



# International Convention for the Protection of All Persons from Enforced Disappearance

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## Committee on Enforced Disappearances Fourteenth session

### Summary record of the 243rd meeting

Held at the Palais Wilson, Geneva, on Thursday, 24 May 2018, at 3 p.m.

*Chair:* Ms. Galvis Patiño (Vice-Chair)

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*In the absence of Ms. Janina, Ms. Galvis Patiño, Vice-Chair, took the Chair.*

*The meeting was called to order at 3 p.m.*

### **Consideration of reports of States parties to the Convention** *(continued)*

*Initial report of Albania* (CED/C/ALB/1; CED/C/ALB/Q/1 and CED/C/ALB/Q/1/Add.1)

1. *At the invitation of the Chair, the delegation of Albania took places at the Committee table.*

2. **Ms. Dralo** (Albania), introducing the initial report of Albania (CED/C/ALB/1), said that her Government recognized the importance of the Convention for promoting and protecting human rights and welcomed the constructive dialogue as an opportunity to renew its commitment to combating enforced disappearance. Albania had ratified all core United Nations human rights treaties, as well as Council of Europe instruments, and abided by the requirements set out in those texts. As a member of the Human Rights Council from 2015 to 2017, Albania had actively contributed to the deliberations of that body and to its efforts to promote and protect human rights. The Government recognized the challenge posed by the rise of violent extremism and non-State armed groups and reaffirmed its commitment to combating rights violations. In the context of those efforts, it was developing a mechanism that would allow government institutions to better monitor progress in the implementation of treaty body recommendations, and it looked forward to receiving the Committee's guidance in order to strengthen and improve its legal framework.

3. The Constitution of Albania enshrined fundamental rights and safeguards for the benefit of all citizens, including provisions on the protection of life, equality before the law and non-discrimination, the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, and political, economic and social rights. Independent institutions charged with protecting human rights included the Constitutional Court, the General Prosecution Office, the Ombudsman's Office and the Office of the Commissioner for Protection against Discrimination. The Government was implementing justice reform with a view to strengthening the judiciary and the rule of law and consolidating democracy, and had taken several steps to meet its obligations under the Convention. Under Act No. 144/2013, the Criminal Code had been amended to include articles categorizing enforced disappearance as a specific criminal offence and, in some cases, as a crime against humanity, along with provisions on the criminal responsibility of superiors, penalties and aggravating circumstances. The Criminal Code therefore provided an appropriate and comprehensive legal framework for preventing acts of enforced disappearance. Moreover, on 1 January 2018, a new Juvenile Justice Code had entered into force; it contained special provisions on juvenile delinquency and procedural rules regarding investigation, prosecution, sentence enforcement, rehabilitation and other measures involving juveniles in conflict with the law.

4. The Constitution, the Code of Criminal Procedure and the State Police Act together defined and guaranteed the legal rights of persons deprived of their liberty. Respect for and protection of human rights was one of the priorities of the State Police, whose officers followed standard procedures that had been developed for the treatment and security of persons detained in its facilities and for addressing their requests or complaints. No cases of enforced disappearance had been reported in the State party during the reporting period. Albania had no secret detention facilities: citizens, aliens or stateless persons arrested by the criminal investigation service were held on State Police premises until further measures were decided by a court. Such premises were visited and inspected by the Ombudsman's Office, human rights organizations and the prosecution authority. As noted in the replies to the list of issues (CED/C/ALB/Q/1/Add.1), the State Police had created an electronic registry system for the entry of data on escorted, arrested and detained persons, which had been operational in local police units since 2010. Under Albanian law, persons deprived of their liberty received a written statement detailing their rights. The General Directorate of State Police continually monitored its employees to ensure that they discharged their duties in accordance with the law and did not use physical force, psychological violence or other forms of ill-treatment in order to obtain information or confessions. Police personnel were

required to attend annual training that covered lawful and unlawful conduct and fundamental human rights, such as the right to counsel. Between 2015 and 2018, 55 training workshops had been carried out for 891 State Police officers and employees. Thanks to legislative improvements, the introduction of community policing and a rise in the number of female police officers, progress had been achieved in changing mindsets within the State Police. The Government recognized the importance of continuing to implement the vetting process that was under way and of upgrading infrastructure and equipment so as to offer better working conditions for law enforcement officers and better conditions of detention for persons deprived of their liberty.

5. The ratification of international instruments and the alignment of legislation with European Union law had laid the foundation for an open, transparent and accountable prison system that fulfilled the Government's obligations under the Convention. The Rights and Treatment of Prisoners Act emphasized fundamental rights, rehabilitation and security in prisons. Albania had 23 penitentiaries, whose addresses and contact details were publicly available. As at 20 May 2018, there were 5,757 convicts and pretrial detainees in the prison system. Although the prison population was 6 per cent higher than official capacity, the rate of overcrowding was lower than in previous years. Prison regulations stipulated that pretrial detainees and convicts alike should be treated with dignity and without discrimination. The General Directorate of Prisons administered data concerning the number of inmates and pretrial detainees in each prison, personal details and dates of admission, release, extradition or transfer. Administrative rules and procedures on record-keeping and personal data protection had been improved; the General Directorate of Prisons carried out inspections to ensure that prisoner records were complete, and no cases of non-registration of persons deprived of their liberty had been detected during the reporting period. Non-governmental organizations (NGOs) and the Ombudsman's Office were allowed to conduct visits and inspections at any time, to see relevant documents and to talk to inmates without the presence of police officers. They also participated in initiatives such as the programme on the prevention of torture and violence in the prison system developed by the Albanian Rehabilitation Centre for Trauma and Torture. In 2017, the Ombudsman's Office had forwarded 68 recommendations and requests for information to the General Directorate of Prisons, of which 53 per cent had been implemented and 20 per cent were in the process of being implemented. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment had carried out a monitoring visit in February 2017 and had made 20 recommendations for the improvement of prisoner treatment and conditions of detention, leading to the adoption of an action plan in January 2018. During the reporting period, the Government had implemented vetting and capacity-building for prison staff as part of its drive to bring the prison system into line with European Union standards. Accordingly, from 2017 to April 2018, 1,454 prison staff had received in-service training in areas such as communication skills, prevention of discrimination, treatment of persons with mental health problems and treatment of drug users.

6. During the period of communist rule (1944–1991), a large number of prisoners had been executed or had disappeared in unknown circumstances. Consequently, the Government and the International Commission on Missing Persons were drafting a cooperation agreement designed to protect the rights of family members of persons who had gone missing during that period, to locate the missing persons and to establish the truth about their disappearance. Pursuant to Act No. 45/2015, the Authority for Information on Former State Security Documents had been assigned responsibility for collecting, assessing, sorting, recording, maintaining and administering the documents of the former Directorate of State Security. It also cooperated with public authorities and archives, provided information on documents to individuals, institutions and other stakeholders and supported scientific and historical research on the activities of the former Directorate of State Security. Its main duty was to ascertain the fate of deceased or disappeared individuals, based on records referring to the place and time of imprisonment, execution or burial, or to the personnel involved, and on lists of victims and other data. It had received a total of 483 requests, 41 of which had asked for clarification of the fate of disappeared individuals. The Authority gave priority to information requests for the purposes of rehabilitation, compensation, criminal investigation and prosecution or avoidance of possible dismissal owing to charges of cooperation with the former Directorate of State

Security, while respecting the applicable legislation on personal data protection. It had also approved the implementation of a project for the national remembrance of forced labour camps and had constructed a memorial at the Tepelenë camp by converting one of the ruined buildings and planting seedlings to commemorate the children who had lost their lives there. Despite the analysis and processing of relevant documents, no records of executions, death certificates or burial places had yet been found, nor had any perpetrators of enforced disappearance been identified.

7. **Mr. Decaux** (Country Rapporteur), thanking the head of delegation for her detailed introduction of the State party's report, said that the reporting process, which was explained in detail in various documents available on the Committee's website, seemed to have given rise to a number of misunderstandings. The State party's replies to the list of issues ([CED/C/ALB/Q/1/Add.1](#)), for instance, had been presented as a second periodic report. In the same document, the article clusters used to structure the Committee's list of issues had been misinterpreted as recommendations. In addition, some of the information submitted was rather general in nature and belonged in the State party's core document. Despite those misunderstandings, he hoped that the constructive dialogue would give the delegation the opportunity to provide any outstanding replies to the questions raised in the Committee's list of issues.

8. He wished to know whether the report under consideration had been prepared through an inter-agency process and whether NGOs, particularly those representing victims' relatives and human rights defenders, had been involved in its preparation. It would be interesting to learn how the activities of the interministerial working group that, in 2000, had been made responsible for the submission of reports to the human rights treaty bodies had been transformed by Order of the Prime Minister No. 112 of 2014. He noted that the Committee had not received any information directly from NGOs working on issues relating to enforced disappearance in the State party.

9. He would be grateful for more specific information on the direct applicability of the Convention and its transposition into national law. For example, it would be useful to learn whether a legislative review had been carried out prior to the ratification of the Convention and whether any implementing legislation had been passed as part of the ratification process. He wondered whether legislative amendments other than the 2013 amendments to the Criminal Code had been introduced to transpose the Convention into national law or whether the direct applicability of each of its provisions would be decided on a case-by-case basis.

10. It would be helpful if the delegation could provide more information on the human rights safeguards implemented during a state of war or emergency. In particular, he wished to know whether fundamental rights and freedoms, including the non-derogability of the prohibition of enforced disappearance, were guaranteed in all circumstances during a state of war or emergency.

11. A number of aspects of the legal framework governing crimes of enforced disappearance, such as the definitions of relevant offences, elements such as complicity and superior responsibility and the applicable penalties, aggravating circumstances and statute of limitations, required further clarification. Article 74 of the Criminal Code, which set out the circumstances in which certain offences constituted crimes against humanity, seemed considerably narrower than the corresponding provisions of the Convention and the Rome Statute of the International Criminal Court. In addition, the penalties provided for under article 109/c of the Criminal Code, which established enforced disappearance as a specific ordinary offence, did not seem commensurate with its seriousness. Given the disparity between the penalties applicable to superiors who bore responsibility for crimes of enforced disappearance and those applicable to the perpetrators of such crimes, he wondered whether elements such as complicity and superior responsibility were systematically taken into account in that context. It was also unclear how the aggravating circumstances provided for in article 109/c were applied alongside the aggravating and mitigating circumstances provided for elsewhere in the Criminal Code and, following the recent amendment of article 66 of the Criminal Code, what term of limitation was currently applicable to the offence of enforced disappearance.

12. With regard to non-State actors, he would be grateful for an explanation of the relationship between the offence of enforced disappearance, as established under article 109/c of the Criminal Code, and other offences established under articles 109, 109/a and 109/b, such as the offence of kidnapping. He noted that article 3 of the Convention required States parties to take appropriate measures to investigate crimes of enforced disappearance committed by persons or groups of persons acting without the authorization, support or acquiescence of the State and to bring those responsible to justice.

13. Lastly, he would appreciate more information on the implementation of the legal framework governing the obligations of subordinates in the context of superior orders and wondered whether subordinates were required to obey a manifestly unlawful order that prescribed, authorized or encouraged enforced disappearance.

14. **Mr. Figallo Rivadeneyra** (Country Rapporteur) said that, with regard to the statute of limitations applicable in respect of enforced disappearance, he would be grateful for more information on the State party's compliance with the requirements of article 8 of the Convention. Although explicit reference was made in article 8 to the continuous nature of the offence of enforced disappearance, under article 66 of the Albanian Criminal Code the term of limitation for criminal proceedings in respect of any offence did not commence from the moment when the offence ceased, but from the moment when it was committed. The importance of taking into account the continuous nature of crimes of enforced disappearance had been emphasized in the report of the Working Group on Enforced or Involuntary Disappearances on its 2016 visit to Albania.

15. With regard to disappearances that might have occurred in the period 1944–1991, there was a need to ensure that national legislation was interpreted and applied in accordance with international law and custom. It was likely that the cooperation agreement between the Albanian Government and the International Commission on Missing Persons would result in improved data-collection practices, which would in turn facilitate effective investigations. In that connection, he wished to know whether perpetrators of enforced disappearance, either as an ordinary offence or as a crime against humanity, could be investigated, prosecuted and convicted under Albanian law in cases in which the fate of the victims was unknown, whether any proceedings in respect of enforced disappearance had been brought before the courts, whether any such proceedings were currently open and whether any cases had been found to be time-barred. Examples of relevant case law would also be welcome.

16. With reference to paragraph 9 of the Committee's list of issues ([CED/C/ALB/Q/1](#)), he would be grateful for more information on any extradition requests that had been granted or denied. Paragraph 40 of the State party's replies was somewhat contradictory, as it indicated that crimes of enforced disappearance could be prosecuted under Albanian law irrespective of where they had been committed or the nationality of the perpetrator, but also that the applicability of Albanian criminal legislation was determined by the international agreements to which Albania was a party. He would appreciate further details on how matters related to the principles of dual criminality, *aut dedere aut judicare* and universal jurisdiction were resolved under the State party's criminal law. With reference to paragraph 42 of the State party's replies, he asked for clarification of the immunities enjoyed by internationally protected persons under articles 9 and 9/a of the Criminal Code. He would also welcome clarification of paragraph 44 of the replies, which indicated both that the military authorities were responsible for investigating and prosecuting persons accused of the offence of enforced disappearance and that ordinary courts had jurisdiction to try military personnel for that offence.

17. He would be grateful if the delegation could provide the information requested in paragraphs 11 and 12 of the Committee's list of issues, regarding the immediate conduct of investigations, international legal assistance, training of relevant officials and access to places of detention. Lastly, he would appreciate additional information on the legislative provisions under which State officials could be suspended from their posts in connection with their involvement in an enforced disappearance. Although paragraph 50 of the State party's replies to the list of issues contained some information on the legislation applicable specifically to Prison Police officers, it was unclear whether they and other State officials were suspended once they had been declared suspects or once the investigation had begun.

*The meeting was suspended at 4.10 p.m. and resumed at 4.30 p.m.*

18. **Ms. Peçi** (Albania) said that the process of drafting periodic reports under the various treaties to which Albania was a party was coordinated by the Ministry of Foreign Affairs. The reports were written by a working group consisting of members of the relevant government ministries and a number of independent institutions. Parliament also played an active role in the process by organizing public hearings and inviting other institutions to provide information. NGOs were also invited to participate in the process, in addition to submitting their own shadow reports. Under domestic law, once a report had been finalized, it was published in the Official Gazette. The recommendations of the relevant treaty body were also publicly disseminated. Some difficulties had been encountered in the drafting of the initial report under the Convention due, perhaps, to the fact that the treaty was relatively new.

19. The core document of 2003 ([HRI/CORE/1/Add.124](#)) had been updated in 2012 ([HRI/CORE/ALB/2012](#)). Albania had NGOs that worked in relevant areas, such as the Albanian Rehabilitation Centre for Trauma and Torture and the Albanian Helsinki Committee, but none that dealt specifically with enforced disappearance. The definition of enforced disappearance in the 2013 Criminal Code incorporated the three main elements referred to in article 2 of the Convention. As a specific offence, enforced disappearance had to involve arrest, detention, abduction or any other form of deprivation of liberty. The act had to be carried out by public officials, State agents or persons acting with the authorization, support or acquiescence of the State. Finally, the act had to be followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person.

20. **Ms. Imeraj** (Albania) said that, under article 122 of the Constitution, in the case of a conflict between domestic law and international treaties, the latter had priority. In addition, treaties were directly applicable except when their provisions were not self-executing and their application required the adoption of implementing legislation. Amendments had, in fact, been introduced into national criminal law to bring it into line with the Convention. Furthermore, in accordance with article 5 of the Convention, article 74 of the Criminal Code listed enforced disappearance as a crime against humanity. The statute of limitations set forth in article 66 of the Criminal Code envisaged a limitation of 20 years for offences that attracted a term of imprisonment of more than 10 years, and 10 years for offences that attracted a term of imprisonment of between 5 and 10 years.

21. **Mr. Shtjefni** (Albania) said that the State Police had a pyramidal hierarchical structure, at the top of which was the General Director of Albanian State Police. Neither the General Director nor any other senior law enforcement official could issue an order to commit acts of enforced disappearance. In fact, all orders had to be issued in written form and had to include the legal grounds that justified them. Thus, subordinates were always aware of the legal provisions underpinning the orders they were following.

22. **Ms. Dralo** (Albania) said that the purpose of parliamentary public hearings was not only to involve representatives of different institutions but also to reach out to civil society and the public at large, inter alia for the purpose of obtaining information that could be helpful for specific investigations. The hearings were also helping to establish a clearer picture of events during the period 1944–1991.

23. **Mr. Decaux** said that he wished to commend the State party for promoting transparency through its consultative processes, particularly the public hearings before Parliament and the publication of reports and recommendations in the Official Gazette. In its report on its 2016 visit to the country ([A/HRC/36/39/Add.1](#)), the Working Group on Enforced or Involuntary Disappearances expressed concerns about “inadequate knowledge of essential precepts of the Convention, related, inter alia, to the nature of State obligations, the continuous character of the crime of enforced disappearance, and the concept of a victim of enforced disappearance”. It was important to provide legal professionals with appropriate training in those fields, particularly in the light of the complexity of the Convention. In that regard, it would be interesting to know whether all the innovative elements of the Convention, such as those contained in articles 24 and 25, had been transposed into domestic law.

24. Although article 74 of the Criminal Code listed enforced disappearance as a potential crime against humanity, the precise circumstances and elements that had to be present in order for it to be considered as such were not clear or easy to interpret. By contrast, article 5 of the Convention made specific reference to applicable international law, one of the cornerstones of which was the Rome Statute, where the elements of crimes against humanity, including enforced disappearance, were much more clearly defined.

25. Although article 2 of the Convention was accommodated in article 109/c of the Criminal Code, he would be interested to know whether provision was also made for other parts of the Convention, notably article 6, which enjoined States to hold persons criminally responsible if they ordered, solicited, induced, attempted to commit or participated in an enforced disappearance. Also with reference to article 6 of the Convention, what provisions existed in domestic law to ensure that superiors and persons in authority, whether civilian or military, were duly held to account for involvement in cases of enforced disappearance?

26. **Mr. Figallo Rivadeneyra** said that focusing on specific legal provisions in isolation could sometimes be misleading, and it was important to have a holistic view of a comprehensive body of legislation. For example, in considering the statute of limitations in article 66 of the Criminal Code, it was important to distinguish between instantaneous offences, continuing offences and continuous offences such as enforced disappearance, where the single act of abduction was instantaneous but its effects were prolonged over time. Perhaps the particular nature of enforced disappearance could be addressed under other provisions of domestic law, taking due account of article 8 of the Convention.

27. **Mr. Teraya** said that he wished to know exactly which parts of the Convention were directly applicable in domestic law under article 122 of the Constitution.

28. **Ms. Peçi** (Albania) said that the Convention was considered to be applied directly when domestic laws that were fully in line with the Convention were duly enforced.

*The meeting rose at 5.05 p.m.*