR THE ALBANIAN COURT SYSTEM TO FUNCTION
WELL. HE SAID THE NEW JUDGES WOULD NEED SOME TIME
ON THE JOB, BUT EVENTUALLY WOULD SETTLE IN TO THEIR
POSITIONS. "UNDER THE COMMUNIST REGIME, JUDGES
CARRIED OUT THE ORDERS OF THE PARTY. NOW WE MUST
HAVE JUDGES WHO WILL BE FAIR, WHO KNOW THE LAW AND
WHO CAN REMAIN UNCORRUPTED."

10. COMMENT: JUDGES IN THE UPCOMING MAJOR
POLITICAL TRIALS WILL FIND THEMSELVES UNDER
CONSIDERABLE PRESSURE, CAUGHT BETWEEN THREATS FROM
"THUGS" FROM THE OLD REGIME AND THE PRINCIPLES OF
THE NEW GOVERNMENT WHICH EMPLOYS THEM. MOST
ALBANIANS AND FOREIGNERS WITH WHOM WE HAVE SPOKEN
BELIEVE THAT UNDER THE CURRENT ALBANIAN JUSTICE
SYSTEM THE RIGHTS OF DEFENDANTS ARE PROTECTED AND
THAT ONE CAN GET A FAIR TRIAL. THE ENACTMENT OF A

[REDACTED]

[REDACTED]

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NEW, DEMOCRATIC CONSTITUTION AND PENAL CODE,
COUPLED WITH CONTINUED EXPOSURE TO EUROPEAN AND
AMERICAN LEGAL SYSTEMS, WILL HELP ALBANIA
INSTITUTIONALIZE LEGAL RIGHTS WHICH ARE NOW AFTER
50 YEARS OF MOCK JUSTICE, AGAIN RESPECTED. RYERSON

[REDACTED]

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