



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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COMMITTEE AGAINST TORTURE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 19 OF THE CONVENTION**

**Initial report of States parties due in 1995**

**Addendum**

**ALBANIA\***

[13 June 2003]

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\* The information submitted by Albania in accordance with the consolidated guidelines for the initial part of the reports of States parties is contained in HRI/CORE/1/Add.124.

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## I. INFORMATION OF A GENERAL NATURE

### A. Introduction

1. The Republic of Albania presents to the Committee against Torture its initial, first and second periodic reports, in compliance with article 19 of the Convention. The report was drafted by a permanent group of experts from the Albanian Government and NGOs, after discussions on the relevant issues and information based on the articles of the Convention.

2. The Republic of Albania adhered to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by Law No. 7727, of 30 June 1993, proclaimed by Decree No. 592, of 6 July 1993 of the President of the Republic. The Convention entered into force with respect to Albania on 11 May 1994.

### B. General legal framework

3. Human rights and freedoms are provided for in the second part of the Constitution (arts. 15-63). The main legal provisions related to the protection against torture or other cruel, inhuman, or degrading treatment are provided by article 25 of the Constitution: “No one may be subjected to torture [or] cruel, inhuman or degrading punishment or treatment.”

4. Furthermore, article 26 provides that no one may be required to perform forced labour, except in cases of the execution of a judicial decision, the performance of military service, or for a service that results from a state of emergency, war or natural disaster that threatens human life or health.

5. Pursuant to article 4 of the Constitution, the law constitutes the basis and the boundaries of the activity of the State. Similarly, article 15 (1) provides that the fundamental human rights and freedoms are indivisible, inalienable and inviolable and are the basis of the entire juridical order.

6. Pursuant to article 18, all are equal before the law. No one may be unjustly discriminated against for reasons such as gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic condition, education, social status, or parentage. No one may be discriminated against for the reasons mentioned in paragraph 2 without a reasonable and objective justification.

7. Pursuant to article 28 of the Constitution, everyone who has been deprived of his liberty has the right to be notified immediately, in a language that he understands, of the reasons for this measure, as well as the accusation made against him. The person who is deprived of liberty shall be informed that he has no obligation to make a statement and has the right to communicate immediately with his lawyer, and he shall also be given the possibility to exercise his rights. The person who has been deprived of liberty, according to article 27, paragraph 2 (c), must be brought within 48 hours before a judge, who shall decide upon his pre-trial detention or release not later than 48 hours from the moment the judge receives the document for review. A person in pre-trial detention has the right to appeal the judge's decision. He has the right to be tried within a reasonable period of time or to be released on bail, pursuant to the law. In all other

cases, the person who is deprived of liberty extrajudicially may at any time address a judge who shall decide within 48 hours regarding the legality of this action. Every person deprived of liberty pursuant to article 27 has the right to humane treatment and respect for his dignity.

8. Pursuant to article 42 (2) of the Constitution, everyone, to protect his constitutional and legal rights, freedoms and interests, or in the case of charges brought against him, has the right to a fair and public trial, within a reasonable time, by an independent and impartial court specified by law.

9. In addition, articles 43 and 44 guarantee that everyone has the right to appeal a judicial decision to a higher court, except when the Constitution provides otherwise. Everyone has the right to be rehabilitated and/or indemnified in compliance with the law if he has been damaged because of an unlawful act, action or failure to act of the State organs.

10. Article 48 provides that everyone, by himself or together with others, may address requests, complaints or comments to the public organs, which are obliged to answer within the time periods and under the conditions set by law.

11. The organization of the judicial system in the Republic of Albania is provided in part nine of the Constitution, articles 135-147. According to article 135, the judicial power is exercised by the High Court, as well as by the courts of appeal and courts of first instance, which are established by law. The Assembly may by law establish courts for particular areas, but in no case may it establish an extraordinary court. Furthermore, Law No. 8436 of 28 December 1998 "On the Organization of the Judicial Branch in the Republic of Albania" provides for the organization of the judicial system, amended by Law No. 8546 of 5 November 1999 and by Law No. 8656 of 31 July 2000.

12. The Albanian legislation is an outcome of Albanian lawyers and the experience gained primarily from the member States of the European Union (EU). The goal of Albania is to join the EU. This means that the administration and the judicial system must create standards of effective governance and stick to them, so that they can integrate into the EU legal system when full membership is achieved.

13. The reform of the justice system; the preparation, approval and implementation of legislative and institutional measures that aim at improving, achieving and ensuring the independence and effectiveness of the judicial system; the bringing of Albanian legislation into line with that of the EU and with present-day standards of civil and criminal legislation; as well as the organization and functioning of independent legal professions represent some of the most important activities guiding the Ministry of Justice.

14. These reforms are based on the following general objectives:

(a) Alignment of the justice legislation with the Constitution;

(b) Fulfilment of the requirements for EU membership and especially for the commitments assumed in the framework of the Stabilization and Association Agreement with the EU;

(c) Improvement and completion of the material, including the relevant legislation, on the fight against illegal trafficking, organized crime and corruption;

(d) Improvement and completion of the material, including the relevant legislation, aiming at the development of civil-judicial relations and at the acceleration, effectiveness and transparency of civil procedures;

(e) Further development of legal and institutional structures associated with the organization and functioning of the organs and institutions of justice system.

15. The law “On the Organization and Functioning of the High Justice Council” is one of the most important laws adopted by the Parliament in 2002. This law provides the most necessary legal structures, competencies, composition, organization and procedures of the work of the High Justice Council for exercising two important functions:

(a) Appointment and removal of magistrates and decisions on their careers;

(b) Disciplinary procedures and measures with regard to magistrates.

16. This law also provides for the relationship, the role and the responsibilities of the Deputy Chairman of the High Justice Council and the Minister of Justice on the above-mentioned issues.

17. Important and voluminous amendments to the Criminal Code, the Criminal Procedure Code and the Military Criminal Code were approved by the Parliament in 2001 after an inclusive and intensive legislative process, aiming at bringing them into line with constitutional provisions (the Constitution was adopted in November 1998), based on the problems that emerged during the five years of the implementation of the Criminal Code, the experience gained during the same period, the acceptance of a considerable number of international instruments in the criminal domain, etc. The main objective of these amendments was to improve the investigation and judgement procedure for criminal cases before the courts; to reduce postponements, to increase the effectiveness of the actions performed by parties in the process, as well as the courts; to establish fundamental legal norms for the establishment and functioning of courts for serious offences.

18. In conformity with the process of Albanian integration into the EU through the Stabilization and Association Agreement, the department responsible for bringing Albanian legislation into line with EU standards has prepared a strategic plan which constitutes a road map for this process, defining the phases within which relevant ministries and other central institutions are going to carry out different tasks, mainly for the harmonization of national legislation with the *acquis communautaire* of the EU.

19. By the initiative of the Albanian Government, the Parliament has adopted a considerable number of national instruments which will considerably affect the Albanian integration processes, as well as the improvement of judicial cooperation between organs within the judicial system, national institutions and homologous organs in other countries.

20. A special unit has been established within the Ministry of Justice (Project for Legal and Judicial Reform). The objectives of this unit are the implementation and coordination of the legal and judicial reform in Albania, within the framework of the extensive reforms of the system of justice. A project for legal and judicial reform has been drafted and is under implementation, supported financially supported by the World Bank until 2004.

21. The project includes the following components:

(a) Improvement of legal education in the Faculty of Law of Tirana University. Important activities in this framework are: development and training, exchange programmes, material support, as well as rehabilitation and expansion of the premises of the Faculty of Law;

(b) Enforcement of judicial system. Within the framework of this programme, the main activities are: improvement of the system of judicial administration, enforcement of the execution of judicial decisions and supervision of the judicial system;

(c) Mediation and arbitration of commercial disagreements;

(d) Dissemination of legal information.

22. The Criminal Code of the Republic of Albania is one of the most important laws of the Albanian legal system. This Code was approved on 27 January 1995 in the framework of the general reform of the Albanian legal system. This Code has been amended by Law No. 8175 of 23 December 1996, Law No. 8204 of 10 April 1997 and Law No. 8733 of 24 January 2001.

23. Article 1 (a) of the Criminal Code states: "The Criminal Code is based on the Constitution of the Republic of Albania, on the general principles of the international criminal law, as well as on the international agreements ratified by the Albanian Government. The legal legislation is composed of this Code and other laws provided by criminal acts."

24. Pursuant to article 9 of Law No. 8328 of 16 April 1998 "On the Rights and Treatment of Prisoners", convicts should receive treatment intending re-education for their integration into social life.

25. The General Directorate of Prisons is the central organ that organizes, directs and controls the institutions of the execution of criminal decisions and the bodies providing support activities. The General Directorate carries out its duty based on the law "On the Rights and Treatment of Prisoners", the general prison regulations, orders and instructions of the Minister of Justice, as well as all other pertinent legal acts and laws. The director of the institution organizes and controls its activity and he is responsible for the execution of criminal decisions.

26. Inmates should be treated in accordance with the requirements of the State and the individual characteristics of each inmate. Individual needs are assessed and the circumstances and the environment in which the inmate has lived, his education and the social reasons for his departure from a normal life are taken into account. The observation is done at the beginning of the treatment and the results are continuously verified during the serving of the sentence, making the right changes.

27. The prison administration personnel, in collaboration with the relevant organs and State institutions, undertake the observation and programming and provide the treatment. The contribution of NGOs and special individuals is encouraged and supported by the prison administration carrying out the treatment programme.

28. Pursuant to article 48 of the General Prison Regulation and the provisions foreseen in the regulations of the special institutions, “the prison staff is forbidden to perform actions against inmates, [including] cruel or degrading punishment or treatment, as well as any kind of torture, that is not based on law”.

### **C. Other treaty commitments**

29. In the framework of commitments for the protection of human rights and freedoms, the Republic of Albania has signed and ratified most of the conventions and international protocols of the United Nations and the Council of Europe, as well as a number of bilateral agreements in the criminal justice field:

Convention on the Prevention and Punishment of the Crime of Genocide, ratified on 12 May 1995;

International Convention on the Elimination of All Forms of Racial Discrimination, entered into force in the Republic of Albania on 11 May 1994;

Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, entered into force on 19 May 1971;

Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, entered into force on 11 May 1994;

Rome Statute of the International Criminal Court, Rome, 18 July 1998, ratified on 23 December 2002;

International Convention against Transnational Organized Crime, ratified on 12 December 2000;

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, ratified on 12 December 2000;

Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, ratified on 12 December 2000;

The Statute of the Council of Europe ratified and entered into force in the Republic of Albania on 13 July 1995. Convention for the Protection of Human Rights and Fundamental Freedoms signed on 13 July 1995, and ratified on 2 October 1996. Albania has also ratified Protocols Nos. 1, 2, 3, 4, 5, 7 and 8, of this Convention signed,

ratified and entered into force on 2 October 1996. Protocol No. 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms was signed on 13 July 1995, ratified on 2 October 1996 and entered into force on 1 November 1998;

Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty, was signed on 4 April 2000, ratified on 21 September 2000 and entered into force on 1 October 2000.

30. Since 1992, when the last execution was carried out, the death penalty has remained in the Criminal Code but the implementation of this punishment was suspended. After the ratification of Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms, this punishment was replaced by life imprisonment. Protocols Nos. 12 and 13 of the European Convention are in the process of ratification.

31. Besides the European Convention on Human Rights, Albania has signed most of the conventions of the Council of Europe in the criminal justice field as follows:

The European Convention on Extradition, signed and ratified on 19 May 1998, and entered into force on 17 August 1998;

The Additional Protocol to the European Convention on Extradition, signed and ratified on 19 May 1998 and entered into force on 17 August 1998;

The European Convention on Mutual Assistance in Criminal Matters, signed on 19 May 1998, ratified on 4 April 2000 and entered into force on 3 July 2000;

The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, signed on 2 October 1996, ratified on 2 October 1996 and entered into force on 1 January 1997;

Protocol No. 1 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, signed, ratified and entered into force on 2 October 1996;

Protocol No. 2 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, signed, ratified and entered into force on 2 October 1996;

Convention on the Transfer of Sentenced Persons, signed on 19 May 1998, ratified on 4 April 2000 and entered into force on 1 August 2000;

The Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, signed on 4 April 2000, ratified on 20 July 2000 and entered into force on 1 February 2002;

The European Convention on the International Validity of Criminal Judgments, signed on 8 June 2000;

The European Agreement on the Transmission of Applications for Legal Aid, signed on 8 June 2000, ratified on 4 April 2000 and entered into force on 3 July 2000;

The Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, signed on 19 May 1998, ratified on 10 June 1999 and entered into force on 3 July 2000;

The European Convention on the Suppression of Terrorism signed on 4 April 2000, ratified on 21 September 2000 and entered into force on 22 December 2000;

The European Convention on the Transfer of Proceedings in Criminal Matters signed on 19 May 1998, ratified on 4 April 2000 and entered into force on 5 July 2000;

The European Convention On the Supervision of Conditionally Sentenced or Conditionally Released Offenders signed on 8 June 2000, ratified on 17 May 2001 and entered into force on 18 August 2001;

The European Agreement relating to Persons participating in Proceedings of the European Commission and Court of Human Rights signed on 21 September 2000;

The Second Additional Protocol to the European Convention On Mutual Assistance in Criminal Matters, signed on 12 November 2001, ratified by the Parliament, and deposited the instrument of ratification;

The Additional Protocol to the European Agreement On the Transmission of Applications for Legal Aid, signed on 12 November 2001, ratified by the Parliament, and deposited the instrument of ratification.

32. Following the ratification of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT) organized four visits to Albania between 1997 and 2001. The texts of the reports and the relevant replies of the Albanian Government have been authorized by Albania for publication.

33. The Criminal Procedure Code of the Republic of Albania, No. 7905 of 21 March 1995, contains various provisions regarding the relationship of the courts and the Ministry of Justice in the field of international criminal legal assistance.

34. Pursuant to article 10 of the Criminal Procedure Code: “The relationship with foreign authorities in criminal matters shall be governed by international conventions recognized by the Albanian Government, by generally admitted principles and standards of international public law and also by the provisions of this Code.”

#### **D. Incorporation into domestic legislation**

35. Article 22 of the Constitution of the Republic of Albania adopted in 1998 provides that any international agreement that has been ratified constitutes part of the internal juridical system after it is published in the *Official Journal* of the Republic of Albania. It is implemented

directly, except for cases when it is not self-executing and its implementation requires the adoption of a law. An international agreement that has been ratified by law has superiority over laws of the country that are not compatible with it.

36. This provision of the Constitution is of special importance in the protection of human rights and freedoms, because in cases where the domestic legislation is incomplete, the Convention on the Prevention of Torture and Cruel, Inhuman or Degrading Treatment or Punishment can be directly implemented if the approval of special laws is not necessary for its implementation.

37. Article 180 of the Constitution states: “International agreements ratified by the Republic of Albania before this Constitution enters into force are considered ratified according to this Constitution. The Council of Ministers submits to the Constitutional Court the international agreements which contain provisions that come into conflict with the Constitution.”

### **E. Remedies**

38. Article 17 of Constitution states: “Limitations of the rights and freedoms provided for in this Constitution may be established only by law, in the public interest or for the protection of the rights of others. A limitation shall be in proportion to the situation that has dictated it. These limitations may not infringe the essence of the rights and freedoms and in no case may exceed the limitations provided for in the European Convention on Human Rights.”

39. Pursuant to article 7 of the Constitution, the system of government in the Republic of Albania is based on the separation and balancing of legislative, executive and judicial powers.

40. The High Court, courts of appeal and first instance courts exercise the judicial power in the Republic of Albania. The courts exercise three types of jurisdiction: civil jurisdiction, criminal jurisdiction and administrative jurisdiction.

41. The Supreme Court has original and review jurisdiction. It has original jurisdiction when adjudicating criminal charges against the President of the Republic, the Prime Minister, members of the Council of Ministers, MPs, judges of the Supreme Court and judges of the Constitutional Court (article 141 of the Constitution). It has review jurisdiction in those cases when it examines complaints against the decisions of the first instance and appeal courts.

42. The Supreme Court consists of civil, criminal and military chambers and has 17 judges appointed by the President of the Republic with the consent of the Assembly for a 9-year mandate without the right of reappointment.

43. The court of appeal is a court that examines at second instance all the issues judged by the courts of first instance which are appealed by the parties. In these cases three judges comprise the court. The court of appeal judges the issue in general and it is not limited only to the reasons presented on appeal.

44. The appeal courts are established in the regions by the President of the Republic on the proposal of the Minister of Justice and with the consent of the High Council of Justice. At present there are six appeal courts established in the following districts: Tirana, Shkodra,

Durres, Korçe, Gjirokaster and Vlora. The total number of judges in these courts is 52. The judges of the appeal courts are appointed by the President of the Republic on the proposal of the High Council of Justice.

45. Courts of first instance are established in every judicial district (their total number is 29 and at present there are 293 judges working there). Their competence is widespread, covering the whole of the districts to which they belong. Only one judge sits at trials, but in different cases there may be organized trials in chambers consisting of three judges.

46. Military courts consist of the military courts of first instance and the appeal courts. At present, although it is not foreseen in the law, courts near the judicial districts exercise the functions of military courts of first instance, while the military court of appeal exercises its functions on its own (the headquarters are in Tirana city).

47. Article 407 of the Criminal Procedural Code states that: “the law provides the cases in which the decisions and writs of the court may be appealed, as well as the means of appealing. Appeals against writs of the court, unless the law provides otherwise, may be made along with appeals against decisions. The means of appealing are: appeal to a higher court, recourse to the Court of Cassation and request for review. The right to appeal belongs to the one whom the law acknowledges expressly. When the law does not make any difference amongst the parties, this right belongs to each of them. If the appeal is made before a court that does not have jurisdiction, this court shall transfer the case to the competent court”.

48. Pursuant to articles 60-63 of the Constitution, the institution of the People’s Advocate defends the rights, freedoms and lawful interests of individuals from unlawful or improper actions or failures to act of the organs of public administration. The authority and the functions of the People’s Advocate are explicitly defined in constitutional provisions, in the Law on the People’s Advocate, as well as in the internal regulation of the Code of Ethics, assisted also by international experts.

49. Any person, group or NGO representing such persons whose rights have been violated may appeal and request indemnity, after exhausting all legal avenues. After the investigation, the People’s Advocate may: close the case; present recommendations to the competent institutions in order to correct the violated rights; recommend an investigation by the public prosecutor or the sacking of the responsible officials.

50. The Office of the People’s Advocate was established in spring 2000. The complaints it receives have to do with judges’ obligations, property, freedom of the press and police brutality.

51. The Law No. 8503 of 1999, “On the Right to Information in Official Documents”, provides that physical persons and legal entities, native or foreign, have the right of information.

52. Article 2 of this law provides that “person”, according to this law, means any physical or legal entity, native or foreign. The Law also provides the right of judicial and administrative appeal in cases of violation of the right of information in official documents.

## **II. INFORMATION RELATING TO THE ARTICLES OF PART I OF THE CONVENTION**

### **Article 2**

53. The main provisions regarding torture are provided in article 25 of the Constitution: “No one may be subjected to torture, [or] cruel, inhuman or degrading punishment or treatment.”

54. Article 17 states, “Limitations on the rights and freedoms provided for in this Constitution may be established only by law, in the public interest or for the protection of the rights of others. Any limitation shall be in proportion to the situation that has dictated it. These limitations may not infringe the essence of the rights and freedoms and in no case may exceed the limitations provided for in the European Convention on Human Rights.”

55. Article 151 (2) of the Constitution provides that: “Issues related to the territorial integrity of the Republic of Albania, the limitation of fundamental human rights and freedoms, the budget, taxes and financial obligations of the State, the imposition or lifting of a state of emergency, a declaration of war or peace, and amnesty, cannot be submitted to a referendum.”

56. “The principles of operation of public organs, and the extent of the restriction of human rights and freedoms during the existence of the situations that require extraordinary measures, are defined by law” (article 170 (2) of the Constitution).

57. The Criminal Code defines the acts that represent acts of torture, and defines the respective punishments towards guilty persons. Accordingly, articles 86 and 87 of the Criminal Code provide that torture, as well as any other degrading or inhuman treatment, is punished with 5-10 years of imprisonment. Torture, like any other degrading or inhuman treatment, when it has inflicted a handicap, mutilation or any permanent harm to the well-being of a person, or death, is punished with 10-20 years of imprisonment.

58. Article 50 of the Criminal Code provides also that, when the criminal act is committed savagely and ruthlessly, this circumstance aggravates the punishment. According to article 75 of the Code, acts committed in wartime, such as murder, maltreatment or deportation for slave labour, as well as any other inhuman exploitation to the detriment of the civil population or in occupied territory, the killing or maltreatment of prisoners of war, the killing of hostages, destruction of private or public property, and the destruction of towns, commons or villages, not ordained by military necessity, are punished with no less than 15 years of imprisonment, or with life imprisonment.

59. Causing a person to commit or attempt suicide because of systematic maltreatment or other systematic misbehaviour which seriously affects the dignity of the person by someone upon whom that person is materially or in any other way dependent is punished by a fine or up to five years of imprisonment (art. 99).

60. In an effort to improve the Criminal Code, it was amended by Law No. 8175 of 23 December 1996, adding to articles 104 and 109 some new provisions.

61. Article 104 now states: “Sexual intercourse conducted with violence and resulting in death or suicide of the victim is punished by life imprisonment. Violent sexual intercourse preceded, accompanied or followed by torture of the victim is punished by 20 years of imprisonment.”
62. After article 109 of the Criminal Code a new section 109 (a) was inserted, providing that: “Kidnapping and unlawful detention of the individual is punished by 25 years of imprisonment when serious and permanent harm is caused to the health of the victim, either intentionally or as a consequence of the conditions in which the victim was held, deprivation of the basic needs for life, or when the kidnapping was carried out with respect to more than one individual. Kidnapping or the holding as hostage of a person when preceded or accompanied by torture, when the victim is a minor, or when it is committed by a criminal organization is punished by life imprisonment. If the minor, or the persons kidnapped are voluntarily freed within seven days of their kidnap or unlawful detention as hostages, and if the victims have not been subjected to acts of torture or suffered serious and permanent harm to their health, the punishment consists of 10 years of imprisonment.”
63. Furthermore, this article was subject to essential changes by Law No. 8733 of 24 January 2001. The new approved provisions provide that kidnapping or holding as a hostage of an individual or a child under 14, preceded or accompanied by physical or psychological torture, committed against one or more persons, is punished by not less than 20 years, and when resulting in the death of the victim, by life imprisonment. If the persons kidnapped or held as hostages are voluntarily freed within seven days, and if the victims have not been subjected to acts of torture or seriously and permanently harmed, the punishment consists of three to five years of imprisonment.
64. Pursuant to article 27 of Law No. 7939 of 25 May 1995 “On Migration”, it is prohibited to return or expel foreigners to territories where they risk threats to their life and freedom on account of race, sex, religion, nationality, membership of a particular social group or political opinion, or where they may be subjected to torture, inhuman and degrading treatment or the death penalty (non-refoulement principle).
65. In addition, article 35 of the same Law provides that, when it has already been decided to expel aliens from Albanian territory, the following provisions are to be taken into consideration and accordingly applied, besides the fact of whether the aliens are legally or illegally resident in the territory of the Republic of Albania.
66. Persons with a legitimate claim that their expulsion will result in intervention and infringement of the right to respect for their private or family rights, as guaranteed by the general principles of the international instruments adopted by the Republic of Albania, are entitled to legal representation and a regular legal process before the courts.
67. Persons with a legitimate claim that their expulsion from the Republic of Albania will expose them to the risk of the death penalty, torture or inhuman and degrading treatment are always entitled to a legal process and a legal representative.

68. Pursuant to Law No. 7514 of 30 September 1991 “On Innocence, Amnesty and Rehabilitation of Ex-political Convicted and Persecuted Persons”, amended by Law No. 7660 of 14 January 1993, this law will not be applicable to persons convicted of ordinary offences such as murder, torture, robbery, sexual offences, etc. (art. 1).

69. Albania is also party to the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and its two Protocols, and other international instruments, condemning the use of torture, as well as degrading and inhuman treatment.

70. Pursuant to article 9 of the Code of Administrative Procedure of the Republic of Albania, organs of the Public Administration conduct their activities in conformity with the Constitution of the Republic of Albania, the international agreements the Republic of Albania has entered into and the laws of the Republic of Albania, within the limits of the competence given to them and in conformity with the purpose of the powers given to them.

71. Administrative acts issued in conditions of a state of emergency that are contrary to the provisions of this Code are valid in order to provide the results required in the conditions of a state of emergency that cannot be attained by other means. The parties affected by such acts have the right to be compensated for eventual losses pursuant to the legal provisions regulating the responsibility of the Public Administration.

72. Articles 92, 93 and 94 of Law No. 8003 of 28 September 1995 “The Criminal Military Code” provide heavy punishments for cruel treatment and carelessness towards sick or injured prisoners of war by the individuals appointed for their treatment, abandonment of prisoners of war in the battlefield and their death or injury. Furthermore, punishments are provided for those who kill or injure enemies who have surrendered. Desecration of an enemy’s body is also considered as a contravention.

73. Similarly, Law No. 8291 of 25 February 1998, “Code of Police Ethics” provides that, while accompanying, detaining and arresting a person involved in a crime, police must strictly follow the legal norms and are categorically prohibited from committing any acts of torture or any other act that damages the personality and dignity of those persons.

74. Article 8 of the Law provides that police are penally, administratively or civilly responsible, according to the regulations governing discipline, for acts, or failure to act on their own initiative or against orders, or for carrying out an order other than in the form provided by the law or the regulation, or for carrying out orders given by persons or organs that are not competent. A police officer is responsible if he executes orders that are clearly against the law. When the order is given formally and according to the rules but is against the law, the police officer is responsible if before performing the act he had the possibility to notify the superior organs or if, after performing the act, he failed to notify these organs.

75. Article 10 provides that police officers must never use force in a manner contrary to the law. They take and give clear-cut instructions for the way and circumstances in which they use firearms and force.

76. According to article 12 of the Law, when a police officer is asked to perform an order or duty that is openly against the law, he is obliged to refuse and to inform the higher chain of command.
77. Articles 6 and 7 of Law No. 8321 of 2 April 1998 “On the Prison Police” provide that the employees of the prison police are obliged to execute the orders conveyed by their superiors, according to the functional position and in accordance with the grade hierarchy. Orders must be given in compliance with the functional position, and with respect for the law and the dignity of the individual they are designated for. In the absence of direct superiors, cases of emergency, or impossibility of communicating with superiors, the person having the highest grade is entitled to give orders to other employees of the same or a lower grade.
78. A written order which is considered unlawful must be always executed unless it is clearly unlawful. Verbal orders which are considered unlawful must be given in writing upon the request of the person responsible for their execution, and when not possible before, then after its fulfilment. The person responsible for execution must always previously notify the superiors about unlawful orders. Superiors always have the responsibility for an unlawfully issued order, and they share responsibility with the executor if the above-mentioned procedure has not been followed. The executors always have responsibility if they carry out clearly unlawful orders.
79. One of the priorities of the Institution of the Peoples’ Advocate consists in receiving, verifying and resolving the complaints of individuals concerning the Public Order Police. This due to the fact that the police forces have specific and sensitive tasks which through inaccuracy and negligence can cause serious infringements of human rights and freedoms, such as the right to life, personal freedoms, the freedom and confidentiality of correspondence, the inviolability of residence, political asylum, etc.
80. The Institution of the Peoples’ Advocate received from June to December 2002, 76 complaints of infringement of rights by police officers, which constitutes 9 per cent of the total number of complaints. Out of 76 complaints, 26 came from the capital city and 50 from other regions; meanwhile, in 59 cases the complaints were linked to the behaviour of police forces in police stations, whereas in 17 cases they were related to the Ministry of Public Order. Twenty-eight complaints were based on claims of maltreatment by the police force.
81. During 2000, the Institution of the Peoples’ Advocate received only one complaint of maltreatment of an inmate by prison staff, and following the investigation the Institution of the Peoples’ Advocate requested the Tirana Prosecution Office to commence a criminal action against the accused officer.
82. During 2001, 262 persons presented to the Institution of the Peoples’ Advocate 198 complaints, requests or notices against police officers. Out of 262 complainants, 232 were male and 30 female. Sixty-seven complaints came from the capital city and 131 from other regions.
83. Out of 262 received complaints, 150 have been concluded as follows: 47, or 32 per cent were resolved in favour of the complainants, 35 were considered outside the jurisdiction of the Institution and 68 were found to be groundless (unjustified); 48 complaints were taken into consideration during 2002.

84. According to the Institution of the Peoples' Advocate, more attention is focused on the complaints of various kinds of mistreatment, due to the fact that when found to be factual, these represent grave violations of article 25 of the Albanian Constitution, which provides that no one may be subjected to torture or cruel, inhuman or degrading punishment or treatment. At the same time, these incidents represent grave violations of article 3 of the European Convention on Human Rights.

85. Forty-nine complaints were received by the Peoples' Advocate during 2001 for mistreatment of citizens by members of the Albanian State Police: 9 of them were considered justified, 19 outside the jurisdiction of the Institution, 15 were groundless; 6 were accepted for examination during 2002.

86. Examining the above-mentioned justified and grounded (nine) complaints, which were followed by disciplinary measures against the responsible officers (six police officers and four sub-officers), the Institution of the Peoples' Advocate came to the conclusion that these disciplinary measures were insignificant, which in future could lead to other serious incidents. Consequently, the Institution of the Peoples' Advocate recommended to the General Police Department/Regional Police Departments more severe measures, including dismissal from service, as punishment for human rights infringements.

87. Furthermore, through the assessment of incidents of mistreatment, the Institution of the Peoples' Advocate has identified some of the reasons contributing to human rights violations by police officers, as follows:

(a) Insufficient knowledge of legal provisions that guarantee the fundamental human rights and freedoms, especially the Constitution and Law No. 8553 of 25 November 1999 "On the State Police";

(b) Insufficient knowledge of international conventions on fundamental human rights and freedoms;

(c) Insufficient educational, cultural and vocational training of police officers, especially those in low-level functions;

(d) Wrong mentality of "the strong", inherited from the past by some police officers, consisting of the perception that the "police are the State, the police are the law", etc.;

(e) Lack of adequate measures in response to human rights infringements, with the purpose of preventing these acts in future;

(f) Insufficient responsibility on the part of superiors and responsible bodies and their indifference in dealing with infringements of human rights by their subordinates;

(g) A relatively serious situation of public order, especially the psychological effect of the killing and injuring of many police officers in recent years, has had a great effect on the self-control and preservation of calm of members of the police forces during the performance of their tasks.

88. In spite of this, the Institution of the Peoples' Advocate appreciates the fact that in relation to all verified or investigated episodes of rights infringement, none of the incidents was found to have been backed, endorsed or judged to be a direct consequence of superiors' orders. Accordingly, human rights infringement appear to be the result of individual acts by different officers within the police forces, whose intention is to "promote" their "work" or their "career", for obtaining "rewards", etc.

89. According to the Institution of the Peoples' Advocate, violence, infringements of rights and freedoms, as well as unlawful acts by the police forces are not found to be part of specific strategies originating from central organs. This also due to the fact that major officials of the police and the Ministry of Public Order have often been exceptionally willing to collaborate with and follow the recommendations of the Institution of the Peoples' Advocate.

90. For the purpose of guaranteeing human rights protection, the Institution of the Peoples' Advocate believes that joint seminars on the law "On the Peoples' Advocate" for top officials of the police forces throughout the country will contribute to improving police efforts against the abuse of their authority and infringements of human rights.

91. In view of the analysis of the complaints received from the prisons, the Institution of the Peoples' Advocate has reached the following conclusions:

(a) The fact that only a small number of complaints, requests or notices have been received from the prisons clearly indicates that the law "On the Peoples' Advocate" is insufficiently disseminated to the administration personnel or the inmates;

(b) The analysis of the complaints received from the prisons reveals that only two of them concern infringements of human rights due to unlawful behaviour of the prison personnel. According to the Institution of the Peoples' Advocate, this is due to two reasons. Firstly, the inmates are not fully aware of their rights provided by the law "On the Rights and Treatment of the Prisoners". Secondly, being under conditions of isolation, they are frightened to denounce unlawful acts of the prison personnel because of the consequences that may follow.

92. With the objective of guaranteeing and implementing the fundamental human rights and freedoms in prisons and isolation areas, the Institution of the Peoples' Advocate has made the recommendations aiming at taking organizational measures and other measures such as improvement of the law "On the Rights and Treatment of the Prisoners"; informing prisoners of their rights through leaflets, etc; adopting a specific law on interrogation; better education of prison personnel on human rights; better kept prison records; improving conditions in detention areas; providing additional financial aid for illegal persons detained in Albania; and issuing comprehensible and precise recommendations to the police by the judicial authorities, the General Prosecutor's Office, etc.

93. For implementing the above-mentioned recommendations, the Institution of the Peoples' Advocate is of the opinion that the Albanian Government has to consider the transfer of isolation rooms and their personnel from the authority of the Ministry of Public Order to the authority of the Ministry of Justice. Furthermore, the Government has to increase its efforts to increase the effectiveness of the provisions of the "Regulations on Security and Treatment of Inmates", adopted by decision of the Council of Ministers No. 96 of 9 March 2000.

94. The transfer of isolation rooms and their personnel to the authority of the Ministry of Justice is expected to be finished within the first trimester of 2003.

95. Analysing the requests and complaints received from prisons and detention areas, it can be concluded that the activity of the Peoples' Advocate during 2002 has focused mainly on the implementation of its recommendations to the Government, the Ministry of Justice (under whose authority the General Directorate of Prisons is), and the Ministry of Public Order for:

(a) Concluding the ongoing process for the transfer of isolation rooms and their personnel within police stations from the authority of the Ministry of Public Order to the authority of the General Directorate of Prisons;

(b) Undertaking necessary measures to transfer all tried and convicted persons from the detention areas in suitable prisons;

(c) Establishing a specialized hospital for mentally ill prisoners who are held in prison hospitals, following court decisions on compulsory treatment;

(d) Continuously improving the conditions in prisons, as well as facilitating the integration of prisoners in society after completing their prison terms;

(e) Strictly and systematically providing medical examinations of all prisoners prior to their admission in the designated place of incarceration, whether under authority of the Ministry of Public Order or the Ministry of Justice.

### **Article 3**

96. Pursuant to article 16 of the Constitution, the fundamental rights and freedoms and the duties contained in the Constitution as pertaining to Albanian citizens are also valid for foreigners and stateless persons in the territory of the Republic of Albania, except for cases when the Constitution specifically attaches the exercise of particular rights and freedoms to Albanian citizenship.

97. Pursuant to article 39 (3) of the Constitution, the collective expulsion of foreigners is prohibited. The expulsion of individuals is permitted under the conditions specified by law. Under article 40, foreigners have the right of refuge in the Republic of Albania according to law.

98. The procedures for entrance, residence and treatment of foreigners in the Republic of Albania are defined by the provisions of Law No. 7939 of 25 May 1995 "On Migration", Law No. 8492 of 27 May 1999 "On Foreigners" and by decision No. 439 of 4 August 2000 of the Council of Ministers "On the Entrance, Residence and Treatment of Foreigners in the Republic of Albania".

99. Article 3 of the Law "On Migration" recognizes and respects the general principles of international agreements. Article 4 of the law provides that civil servants of the Albanian State administration engaged in the implementation of this law, or other by-law, or acts adopted for its implementation, perform their tasks in conformity with the general principles of the international

agreements and international obligations that the Republic of Albania has entered into, regardless of the gender, ethnicity, race or religion of the persons applying to enter, exit or reside in the Republic of Albania.

100. Article 24 of the Law provides that persons persecuted because of their race, religion, nationality or membership of a political or social group, are not in the country of their nationality and who have no possibility of protection in this country, or who have no nationality and have no possibility of returning to their country of origin, are considered to be refugees under certain procedures contained in the legal acts enacted for the implementation of this law.

101. Pursuant to this law, refugee status in relation to a foreign citizen ceases if the refugee:

(a) Has committed a criminal offence against peace, a war crime or a crime against humanity, according to the international acts;

(b) Has committed a grave non-political crime abroad, prior to being accepted as a refugee in Albania;

(c) Acquires Albanian citizenship, or the citizenship of another country, thereby attaining its protection;

(d) Voluntarily returns to the country of origin from which he escaped or to which he could not return owing to fear of persecution;

(e) Can no longer refuse protection of the country of origin, following the termination of the circumstances that influenced the acquisition of refugee status, or if he refuses to return to his former place of residence and has lost his citizenship.

102. Pursuant to articles 26, 27 and 28 of the Law “On Migration”, it is prohibited to return or expel aliens to the frontiers of territories where they risk threats to life and freedom on account of race, sex, religion, nationality, membership of a particular social group or political opinion (see paragraph 64 above).

103. Every person at the borders or within the territory of Albania and requesting residence in Albania pursuant to this law, regardless of whether he has entered in Albania legally, has to present a request to the administrative organs established by law for this purpose. No asylum-seeker shall be expelled to another country in order to examine his request until he has been given the possibility of presenting the reasons why the application should be examined in the Republic of Albania, and not in any other country. No asylum-seeker shall be expelled after the refusal of asylum without providing him with the opportunity to have his claim reconsidered pursuant to the relevant procedures.

104. Similarly, pursuant to articles 33, 34 and 35 of the Law “On Migration”, persons subject to this law residing legally in the Republic of Albania shall not be expelled unless by way of a decision taken in conformity with legal provisions.

105. They are entitled to:

(a) Present reasons against the expulsion;

(b) Appeal for a re-examination of their case;

(c) To be duly represented before the competent authority, as provided for in by-laws acts issued in conformity with the law.

106. Nevertheless, persons subjected to the provisions of this law can be expelled from the country without regard to the above procedures when the expulsion is necessary for the interests of public order or national security.

107. Persons residing illegally in the territory of the Republic of Albania, subject to this law, are expelled pursuant to well-defined procedures provided for in by-laws acts which are issued and published in conformity with this law (see paragraphs 65-67 above). Only when there are sure indications that illegally entering onto the territory of the Republic of Albania was accompanied by elements of criminal offences are police measures required, in conformity with Albanian criminal legislation.

108. The above-mentioned legal provisions were the legal bases for the successful management of the Kosovo crisis (1999), when approximately 500,000 Kosovar refugees found temporary refuge in the territory of the Republic of Albania.

109. Prior to 2001, the specialized Albanian organs, in close cooperation with foreign counterparts, made possible the identification and expulsion of 10 suspected extremist (foreign citizens) from Albanian territory.

110. On 6 October 2001, shortly after the terrorist attacks against the United States, the Albanian Minister of Public Order, following intense cooperation with relevant foreign specialized bodies, issued order No. 1560 expelling from the Albanian territory five suspected foreign citizens who had been residing in Albania, and ordered a number of others to leave Albanian territory.

#### **Article 4**

111. Chapter IV of the Criminal Code of the Republic of Albania provides for the procedure on punishment determination.

112. Pursuant to article 47 of the Code, the court determines the punishment in compliance with the provisions of the general part of the Code and the limits of punishment on criminal acts provided for by law. In determining the range of punishment against a person the court considers the dangerousness of the criminal act, the dangerousness of the person who committed the act, the level of guilt, as well as both mitigating and aggravating circumstances.

113. Pursuant to article 50 of the Code, the following circumstances aggravate the punishment:

(a) When the criminal act is committed savagely and ruthlessly;

(b) When actions which aggravate or increase the consequences of a criminal act are committed;

(c) When the act is committed against children, pregnant women, or other people who, for different reasons, cannot protect themselves.

114. Chapter I of the special part of the Criminal Code provides that:

(a) The execution of a premeditated plan aiming at the total or partial destruction of a national, ethnic, racial or religious group directed towards its members, and combined with the following acts, such as: intentionally killing a group's members, serious physical and psychological harm, placement in difficult living conditions which cause their physical destruction, applying birth prevention measures, as well as the obligatory transfer of children from one group to another, is punished by no less than 10 years of imprisonment, or with life imprisonment (art. 73);

(b) Article 74: killing, massacres, slavery, internal exile and deportation, as well as any act of torture or other inhuman violence, committed for political, ideological, racial, ethnic or religious reasons are punished by no less than 15 years of imprisonment, or with life imprisonment;

(c) Article 75: acts committed by people in wartime such as murder, mistreatment or deportation for slave labour, as well as any other inhuman exploitation to the detriment of the civil population or in occupied territory, the killing or mistreatment of prisoners of war, the killing of hostages, the destruction of private or public property, the destruction of towns, commons or villages that is not ordained by military necessity are punished by no less than 15 years of imprisonment, or life imprisonment.

115. Chapter II of the specific part "Penal acts against the person" contains the articles described below.

116. Article 86, Torture, as well as any other degrading or inhuman treatment, is punished by 5-10 years of imprisonment.

117. Article 87, Torture, like any other degrading or inhuman treatment, when it has inflicted a handicap, mutilation or any permanent harm to the well-being of a person, or death, is punished by 10-20 years of imprisonment.

118. Article 88, Serious intentional injury inflicting a handicap, mutilation, or any other permanent damage to health, or inflicting interruption of pregnancy, or which was dangerous to life at the moment of its application, is punished by 3-10 years of imprisonment. When the same act is committed against a group of people, or causes death, it is punished by 5-15 years of imprisonment.

119. Article 89, Intentional injury, inflicting temporary work incapacity of no longer than nine days, constitutes a criminal act and is punished by a fine or up to two years of imprisonment.

120. Article 90, Assault, as well as any other violent act, constitutes a criminal act and is punished by a fine. The same act causing temporary work incapacity of up to nine days constitutes a criminal act and is punished by a fine or up to six months of imprisonment.

121. Article 99, Causing suicide or a suicide attempt by a person because of systematic mistreatment or other systematic misbehaviour which seriously affects the dignity of the person, committed by another person upon whom the victim is materially or otherwise dependent is punished by a fine or up to five years of imprisonment.

122. Article 100, Intercourse with a minor girl who has not reached the age of 13 years, or who has not reached sexual maturity, is punished by 5-15 years of imprisonment. When sexual intercourse was had without consent, or serious harm to the health of the victim has been caused, it is punished by 10-20 years of imprisonment. When the act has resulted in the death or suicide of the girl, it is punished by no less than 20 years of imprisonment.

123. Article 101, Unconsensual sexual intercourse with a minor girl between 14 and 18 years and who has reached sexual maturity, is punished by 5-10 years of imprisonment. When serious consequences result for the minor girl's health, it is punished by 10-15 years of imprisonment. When the act leads to the death or suicide of the minor girl, it is punished by at least 15 years of imprisonment.

124. Article 102, Unconsensual sexual intercourse with a mature woman, is punished by 3-10 years of imprisonment. When serious consequences are caused to the health of the victim, it is punished by 5-15 years of imprisonment. When the act leads to the death or suicide of the victim, it is punished by 10-20 years of imprisonment.

125. Article 103, Sexual intercourse with an either physically or mentally handicapped victim who has reached the age of 14 and who is sexually mature, or sexual intercourse with a person who has lost consciousness, is punished by 5-10 years of imprisonment. When serious consequences are caused to the health of the victim, it is punished by 5-15 years of imprisonment. When the act has led to the death or suicide of the victim, it is punished by 10-20 years of imprisonment.

126. Article 104, Sexual intercourse at gunpoint, is punished by 5-15 years of imprisonment.

127. Article 105, Sexual intercourse through abuse of office or subordinate relations, is punished by up to three years of imprisonment.

128. Article 109, Kidnapping with the intention of enrichment or of securing any other kind of benefit, is punished by 10-20 years of imprisonment. Kidnapping a child under 14, or the act of hiding or substituting a child with another, is punished by at least 20 years of imprisonment, or to life imprisonment, or death.

129. Article 110, Unlawful detention of a person, constitutes a criminal act and is punished by a fine or up to one year of imprisonment. When this act has endangered life or is accompanied by serious physical hardship, it is punished by up to five years of imprisonment.

130. Article 111, Hijacking aeroplanes, ships and other means of transportation that carry people, is punished by 10-20 years of imprisonment.

131. Article 112, Breaking and entering someone's house without his consent, constitutes a criminal act and is punished by a fine or up to three months of imprisonment. Committing the act using force or at gunpoint constitutes a criminal act and is punished by a fine or up to one year of imprisonment.
132. Article 124, Abandonment of a child under 14 by a parent or a person obliged to care for him, is punished by a fine or up to three years of imprisonment. When serious harm to the health or the death of the child has resulted, it is punished by 3-10 years of imprisonment.
133. Article 129, Inducing or encouraging minors under 14 to criminality, is punished by up to five years of imprisonment.
134. Article 130, Forcing or preventing beginning or continuing to cohabit or forcing someone to divorce constitutes a criminal act and is punished by a fine or up to three months of imprisonment.
135. Article 141, Theft of property, when accompanied by such actions which result in the death of a person, is punished by 10-15 years of imprisonment, or to life imprisonment, or death.
136. Article 230, Committing violent acts that threaten the life and health of people or personal freedom, through kidnapping of people or hijacking public transportation, with the intent to seriously disturb public order and instil fear and uncertainty in the public, is punished by at least 15 years of imprisonment, or to life imprisonment, or death.
137. Article 238, Serious threat of assassination or critical injury of an official acting in the execution of a State duty or public service, because of his State activity or service, constitutes a criminal act and is punished by a fine or up to two years of imprisonment.
138. Article 250, Committing acts or giving orders which are arbitrary, by an official acting in a State function or public service while exercising his duty, which affect the freedom of citizens, is punished by a fine or up to seven years of imprisonment.
139. Article 251, Refusing to take measures, or refusing to request from a competent person action to stop an unlawful situation resulting from an arbitrary act which has affected the freedom of citizens, by the person in charge of a State function or public service who learns of the situation because of the function or service, is punished by a fine or up to three years of imprisonment.
140. Article 252, Detaining in prison without a decision by the competent body, or beyond the term determined in the decision or by law, committed by a person holding the office of prison administrator, constitutes a criminal act and is punished by a fine or up to two years of imprisonment.
141. Article 261, Committing acts that prevent citizens from exercising the right of free speech or assembly, constitutes a criminal act and is punished by a fine or up to six months of imprisonment. When those acts are accompanied by the use of physical violence, they are punished by a fine or up to three years of imprisonment.

142. Article 264, Forcing an employee to strike or not to strike against his will, or creating obstacles and problems for continuing his job when the employee wishes to work, constitutes a criminal act and is punished by a fine or up to three months of imprisonment.

143. Article 286, Inducing others to use narcotic drugs or psychotropic substances, or their injection without the consent of the victim, is punished by 5-10 years of imprisonment. When the inducing or forced injection is practised upon children, or in a penitentiary, educational, sport or any other institution providing social activity, it is punished by 10-15 years of imprisonment.

144. Chapter IV, "Penal acts against justice" provides for the penalties described in the following paragraphs.

145. Article 303, Hiding or destroying beyond recognition a corpse of a victim of a murder or of another violent act, committed with the intent of assisting the executor of the crime to evade search, apprehension and arrest, is punished by a fine or up to five years of imprisonment.

146. Article 313, Conducting an unlawful criminal prosecution by the prosecutor against a person who is known to be innocent, is punished by a fine or up to five years of imprisonment.

147. Chapter X, "Criminal acts affecting free elections and the democratic system of elections", provides for the penalties described in the following paragraphs.

148. Article 332, Abuse of military authority by a military official of any rank in order to influence the voting of persons under his orders, through commands, advice or any other propaganda, constitutes a criminal act and is punished by a fine or up to two years of imprisonment.

149. In relation to criminal acts and prisoners who have committed criminal acts of torture and torture with serious consequences, and intentional criminal acts against health, for 2001:

(a) No persons have been convicted on the basis of article 86 of the Criminal Code;

(b) On the basis of article 87 (torture with serious consequences), there were 23 cases with 15 convictions;

(c) There were 82 crimes and 213 law violations considered to be criminal cases judged by the court and classified as intentional criminal acts against health.

150. Concerning the number of grave injuries under article 88 of the Criminal Code:

(a) During 1997 there were 344 registered cases of grave injury, 53 per cent of which were brought before the courts after the police discovered them;

(b) During 1998 there were 188 registered cases of grave injury, 76 per cent of which were discovered by the police and brought before the courts;

(c) During 1999 there were 193 registered cases of grave injury, 80 per cent of which were discovered by the police and brought before the courts.

## Article 5

151. The Criminal Code of the Republic of Albania defines the limits of its jurisdiction and implementation in articles 5, 6, 7, 8 and 9.

152. In article 5, for the purposes of the criminal law the territory of the Republic of Albania is defined as the land area, the territorial and internal waters, the airspace over the Albanian State, the residences of the Albanian diplomatic and consular missions, the ships, as well as any other place under the sovereignty or carrying the flag of the Republic of Albania, including the ships belonging to the navy and military and civil aircraft, wherever they happen to be.

153. Article 6 states that concerning criminal acts committed by Albanian citizens within the territory of the Republic of Albania, the criminal law of the Republic of Albania shall apply. The criminal law of the Republic of Albania shall also be applicable to the Albanian citizen who commits an offence within the territory of another country, when that offence is concurrently punishable, unless a foreign court has passed a final judgement. In the sense of this article, Albanian citizens shall also be considered those persons who hold another nationality besides the Albanian nationality.

154. According to article 7, the foreign citizen who commits a criminal act within the territory of the Republic of Albania is subject to the criminal law of the Republic of Albania. The criminal law of the Republic of Albania is also applicable to a foreign citizen who, outside of the Republic of Albania, commits against the interests of the Albanian State or an Albanian citizen one of the following offences:

- (a) Crimes against humanity;
- (b) Crimes against Albanian independence and its constitutional order;
- (c) Terrorism;
- (d) The organization of prostitution; the illegal manufacturing and trafficking of drugs or other narcotic substances, weapons, nuclear materials, as well as pornographic material;
- (e) Hijacking aeroplanes or ships;
- (f) Falsifying the Albanian State seal, Albanian currency, or Albanian bonds or stocks;
- (g) Crimes which affect the life or health of Albanian citizens, for which the law provides for a punishment of imprisonment of five years or more.

155. Under article 8, if a person who does not hold any nationality commits a criminal act within the territory of the Republic of Albania or an offence outside it, the provisions of article 7 of this Code shall apply.

156. Under article 9, any case concerning the responsibility of a foreign citizen who commits a criminal act within the territory of the Republic of Albania and enjoys immunity according to international law is resolved diplomatically.

157. In the framework of its international commitments relating to the reinforcement of safety at the international level, the Republic of Albania has ratified and is a State party to the following international conventions:

Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Montreal 1971, entered into force in the Republic of Albania on 20 October 1997;

Convention on Offences and Certain Other Acts Committed on Board Aircraft, Tokyo 1963, entered into force in the Republic of Albania on 1 March 1998;

The Hague Convention on the Suppression of Unlawful Seizure of Aircraft, The Hague, 16 December 1970, entered into force in the Republic of Albania on 20 November 1997;

International Convention against the Taking of Hostages entered into force in the Republic of Albania on 22 February 2002;

Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, instrument of adherence has been submitted;

Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, entered into force in the Republic of Albania on 17 September 2002;

International Convention on the Suppression of Terrorist Bombings, entered into force in the Republic of Albania on 22 February 2002.

#### **Article 6**

158. In the field of criminal procedures, the Republic of Albania has ratified and is State party to the following conventions of the Council of Europe, that in compliance with article 122 of the Constitution constitute parts of the internal judiciary system:

European Convention on Mutual Assistance in Criminal Matters, signed on 19 May 1998, ratified on 4 April 2000 and entered into force on 3 July 2000;

Convention on the Transfer of Sentenced Persons signed on 19 May 1998, ratified on 4 April 2000 and entered into force on 1 August 2000;

European Convention on the International Validity of Criminal Judgments signed on 8 June 2000;

European Agreement on the Transmission of Applications for Legal Aid, signed on 8 June 2000, ratified on 4 April 2000 and entered into force on 3 July 2000;

Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, signed on 19 May 1998, ratified on 10 June 1999 and entered into force on 3 July 2000;

European Convention on the Transfer of Proceedings in Criminal Matters, signed on 19 May 1998, ratified on 4 April 2000 and entered into force on 5 July 2000;

European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders, signed on 8 June 2000, ratified on 17 May 2001 and entered into force on 18 August 2001;

Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, signed on 13 November 2001, ratified from the Parliament, and ratification instrument deposited;

Additional Protocol to the European Agreement on the Transmission of Applications for Legal Aid, signed on 13 November 2001, ratified from the Parliament and ratification instrument deposited.

159. Cases for depriving persons of their liberty are foreseen by the Constitution. According to article 27 of the Constitution:

- (a) No one's liberty may be taken away except in the cases and according to the procedures provided by law;
- (b) The freedom of a person may not be limited, except in the following cases:
  - (i) When he is punished with imprisonment by a competent court;
  - (ii) For failure to comply with the lawful orders of the court or with an obligation set by law;
  - (iii) When there are reasonable suspicions that he has committed a criminal offence, or to prevent the commission by him of a criminal offence, or his escape after its commission;
  - (iv) For the supervision of a minor for purposes of education or for escorting him to a competent organ;
  - (v) When a person is the carrier of a contagious disease, mentally incompetent and dangerous to society;
  - (vi) For illegal entry at State borders, or in cases of deportation or extradition;
- (c) No one may be deprived of liberty just because he is not in a condition to fulfil a contractual obligation.

160. The Family Code (art. 75) provides for the right of the Custody Council to petition the court to decide in cases where parents may be required to relinquish their child if they do not care for the child, his growth and development and his education, or when this is in the best interest of the child and the child should be entrusted to a State institution or to another person.

161. According to the Criminal Procedure Code of the Republic of Albania, article 4, the liberty of an individual may be restricted by means of precautionary measures only in the cases and forms provided by law. No one may be subjected to torture, punishment or cruel treatment. A person sentenced to imprisonment shall be provided humane treatment and moral rehabilitation. Even when isolated by precautionary measures or when deprived of liberty for any other cause, the defendant shall be interrogated in a free state, except when it is necessary to take measures to prevent his escape or a violation. There may not be used, even with the consent of the person under interrogation, methods or techniques to influence free will or to modify the capacity of the memory in relation to the evaluation of the facts. Before the interrogation starts, it is explained to the defendant that he has a right to silence and that even if he fails to speak, the proceedings shall continue.

162. Under article 42, the competent authority collects information on the personal, family and social life of an accused juvenile that would help to assess the responsibility and evaluate the social importance of the facts, and also to determine suitable criminal measures. The competent authority collects information from persons who have had relations with the juvenile and hears the opinion of experts.

163. If the mental condition of a defendant indicates that he needs treatment, the court may decide, even ex officio, to place the defendant in a psychiatric institution. When it is decided, or it must be decided, that a compulsory medical measure must be applied against the defendant, the court may order that the defendant be kept in a psychiatric institution. During the preliminary investigation, the prosecutor may ask the court to decide to hospitalize the defendant and, when delay may be dangerous, orders temporary hospitalization until the court renders a decision.

164. Under article 88, precautionary measures imposed by the court that in the meantime or afterwards are declared invalid for any reason shall become ineffective.

165. Pursuant to article 228, "The circumstances for imposing precautionary measures", no one may be subjected to personal precautionary measures unless there is reasonable cause, grounded in evidence, to believe that a crime has been committed. No measure may be imposed when the offence ceases to be punishable or no longer constitutes an offence.

166. Personal precautionary measures shall be imposed when:

- (a) There are important reasons which threaten the obtaining or the giving of evidence;
- (b) The defendant has escaped or the danger that he may escape is evident;

(c) Due to the circumstances of the case and the defendant's personality, there is a danger that he may commit serious crimes or other criminal offences similar to that with which he has been charged.

167. According to article 229, "When it imposes precautionary measures the court shall consider whether any of them is proper and required by the circumstances. Any measure must be commensurate with the gravity of the facts and the punishment provided by law for that criminal offence".

168. Continuity, recidivism, as well as the mitigating and aggravating circumstances provided by the Criminal Code shall also be taken into consideration. When the defendant is a juvenile, the court shall take into consideration the requirement to maintain the juvenile's educational programmes.

169. In an urgent case of extradition, according to article 495, the judicial police may arrest the person who is the subject of a temporary arrest order. The authority that has carried out the arrest shall immediately inform the prosecutor and the Minister of Justice. The prosecutor, within 48 hours, shall make the arrested person available to the court of the territory where the arrest has taken place, also sending the relevant documents. The court, within three days of the arrest, approves it if there is cause, or orders the release of the arrested person.

170. The decision rendered by the court shall be notified to the Minister of Justice. The arrest shall be revoked if, within 10 days of approving it, the Minister of Justice does not request its continuance. The copy of the decision rendered by the court regarding the coercive measures and the attachments, in accordance with the relevant articles, shall be notified to the prosecutor, the person concerned and his defence lawyers, who may appeal to the court of appeal.

171. The Republic of Albania has signed and ratified the Vienna Convention on Consular Relations, which entered into force on 14 October 1991, and refers in particular to article 36 of the Convention.

## **Article 7**

172. According to article 39 of the Constitution, no Albanian citizen may be expelled from the territory of the State. Extradition may be permitted only when it is expressly provided for in international agreements to which the Republic of Albania is a party, and only by judicial decision. The collective expulsion of foreigners is prohibited. The expulsion of individuals is permitted under the conditions specified by law.

173. According to the Criminal Procedure Code, article 492, when Albania receives a request from a foreign country for extradition, the Minister of Justice, if he does not reject it, shall send it along with the relevant documents to the prosecutor at the competent court. The prosecutor, after receiving the request, orders the interested person to appear in order to identify him and to obtain his eventual consent for the extradition. The right to be assisted by a defence lawyer is explained to the interested person. The prosecutor, through the Minister of Justice, requests from the foreign authorities the documents and the information that he considers necessary. Within three months from the date on which the request for extradition has arrived, the prosecutor submits the request to the court for examination. The request of the prosecutor shall be

deposited with the secretary of the court along with the acts and attached objects. The secretary shall take care of the notification of the person subject to extradition, his defence lawyer and the representative of the requesting State who, within 10 days, have the right of access to the documents and to make copies of them, as well as to examine the attached objects, and to present memos.

174. According to article 422 of the Criminal Procedure Code, the prosecutor, the defendant and private parties may appeal the decisions of the first instance court.

175. According to article 498 (5), “The decision regarding the request for extradition may be appealed to the court of appeal by the interested person, his defence lawyer, the prosecutor and the representative of the requesting State, according to the general rules of appeal”.

### **Article 8**

176. In the Republic of Albania, the extradition to other countries of persons suspected of having committed crimes has been foreseen in the following articles:

(a) Article 39 (2) of the Constitution: “Extradition may be permitted only when it is expressly provided for in international agreements to which the Republic of Albania is a party, and only by judicial decision.”;

(b) The European Convention on Extradition, signed and ratified on 19 May 1998 and entered into force on 17 August 1998, its two Additional Protocols ratified by the Republic of Albania, as well as the bilateral agreements signed with different States;

(c) Article 11 of the Criminal Code of the Republic of Albania and Title X of the Criminal Procedure Code of the Republic of Albania, which define the judicial relations with other countries.

177. Since 1992 the Republic of Albania has signed agreements of mutual legal assistance in civil and criminal matters with the Republic of Greece (17 May 1993), the Russian Federation (27 March 1995), the former Yugoslav Republic of Macedonia (15 January 1998) and the Republic of Turkey (20 February 1998).

178. Judicial assistance in criminal matters with the countries with which there are no agreements is regulated on the basis of the principles of the European Convention on Extradition, as well as on the basis of Title X (arts. 408-504) of the Criminal Procedure Code, which covers international cooperation in the field of judicial assistance.

179. The main organs of extradition involved in the process of accepting and presenting the requests for judicial assistance for and from foreign countries are:

(a) Ministry of Justice - Department of International Agreements and Juridical Relations;

(b) Ministry of Public Order - National Central Office, Interpol Tirana;

- (c) General Prosecution Office - Department of Foreign Relations;
- (d) Ministry for Foreign Affairs - Consular Department.

180. The procedure for extradition from Albania is set out in the provisions of the Criminal Procedure Code; they are fully compatible with article 12 of the European Convention on Extradition. According to those provisions, extradition is allowed only on the basis of a request to the Ministry of Justice. This request can be sent directly to the Ministry of Justice, or by diplomatic channels through the Ministry for Foreign Affairs.

181. The request for extradition should include:

- (a) The copy of the sentence to imprisonment or the act of proceedings;
- (b) A report of the criminal offence with which the person subject to extradition is charged, indicating the time and place of the commission of the offence and its legal qualification;
- (c) The text of the legal provisions to be applied, indicating whether the death penalty is applicable to the criminal offence subject to extradition under the law of the foreign country;
- (d) Personal data and any other possible information which help to define the identity and the citizenship of the person subject to extradition.

182. The Albanian State has expressed no reservation regarding the language that will be used in the extradition procedure; thus, the requests can be in Albanian, English or French.

183. When there are several competing requests for extradition, the Minister of Justice sets forth the order of examination. He takes into consideration all of the circumstances of the case, in particular the date of the receipt of the request, the importance of the criminal offence and the place where it was committed, the citizenship and the residence of the person subject to the request, as well as the possibility of a re-extradition by the requesting country. In case extradition is requested simultaneously by several countries for a single offence, the person will be extradited to the country that was the subject of the criminal offence or to the country within whose territory the criminal offence was committed.

184. The Ministry of Justice decides whether it will refuse or accept the request for extradition. If it decides that it will not refuse the request, the documentation is sent to the Attorney-General's Office, which transfers it to the competent court prosecutor. Within three months from the date of receiving the request for extradition, the prosecutor should present it to the competent court.

185. The court can decide on a temporary restrictive measure before the request for extradition. This measure can be taken when:

- (a) The foreign country has declared that the personal freedom of the person has been restricted or a sentence of imprisonment has been pronounced, and the foreign country may submit an extradition request in that respect;

(b) The foreign country has presented detailed data on the criminal offence and sufficient elements of identification of the person;

(c) There is a danger that the person may escape.

186. The coercive measures are revoked if within 18 days or a maximum of 40 days from the above-mentioned notice, the Ministry of Justice does not receive the request for extradition and the accompanying documents.

187. The coercive measures are revoked if the proceedings before the court have not been completed within three months.

188. The competence to decide about the measure belongs to the district court in the territory of which the person is living or has a house, or to the court of the district where the person resides. If the competence cannot be defined on that basis, the competent court will be the Court of First Instance of Tirana.

189. The court can decide to confiscate the material proofs and the objects pertaining to the criminal offence. The Ministry of Justice informs the foreign country about the temporary implementation of the coercive measure and the confiscation.

190. After the receipt of the request by the prosecutor, the court fixes the date of the hearing and notifies, at least 10 days in advance, the prosecutor, the person subject to the request for extradition, his defence lawyer and the representative of the requesting State, if any. The court collects data, makes the necessary verifications and hears the persons summoned to appear.

191. The court renders the decision in favour of the extradition when it possesses important data demonstrating the guilt of the accused or when there is a final court decision in that regard. In cases where a request has been submitted by the Minister of Justice through the prosecutor, the court decides whether to take into custody the person whose extradition has been requested and which elements of evidence pertain to the criminal offence.

192. The court decides against the extradition when the reasons for refusal are among those enumerated in law. In such a case, the extradition cannot be done. An appeal can be lodged against this decision before the competent court, in accordance with the provisions of the Criminal Procedure Code of the Republic of Albania.

193. Extradition may not be provided in the following cases:

(a) For an offence of a political nature, or when it is apparent that it is requested for political reasons;

(b) When there are grounds to believe that the extradited person shall be subjected to persecution or discrimination due to race, religion, sex, citizenship, language, political belief, or personal or social status, or to cruel, inhuman or degrading punishment or treatment, or acts which constitute violations of fundamental human rights;

- (c) When the extradited person has committed a criminal offence in Albania;
- (d) When he is being tried or has been tried in Albania for a criminal offence committed abroad;
- (e) When the criminal offence is characterized as such by the Albanian legislation;
- (f) When the Albanian State has provided an amnesty for this offence;
- (g) When the requested person is an Albanian citizen and there is no agreement providing otherwise;
- (h) When the law of the requesting State does not provide for the prosecution or punishment for the offence.

194. Although the Criminal Procedure Code does not provide as a reason for refusal the military and fiscal infringements foreseen by articles 4 and 5 of the European Convention on Extradition, Albania is obliged to implement those provisions, being party to that Convention.

195. A decision against the extradition prohibits the rendering of a subsequent decision in favour of extradition as a result of a new request presented for the same facts by the same State, except when the request is based on elements that were not taken into consideration by the court. The decision of the court regarding the request for extradition may be appealed to the court of appeal by the interested person, his defence lawyer, the prosecutor and the representative of the requesting State, according to the general rules of appeal.

196. The Minister of Justice must act on the extradition within 30 days from the date the decision of the court has become final. After the expiration of this deadline, if the Minister has not acted on the decision, the person subject to extradition, if imprisoned, shall be released. The person shall be released if the request for extradition is rejected. The Minister of Justice communicates the decision to the requesting State and, when appropriate, the place of the surrender and the date by which it is expected to take place. The time limit for the surrender is 15 days from the date set and, upon motivated request of the requesting State, it may be extended for another 15 days. For reasons that do not depend on the parties, another day for the surrender can be set, but the above time limits must be respected. The decision to extradite shall be invalid and the extradited person shall be released if the requesting State does not act within the fixed time period to receive him.

197. The carrying out of the extradition is suspended when the extradited person is to be tried on Albanian territory and must serve a punishment for criminal offences committed before or after the one that motivated the extradition request. But the Minister of Justice, after hearing the competent Albanian authority or the body dealing with the execution of sentence, may order the temporary surrender to the requesting State of the person subject to extradition, defining the time limits and the way of proceeding. The Minister may agree that the rest of the sentence is to be served in the requesting State (article 500 of the Criminal Procedure Code).

198. For the criminal offence of torture, as set out in article 86 of the Criminal Code, the National Central Office - Interpol Tirana, with the necessary support from its foreign counterparts, has issued five announcements for international investigation. There are no time limits for specific cases in that regard.

199. During 2002, 46 extraditions were carried out.

### **Article 9**

200. Albania is party to the European Convention on Mutual Assistance in Criminal Matters and the Additional Protocols thereto, signed on 19 May 1998, ratified on 4 April 2000 and entered into force on 3 July 2000.

201. On the basis of the ratification of this Convention, the Republic of Albania takes upon itself to provide mutual necessary assistance in criminal matters in accordance with the provisions of the Convention.

202. At the same time, Albania is party to the European Convention on the Transfer of Proceedings in Criminal Matters, signed on 19 May 1998, ratified on 4 April 2000 and entered into force on 5 July 2000. Regarding the Additional Protocol to the European Agreement on the Transition of Application for Legal Aid, signed on 12 November 2001 and ratified by the Assembly of Albania, the instrument of ratification has been deposited.

203. Ratified international agreements and the Criminal Procedure Code of the Republic of Albania regulate the communication procedures between Albania and other countries in the field of mutual legal assistance in criminal matters. According to article 505 of this Code: "The Minister of Justice decides to grant support to a letter of application of a foreign authority regarding communications, notifications and the taking of proofs, except when he deems that the requested actions infringe the sovereignty, the security and important interests of the State. The Minister does not grant support to the letter of application when it is certain that the law prohibits the requested actions expressly or they contradict the fundamental principles of the Albanian rule of law. The Minister does not grant support to the letter of application when there are motivated reasons to think that the considerations regarding race, religion, sex, nationality, language, political beliefs or social states may have a negative influence on the performance of the process, and when it is certain that the defendant has expressed freely his consent to the letter of application. In cases where the letter of application concerns the summons of a witness, expert or defendant before a foreign judicial authority, the Minister of Justice does not grant support to the letter of application when the requesting State does not give sufficient guarantee for the protection of the cited person. The Minister has the right to not grant support to the letter of application if the requesting State does not give the necessary guarantee of reciprocity."

204. In 2002 the Ministry of Justice, in collaboration with the Albanian and foreign justice institutions, executed about 650 actions in the framework of legal assistance.

## Article 10

205. At present, the activities and the practices of the prison system are based on the framework of legal acts, which is considered as a fundamental value for the construction of a democratic State. This legal framework is composed of:

- (a) Law No. 8321 of 2 April 1998 “On the Prison Police”;
- (b) Law No. 8328 of 16 April 1998 “On the Rights and Treatment of Prisoners”;
- (c) Law No. 8331 of 21 April 1998 “On the Execution of Criminal Sentences”.

206. In the implementation of these legal acts, the General Prison Regulations have been drafted and approved. This project has been approved by the experts of the Council of Europe and then by the Albanian Government, by decision No. 63 of 9 March 2000. The specialists of the Albanian Helsinki Committee also studied the draft regulations; their suggestions were assessed and reflected to a considerable extent in the final version. This legal framework was also completed with the approval of the Regulations of the Prison Police in June 2000.

207. On the basis of article 18 of the Law “On the Rights and Treatment of Prisoners” and the General Prison Regulations, the penitentiary institutions have prepared their specific regulations. Despite this, the Ministry of Justice and the Prisons Administration have rigorously implemented the various recommendations of the Council of Europe, which in many cases have been converted into Minister’s or Director’s General Orders and sent to the respective institutions for implementation, as appropriate.

208. Prison staff (civilian or military) administer the prison activities according to the legal provisions. Cases of using force are defined in the law and it is considered as a last means of resolving a conflict or a certain situation. Pursuant to article 48 of the General Prison Regulations: “The prison staff is forbidden to perform actions prohibited by law against the prisoners, inhuman or degrading treatment or punishment, or any kind of torture.” This provision is also included in all the specific regulations of the detention institutions.

209. Along with the recruitment of the professional staff, the Prison Police School has played an important role in the training of the prison personnel, as is foreseen in the Law “On the Prison Police”. The aims of the school are: basic training of new recruited prison personnel; motivation of existing personnel; training of senior prison staff.

210. This school has been functioning for two years and it is training all the basic personnel in 15-day to 3-month courses. The school also organizes training courses for medium-level personnel. During 2002, 358 basic personnel and 11 medium-level personnel were trained. One- to two-day courses are organized for senior prison staff. There are also training seminars for civilian prison staff, including the education sector.

211. Article 8 of the Law “On the Prison Police” forbids keeping ammunition inside prisons. The Law “On the Public Order Police” describes the types, norms, cases and ways of using personal ammunition. The other means of force are used only by order of the Police Director in the General Prison Directorate or, in emergency cases, by order of the Head of Police of the institution.

212. In the educational plan of the Police Academy “Arben Zylyftari”, the programme on human rights is not treated as a separate subject, but is included in the programmes of many subjects, combining the theoretical with the practical aspects.

213. The subjects Constitutional Law, Penal Law, Professional Etiquette and Penal Procedure Law deal with the theoretical aspect of respecting individual rights in criminal proceedings, as well as the meaning and the elements of the criminal offence of torture.

214. A separate chapter of the subject The Police Law deals with the respect for human rights and freedoms during police escorting; in particular, the rights and restrictions on use of force by the police are specified.

215. The subject Techniques of Public Security deals with applying aspects of human rights by the police, focusing on the prohibition of mistreatment and torture in police actions.

216. The respect for human rights and personal freedoms, including the prohibition of torture, is given priority in different training programmes of the police staff of the Academy of Public Order “Arben Zylyftari”.

#### **Training of the Albanian police about human rights**

217. The Ministry of Public Order in cooperation with the Albanian Centre for Human Rights and the Albanian Helsinki Committee, have organized the training of the Albanian police through a three-year project of education in the field of human rights, which began in January 2000 and ended in December 2002.

218. This project aimed at increasing the awareness of the Albanian police in respecting human rights. The project covers all 12 police directorates of Albania. During the project the above-mentioned NGOs organized 40 seminars, conferences and training activities. Intensive training was also organized in four police directorates.

219. Theoretical and practical training was given by a group of law and police experts trained in Denmark and selected by the Ministry of Public Order and the Albanian Centre for Human Rights, which were involved in preparing the trainers of the Albanian police. Officers trained in those seminars - mainly chiefs of sector - transmitted their knowledge to the base-level police in all commissariats. The main material for training was “Human Rights and the Police”, published by the Albanian Centre for Human Rights, from which the themes regarding police were selected.

220. The project established mini-libraries in all police directorates, including legal and human rights documentation and professional literature for police, in order to increase the level of policing in a democratic country.

221. During the project some publications and brochures were promoted, such as the pocket book “ABC of Policing”, the video cassette “The Police and Human Rights”, “Strategy of Reform of State Police” (Albanian, English), “Legislation of State Police”, etc. Those teaching materials serve the Albanian police for the ongoing training of the staff of all levels.

**Education, information and training of specialized personnel regarding the prohibition of torture**

222. Measures taken in this regard aim at:

(a) Acquainting trainees with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the respective penal and administrative legislation;

(b) Preventing the use of any form of torture through implementation of the provisions of the Convention and the respective legislation;

(c) Finding of evidence and identifying different phenomena and manifestations having direct or indirect elements of torture;

(d) Using suitable forms and ways of raising awareness among different social categories regarding the prohibition of torture, etc.

223. The overall knowledge about the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the respective penal and administrative legislation is taught in the faculties and departments of universities preparing personnel in the relevant fields. Those institutions are:

(a) Faculty of Law (University of Tirana and Shkodra);

(b) Post-university studies for prosecutors and judges in the Higher School of Magistrates in Tirana;

(c) Tirana University master's degree for jurists and psychiatrists;

(d) Higher Military Schools, such as the Police Academy "Arben Zylyftari" in Tirana;

(e) The Military Academy "Skenderbej" in Tirana;

(f) The Marine and Aviation Academy in Vlora;

(g) The Higher Academy of Defence attached to the Army General Staff in Tirana;

(h) Different training courses for police, legal, officers, etc.

224. Parts or elements of the Convention and the respective penal and administrative legislation regarding the prohibition of torture have been transmitted to the students of compulsory school and high school, through the curricula of different subjects such as civil and moral education, sociology and philosophy, history, literature, etc.

225. Teachers and parents of children of compulsory and high school age are also informed and trained systematically about the problems regarding the prohibition of torture in various ways such as short socio-pedagogical courses, pedagogical material and the press, etc. In many

cases good cooperation exists between school structures and elements of civil society dealing with human rights, such as the Albanian Centre for Human Rights, the Albanian Helsinki Committee, etc.

**Finding evidence of and identifying different phenomena and manifestations having direct or indirect elements of torture**

226. In order to carry out effectively the different kinds of education, information and training of specialized personnel regarding the prohibition of torture, examples of evidence and ways of identifying phenomena and manifestations having direct or indirect elements of torture are used. Elements of torture, including psychological torture, that have come to light in this context include specific cases of teachers insulting or putting pressure on students, manifestations of violence and mistreatment by husbands of their wives, by parents and other adults of children, etc. More problematic are cases of children thrown onto the street to earn money, and children involved in blood feuds in some areas of northern Albania.

**Forms and ways of providing information and training regarding the prohibition of torture among different social categories**

227. Different forms and ways of providing information and training to raise the awareness of specialized personnel and different social categories regarding the prohibition of torture are used, such as:

- (a) Lectures and talks to clarify and explain the Convention and the relevant penal and administrative legislation regarding the prohibition of torture;
- (b) Special activities in schools about human rights, emphasizing the right of children not to be subjected to heavy and harmful labour, not to be disparaged because of race, colour, sex, language, etc.;
- (c) Discussions about concrete cases of violence in the public or family environment, directly observed or evidenced by interviews or surveys by the written and electronic media, etc.;
- (d) Comments and discussions about historical, fictional and artistic (films, pictures, etc.) themes connected with different forms of torture;
- (e) Initiatives and actions to save children from situations of torture, such as measures and programmes to help children forced to go out on the street or to return to school. Activists of local government, NGOs, religious communities, teachers and students in some areas of northern Albania have undertaken an important awareness campaign on blood feud reconciliation aimed at returning children to school. The drop-out rate has been reduced from 6.4 per cent in 1992 to 3.1 per cent in 1997 and 2 per cent in 2002;
- (f) Criminal punishment of flagrant cases of behaviour, evidencing manifestations of elements of torture. In 2002 a school director in the Fieri district was sentenced to jail because of child sexual abuse.

228. Public opinion in general in Albania is well informed and aware of the prohibition of any form of torture.

## Article 11

229. Article 28 of the Constitution of the Republic of Albania provides: “Everyone whose liberty has been taken away has the right to be notified immediately, in a language that he understands, of the reasons for this measure, as well as the accusation made against him. The person whose liberty has been taken away shall be informed that he has no obligation to make a declaration and has the right to communicate immediately with a lawyer, and he shall also be given the possibility to realize his rights. The person whose liberty has been taken away must be sent within 48 hours before a judge, who shall decide upon pre-trial detention or release not later than 48 hours from the moment he receives the documents for review. A person in pre-trial detention has the right to appeal the judge’s decision. He has the right to be tried within a reasonable period of time or to be released on bail pursuant to law. In all other cases, the person whose liberty is taken away extrajudicially may address a judge at any time, who shall decide within 48 hours regarding the legality of this action. Every person whose liberty was taken away pursuant to article 27 has the right to humane treatment and respect for his dignity.”

230. Article 148 of the Constitution provides: “The office of the prosecutor carries out the criminal prosecution and represents the accusation in court in the name of the State. The office of the prosecutor also performs other duties set by law. Prosecutors are organized and operate near the judicial system as a centralized organ. In the exercise of their powers, the prosecutors are subject to the Constitution and the laws.” Article 149 (4) provides: “The General Prosecutor informs the Assembly from time to time on the status of criminality.”

231. Article 4 of Law No. 8737 of 12 February 2001 “On the Organization and Functioning of Prosecution Offices in the Republic of Albania” provides that, in carrying out their functions, prosecutors are bound by the Constitution and laws. Prosecutors exercise their competences by respecting the principles that assure fair, equal and regular legal proceedings and the protection of legitimate human freedoms, rights and interests. The orders and instructions of a superior prosecutor are compulsory for a subordinate prosecutor. Prosecutors conduct proceedings and implement the guidelines issued in conformity with the legal provisions, penal decisions and court orders, and give their assistance for the proper administration of justice.

232. According to article 56 of this law, the Minister of Justice monitors the legitimacy of the prosecutors’ activity regularly or on the basis of information from interested bodies, institutions or individuals. This control is focused on the following issues:

- (a) The continuity of issues included in the annual recommendations by the Council of Ministers concerning the fight against crime;
- (b) Respect for the investigation time limits;
- (c) Respect for the detention time limit;
- (d) Respect for the fundamental rights and freedoms of the individuals who are the subject of criminal proceedings and of those in detention, and those in custody in particular;
- (e) The regularity and continuity of investigative actions;

- (f) The observance by the prosecutor of the legal obligation to initiate criminal proceedings;
- (g) The continuity of penal policy, and of sentencing policies of prosecutors in particular;
- (h) The regularity of data collection and the administration and registration of penal records;
- (i) Ensuring the fairness, equality and legitimacy of the prosecutors' activities in their relations with other subjects of criminal proceedings.

233. In any case, notice should be given of the control and it must be related to cases for which the preliminary inquiries have been completed. The President of the Republic, the General Prosecutor and the prosecutor whose activity has been monitored should be informed about the conclusions of the control.

234. Pursuant to article 2 of the Criminal Procedure Code, the procedural provisions define the rules for the carrying out of criminal proceedings, investigations and the trying of criminal offences, as well as the execution of criminal sentences. These rules shall be compulsory for the subjects of criminal proceedings, State authorities and citizens.

235. Articles 5 and 38 of the Code provide that the liberty of an individual may be restricted by means of precautionary measures only in cases and in forms provided by law. No one may be subjected to torture, punishment or cruel treatment. A person sentenced to imprisonment shall be provided with humane treatment and moral rehabilitation (see also paragraph 164 above).

236. Additionally, article 39 provides that the competent authority must explain to the defendant, clearly and in detail, the facts that have been alleged and makes him familiar with the evidence against him, indicating their source when possible. The competent authority invites him to explain everything helpful for his defence and interrogates him face to face. If the defendant refuses to respond, this shall be noted in the minutes. In the minutes shall be also noted, when necessary, the physical features and specific marks of defendants.

237. According to the procedure, the prosecutor notes down the personal identity of the defendant, his age, in the case of a juvenile his personality, and his statement of responsibility. If the mental condition of the defendant hinders his conscious participation in the proceedings, the competent organ may decide to suspend the proceedings.

238. In deciding suspension, the competent authority appoints a special tutor for the defendant, who is given the rights of a legal attorney. The decision on suspension is subject to appeal with the Court of Cassation by the prosecutor, the defendant or his defence lawyer. The suspension does not hinder the authority from acquiring evidence that may lead to the acquittal of the defendant and, if delay carries a risk, any other evidence requested by the parties. In the actions that must be carried out concerning the personality of the defendant, and for those requiring the defendants' presence, his special tutor shall also participate (art. 44).

239. Paragraph 66 above describes the procedure for defendants requiring psychiatric care.

240. According to the provisions of the Criminal Procedure Code (art. 255), the officers and the agents of the judicial police that have made an arrest or a detention shall immediately inform the prosecutor of the place where the arrest or the detention has taken place. They shall explain to the arrested or the detained person that he is not obliged to declare anything and that he has the right to choose a defence lawyer, and shall immediately notify the selected defence lawyer or the one appointed ex officio by the prosecutor. The officers and agents of the judicial police shall, as quickly as possible, make the arrested or detained person available to the prosecutor. When the arrested or detained person is sick or a juvenile, the prosecutor may order him to remain under surveillance in his home or in another place. The judicial police, with the consent of the arrested or detained person must immediately notify the family. When the arrested or detained person is a juvenile, the parent or tutor must be notified.

241. The prosecutor interrogates the arrested or detained person in the presence of the selected or appointed defence lawyer. He shall notify the person of the facts in relation to which he is being charged and the reasons for the interrogation (art. 256).

242. According to the Law “On the Rights and Treatment of Prisoners”, an inmate is isolated in the following circumstances:

- (a) For medical reasons;
- (b) In executing measures of a special surveillance regime;
- (c) In the cases provided for in article 13 of the Law.

243. Article 57 of the same Law provides that the use of physical force against inmates is forbidden, unless it is necessary to prevent acts of violence, attempts to escape from the institution, as well as to overcome resistance, even when passive. The official who for any reason uses physical force against inmates should immediately inform in writing the director of the institution, who conducts an investigation and provides medical aid for the inmates, and only after that makes the necessary verifications. Means of physical coercion are not used as punishment, but are foreseen for use only in circumstances provided for by the regulations and in order to avoid attempts to escape from the institution, violence against persons, damage to property, as well as to guarantee the health of the sentenced person himself. The use of means of physical coercion must be limited in time: if a time limit of 72 hours is exceeded, approval by the prosecutor should be sought. During the use of physical coercion, the sentenced person should be under the continuous control of the health services.

244. The prison regulations foresee the types and nature of force and means of coercion that may be used and the rules for their use. They must have a preventive function and be in accordance with the individual nature of the sentenced person. It is prohibited to use means of force and coercion that, within the meaning of the Penal Code, constitute arms or narcotic substances, as well as those that have a distressing or hypnotic effect. Police officers inside the prison may not bear arms, except in the circumstances foreseen by the Law “On the Prison Police”.

245. During the preliminary inquiries, prosecutors must monitor the legality of the activities of the judicial police or agents, with a view to ensuring respect for the principles and provisions of the criminal procedure, in order to prevent the perpetration of unlawful actions during the criminal proceedings.

246. The appointed prosecutor in the prosecution office of the territory in which the institution is located monitors the enforcement of the law and the regulations in the penitentiary with respect to the protection of the sentenced persons. In high security prisons, prosecutors authorized by the Attorney-General carry out inspections. In other categories of prisons, the monitoring task is vested in the Inspection Council, established by the Law “On the Execution of Criminal Sentences”. Based on a request or claim, the Inspection Council is entitled to make all the necessary verifications and, upon doing so, it may demand the head of the institution to take action, or recommend to the prosecutor to exercise his competence, or present its requests directly to the competent court.

247. The prosecutor should observe directly, periodically or without warning the penitentiary institutions, assisted when necessary by specialists from the relevant fields. Upon finding irregularities or obstacles, the prosecutor presents a request to the head of the institution aiming at the re-establishment of the law or rules infringed, the respect for sentenced persons’ rights, as well as the initiation of disciplinary, administrative or compensation procedures, unless the circumstances require the initiation of criminal proceedings. When the prosecutor’s request is not taken into consideration, and in all cases when, according to this law, the re-establishment of the laws, rules and rights infringed is under the competence of the court or other relevant body, the case is forwarded to it for consideration.

248. Article 70 of the Law “On the Rights and Treatment of Prisoners” stipulates that the prosecutor supervises the serving of sentences by:

- (a) Receiving from the institution the notification of the execution of an imprisonment sentence;
- (b) Receiving written or direct petitions and requests from the sentenced persons;
- (c) Receiving information, petitions and requests from the sentenced persons, or requests presented by the Inspection Council or other persons who have visitor status, according to article 41 of the Law, as well as from other State bodies or non-governmental organizations that have inspected the institution within the competence given by the Law or by authorization, and from the defence lawyer of the sentenced person;
- (d) Demanding information from the institution’s administration;
- (e) Verifying documents, objects, equipment, staff and premises inside and outside the institution that are connected with the sentenced person. When appropriate, verifications are made with regard to the sentenced person or institution officials. In order to carry out the inspection, the prosecutor can be assisted by specialists from relevant fields. Regardless of whether there are any irregularities and infringements, the prosecutor drafts a process-verbal, which is to be signed by the head of the institution or an official appointed by him; both are entitled to make comments.

249. The inspection of the activities of judicial police officials or agents towards detained and arrested persons and criminal proceedings that have been initiated against some arbitrary actions of certain police officers, have revealed cases of mistreatment of persons apprehended, arrested in flagrante or held in custody during their interrogation at the police departments or commissariats in some districts, or by keeping them in custody beyond the legal time limits.

250. Prosecutors, on the basis of allegations and claims and on their own initiative, have initiated criminal proceedings for those cases of abuse and/or mistreatment against detained persons, carrying out their investigations in due time and in order to bring the responsible persons to justice.

251. In 2002, the prosecution institution has carried out criminal proceedings and brought the following charges to the competent courts:

(a) Proceedings against two arrested defendants in the Pogradec and Vlora judicial districts for the criminal offence of torture according to article 86 of Penal Code; and

(b) For the criminal offence of undertaking arbitrary actions resulting in the unlawful deprivation of liberty of citizens, as provided for by article 29 of the Penal Code, 20 persons were charged in 14 separate criminal proceedings in the judicial districts of Tirana, Fier, Gjirokastra, Korca and Kurbin.

252. Article 71 of the Law “On the Rights and Treatment of Prisoners” provides that the court in the territory of which the institution is located tries with a single judge all the cases referred to in the Law, as well as other cases related to the rights of the sentenced person that are not resolved by the institution upon the complaint of the sentenced person or at the request of the prosecutor, except for cases for which the Criminal Procedure Code has allotted the competence elsewhere.

253. According to the Law “On the Execution of Criminal Sentences”, other State bodies and NGOs may seek information from penitentiary institutions with regard to how sentences are being served and the observance of the rights of the sentenced person, and can recommend the taking of appropriate measures and, when necessary, to ask for the prosecutor’s intervention. Those penitentiary institutions to which different criteria provided by a particular law are applied are excluded from this rule.

254. The whole staff of the Central Police Department and the personnel dealing with detained persons in particular, has been trained. This training has basically focused on the application of domestic law, the Convention against Torture and European conventions.

255. The relevant provisions concerning internal activity during detention foresee disciplinary measures against those persons who violate the internal detention regime. Also, strenuous efforts have been taken by the police to prevent cases of torture or other inhuman treatment, especially during the apprehension of persons. In this regard, proven cases of the use of force beyond the limits set by law have been severely condemned.

256. Furthermore, the Criminal Police Department and the Public Order Police are in the process of drafting a manual to be used by all police forces which is based on existing laws and regulations and will serve to inform these forces about the rights and obligations of the persons apprehended by the police. Also, the manual will include information on the legal time limits for holding of persons in custody at commissariat premises, and for investigation and detention periods until the person is charged or released.

## Article 12

257. Article 1 of the Criminal Procedure Code provides that "... the criminal procedural legislation is to provide a fair, equal and due legal process, to protect individuals' freedoms [and] the rights and the legal interests of citizens, [and] to contribute to the strengthening of the rule of law and to the application of the Constitution and laws ruling the country.

258. According to article 280, "the prosecutor and the judicial police [can] become aware of a criminal offence ex officio and by other information".

259. Public officials, medical staff and the judicial police are also obliged to present written indictments. Any person that has become aware of a criminal offence prosecutable ex officio must make an indictment. In cases specified by law an indictment is compulsory. The indictment is presented to the prosecutor or to an officer of the judicial police orally or in writing, personally or through an attorney (see under article 13).

260. After carrying out the necessary investigative actions, the judicial police present to the prosecutor all the documentation, accompanied by an explanatory report on the evidence and proofs assembled, together with their indicators of how the investigation will end. After examining the whole file, and being assured that the defendant and his lawyer are familiar with it, the prosecutor decides, when appropriate, either to drop the charges or send the case to court.

261. With regard to preliminary investigations, articles 277, 278 and 279 of the Criminal Procedure Code provide that: the prosecutor and the judicial police conduct, in accordance with their specified competency, the necessary investigations connected with the criminal prosecution. The prosecutor leads the investigations and makes use of the judicial police. During the preliminary investigations, which are held at the request of the prosecutor, the defendant and the injured and private parties, in cases provided by law, the court is entitled to exercise discretion. The investigations are secret until the defendant is informed of them. If it is necessary to continue the investigations, the prosecutor may order the keeping of secret special documents until the investigations come to an end. The prosecutor may allow, by a motivated decision, the publication of special documents or of parts of them. The published acts shall be deposited with the secretary of the prosecutor.

262. According to article 9 (b) of the Law "On Prosecutable Offices in the Republic of Albania" of 12 December 2001, there are departments at the Prosecutor General's Office, that monitor investigations and criminal proceedings; they coordinate and assist prosecution offices in carrying out their tasks with respect to courts.

### Article 13

263. According to the Albanian Constitution, article 28 (1), (2) and (3), everyone who has been deprived of liberty has the right to be notified immediately, in a language that he understands, of the reasons for this measure, as well as the accusation made against him. The person shall be informed that he has no obligation to make a statement and that he has the right to communicate immediately with a lawyer, and he shall also be given the possibility to exercise his rights. In accordance with article 27 (2) (c), the person must be brought within 48 hours before a judge, who shall decide upon pre-trial detention or release. The judge's decision may be appealed. The person has the right to be tried within a reasonable period of time or to be released on bail, pursuant to the law.

264. Article 43 of the Constitution stipulates that everyone has the right to appeal a judicial decision to a higher court, except when the Constitution provides otherwise. Anyone, by himself or together with others, may direct requests, complaints or comments to the public organs, which are obliged to answer in the time periods and conditions set by law (art. 48).

265. Article 131 (i) of the Constitution stipulates that the Constitutional Court decides on the final adjudication of individual complaints of violation of the constitutional right to due process of law, after all legal means for the protection of that right has been exhausted.

266. Article 311 of the Criminal Code provides that a threat made to a victim of a criminal act not to report or complain or a threat to withdraw a report or complaint, constitutes a criminal violation and is punished by a fine or up to two years of imprisonment.

267. The principle of preliminary investigation and an independent trial is guaranteed by article 15 (3) of the Criminal Procedure Code, which stipulates that a person who has exercised the functions of the prosecutor or has conducted operations of the judicial police or has been a defence lawyer, an attorney of one of the parties or a witness or an expert, or has presented an information, complaint or request for proceedings, or has rendered or participated in the rendering of the decision authorizing the initiation of an action, may not exercise the function of a judge in the same proceedings.

268. Article 111 of this Code provides that a person held in custody has the right to present complaints, requests and statements through the director of the institution, who issues a document certifying that they have been handed in. They are recorded in a special book, are notified immediately to the competent authority and have the same effect as having been accepted directly by that authority. The defendant under house arrest or under supervision in a medical facility has the right to present claims, requests and statements to the officer of the judicial police who certifies to have received them and arranges for them to be immediately sent to the competent authority. The same rules are applied to information, complaints, requests and statements presented by private parties or injured person.

269. Article 284 of the Criminal Procedure Code stipulates that, for the criminal offences provided by articles 85, 89, 102, first paragraph, 105, 106, 130, 239, 240, 241, 243, 264, 275 and 318 of the Criminal Code, the prosecution may start only by an indictment brought by the injured party, who may withdraw the same at any stage of the proceedings. The injured party brings the indictment before the prosecutor or the judicial police by means of a statement in

which, personally or through the special attorney, he/she expresses the willingness to proceed on the basis of a fact provided by law as a criminal offence. The plaintiff or his attorney signs the relevant minutes when the indictment is made orally. The one who receives the indictment, after being certain of the identity of the plaintiff, sends the document to the prosecutor. In cases provided by article 59, the indictment is brought before the court by the injured party/accuser.

270. Article 285 of the Code provides that renouncing the right of indictment is done personally or through an attorney by a signed statement, or orally before the prosecutor or the officer of the judicial police who keeps minutes. It must be signed by the author. Time-bound or conditional renouncement is not valid. The same statement may also contain a renunciation of civil lawsuit.

271. The withdrawal of an indictment is done personally or through an attorney by a statement presented to the competent authority. The withdrawal of an indictment may be presented at any stage of the proceedings before the decision of the court has become final. The expenses of the proceedings shall be in the charge of the one who has withdrawn the action, except when the act of withdrawal has provided, by agreement, that they are entirely or partly in the charge of the one subject to the action (art. 286).

272. According to article 339 of the Criminal Procedure Code, the hearing should be public; otherwise the proceedings shall be null and void. Juveniles under 16 and those who are drunk, intoxicated or mentally disordered shall be not allowed in the hearing. The presence of armed persons in the hearing is prohibited, except for members of public order forces.

273. Article 340 of the Code stipulates that the court can decide to hold some or all of its proceedings in camera when:

- (a) The publicity may damage social morality or may divulge data to be kept secret in the interest of the State, if the competent authority requests this;
- (b) Behaviour is displayed which impairs the normal performance of the hearing;
- (c) It is necessary to protect the witnesses or the defendant;
- (d) Necessary during the questioning of juveniles.

The decision of the court to holding the hearing in camera is revoked once the causes that required it no longer exist.

#### **Article 14**

274. Article 44 of the Constitution guarantees that everyone has the right to be rehabilitated and/or indemnified in compliance with law if he is damaged because of an unlawful act or action or a failure to act on the part of the State organs.

275. According to chapter V of the Criminal Procedure Code, "Compensation for Unfair Imprisonment", articles 268-269, a person who is found innocent by final sentence is entitled to compensation for the detention served, except when it is proven that the wrong sentence, or the failure to discover an unknown fact in due time, was caused entirely or partly by himself.

The person who has been detained shall have the same right when it is proven by a final decision that the act by which the measure had been imposed was issued in the absence of the requirements provided by articles 228 and 229. The provision shall also apply to the person whose case has been dismissed by decision of the court or the prosecutor. When it is proven by court decision that the fact is not characterized as a criminal offence by law because of abrogation of the relevant provision, the right to compensation is not recognized for that part of the detention served before the abrogation.

276. The request for compensation must be presented within three years from the date the decision of acquittal or dismissal of the case has become final; otherwise, it is not accepted. A special law determines the amount of the compensation and the way it is assessed, as well as cases of compensation for the house arrest.

277. Article 397 of this Code provides that upon adoption of the decision accepting the request for restitution or compensation for damage, the court obliges the defendant to pay the administrative costs in favour of the plaintiff in a civil suit, except when it determines that it must decide on the entire or partial compensation. When the request is rejected, or the defendant is found innocent, except when he is deemed irresponsible, the court obliges the plaintiff to pay the administrative costs of the defendant in a civil lawsuit, and in any case when there are no reasons for complete or partial compensation. When gross negligence is proved, the court may also charge the defendant in a civil suit with the payment of compensation for the damage caused.

278. Article 459 provides that a person who is acquitted, when intentional causes or gross negligence have not been the cause of the wrong decision, is entitled to compensation in proportion to the duration of the sentence and the personal and family consequences deriving from the sentence. The compensation is made by payment of an amount of money or by other means. The request for compensation is made within two years from the day that the court decision becomes final and/or submitted to the secretary of the court that has rendered the decision. The request is communicated to the prosecutor and to all the interested persons. The decision on compensation is subject to appeal with the court of appeal.

279. When the sentenced person dies before the proceedings are completed, the right to compensation belongs to his heirs. Only legal heirs shall have this right (art. 460).

280. According to the Law "On Innocence, Amnesty and Rehabilitation of Ex-political Convicted and Persecuted Persons", amended by Law No. 7660 of 14 January 1993 and the Law of 29 June 1993, persons benefiting from verdicts of innocence, amnesty and rehabilitation are remunerated for damages suffered, according to rules approved by special provisions that are in conformity with international criteria. They are entitled to restoration or compensation for previously confiscated properties. Relatives or legal heirs of ex-persecuted persons who are no longer alive, as well as relatives of persons executed without a court decision, or dead persons not sentenced by a court, are also entitled to compensation for damages suffered.

281. Pursuant to provisions on retirement funds, relatives of executed persons and relatives of persons sentenced without a court decision, as well as relatives of dead persons imprisoned without a court decision have the right to enjoy retirement allowance (art. 5 (d), (dh), (e)).

282. Pursuant to articles 6 and 7 of the same Law, the rights provided by article 5 are obtainable also by expelled persons or persons interned for political reasons, as well as by persons accused of political offences who are still hospitalized in psychiatric institutions for compulsory treatment. Relatives of persons who died during the process of investigation or persons executed without a court decision enjoy the rights provided by this law. Persons who used to be part of the high *nomenklatura* of the communist regime or part of its dictatorial organs, implicated directly in committing criminal offences, issuing orders for detentions, imprisonments or internments of families because of political convictions, as well as persons who have been active in using violence against inmates in prisons, camps, detention centres, etc., when these acts are judicially ascertained, cannot enjoy the rights provided by the above-mentioned law.

283. According to the above-mentioned law, ex-political prisoners are entitled to compensation and pensions, from the moment they were entitled, for the duration of their sentence in prisons or labour camps, pursuant to regulations provided by special provisions in conformity with the international criteria. The children of ex-political convicted persons are also entitled to this right regardless of their age, as long as they attend school. Relatives of ex-political prisoners are also entitled to compensation for the entire duration of the sentence. When the ex-political prisoners die, their relatives are entitled to receive the rest of the pension. They enjoy the right to be compensated or to restoration of confiscated properties pursuant to the relevant legal or by-law provisions.

284. Pursuant to Law No. 8246 of 1 October 1997 “On the Institution for the Integration of the Persecuted”, an Institution of Persecuted Persons was established dependent on the Council of Ministers. Pursuant to article 1 of this law, the Institution is established as a unitary State body with the objective of taking all necessary measures and to examine all cases related to the integration of persons persecuted by the communist regime in Albanian social life.

285. Furthermore, this institution is responsible for meeting the continuing needs of the persecuted persons and at the same time making efforts towards reaching an extensive consensus with different associations of sentenced and persecuted persons, in order to improve their conditions and their treatment.

286. Pursuant to the provisions of the Civil Code, article 608, the person who is found illegally and wilfully to have caused damage to another person, or to his property, is obliged to compensate the damage caused. The damage is illegal when it results from the violation of the interests and rights of the other person that are protected by law, judicial order, or custom.

287. The person who suffers damage, including property damage, has the right to claim compensation if he has suffered injury to his health or harm to his honour. In a case where the memory of a dead person is desecrated, the spouse he lived with on the day of his death or his relatives up to the second degree may seek compensation, except when the damage was done when the dead person was still alive and he was already awarded compensation. This right is not hereditary.

288. The person who has caused damage to the health of another person is obliged to compensate for the damage, taking into consideration the loss or the reduction of working capabilities of the damaged person, the expenses related to his medical treatment and other

expenses that relate to the damage caused. The amount of compensation for the damage might change in the future, depending on the improvement or aggravation of the person's health, the increase or decrease of his working capabilities, and to the changes in the salary of the damaged person.

289. When the death of a person is caused, the damage to be compensated for consists of living expenses for his minor children, consort and parents unable to work who used to be his responsibility, completely or partially, and for the persons who used to live with the dead person's family and who had the right to be fed by him; and the necessary funeral expenses according to the personal and family circumstances of the dead person. The court, taking into consideration all the circumstances of the question, might decide that the compensation may be given in kind or in cash, at one time or in instalments.

290. When a person who has committed an illegal act or illegally failed to act, has derived a significant benefit therefrom, at the request of the damaged party and taking into consideration the nature of the damage, the scale of liability and other circumstances, the court may include in the calculation of damage compensation the profits earned as a result of the illegal action.

291. When death or injury to health has been caused to a person who is a beneficiary of social insurance, the damage is compensated in the way determined by law. If a person has not been employed or has not been insured, the compensation of the damage caused by his death or injury is determined by the court on the basis of the salary of a worker belonging to the same category as the dead or injured person.

292. When the damaged minor turns 16 years old and has no salary from his work, he has the right to require compensation for the loss of his working capabilities on the basis of the average salary of a worker, in accordance with the criteria of article 646 of the Code. When he reaches 18 years old, he has the right to require compensation based on the average salary of a worker who belongs to the same category to which he would have belonged if his health had not been injured.

### **Article 15**

293. Article 32 of the Constitution provides that no one may be compelled to testify against himself or his family or to confess guilt. No one may be declared guilty on the basis of data collected in an unlawful manner.

294. Pursuant to article 312 of the Criminal Code, proposing or giving remuneration, gifts or other benefits, or threatening or committing other violent acts against a person so that they provide false testimony, expertise or translation, or refuse to carry out their duties before the organs of criminal prosecution or the court, is punished by a fine or up to three years of imprisonment.

295. Article 314 of the Code provides that the use of violence by the person in charge of an investigation to force a citizen to make a statement, give testimony or confess his guilt or somebody else's, is punished by 3-10 years of imprisonment.

296. Article 3 (2) of the Criminal Procedure Code provides that the court renders decisions upon evidence examined and revealed during the hearing.

297. Pursuant to article 151 (3) (4) of the Criminal Procedure Code, when evidence that is not provided for by law is requested, the court may accept it if it helps to prove the facts and if it does not impair the free will of the witness. The court decides whether to accept the evidence after hearing the parties. Evidence may not be used if it is contrary to the prohibitions provided for by law. A request to reject the evidence may be brought ex officio at any stage of the proceedings.

298. Article 316 (b) provides that during the preliminary investigation, the prosecutor and the defendant may ask the court to proceed to take a witness into custody, when there are well-founded reasons to believe that the person may be subject to violations, threats, or may be offered money or other profits in order not to testify or give false evidence.

299. Article 357 provides that, after hearing the parties, the court renders a decision on the taking of the evidence. During the court examination, the parties may present claims in relation to the taking of the evidence. The court may, by decision, revoke the taking of evidence that is unnecessary or accept the taking of evidence that had been refused.

300. In addition, article 450 (c) of the Code provides that a review may be requested when it is proved that the conviction was rendered as a result of the falsification of the trial documents or of another fact provided for by law as a criminal offence.

301. In order to enforce the fight against criminality, following the later amendments of the Criminal Code and Criminal Procedure Code, a working group has been established, composed of representatives from the Ministry of Justice, the Ministry of Public Order and the Prosecutor General's Office. This working group has as its purpose to undertake a comparative study and a discussion at the expert level of the draft law on witness protection. Despite the maximum commitment on the structures of the Ministry of Justice and the advanced stage of the work carried out, the approval of the draft law by the Assembly of the Republic of Albania is not expected to take place before the end of 2003. This is due mainly to the difficulties and complexities of the national and international juridical relations responsible for regulation.

302. Likewise, the draft law contains some standards and commitments of the State towards the life, health and special treatment of witnesses, etc. which have special consequences in terms of their material and criminal procedural aspects, as well as financial and social aspects (housing, subsistence, change of identity, employment, schooling, etc.), and consequences related to human resources and vocational training of State employees, etc.

#### **Article 16**

303. Law No. 8092 of 21 March 1996 "On Mental Health" provides the procedure for the conditions for the allocation of psychiatric care and at the same time lays down the obligations of central and local authorities in organizing the care with respect to mentally ill persons.

304. Article 3 of the law provides that the preventive policies for the protection of mental health are based on:

- (a) The application of principles on the protection of mental health in educational and health institutions, workplaces and military units;
- (b) The establishment of preventive and consultative institutions;
- (c) Supporting the organizations and initiatives that operate in the area of mental health care;
- (d) The inclusion of elements of health care in the training programmes for employees of the educational, social care, health, administration, and organization of leisure activities sectors;
- (e) Conducting research for the improvement of health care and the prevention of mental illnesses;
- (f) Rehabilitation of mentally ill persons.

305. Retarded and mentally ill persons are treated free of charge in the public institutions, which provide them with care, rehabilitation and education. When treated in private institutions, the State covers the expenses up to the cost of treatment in public institutions for individuals less than 18 years of age.

306. Furthermore, article 8 of the law provides that the Ministry of Labour and Social Affairs has to appoint social assistants in all public psychiatric and rehabilitation institutions, whose task it is to care for the patients and to protect their human and social rights.

307. The limitation or deprivation of the physical capacity of mentally ill persons may be proposed by a legal-psychiatric commission, which must be composed of not less than three members. In compliance with the provisions of the Civil Procedure Code, the court is entitled to take the final decision. The decision must also provide for a legal guardian.

308. The head of the psychiatric and rehabilitation institution where the mentally ill person is placed, has to notify the court of first instance if there is any verified evidence that the legal guardian of the person does not fulfil his duties. In such circumstances, the court may take a decision to revoke the guardianship and to assign a new guardian.

309. The mentally ill person, his legal guardian and his relatives have the right to be informed about his health situation and the examination and treatment methods that are going to be utilized. His medical or social caregiver, according to the patient's health situation and the principles of medical ethics, provides the relevant information.

310. Carrying out the obligations of the law, physical restraint of mentally ill persons may be considered only when the person represents a risk to his own health and/or life or the health or life of other persons, when he acts against public safety, on when he damages or destroys items in the surrounding area, in the cases provided for by the regulations of the psychiatric service.

311. The physician is entitled to take the decision on the physical restraint of the person and to specify the manner of the restraint. He is also personally involved in carrying out the application of the methods of restraint. In those psychiatric and rehabilitation institutions when it is impossible to have an immediate decision by the doctor, the nurse, who informs the doctor immediately, can take the decision on the application of physical restraint. When the decision is incorrect, the physician may revoke it. The actions of the physician and the decisions taken by him have to be recorded in the relevant documentation.

312. Before applying the physical restraint, the person concerned has to be notified. During the application of physical restraint, the person has to be treated in a very careful manner, one which is the most convenient for him and his welfare.

313. The decision to apply physical restraint has to be legitimated within 24 hours by the permanent commission established within the rehabilitation and psychiatric institution. The composition of the commission, its rights, duties, and the manner of its work have to be defined by a regulation issued by the Ministry of Health and the Ministry of the Environment. The Ministry of Health has not yet approved this regulation.

314. A mentally ill person may be treated in a psychiatric institution without his or his guardian's prior consent only if he represents an obvious threat to his own life or health, or the life or health of other persons. The decision to hospitalize a person has to be taken by a specialized physician, and only after he has personally conducted an examination.

315. The mentally ill person, his parents or his legal guardian is entitled to be informed of the grounds for the decision to hospitalize him. The hospitalization procedures have to be recorded in the clinic's registers.

316. The physician who takes a decision to hospitalize a mentally ill person without his or his guardian's prior consent has to notify, within 24 hours, the head of the clinic, who can approve or reject the decision. Within 48 hours of the approval, the head of the clinic has to present the case to the single judge of the court of first instance that is competent to examine these cases.

317. The single judge, who examines the case not later than three days from the request, interrogates the hospitalized person, with or without his or his legal guardian's consent, the doctor who examined the person, the head of the clinic who approved the hospitalization and also the relatives or any interested person, for explanations on the case. The decision of the single judge to keep the sick person hospitalized or to release him has immediate effect.

318. The family or the legal guardians of a mentally ill person have the right to request that he leave the hospital at any time. The request may be informal and has to be registered in the clinic register. If the request is refused, the above-mentioned individuals are entitled to appeal before the court of first instance that has jurisdiction within seven days from the date of having notice, and the case is examined by a single judge, whose decision is final.

319. The psychiatric institutions are required to examine all the requests, complaints and proposals made by the associations or other voluntary groups of patients, their family members or interested persons intended for the protection of the interests of mentally ill persons.

320. In cooperation with civil society, the Ministry of Health, the Ministry of Public Order, the Ministry of Education and Science, the State Institute for Integration, the General Directorate of Prisons and Tirana University have concluded formal agreements with the Albanian Rehabilitation Centre for Torture Victims in order to provide a legal framework for their relations with a view to improving the treatment of mentally ill persons, or persons suffering other forms of traumas.

321. Additionally, the Ministry of Health, in cooperation with the Albanian Rehabilitation Centre for Torture Victims, was actively engaged in programmes of medical assistance for the treatment of Kosovar refugees who resided in Albania during the Kosovo crisis. The assistance consisted mainly of the treatment of traumas and the effects of physical and psychological mistreatments.

322. Likewise, one of the objectives of the Albanian Rehabilitation Centre for Torture Victims consists of treating ex-prisoners and the ex-political persecuted.

## **Annex**

### **List of agreements on the readmission of persons**

1. Agreement between the Government of the Republic of Albania and the Government of the Republic of Italy on the readmission of persons at the border, signed on 18 November 1997;
2. Agreement between the Government of the Republic of Albania and the Government of the Swiss Confederation on the readmission of persons, signed on 2 February 2000;
3. Agreement between the Government of the Republic of Albania and the Government of the Republic of Hungary on the readmission of persons, signed on 20 March 2001;
4. Agreement between the Government of the Republic of Albania and the Government of the Kingdom of Belgium on the readmission of persons residing illegally, signed on 17 April 2001;
5. Agreement between the Government of the Republic of Albania and the Government of the Republic of Bulgaria on the readmission of persons residing illegally, signed on 11 June 2002;
6. Agreement between the Government of the Republic of Albania and the Government of the Republic of Romania on the readmission of persons residing illegally, signed on 7 June 2002;

The Agreement between the Government of the Republic of Albania and the Government of the Federal Republic of Germany on the readmission of persons residing illegally has been signed on 18 November 2002, but it has not yet entered into force. There are some other readmission agreements in the process of examination and signature with different countries, such as with the United Kingdom, the Kingdom of the Netherlands, the Grand Duchy of Luxembourg, Croatia, Macedonia, Moldavia, Slovakia, Slovenia and the EU.

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