



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

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Committee against Torture

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Consideration of reports submitted by States parties under article 19 of the Convention

Concluding observations of the Committee against Torture

Albania

1. The Committee against Torture considered the second periodic report of Albania (CAT/C/ALB/2), at its 1060th and 1063rd meetings (CAT/C/SR.1060 and 1063), held on 8 and 9 May 2012. At its 1084th meeting (CAT/C/SR.1084), held on 25 May 2012, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the second periodic report by the State party although it was submitted after a delay of almost two years. The Committee notes that the State party's report generally complied with the reporting guidelines, albeit it lacked specific data, disaggregated by sex, age and nationality, in particular about acts of torture and ill-treatment by law enforcement officials.

3. The Committee appreciates the open and constructive dialogue with the State party's inter-departmental delegation covering all areas under the Convention. The Committee also appreciates the submission by the State party of the detailed written replies to the list of issues that it provided in advance of the session to facilitate the consideration of its report.

B. Positive aspects

4. The Committee welcomes the ratification by the State party of the following international instruments:

(a) International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, on 5 June 2007;

(b) Optional Protocol to the International Covenant on Civil and Political Rights, on 4 October 2007;

- (c) Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, on 17 October 2007;
- (d) International Convention for the Protection of All Persons from Enforced Disappearance, on 8 November 2007;
- (e) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, on 5 February 2008;
- (f) Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, on 9 December 2008;
- (g) Council of Europe Convention on Action against Trafficking in Human Beings, on 6 February 2007;
- (h) Protocol No. 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances, on 6 February 2007.

5. The Committee welcomes the enactment of the following legislation:

- (a) Law No. 9686 of 26 February 2007, amending the definition of torture in article 86 of the Criminal Code, that criminalizes acts falling under article 1 of the Convention, including when committed by persons acting in an official capacity, and adding aggravating circumstances in article 50 of the Criminal Code for the punishment of offences when motivated by factors such as gender, race or religion; and
- (b) Law no. 9669 of 18 December 2006 ‘On measures against violence in family relations’ and law no. 10494 of 22 December 2011 ‘On electronic monitoring of persons deprived of liberty according to law court decisions’, aiming to prevent incidents of violence in the family.

6. The Committee also welcomes:

- (a) Assignment, by the Parliament of Albania in 2008, of the People’s Advocate as the National Preventive Mechanism against Torture under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- (b) The approval of a ‘Manual on the Treatment of Persons in Police Custody’, approved by the Director General of the State Police in December 2009;
- (c) The adoption of the national Strategy on Gender Equality and Reduction of Violence on Gender Base and Violence in the Family, 2011 – 2015, through the Council of Ministers’ Decision no. 573 of 16 June 2011.

7. The Committee notes the existence of an active civil society that significantly contributes to the monitoring of torture and ill-treatment, thereby facilitating the effective implementation of the Convention in the State party.

C. Principal subjects of concern and recommendations

Definition and criminalization of torture

8. The Committee welcomes that the State party’s Criminal Code (art. 86) is in line with article 1 of the Convention. However, the Committee expresses serious concern at the fact that no information has been reported on the application of article 86 of the Criminal Code and the pattern of reclassifying reported incidents of torture as arbitrary acts under article 250 of the Criminal Code (arts. 1 and 4).

In accordance with the Committee’s general comment No. 2 (2007) on implementation of article 2 by States parties, the State party should ensure that evidence of acts

considered as torture under article 86 of the Criminal Code is duly compiled and evaluated, refraining from reclassification of reported incidents of torture as arbitrary acts under article 250 of the Criminal Code. The State party should also clarify which of the incidents of ill-treatment by law enforcement officers reported in response to the list of issues and during the dialogue amount to torture and other cruel, inhuman or degrading treatment or punishment, as well as what measures are taken to ensure that prosecutors can apply article 86 of the Criminal Code.

Direct applicability

9. While welcoming the direct applicability of the Convention, pursuant to article 112 of the Albanian Constitution, the Committee notes with concern that the State party acknowledged during the dialogue that it has no specific information on cases in which the Convention has been invoked and directly applied before the domestic courts (arts. 2 and 10).

The Committee recommends that the State party take steps to:

(a) Ensure the effective implementation of the Convention and its direct applicability and enforceability within the national legal framework, and disseminate the Convention to all relevant public authorities, including the judiciary, thus facilitating direct application of the Convention before domestic courts;

(b) Provide an update on illustrative cases of direct application of the Convention before domestic judicial bodies in its next periodic report.

People's Advocate as National Preventive Mechanism

10. The Committee is concerned at reports that the People's Advocate, acting as National Preventive Mechanism, monitors the situation in detention - through the Unit for Prevention of Torture only once it receives allegations of abuse and with prior consent, thus limiting the protective aspects of its preventive visits (art. 2).

The Committee recommends that the State party ensure a regular and timely access by People's Advocate to all places of detention without limiting its visits to on-site inquiry into allegations of abuse, and without prior consent to the visit by the respective authorities.

11. The Committee is also concerned at the lack of professional staff, financial resources and methodological resources provided to the People's Advocate, and reports alleging undue pressures regarding its functioning such as the absence of assignment of the People's Advocate for more than two years, due to which the places of detention have been visited only irregularly, thus limiting the adequate fulfilment of the monitoring mandate by the People's Advocate and diminishing the role and significance of the institution (arts. 2 and 12).

The Committee recommends that the State party provide the People's Advocate with sufficient human, financial, technical and logistical resources to enable it to carry out its functions effectively and independently, in accordance with article 18, paragraph 3, of the Optional Protocol and guidelines Nos. 11 and 12 of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and to make sure that the institution operates free from undue pressures.

12. While commending the People Advocate's recommendations aimed at, inter alia, improving conditions of police detention cells, the Committee notes with concern the lack of dialogue and follow-up by the Parliament to the recommendations by the People's Advocate as required by the law, as well as public awareness about its recommendations. The Committee also notes with concern the lack of the People Advocate's mandate to promote human rights of detainees, access to the institution at the regional level, systematic

interaction with the international human rights system and of the transparency of appointment processes to the governing bodies (arts. 2 and 12).

The Committee recommends that the State party:

(a) Take steps to improve dialogue and follow-up by the Parliament with a view to implementing the findings and recommendations by the People's Advocate following the missions to the detention centres by its Unit for Prevention of Torture, as required by the law;

(b) Make public, using all appropriate means of communication, the steps taken by the State party to ensure effective implementation of the findings and recommendations adopted by the People's Advocate and to increase public awareness thereof;

(c) Compile and regularly disseminate the best practices by the People's Advocate and undertake relevant training thereon to its personnel;

(d) Strengthen the mandate of the People's Advocate to include promotion of human rights in order to improve safeguards, living conditions and treatment of detainees, make it more accessible through the establishment of a permanent regional presence and improve its systematic interaction with the international human rights system and the transparency of appointment processes to the governing bodies.

Fundamental legal safeguards

13. The Committee expresses its deep concern at reports that basic safeguards against ill-treatment during pretrial detention are still not applied systematically and effectively as detainees are not always fully informed of their fundamental rights from the outset of their deprivation of liberty, get deprived of timely access to a lawyer and a medical doctor and of the right to notify a family member or person of one's choice of an arrest and current place of detention, and are not often brought before a judge within the constitutionally prescribed periods (arts. 2, 11 and 16).

The Committee recommends that the State party:

(a) Take measures to ensure that all persons detained by the police are fully informed of their fundamental rights as from the very outset of their deprivation of liberty, requiring the provision of an oral information on these rights at the very outset of detention, and supplemented by the provision of an information sheet at the earliest possibility, receipt of which should be attested by a signature of the detained person;

(b) Regularly train police officers on the legal obligation to grant access to a lawyer and a medical doctor from the very outset of a person's deprivation of liberty and to provide for a notification of a detained person's family member or person of one's choice of an arrest and current place of detention;

(c) Ensure that all persons detained by the police are brought before a judge within the constitutionally prescribed periods.

Violence against women, domestic violence and violence against children

14. While welcoming the Law no. 9669 of 18 December 2006 'On measures against violence in family relations' prompting the establishment of appropriate police structures, protection mechanisms for victims of family violence and series of training activities, and noting the adoption of the national 'Strategy on Gender Equality and Reduction of Violence on Gender Base and Violence in the Family' on 16 June 2011, the Committee expresses concern about the absence of specific criminal offences punishing violence against women

that would consider marital rape and domestic violence as specific penal offences. The Committee is also particularly concerned by the high incidence of violence against children in the family and schools, and the public acceptance of corporal punishment of children (arts. 2 and 16).

The Committee urges the State party to:

- (a) Prepare and adopt, as a matter of priority, a comprehensive legislation on violence against women that would establish marital rape and domestic violence as specific penal offences;**
- (b) Adopt the new draft law against violence against children at schools, prohibit corporal punishment in all settings, including home and alternative care settings and hold the perpetrators of such acts accountable;**
- (c) Take measures at all levels of the government to ensure public awareness of the prohibition and harm of violence against children and women in all sectors.**

Trafficking in persons

15. The Committee notes the State party's information about the legislative amendments to the Criminal Code to deal with trafficking in persons (articles 110/a, 114/b, and 128/b), activities of the National Coordinator against the Trafficking of Persons and the adoption of 'Action Standard Procedures for Identification and Reference of Potential Victims of Trafficking' of 27 July 2011. However, it expresses serious concern at the absence of data on the measures to prevent acts of trafficking and on prosecutions and types of sentences handed down for such acts (arts. 2, 3, 12, 13, 14 and 16).

The Committee urges the State party to:

- (a) Continue to take effective measures to increase protection to the victims of trafficking in persons;**
- (b) Prevent and promptly, thoroughly and impartially investigate, prosecute and punish trafficking in persons and related practices;**
- (c) Provide means of redress to victims of trafficking, including assistance to victims in reporting incidents of trafficking to the police, in particular by providing legal, medical and psychological aid and rehabilitation including adequate shelters, in accordance with article 14 of the Convention;**
- (d) Prevent return of trafficked persons to their countries of origin where there is a substantial ground to believe that they would be in danger of torture, to ensure compliance with article 3 of the Convention;**
- (e) Provide regular training to the police, prosecutors and judges on effective prevention, investigation, prosecution and punishment of acts of trafficking, including on the guarantees of the right to be represented by an attorney of one's own choice, and inform the general public of the criminal nature of such acts;**
- (f) Compile disaggregated data about the victims, prosecutions and types of sentences handed down for acts of trafficking, provision of redress to the victims and measures to prevent acts of trafficking as well as the difficulties experienced in preventing such acts.**

Pretrial detention

16. The Committee welcomes the adoption of the Law no. 10494 of 22 December 2011 'For electronic monitoring of persons of limited liberty under a law court decision' aiming to limit pretrial detention; however, it notes with concern that pretrial detention continues to be excessively applied. The Committee is particularly concerned about reports of high

number of torture and ill-treatment during pretrial detention, the length of detention up to three years, as well as reports of court decision imposing pretrial detention often without justification. Furthermore, the Committee is also concerned at reports that persons who have been detained for long periods and whose rights have not been respected during pretrial detention face often difficulties in access to justice and seeking redress (arts. 2, 11 and 14).

The Committee urges the State party to:

(a) Amend the relevant criminal legislation with a view to imposing pretrial detention as a measure of last resort, in particular when the seriousness of the crime would make any other measure clearly inadequate;

(b) Devise alternative measures to pretrial detention and ensure their effective application by the judiciary;

(c) Adopt all necessary measures to reduce duration pretrial detention and the imposition thereof, and take into account the provisions of the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) when devising the measures alternative to preventive detention;

(d) Ensure adequate training for law enforcement and other personnel on the use of pretrial detention;

(e) Immediately investigate all acts of torture and ill-treatment in pretrial detention and provide their victims with access to justice and means of redress.

Administrative detention

17. The Committee remains concerned at the continued application of the 10-hour administrative detention period for interrogation prior to the 48-hour period within which a suspect must be brought before a judge (arts. 2 and 16).

The Committee recommends that the State party abandon the current 10-hour administrative detention period for interrogation and ensure that the objectives of identification of suspects are met within the 48-hour period during which a suspect must be brought before a judge.

Non-refoulement

18. The Committee notes with concern the lack of information with regard to grounds for expulsion and means of protection of individuals, considered as a security threat, in accordance with article 3 of the Convention (art. 3).

The Committee recommends that the State party strictly observe in all cases article 3 of the Convention requiring that the State party shall not expel, return or extradite a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture.

Diplomatic assurances

19. While noting the update on the situation, status and documentation of nine former Guantánamo inmates and their children, received by Albania, the Committee notes with concern the absence of information about the criteria for requesting and granting diplomatic assurances, including an indication if such assurances could serve to modify a conclusion of a risk of torture upon return to the country of origin. (art. 3).

The Committee recommends that the State party refrain from seeking and accepting diplomatic assurances, both in the context of extradition and deportation, from the State where there are substantial grounds for believing that a person would be at risk of torture or ill-treatment upon return to the State concerned, and desist from

returning a person to the country of origin where there is a risk of torture or ill-treatment.

Access to complaint mechanisms

20. The Committee is concerned about the information that alleged victims of ill-treatment by the police are not aware of complaint procedures beyond reporting their complaints to the police, who in some cases refused to accept allegations of misconduct by the police. The Committee is further concerned at reported cases of ill-treatment of persons in a vulnerable situation who have declined to file a complaint against the police out of fear of counter-complaints by the police or other forms of reprisals (arts. 12, 13 and 16).

The Committee recommends that the State party take appropriate measures to ensure that:

(a) Information about the possibility and procedure for filing a complaint against the police is made available and widely publicized, including by being prominently displayed in all police stations of the State party;

(b) All allegations of misconduct by the police are duly assessed and investigated, including cases of intimidation or reprisals in particular against persons in vulnerable situation as a consequence of the complaints of ill-treatment by the police.

Prompt, independent and thorough investigations

21. The Committee is concerned at the prevalence of limited data on the investigation of torture and ill-treatment and unlawful use of force by the police. The Committee is particularly concerned at the lack of effective investigation of torture and ill-treatment due to the involvement of the Ministry of Interior Affairs in investigation of alleged violations by its subsidiary units, in contravention of a principle of impartiality. The Committee is also concerned about the absence of information whether the investigations into the fatal shooting of three demonstrators by the police during anti-government protests in Tirana in January 2011 have been carried out promptly, independently and thoroughly. The Committee thus reiterates its concern at the absence of independent and effective investigations into the allegations of torture and ill-treatment by law enforcement officials and lack of accountability of the perpetrators. The Committee is further concerned about the lack of investigation into the reported incidents of ill-treatment of children in social care settings (arts. 12, 13 and 16).

The Committee recommends that the State party:

(a) Take all appropriate measures to ensure that all allegations of torture and ill-treatment by the police are investigated promptly and thoroughly by independent bodies, with no institutional or hierarchical connection between the investigators and the alleged perpetrators among the police, and prosecute those responsible and take all measures to ensure that impunity does not prevail, as recommended in the context of the universal periodic review of Albania;

(b) Provide the Committee as a matter of priority with information on the investigations into the fatal shooting of three demonstrators by the police during anti-government protests in Tirana in January 2011, to be carried out promptly, independently and thoroughly;

(c) Compile accurate data on the investigation of torture and ill-treatment and unlawful use of force by the police and update the Committee thereon;

(d) Ensure effective investigation into the reported incidents of ill-treatment of children in social care settings.

Secret detention

22. The Committee notes with concern that no meaningful Government investigation has been undertaken into the allegations of secret detention carried out on the territory of the State party in the context of its cooperation in countering terrorism. The Committee is further concerned about the lack of information from the State party about the specific measures it has taken to implement the recommendations of the United Nations joint study on global practices in relation to secret detention in the context of countering terrorism (A/HRC/13/42) (arts. 2, 3 and 12).

The Committee urges the State party to:

(a) **Provide information on measures to initiate Government's investigation into alleged involvement of law enforcement officers of the State party in rendition and secret detention programmes;**

(b) **Make the outcomes of the investigations public;**

(c) **Take all necessary measures to prevent the future incidents of such nature;**

(d) **Take specific measures with a view to implementing the recommendations of the United Nations joint study on global practices in relation to secret detention in the context of countering terrorism (A/HRC/13/42).**

Training of law enforcement personnel

23. While noting the adoption of the Manual on the Treatment of Persons in Police Custody adopted in December 2009, the Committee remains concerned at reports that the staff of police stations has no knowledge of the Manual's existence and its requirements. The Committee also expresses its concern at the lack of specific training to all professionals directly involved in the investigation and documentation of both physical and psychological traces of torture as well as medical and other personnel involved with detainees and asylum seekers on the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol). The Committee is additionally concerned at the lack of information about training programmes for judges on the Convention and the Committee's general comment No. 2(2007) (art. 10).

The Committee recommends that the State party ensure:

(a) **Adequate training on the requirements of the Manual on the Treatment of Persons in Police Custody to all the police staff;**

(b) **That all law enforcement, medical and other personnel involved in the holding in custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment and the documentation and investigation of torture are provided, on a regular basis, with training on the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), requiring the identification of both physical and psychological consequences for victims of torture;**

(c) **That such training is also provided to personnel involved in asylum determination procedures;**

(d) **Effective training programmes for judges on the application of the Convention and the Committee's general comment No. 2 (2007).**

Missing Roma children

24. The Committee is concerned about information that 502 out of 661 Albanian Roma street children went reportedly missing following their placement during 1998-2002 in Aghia Varvara children's institution in Greece. The Committee is particularly concerned about the lack of effective efforts by the authorities of the State party to prompt effective investigations into cases of so called disappearance of Roma children by the relevant authorities of Greece (arts. 2, 11, 12 and 14).

The Committee urges the State party to immediately engage with the Greek authorities with a view to promptly creating an effective mechanism to investigate these cases in order to establish the whereabouts of the missing children, in cooperation with the Ombudsmen of both countries and relevant civil society organizations, and identify disciplinary and criminal responsibilities of those involved, before the charges may become time-barred.

Blood feuds

25. While taking note of the State party's information about the decline in incidents of revenge killing vindicating honour outside the regular legal system, the Committee expresses concern that this practice still remains entrenched in certain parts of the society, in particular due to the prevalence of deeply rooted stereotypes of defending and restoring family honour lost as a result of the initial murder.

Recalling the recommendations by the Human Rights Committee and the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Committee recommends that the State party take further measures, including research and awareness-raising campaigns, to extinguish a belief in the practice of vindicating honour outside the regular legal system and to investigate such crimes and prosecute and punish all perpetrators of such acts.

Identification of members of intervention groups in prisons

26. The Committee is concerned at reports that members of special intervention groups in prison establishments are not obliged to wear identification badges showing their proper identification during the exercise of their functions (arts. 12, 13 and 14).

The Committee recommends that the State party ensure that members of special intervention groups display appropriate identification at all times when in contact with prisoners to prevent ill-treatment and provide for accountability.

Adequate compensation

27. While noting that article 44 of the Constitution guarantees compensation to persons who have suffered damage due to illegal action or lack of action by State authorities or its employees, the Committee expresses its concern at reports that in practice many victims of torture or ill-treatment by the police officers or other public officials have to resort to filing a civil suit for compensation (art.14).

The Committee urges the State party to take immediate legal and other measures to ensure that victims of torture and ill-treatment obtain redress and have an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible, in particular the former political prisoners and persecuted persons, and to collect data and share information in the next periodic report on instances and types of compensation and rehabilitation granted.

Data collection

28. The Committee appreciates the State party's compilation of statistics on crimes, including ill-treatment by the police and trafficking in human beings. It notes the data on complaints of ill-treatment by law enforcement officers, disaggregated by suspected crime. However, the Committee regrets the absence of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement, security, military and prison personnel, as well as on honour crimes, domestic and sexual violence, enforced disappearances, and on means of redress, including compensation and rehabilitation provided to the victims (arts. 2, 12, 13 and 16).

The Committee recommends that the State party compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement, security, military and prison personnel, as well as on honour crimes, domestic and sexual violence, enforced disappearances, and on means of redress, including compensation and rehabilitation provided to the victims.

29. The Committee recommends that the State party consider making the declarations envisaged under articles 21 and 22 of the Convention, in order to recognize the competence of the Committee to receive and consider inter-State and individual communications, as indicated by the delegation.

30. The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet a party, namely the Convention on the Rights of Persons with Disabilities and its Optional Protocol and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

31. The State party is requested to disseminate widely the report submitted to the Committee and the Committee's concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

32. The State party is invited to submit its common core document, in accordance with the requirements of the common core document contained in the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN.2/Rev.6).

33. The Committee requests the State party to provide, by 1 June 2013, follow-up information in response to the Committee's recommendations related to (a) ensuring or strengthening legal safeguards for persons detained, and (b) conducting prompt, impartial and effective investigations, and prosecuting suspects and sanctioning perpetrators of torture or ill-treatment, as contained in paragraphs 13 and 21 of the present document. In addition, the Committee requests follow-up information on the provision of fair and adequate compensation to the victims as well as data collection, as contained in paragraphs 27 and 28 of the present document.

34. The State party is invited to submit its next report, which will be the third periodic report, by 1 June 2016. To that purpose, the Committee invites the State party to accept, by 1 June 2013, to report under its optional reporting procedure, consisting in the transmittal, by the Committee to the State party, of a list of issues prior to the submission of its report. The State party's response to this list of issues will constitute, under article 19 of the Convention, its next periodic report.
