



REPUBLIC OF ALBANIA

PEOPLE'S ADVOCATE

National Mechanism for the Prevention of Torture

**People's Advocate recommendation to immediately interrupt illegal actions
of police officers of the Tirana Region Police Directorate against former
political persecuted prisoners Mr. Skënder Tufa and others**

April 2013

-Non official translation-

People's Advocate Office

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Subject: Recommendation to immediately interrupt illegal actions of police officers of the Tirana Region Police Directorate against former political persecuted prisoners Mr. Skënder Tufa and others.

To: General Director of State Police
Mr. Hysni BURGAJ

Cc: Minister of Interior
Mr. Flamur NOKA

Dear Mr. Burgaj,

With official letter no. K4/S2-3, dated 04.05.2013, You have been informed that Mr. Skënder Tufa has filed several complaints at the People's Advocate Institution. The complainant claims that, since October 2012, together with Mr. Fatmir Lloçi, Mr. Petrit Lipo dhe Mr. Besim Valeri, all former political persecuted prisoners, and all participants at the hunger strike conducted by this social grouping, during September-October 2012, are kept under surveillance 24 hours a day by the criminal police of the Tirana Region Police Directorate. The complainant also claims that he and the other mentioned individuals have the feeling of being under pressure by the police and also being threatened, because they were detained at the Tirana Police Stations in abusive and illegal way, whenever the leader of the Democratic Party holds meetings or participates in various activities in the city of Tirana.

In order to analyze the complaint as objectively as possible, the People's Advocate, with official letter no. K4/52-2 prot., dated 04.03.2013, based on paragraph 4 of article 63 of the Constitution of the Republic of Albania, article 19/b and 20 of Law no. 8454, dated 04.02.1999 "On People's Advocate", as amended, has requested clarification to the Director of the Tirana Region Police regarding the grounds and legal basis for keeping under surveillance the complainant Mr. Skënder Tufa and three other citizens mentioned above. This official letter has been sent for information to You as well.

The Tirana State Police Directorate, although with delay, sent a replay with official letter no. 1690/1 prot., dated 03.04.2013, with regard to the complainant's claims. We are informed that the complainants, as mentioned above, are not kept under surveillance by investigation structures of the Tirana Region Police Directorate.

Meanwhile, You also responded in April 2013. From Your response we were informed that the complainant is not kept under surveillance by the State Police structures.

State Police Directorate, although with delay, sent a replay with an official letter no. 1690/1 prot., dated 03.04.2013, with regard to the complainant's claims. We are informed that the complainants, as mentioned above, are not kept under surveillance by investigation structures of the Tirana Region Police Directorate.

Mr. Director,

Although not admitted by the Tirana Region Police Directorate that Mr. Skënder Tufa, Mr. Fatmir Lloçi, Mr. Petrit Lipo and Mr. Besim Valeri are kept under surveillance by the structures of the Tirana Region Police Directorate or those of the State Police, we informed You that the complainant's claims, have been proven on three occasions by the staff of the People's Advocate, and in one of these cases personally by the People's Advocate. This occurred on 01.03.2013, when the complainant and his two companions came to the People's Advocate Institution to file a complaint on this issue. During the verification of this case, carried out by our experts, it turned out that they were kept under surveillance by two criminal police officers, which were precisely identified by the People's Advocate. The People's Advocate and his staff communicated directly with the two police officers, who among the others admitted that they have been assigned by their superiors to keep under open surveillance 24/24 hours the complainant.

In another occasion, dated 02.04.2013, the staff of the People's Advocate evidenced the claims of Mr. Tufa. On this occasion, Mr. Tufa came to the People's Advocate Institution to file a complaint against the police. Our staff members noticed that the complainant was kept under surveillance by two civilian police officers.

After the conclusion of the investigation on this complaint, we concluded that keeping these citizens under open surveillance and on constantly basis is illegal and is contrary to Article 114 of Law no. 9749, dated 04.06.2007 "On the State Police", according to which *"the police officer has the responsibility to collect data for the purpose of protecting public order and security and/or for the prevention and detection of crime, using up any source that can provide data. For this purpose he can use even secret collaboration with individuals, secret surveillance of persons and premises, as well as location tracking devices"*.

As it resulted from the verification of the complaint, the complainants have not just been under surveillance without observing the relevant legal criteria but at the same time they were under open surveillance.

From the verifications of the experts of the People's Advocate carried in Police Commissariat no. 1, 2 and 3 of Tirana Region, it is concluded that accompanying repeatedly to the Commissariat Mr. Skender Tufa and the other former political persecuted prisoners of the communist regime, is unlawful because it is against the provisions of Law no. 9749, dated 04.06.2007 "On the State Police" and related bylaws. More specifically, it is unlawful with:

1. Article 11, paragraph 6 of Law no. 9749, dated 04.06.2007 "On the State Police" where it is envisaged the definition of the accompaniment of individuals at Police premises. According to this provision: *"Accompaniment in this law will be interpreted as the case when a person*

breaches an administrative rule and for identification purposes it is necessary to accompany the person to Police premises, willingly or not”.

2. Article 101, paragraph 1, of the Law “On the State Police” provides with regard to the accompaniment at Police premises:

“The Police officer accompanies persons to Police premises or to the premises of the body that issued the order, in the following cases:

- a) for the supervision of a minor for purposes of education or for escorting him to a competent organ;*
- b) when a person is the carrier of a contagious disease, mentally incompetent and dangerous to society”.*

3. With Order of the Director General of the State Police no. 711, dated 11.10.2007, “On the implementation of the Law on the State Police” regarding the use of force and treatment of accompanied persons, in section 1, 6 and 7.

4. On official letter of the Director General of State Police no. 1328, dated 23.11.2009 “On the observance of legal and constitutional rights and freedoms of individuals in the activity of the State Police” in paragraphs 4 and 5.

Referring to laws and regulations as mentioned above, it is fully proven that the accompanied at Police premises of Mr. Tufa and others was not in accordance with the law.

Concerning the issue of police accompaniment for these individual, with document no. K2/S4-5 prot., dated 01.03.2013, the People’s Advocate has made a recommendation to the Director of the Tirana Region Police and to the Directors of Police Stations no. 1 and 2 for termination of these illegal actions towards former political persecuted prisoners, but thi recommendation was not taken into consideration.

Moreover, we assess that these illegal actions of police officers have seriously violated the right of *Mr. Skënder Tufa, Mr. Fatmir Lloçi, Mr. Petrit Lipe and Mr. Besim Valeri* to move freely in any part of the territory of the State guaranteed by article 38/1 of the Constitution, *by monitoring their movements 24 hours and by accompanying frequently at the premises of Tirana Police Stations.* .

These acts committed by police are against the European Convention for the Protection of Human Rights and Fundamental Freedoms, respectively:

Article 8 of the convention: *“1) Everyone has the right to respect for his private and family life, his home and his correspondence. 2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others”.*

Article 2 of Protocol no. 4 of the above mentioned convention: *“Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence”*.

The People’s Advocate concludes that these illegal police actions against the Mr. Tufa and other citizens as mentioned, aimed at exercising physical and psychological pressure to them so that they give up pursuing their rights and demands to state authorities concerning their compensation as envisaged by the law.

With official letter no. K4/S2-3, dated 05.04.2013, the People's Advocate recommended the following to the Director of Tirana Region Police:

1. The immediate interruption of the illegal actions of the Tirana Region Police Directorate in keeping under surveillance Mr. Skënder Tufa, Mr. Fatmir Lloçi, Mr. Petrit Lipe and Mr. Besim Valeri.
2. Immediate interruption of the illegal accompaniment of any group of persons, ex-persecuted prisoners, as well as to be taken measures to respect legal criteria foreseen for the accompaniment of individuals at police premises.
3. Processing and analyzing impartially and very seriously this case. Initiating disciplinary procedures for the police officers who have ordered the surveillance and accompaniment at police premises of Mr. Skënder Tufa, Mr. Fatmir Lloçi, Mr. Petrit Lipo and Mr. Besim Valeri.
4. Treating this case as an example by aiming to end to such practices of State Police officers who have violated human rights and freedom.

For information, this recommendation was sent as well to You.

Mr. Director,

With regret it is evidenced that our recommendation has not been implemented by the Tirana Region Police Directorate. This conclusion is based on direct evidence. In particular, we refer to two cases that contradict the response of the police authority send to the People's Advocate, according to which “the complainants listed above are not kept under surveillance by the structures of the Tirana Region Police Directorate”.

On April 24th, 2013, at 9:30 pm at the entrance of Restaurant “Rovena”, by chance the citizen Skënder Tufa has met the People’s Advocate to whom he raised the ongoing concern about the constant surveillance by police. In addition, Mr. Tufa indicated the two police officers that were keeping him in open surveillance from just few meters away. The People’s Advocate found in situation, meet with one of them. The police officer told the People’s Advocate that he and some of his colleagues were in charged by their superiors with the duty of keeping under surveillance Mr. Skënder Tufa. According to him, this action was for best of the complainant so because he was “secure” from them.

Whereas, on April 25th, 2013, at noon, Mr. Tufa has came to the People’s Advocate Institution and complained once more about this issue. He claimed that observers had been following him throughout the day and were nearby the People’s Advocate Institution. The People’s Advocate

employees made verifications and it resulted that at 13:36 Mr. Tufa was kept under surveillance by two police officers. In order to document this fact, some photos were taken to the police officer that was waiting and then followed Mr. Tufa when he got out of the People's Advocate Institution.

The legal violations identified above are a result of the lack of knowledge of the law and bylaws that regulate the activity of the State Police, the lack of law enforcement, and for reasons related to the lack of a legal culture and a clear vision on human rights. Unfortunately these shortcomings characterize some of the directors of the State Police. The repeated violations of the law by police officers demonstrate lack professionalism to perform the duties and the mission of the State Police, which is not only to protect the public order and security, according to the law, but also to respect human rights and freedoms.

Lack of knowledge and of law enforcement have serious consequences on constitutional and legal rights of citizens affected by the illegal actions of police officers. On the other hand, this seriously damages the image and confidence of the community in police bodies. While, the non-implementation of the People's Advocate recommendations concerning citizens' rights, affects the relations of the State Police with the constitutional institution protecting human rights.

In this context, we have to remind You that if these actions will be furthermore undertaken in the future by the Tirana Region Police Directorate, we will recommended to the Prosecutor's Office to initiate the investigation for the criminal offence of "arbitrary acts" under Article 250 of the Penal Code.

Taking in consideration the fact that the mentioned recommendation was not implemented by the Tirana Region Police Directorate, we address to You, General Director of State Police and consequently the superior authority to the Tirana Region Police Directorate, under paragraph 3 of Article 63 of the Constitution, Articles 21/c and 21/ d of the Law no. 8454, dated 04.02.1999 "On People's Advocate", as amended,

IT IS RECOMMENDED:

1. The immediate interruption of the illegal actions of the Tirana Region Police Directorate in keeping under surveillance and accompanying to Police stations Mr. Skënder Tufa, Mr. Fatmir Lloçi, Mr. Petrit Lipe and Mr. Besim Valeri.
2. Processing and analyzing impartially and very seriously this case. Initiating disciplinary procedures for the police officers who have ordered the surveillance and accompaniment at police premises of Mr. Skënder Tufa.
3. Treating this case as an example by aiming to end to such practices of State Police officers who have violated human rights and freedom.

With regard to Your position and to the measures that You will adopt for the implementation of this recommendation, please keep the People's Advocate informed as defined by the law within 30 days, foreseen by article 22 of the Law “On People's Advocate”.

Confident for Your cooperation we are looking forward to hearing from you,

**PEOPLE'S ADVOCATE
IGLI TOTOZANI**