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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

Second periodic report of States parties due in 2007

Albania*, **, ***

[12 February 2009]

* The initial report submitted by the Government of Albania is contained in document CAT/C/28/Add.6; for its consideration by the Committee, see documents CAT/C/SR/649 and 652, and Official Records of the General Assembly, sixtieth session, supplement No. 44 (A/60/44), paras. 77–87.

** In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited before being sent to the United Nations translation services.

*** Annexes to the present document are available for consultation with the secretariat of the Committee.

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Introduction

1. The Republic of Albania has acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Convention against Torture) by Law No. 7727, dated 30.06.1993 and this Convention entered into force on 11.05.1994. Pursuant to Article 19 of the Convention, in 2003, Albania submitted the Initial Report to the CAT Committee, containing general information about the application of the articles of the Convention as well. After reviewing this Report in 2005, the CAT Committee adopted its conclusions and recommendations to Albania.

2. The Second National Periodic report was drawn up in accordance with the specific guidelines of the CAT Committee on the drafting of regular reports. This Report contains information related to the measures taken by Albania in application of the Convention against Torture, in accordance with the obligations arising under the Article No. 19/1 of the present Convention. In this framework, Albania presents the progress made during the period 2003–2008, especially the changes made in the legislative and administrative aspects for the application of the first 16 Articles of the Convention and the measures taken for the implementation of the conclusions and recommendations of the CAT Committee.

3. With a view of having more complete information as regards the application of the Convention articles and the implementation of conclusions and recommendations of the CAT Committee, this Report addresses the provisions of laws adopted prior to 2003 (according to specific fields), which were not identified in the first Report submitted by Albania. Also, various laws or specific provisions are put forward in this Report, that entered into force prior to this period of time and which are not actually effective any more, because they have been reviewed or amended.

4. Pursuant to the Order issued by the Prime Minister No. 201, dated, 05.12.2007 "On the establishment of the working group for drawing up the National Reports within the framework of International Agreements to which the RoA is a party", the Ministry of Foreign Affairs was charged with the task of drawing up the National Periodic Reports in cooperation with state institutions, with a view of making the reports reflect the current situation, the achieved progress, as well as the problems identified in the field of human rights. The Second Report on the Convention against Torture was drafted by the Ministry of Foreign Affairs in cooperation with central and independent institutions according to their field of discretion concerning the issues addressed by the Convention against Torture. Pursuant to the Prime Minister's Order, the Inter-institutional Working Group was set up, composed of central institutions' representatives (Ministry of Justice, Ministry of Interior, Ministry of Labor, Social Affairs and Equal Opportunities, Directorate General of State Police, Directorate General of Prisons) and representatives of independent institutions as well (Prosecutor's General Office and the Ombudsman).

5. The Council of Minister adopted the Second National Periodical Report, regarding to the Convention against Torture, by the DCM No. 39, dated 14.01.2009.

6. Also, for the purpose of drawing up this Report, the civil society was consulted (non-governmental and non-profit organizations), active in the field of respect and observance of human rights, which contributed to ensuring the necessary information. The civil society opinions are included in the annexes attached to this report.

7. Additional information is reflected in the annexes to this Report, considered as useful for obtaining more complete information, in terms of the field of human rights and the problems addressed by the Convention.

I. General considerations

8. As far as the protection, respect and observance of human rights and fundamental freedoms are concerned, Albania has been continuously committed to the improvement of standards. A clear expression of Albania's commitment in this respect is the ratification or its accession to almost all the international conventions on human rights and the UN Convention against Torture, as well as the European Convention on the Prevention of Torture. Albania has also ratified the Optional Protocol to the Convention against Torture (OPCAT) – (adopted by virtue of Law No. 9094, dated 3.07.2003). The Constitution of RoA, the ratified international agreements which are part of the domestic legal system, laws, normative acts of the Council of Ministers[1] and by-laws[2] (sublegal acts), guarantee the practical implementation of the human rights. The Albanian legislation, which is continually improving, is a guarantee of the prevention of torture, or other inhuman and degrading acts, reflecting also the spirit of the Convention against Torture.

9. The Convention against Torture, which after its ratification pursuant to the RoA has become part of the domestic legislation, constitutes the grounds on which is based the taking of measures for the elimination of any form of torture or cruel and degrading treatment.

10. Within the framework of guaranteeing the rights and fundamental freedoms of the individual, including the rights of pretrial detainees and convicts, the Albanian government considers the fulfillment of the obligations for ensuring the treatment of the pretrial detainees and convicts in conformity with the standards and the transformation of the criminal sentence into an opportunity for their social rehabilitation, as its primary commitment. The legal framework of human rights, as well as that of the penitentiary system has continually improved, approximating the international standards. The enforcement of international acts in the field of human rights, of the recommendations of the international institutions and of the obligations arising from the implementation of the Stabilization and Association Agreement with the European Union remains a very important objective.

11. Indisputably Albanian society is currently facing serious difficulties and challenges which are part of the development process and the attempts of Albania to become a dignified partner of the community of the developed societies of European and North-Atlantic structures.

12. During the specific period of time, this Report refers to, the integration of Albania into the Euro-Atlantic structures, by supporting the compliance with the European standards, through observance and protection of human rights, by way of political, economic and social transforming processes, the approximation of the Albanian legislation to the community legislation etc has been the priority of government policies. Integral part of the integration process into the European structures is the improvement of the human rights respect and observance level of the rights of pretrial detainees and convicts as well, issues which constitute the main points of the joint recommendations of the consultative

[1] Article 116 of the Constitution stipulates that: 1. The Constitution ratified international agreements, laws and normative acts of the Council of Ministers are normative acts which are effective within the entire territory of the RoA. 2. The acts which are issued by the local government bodies are effective only under the territorial jurisdiction exercised by these bodies. 3. Normative acts issued by ministers and other presiding bodies of other central institutions are effective over the entire territory of the Republic of Albania under the scope of their jurisdiction.

[2] Pursuant to Article 118 of the Constitution, by-laws are issued on the grounds of and in application of the laws adopted by the bodies contemplated in the Constitution.

EU-Albania Task Force Group and the negotiations for the signature of the Stabilization and Association Agreement.

13. These negotiations were officially opened for Albania on January 31, 2003 and the signature of this Agreement was finalized on June 12, 2006.

14. Signature of the Agreement marks a new step towards the European integration process of Albania and constitutes a challenge to all the Albanian society stakeholders, not only to the state structures but to the civil society as well, with a view of working together for complying with the commitments arising from this agreement, of which the protection, respect, observance of human rights and fundamental freedoms is an integral part.

15. The Council of Ministers adopted the National Plan for the Implementation of the Stabilization and Association Agreement, (adopted by the DCM No. 463, dated 5.07.2006, as amended by DCM No. 577, dated 5.09.2007 and DCM No. 1317, dated 1.10.2008) an important part of which is the undertaking of legislative and institutional reforms, reform in the justice system for guaranteeing and observing the rights and fundamental freedoms of the individual, according to international standards. This document sets the long and medium term priorities of the Albanian government policy related to respect and observance of human rights (including the rights of convicts and pretrial detainees).

16. As a result of the reforms undertaken to fulfill the international commitments, Albania, in 2008, received the membership invitation to NATO, an invitation which promotes more the carrying out of reforms in all fields in conformity with the international commitments and obligations.

II. First part: Information on new measures and developments related to the application of articles 1–16 of the Convention

Article 1
Definition of torture in Albanian legislation

17. Constitution of the RoA, (Article 25) expressly stipulates that “No one may be subjected to cruel, inhuman or degrading torture or punishment”. The contents of the provision on torture in Constitution directly refer to Article 3 of the European Convention “On Protection of Human Rights and Fundamental Freedoms” (which was signed by the RoA on 13.07.1995, was ratified on 31.07.1996 and entered into force on 2.10.1996).

18. The provisions of the Convention against Torture, a Convention which was lawfully ratified by the RoA, are part of the domestic legislation, pursuant to Article 122 of the Constitution, according to which each ratified international agreement constitutes a part of the domestic juridical system and is directly implemented, except in the cases when it is not self-applicable and its enforcement requires the issuance of a law.

19. The Albanian Parliament adopted the Law No. 9686, dated 26.2.2007 “On some supplements and amendments to the Criminal Code of the RoA” (adopted by Law No. 7895, dated 27.1.1995), which defines torture in full conformity with Article 1 of the Convention against Torture. This law amends Article 86 of the Criminal Code, and more specifically torture means “the committal of acts, by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person by another person acting in an official capacity, when such pain or suffering is inflicted by or at the instigation of or with his consent or acquiescence for such purposes as:

(a) Obtaining from him or a third person information or a confession;

(b) Punishing him for an act he or a third person has committed or is suspected of having committed;

(c) Intimidating or coercing him or a third person;

(d) For any reason based on discrimination of any kind;

(e) Or any other inhuman or degrading act.

Article 2, paragraph 1
Effective legislative, administrative and judicial measures for the prevention of acts of torture

20. The Constitution of the RoA and Albanian legislation, provide for a range of provisions which guarantee that no one shall be subjected to torture and other cruel, inhuman or degrading treatment or punishment, as well as with regard to the prevention of torture or ill-treatment acts. The definition of torture in the Criminal Code of the RoA (with the necessary amendments) as a criminal act and the stipulation of the relevant punishment constitutes a major measure for the prevention of torture acts. Also, the Criminal Code in its Article 87 defines torture or any other inhuman act, as well as the cases when these actions have brought about grave consequences, stipulating them as criminal acts and providing for the relevant punishment.

21. Code of Criminal Procedure (adopted by Law No. 7905, dated 21.03.1995) with the relevant amendments stipulates expressly that no one shall be subjected to torture or other degrading treatment or punishment, and that human treatment and moral rehabilitation shall be ensured to the convicts with (Article 5).

22. Law No. 8291, dated 25.02.1998 "Code of Police Ethics" contains the principles and norms on the grounds of which the police officers in the RoA express their will and awareness for the protection of the constitutional order and law enforcement, being characterized by humanism, objectivity and cultured conduct during the fulfillment of their duty (Article 1). The police officers act with honesty and impartiality, during the implementation of the tasks they are entrusted with by the law, requiring the same law enforcement by the individuals, regardless their political or religious beliefs, race, social or official status, nationality or citizenship or their economic circumstances, as well as it provides for the prohibition of every torture act or any other action which encroaches on their personality and dignity (Article 3).

23. Law No. 8553, dated 25.11.1999 "On the State Police",[3] stipulated that the mission of the State Police is the protection of order and public safety, as well as the guarantee of law enforcement. Inter alia, this law provided for that the institutional duty of the State Police is the protection of the exercise of human rights and freedoms. While fulfilling their tasks, the Police officers in no case shall be permitted to inflict any kind of torture on individuals.

24. Law No. 9749, dated 04.06.2007 "On the State Police" in comparison with Law No. 8553, dated 25.11.1999 "On the State Police", brings about changes in respect of the protection and guarantee of human rights by the State Police employees during the fulfillment of their institutional tasks. Article 1 of this law stipulated that the State Police, which provides the police service in the RoA, fulfills its mission of the protection of order and public safety, in accordance with the law, by respecting and observing the human rights

[3] This Law was repealed by the entry into force of the Law No. 9749, dated 04.06.2007 "On the State Police".

and freedoms. The aim of this law is the definition of duties and responsibilities of the Police officers, with a view of guaranteeing a democratic and professional police service. Pursuant to Article 4, the responsibilities of the Police comprise:

(a) The protection of the life of the people, their personal safety and property;

(b) Prevention, detection and investigation of the criminal offenses and their perpetrators in accordance with the criminal law and the law of criminal procedure;

(c) Supervision and control of state borders of the RoA;

(d) Protection of individuals from potential dangers;

(e) Fulfilment of tasks laid down in this law, other laws as well as by-laws, which provide for the Police duties. Each Police officer enjoys the attributes of the Judicial Police, in accordance with the Code of Criminal Procedure and the relevant law on the organization and functioning of this Police.

25. Pursuant to Article 118 of this Law, the use of force against people is the direct action through physical force, equipment, other instruments or fire weapons. The Police officer uses force to fulfill a lawful aim only if that is indispensable and all the other measures have proved unsuccessful or impossible to be taken. The Police officer uses the minimum level of the necessary force, in accordance with the proportionality principle and selects the necessary level force between the escalated opportunities which among others include verbal persuasion, physical coercion, beating instruments, chemical substances paralyzing instruments, electro shocking instruments, police dogs, fire weapons. The Police officer uses the fire weapons at his disposal in cases and according to circumstances contemplated in the relevant legislation which regulates the use of fire weapons (Article 119).

26. Pursuant to Article 59 of the Law "On the State Police" (Article 59), provides for the right of the Police officer to possess weapons. The types of armament, chemical substances (neuro-paralyzing ones), and of other instruments for the use of force by the Police are stipulated by the decision of the Council of Ministers.

27. The Police officers are given instruments and other equipment provided for in the item 1 of this Article, according to the normative acts issued by the Minister. Pursuant to this Law, the Decision of the Council of Ministers No. 730, dated 28.05.2008 adopted "Types of armament, chemical substances (neuro-paralyzing ones) and other instruments, for the use of force by the State Police".

28. Law No. 8749, dated 01.03.2001 "On the Internal Inspection Service within the Ministry of Interior",[4] among others contemplates as its object[5] "the prevention of criminal activity committed by the State Police employees and other structures of the Ministry of Interior" and that the activity of this service is carried out by respecting and observing the human rights and freedoms, guaranteed by the Constitution".

29. The Albanian Parliament adopted Law No. 10002, dated 6.10.2008 "On the internal inspection service in the Ministry of Interior",[6] which repealed the Law No. 8749, dated 01.03.2001 "On the Internal Inspection Service within the Ministry of Interior". The mission of this Service is to guarantee to the community an accountable, democratic and

[4] This Law was effective until the entry into force of Law No. 10002, dated 6.10.2008 "On the Internal Inspection Service in the Ministry of Interior".

[5] More detailed information is given in the comments on Article 12 paragraph 180 of this Report.

[6] Detailed information about this Law is given in the comments on Article 12, paragraphs 181, 182, 183.

transparent police service, in accordance with the legislation in force and the required standards (Article 2). Among others, this law stipulates as the object of the activity of the IIS the prevention of criminal offense committed by the employees of the State Police, regardless their functions or ranks, for the criminal offenses committed in the course of duty or because of the official capacity. Article 6 stipulates that "The employees of this service, in complying with their duties, shall respect and observe human rights and fundamental freedoms, guaranteed by law, as well as they shall contribute to their fulfillment". Article 22, as regards the armament and the use of force stipulates that:

> 1. The investigative staff of the IIS is entitled to possess weapons. The types of armament and other instruments for the use of force by IIS are defined by order of the minister.
>
> 2. The Officer uses the armament and force in accordance with the Laws 118 and 119 of law No. 9749, dated 4.6.2007 "On the State Police", the relevant laws in force and by-laws, issued for their application.

30. In application of the Albanian legislation and evaluation of the recommendations of the CAT Committee and the Committee for the Prevention of Torture of the Council of Europe, the Ministry of Interior and the Directorate General of the State Police during the period 2003–2008 drafted a series of normative acts, defining the duties of the State Police structures, as regards the enforcement of legal acts, as well as the guarantee of rights and fundamental freedoms of the citizens.[7]

31. The legal basis of the penitentiary system is complete, in terms of the treatment of convicts and pretrial detainees. The Albanian legislation provides for a series of legal and by-law measures for the guarantee of their rights and with a view of preventing any form of torture or inhuman treatment.

32. Pursuant to Law No. 8328 dated 16.04.1998 "On the rights and treatment of prisoners" the purpose of the convicts' punishment is the carrying out of a treatment which aims at their re-education and integration in the social life (Article 9). This law[8] prohibits the use of physical force against the convicts, if it is indispensable to stop violent acts, attempts to escape from the facility, as well as the subduing of rebellion when he is passive in following the given orders. Pursuant to Article 58 the use of force or coercive instruments which constitute weapons or narcotic substances under the definition of the Criminal Code or of the instruments of torturing or hypnotizing nature is prohibited. The police officers serving at the facility shall not possess weapons, saving cases provided for in the Law "On Prison Police".

33. Law No. 9888, dated 10.03.2008 "On some supplements and amendments to Law No. 8328, dated 16.4.1998 "On the rights and treatment of prisoners"[9] adopted by the Albanian Parliament has as its object the protection and observance of the rights of convicts and pretrial detainees, in accordance with international acts. Pursuant to Article 1 of Law No. 9888, dated 10.03.2008 the title of law is changed to "On the rights and treatment of prisoners and pretrial detainees". Special attention and protection is given to pretrial detainees and pretrial detention facilities (a series of provisions have been modified).

34. Article 2 of this Law stipulates that all the convicted persons condemned by the Albanian courts by virtue of a final judgment are subjected to the provisions of this Law

[7] Detailed information about the by-law acts issued by the State Police structures is given in the comments on Article 10, paragraph 2.

[8] As it was also identified in the First Report.

[9] Amendment of the Law "On the rights and treatment of prisoners" was carried out in cooperation with EURALIUS (European Assistance Mission for the Albanian Justice System) and UNICEF.

and also in accordance with international agreements and foreign courts respecting the relevant procedural requirements for the pretrial detainees as well. By way of the recent legal changes to the Law "On the rights and treatment of prisoners" the term of isolation of convicts and pretrial detainees has been removed.

35. A new positive development is the involvement of the Ombudsman in cooperation with the highest state authorities in fulfilling the obligations of the Albanian state, within the framework of the implementation of the provisions of CAT and its Optional Protocol, which requires that the States Parties establish the National Independent Mechanisms for the Prevention of Torture. By virtue of Law No. 9888, dated 10.03.2008 (Article 36), some provisions of Law No. 8328, dated 16.4.1998 "On the rights and treatment of prisoners" were adopted (Articles 74/1, 74/2, 74/3), which define the powers of the "National Mechanism for the Prevention of Torture and other cruel, inhuman or degrading treatment or punishment", the guarantees in exercising its activity, as well as the ways of supervision, more specifically as follows.

Article 74/1
National Mechanism for the Prevention of Torture and other cruel, inhuman or degrading treatment or punishment and its powers

36. The Ombudsman, by way of the National Mechanism for the Prevention of Torture and other cruel, inhuman or degrading treatment or punishment, hereinafter the National Mechanism, which operates as a special structure under its authority, supervises the enforcement and implementation of this law for the protection of convicts' rights.

37. The National Mechanism has the following powers:

(a) Regularly observes the treatment of individuals deprived of liberty in the detention, arrest or imprisonment facilities, for the purpose of strengthening, when appropriate the protection of individuals against torture, and other cruel or inhuman or degrading treatment or punishment;

(b) Submits recommendations to the relevant bodies, with a view of improving the treatment and conditions of the individuals deprived of liberty and for the prevention of torture and other cruel, inhuman or degrading treatment or punishment.

38. Article 74/2 guarantees in the activity of the National Mechanism. The National Mechanism, during the exercise of its duty, is guaranteed the following:

(a) Receipt of any information regarding the number of individuals deprived of their liberty, at the liberty deprivation facilities, as well as the number of facilities and their location;

(b) Receipt of all the information about the treatment of these individuals, as well as about their detention conditions;

(c) Free access to all the facilities and premises where the individual's liberty is restricted;

(d) Conducting of private interviews, without witnesses, with individuals deprived of their liberty, in person or with the assistance of an interpreter when it is indispensable, as well as with any other individual who can give the necessary information;

(e) Free selection of facilities they want to visit and of individuals to be interviewed.

39. Article 74/3, supervision forms. The National Mechanism carries out its supervising activity by:

(a) Accepting the requests and complaints submitted by convicts or pretrial detainees in writing or directly;

(b) Receiving the information, complaints or requests of the convicts, or from individuals who have the visitor status or that of state bodies or non-governmental organizations, that have inspected or visited the facility, according to the powers acknowledged to them by the law , as well as by the attorney of the convict or the pretrial detainee;

(c) Requesting information from the facility's administration;

(d) Verification of documents, objects, equipment or premises, which are related to the convict or the pretrial detainee, inside and outside the facility.

With a view to carrying out the supervising process, the National Mechanism may hire specialists and experts from the relevant fields. "In any case and notwithstanding the fact that violations and irregularities may be found out during the verification, the specialists of this Mechanism draw up the minutes, which are signed by the director of the facility or somebody else authorized by the director, who is entitled to reflect his remarks."

40. The Code of Criminal Procedure of the RoA (Article 11) "Court functions" stipulates that the Court is the body which administers and renders justice and no one can be declared guilty and punished for committing a criminal offense without a court judgment.

41. The Law No. 8737, dated 12.02.2001 "On the Organization and Functioning of the Prosecutor's Office in the Republic of Albania" (Article 4), stipulates that "the prosecutors exercise their duty in accordance with the Constitution and laws, and their powers by respecting the principles of fair, equal and due legal prosecution and the protection of lawful human rights, interests and freedoms".

42. Law No. 8321, dated 2.04.1998 "On Prison Police" (as amended by Law No. 8757, dated 26.03.2001 and Law No. 9375 dated 21.04.2005) sets out that the Prison Police is an armed structure within the Directorate General of Prisons. The Prison Police carries out its tasks and functions by respecting and observing the rights and freedoms of the convicts guaranteed by law and pursuant to this Law, legal and by-law acts which regulate its activity. By virtue of Law No. 9375 dated 21.04.2005 "On some supplements and amendments to Law No. 8321 dated 2.04.1998 "On the Prison Police" several provisions were added to the Law "On the Prison Police" which stipulate the relevant measures in cases when the personnel of the Prison Police does not carry out the service tasks, violates the rules provided for in this law, in the internal regulation or in other legal or by-law acts related to its duties, the disciplinary measures to be applied in the event that there is no space for criminal liability.

43. During this period was prepared a draft-law on the "Prison Police" which reviews the existing law. The Albanian parliament adopted the Law No. 10032, dated 11.10.2008, "On Prison Police", which repealed the Law No. 8321, dated 2.04.1998 "On Prison Police" (amended). Article 3 stipulates that:

> 1. The mission of the Prison Police is to preserve the order and security in the Penal Sentence Enforcement Institutions and during the accompaniment and transfer of the convicts and pretrial detainees to the courts and other institutions, according to the law by respecting the rights of the convicts and pretrial detainees.
>
> 2. The Prison Police carries out its tasks according to this Law, legal and by-law acts which regulate its activity.

44. The most important principle related to the punishment (for disciplinary reasons) at the sentence serving facilities (prisons) is that the convicts are not tortured or subjected to

any other form of cruel, inhuman or degrading treatment or punishment. The torture can neither be justified with the dangerous character of the arrested or convicted person, nor with the lack of prison security. When dealing with the cases of "torture", the Ministry of Justice has adhered to the prosecution principle, in accordance with the extent of claimed violations, of ill-treatment or torture cases, exercised by the personnel of the Prison Police.

45. For the purpose of the prevention, detection, documentation and preliminary investigation of the criminal activity committed by employees of the Prison Police, by other structures of the system of the Directorate General of Prisons and as regards issues related to prisons' safety, the Assembly of Albania adopted the Law No. 9397, dated 12.5.2005, "On the Internal Inspection Service in the penitentiary system". Pursuant to this law, the duty of this Service is to investigate and send to criminal prosecution each official employee who commits criminal offenses while exercising his functions, therefore even the employees of the prison administration who commit the criminal offence of torture provided for by Article 86 of the Criminal Code. The Service enjoys the legal attributes of the Judicial Police. Actually, it is being worked on the drafting of by-law acts for the implementation of the law on the exercise of the activity of this Service.

46. By-law and normative acts related to the treatment of the convicts:[10]

- Regulation General of Prisons (adopted by DCM No. 96 dated 09.03.2000)
- Order of the Minister of Justice "On the adoption of rules of conduct for the employees of pretrial detention and penitentiary system" (No. 3052/1, dated 25.5.2005)

Failure to comply with or respect these rules by the penitentiary system employees is considered as a failure to fulfill or a violation of state duty, and gives rise to disciplinary coercive or criminal measures.

47. **Pretrial Detention Regulation** (adopted by order of the Minister of Justice No. 3705/1, dated 11.05.2006). This Regulation stipulates that "The treatment of pretrial detainees shall be impartial and not discriminatory, respecting and observing the international and national standards of human rights". Also, it lays down the obligation of prison administration to effectuate a human and educative treatment of convicts through modern and effective ways of administration, without discrimination on account of race, color, sex, language, religion, political opinion, national or social background, economic circumstances etc.

48. **Regulation of Prison Police**, (adopted by order of Minister of Justice, No. 3706/1, dated 12.05.2006). This Regulation stipulates that the employees of the Prison Police are obliged to respect the Constitution and all the other legal acts and by-laws related to the treatment of convicts.

49. **Existing institutional framework**. The responsible institutions for the implementation of obligations arising from the Albanian legislation in terms of respect and observance of human rights and respectively for the penitentiary system are:

- Ministry of Justice (Directorate General of Prisons)

Pursuant to law No. 8678, dated 14.05.2001 "On the organization and functioning of the Ministry of Justice", as amended by Law No. 9112 dated 24.07.2003, The Directorate General of Prisons (GDP) is an institution under the subordination of the Ministry of Justice, for the organization and functioning of the pretrial detention system, enforcement of criminal judgments, serving of sentences etc. Pursuant to Law No. 9888, dated

[10] More detailed information is provided by comments on Article 10, paragraph 2.

10.03.2008 "On some supplements and amendments to Law No. 8328, dated 16.4.1998 "On the rights and treatment of prisoners", the Directorate General of Prisons is the central body which organizes, runs and controls all the penal sentence enforcement institutions.

- Ministry of Interior (Directorate General of State Police)

Pursuant to Law No. 7949, dated 4.06.2007 "On the State Police", the Code of Criminal Procedure, as well as other by-laws, the State Police exercises its activity in terms of the respect, guarantee of rights and treatment of arrested and detained persons in police stations until the imposition of the security measure by the court bodies.

The Prosecutor's General Office exercises its activity pursuant to Law No. 8737, dated 12.02.2001 "On the Organization and Functioning of the Prosecutor's Office in the Republic of Albania", whose object is the definition of rules of organization and functioning of Prosecutor's Office in RoA. The Prosecutor's Office conducts the criminal prosecution and represents the prosecution on behalf of the state in a trial.

50. In the field of mental health:[11]

(a) Law No. 8092 dated 21.03.1996 "On mental health" is the main mechanism which ensures an adequate care and treatment to the people with mental disorders, their protection, elimination of discrimination and promotion of mental health to the population;

(b) Regulation of Mental Health Care (adopted by Order of Minister of Health No. 118, dated 15.05.2007) has as its object the development of the Mental Health Care which aims at the promotion, prevention, diagnostication, treatment and rehabilitation in the field of mental health.

Article 2, paragraph 2
Legislative, administrative and judicial measures for the prohibition of torture under any circumstances, including the state of war, domestic political instability or any other public emergency

51. As identified above, the Constitution of the RoA (Article 25) expressly stipulates that no one shall be subjected to torture and other cruel, inhuman or degrading treatment or punishment. Article 17 of the Constitution provides that:

> 1. Restrictions on the rights and freedoms contemplated in this Constitution shall be imposed only by law for the sake of public interest or for the protection of the rights of other people. The restriction shall be proportional to the condition which has dictated it.
>
> 2. These restrictions shall not encroach on the essence of freedoms and rights and in any case shall not exceed the restrictions contemplated in the European Convention on Human Rights. Its Article No. 26 stipulates that "No one shall be forced to hard labor, except in cases of the execution of a judicial judgment, of serving of military service, of a service arising from the state of war or a natural disaster, which threatens the people's life or health".

52. Pursuant to Article 75 of the Criminal Code "Offenses committed by various persons in wartime, such as murder, ill-treatment or banishment to enslaving labor, as well as any other inhuman exploitation to the detriment of the civil population or in an invaded territory, the murder or ill-treatment of the war captives, murder of hostages, destruction of

[11] More detailed information is provided in the following comments on Article 16.

private or public property, destruction of cities, communes or villages not dictated by military necessities, is punishable by deprivation of liberty of not less than 15 years or life-time sentence".

53. In Albania there is no law on the state of war or domestic political instability which modifies the status and institutional duties or responsibilities of the State Police and which has as its object the regulation or justification of torture and violation of the rights of arrested or detained persons. Thus, also at those events, the same provisions provided for by the legislation in force shall apply.

54. Law No. 8553, dated 25.11.1999 "On the State Police" (Article 2) contemplates that the Police Status, defined in this Law, shall not be modified even under the conditions of state of war, under exceptional circumstances or natural disasters. The Police implement the extraordinary measures in accordance with the Constitution and the relevant law.

55. Law No. 9749, dated 04.06.2007 "On the State Police", stipulates that "the status of the State Police shall not be modified even under the conditions of the state of war, under exceptional circumstances or natural disasters (Article 6, paragraph 2). Part IV of this Law provides for the measures for the protection of public order and security. Article 92 stipulates that the Police officers, in application of the responsibilities laid down in this Law, carry out the following activities:

(a) They shall avoid in any case the danger posed to nationals and themselves;

(b) In the event that the Police officers deem there is a need for taking additional measures or back-up forces are necessary, they shall promptly notify the responsible administrative authorities and advise them on the potential measures to be taken. Pursuant to Article 93, the taken measures to avoid the risk shall be proportional to the scale of dangerousness and they shall not exceed the limits of the necessity under the given circumstance.

56. The measure remains adequate if it reduces the risk's potential or lowers it temporarily. If the measure is ineffective, then another measure of a higher effect shall be chosen. Article 94 contemplates that the further enforcement of each taken measure is immediately discontinued if its cause does not exist any more.

57. Article 95 stipulates that:

1. The immediate execution of the measure may be undertaken only in the event that a real and instant danger to the public order and security shall be avoided, which can not be evaded by way of other remedies.

2. The person, against whom the measure was taken, shall be promptly notified of the taken measure. This Law stipulates that the measures for the protection of public order and security include the entirety of the lawful actions which shall be carried out by the Police officer, starting with the verbal persuasion up to the use of lethal force to restore the order, in accordance with the legislation in force and taking into account the age and status of the individual.

58. Article 96 contemplates that:

1. In the event that the conduct of a certain person encroaches on the public order and security, measures shall be taken against him.

2. If the encroaching on the public order and security was brought about as a consequence of the actions of a juvenile under 14 years of age, in addition to the measures taken against him, the Police officer shall immediately notify the parent or the legal guardian of the minor child under 14 on the discontinuation of unlawful actions on the part of the minor.

59. 1. Pursuant to Article 114 of this Law, the Police officer is responsible for collecting data for the needs of the protection of public order and security and/or for the prevention and detection of crimes, making use of every data producing source. To this end, he can also make use of the secret cooperation with individuals, secret observation of people and premises, as well as location tracing equipment.

2. It is prohibited to collect data about persons solely due to such reasons as gender, ethnicity, race, language, religion, political, religious or philosophical opinions and convictions, economic, educational or social background, sexual orientation or parental belonging.

3. Public administration bodies, natural and juridical persons are obliged to submit the identification data and the collected information in a lawful way, when requested by the Police, excluding the data, the disclosure of which is prohibited by law.

4. Concrete rules for using the information sources, as well as for the collection, administration, verification and evaluation of the data obtained from them are defined by the guideline issued by the Minister of Interior.

60. Law No. 9722, dated 30.04.2007, "On some amendments to the Law No. 8003, dated 28.9.1995 "The Criminal Military Code of the RoA", adopted by the Albanian Parliament, abolished the death penalty, contemplated as a punishment measure in the event that grave criminal military offenses are committed in wartime by the subjects stipulated in this Code.

Article 2, paragraph 3
Legislative and administrative measures for prohibition of torture in cases when an order by a superior official or public authority is used to justify torture

61. For the purpose of the prevention of torture, the Criminal Code of the RoA (as amended) provides for the sanctions to be undertaken against the people entrusted with the law enforcement when they exercise actions or fail to exercise them contrary to the law. The Criminal Code, contains provisions that define as misdemeanors or criminal offenses (with the relevant sanctions), the committal of actions or issuance of arbitrary orders which affect the freedoms of the citizens, by the officials who exercise a state or public function, the non-taking of measures to discontinue the unlawful situation[12] (Articles 250,251 of the CC).

62. Article No. 248 "Abuse of Office" stipulates that "The intentional undertaking or not-undertaking of actions or non-actions contrary to the law, which constitutes the due fulfillment of the duty by the official entrusted with a state function or public service, when this has brought about grave consequences to the lawful interests of the citizens or the state, is punishable by a penalty or imprisonment up to seven years".

63. Article 253 "Violation of the nationals' equality" stipulates that the committal due to the public position or in the course of duty on the part of the person in the capacity of a state employee or public official of any discrimination on account of origin, sex, health condition, religious and political opinions and beliefs, of trade union activity or because of a particular ethnical, national, racial or religious belonging, which consists in the creation

[12] First Report on the CAT, comments on Articles 2, 4.

of unfair privileges or refusal of a right or benefit stemming from the law, is punishable by a fine or imprisonment up to 5 years.

64. Law No. 9749, dated 04.06.2007 "On the State Police", (Article 60) stipulates the obligation of the police employees to carry out only orders based on laws and more concretely:

1. The police officer shall carry out all the orders issued by a person superior in function or rank.

2. When a police officer has sufficient reasons to suspect that a given order by his superior is unlawful, he shall, without delay inform the superior of that and request that the order be communicated to him in writing.

3. The superior police officer has the obligation to give the order in writing, in case that is required pursuant to item 2 of this Article.

4. In case the non-carrying out of the order until it is given in writing, pursuant to item 3 of this Article, endangers the life of another person, the police officer shall carry out the order.

5. When a police officer, even after the implementation of procedures, pursuant to item 2 or 3 of this Article, continues to have reasons to suspect that the order is unlawful, he undertakes the following actions:

(a) He disobeys the order, with the exception of the case contemplated in item 4 of this Article;

(b) He immediately informs the senior official, whose rank is directly above that of the superior who has given the order, as well as about the measures taken by him, pursuant to this Article. There have been no cases that an order given by the superior official to use violence, has been presented by the police employees as an excusing or justifying argument of the unlawful acts committed on the part of these persons.

65. Law No. 10002, dated 06.10.2008 establishes the obligation of the employees of the Internal Inspection Service to carry out the orders based on law. Article 44 of this Law contemplates that:

1. Each employee of the IIS shall carry out all the lawful orders that are given by a person superior in function or rank.

2. When an employee of IIS has sufficient reasons to suspect that a given order by his superior is unlawful, he shall, without delay inform the superior about that and request that the order be communicated to him in writing.

3. The superior employee of the IIS has the obligation to give the order in writing, if that is required pursuant to item 2 of this Article.

4. In case the non-carrying out of the order until it is given in writing, pursuant to item 3 of this Article, endangers the life of another person, the IIS employee shall carry out the order.

5. When an IIS employee, even after the implementation of the procedures, pursuant to items 2 and 3 of this Article, continues to have reasons to suspect that the order is unlawful, he:

(a) Disobeys the order, with the exception to the case contemplated in item 4 of this Article;

(b) He immediately informs the senior officer, whose rank is directly above that of the superior who has given the order, to whom he communicates the measures taken by him, in accordance with the provisions of this Article.

66. Law Nr. 10032, dated 11.12.2008 "On the Prison Police", (Article 9) stipulates that "the Prison Police employees are obliged to carry out all the orders issued by a person superior in function or rank. The orders should be given in accordance with the functional tasks, based on law and not to be contrary with the dignity of the person concerned". According to article 10 of this Law "the prison police employees in any case shall carry out all the orders issued by the Superior, which are based on law and the evidences, except for the case when the order is contrary with the law:

1. In case when a prison police employee estimates the verbal order as unlawful, he shall inform the superior and request that the order be communicated to him in writing.

2. In case when the life of another person is in danger, the police officer shall carry out the order.

3. When a prison police officer, even after the implementation of procedures, pursuant to item 2 or 3 of this Article, continues to have reasons to suspect that the order is unlawful, he disobeys the order and he immediately informs the senior official, whose rank is directly above that of the superior who has given the order, as well as about the measures taken by him. In any case the employee which has given the order has the responsibility. The employee who carries out the order has also the responsibility, if he does not proceed in accord with the provisions of this article. These cases constitute the causes for the beginning of disciplinary proceeding against them.

67. Law No. 8737, dated 12.02.2001 "On Organization and Functioning of the Prosecutor's Office in the RoA" defines that the orders and guidelines of the prosecutor who is higher in rank are binding on the lower prosecutor. This definition enables the elimination of occasions of giving arbitrary verbal orders by officials with public or state functions.

Article 3
Measures which establish that no State party shall expel, return or extradite a person of another State, in case there are essential reasons to believe that he would be subjected to torture

68. Entry, stay and treatment of foreign nationals and guarantee of all their rights is provided for by the Albanian legislation, related to the principle of not returning a person to another country where he would be in danger of being subjected to torture. As it was also identified in the First Report, the Constitution of the RoA sanctions the prohibition of collective expulsion of foreigners and contemplates that the expulsion of foreign individuals is permitted in cases provided for by the law. Article 16 of the Constitution sanctions that the rights, fundamental freedoms and the obligations of Albanian nationals are valid for foreigners and stateless persons, as well saving the cases when their exercise is particularly related to the Albanian citizenship.

69. Law No. 8492 dated 27.05.1999 "On Foreigners" regulates the entry, stay, circulation and employment regime of foreign nationals in the Republic of Albania, as well

as that of their exit from its territory.[13] This law recognizes and respects the principles and norms acknowledged by international acts; the reciprocity principle, the principle of respect and observance of human rights, as well as the interests of public and national security. Also this Law provided for provisions regarding the forced expulsion, the rights and obligations, the relevant procedures for moving outside the territory, expulsion , procedures for carrying out the expulsion order, exemption cases of expulsion from the territory of the RoA, expulsion of the foreigner in the event that he has committed a criminal offense. The foreigners are entitled to administrative and judicial appeal against the expulsion order, refusal of any request, punitive measures or penalties, pursuant to the definitions laid down in this Law. Article 49 of this Law stipulates the exemption cases from expulsion from the borders of the RoA and more specifically no foreign national, with refugee status or during the review of the asylum request, shall be drawn out of the borders of the RoA toward another country, where his life or freedom are threatened because of his race, religious convictions, ethnical belongingness, political opinions or belonging to a political or social group. Also, a foreign national, about whom there are reasons to believe that his life is threatened in the country he is about to be expelled, shall not be drawn out of the borders of the RoA.

70. The new Law No. 9959 dated 17.7.2008 "On Foreigners"[14] was drafted within the framework of the approximation of the Albanian legislation to acquis communautaire of EU and in application of human rights and fundamental freedoms, international agreements ratified by the Republic of Albania, pursuant to the principle of reciprocity, non-discrimination and the principle of their not less favorable treatment than that reserved to Albanian nationals. Pursuant to this law, a "foreigner" means any person, stateless or with citizenship, who, according to the Albanian legislation, is not an Albanian national. This Law regulates the regime of entry, stay, employment, treatment and exit of the foreigners to/from the RoA and lays down the functions and powers of state authorities and other entities, public and private, Albanian or foreign, which are related to the foreigners (Article 1). The object of this Law are the foreigners, who enter or intend to enter the RoA, for the purpose of staying, transition, employment, studies or readmission and this Law guarantees the rights and obligations of the foreigners who work and reside in Albania. The law enforcement authorities are:

(a) Border and Migration Department as the responsible authority in the structure of the State Police, which has powers and duties in the field of the treatment of foreigners;

(b) Directorate of Migration Policy is the responsible authority in the structure of the Ministry of Labor, Social Affairs and Equal Opportunities, which has powers and duties in the field of employment and self-employment of foreigners.

71. The new Law has essential changes in comparison with the Law No. 8492 dated 27.05.1999 "On Foreigners" (effective until December 1, 2008) because it grants the right to appeal to the foreigners whose entry or stay in the RoA is refused, stipulating clearly the administrative and judicial institutions of appeal and the relevant time limits. The foreigners, who are the object of this law, are treated in accordance with human rights and fundamental freedoms and international agreements, ratified by the RoA, respecting and observing the principle of reciprocity, non-discrimination and the principle of their not less favorable treatment than that reserved to Albanian nationals (Article 2). The new Law "On Foreigners" contemplates the regulation of some major aspects:

[13] The provisions of Law No. 8492, dated 27.05.1999 "On Foreigners" were not addressed in the First Report. This Law was effective until December 1, 2008.

[14] This Law repealed Law No. 8492 dated 27.05.1999 "On Foreigners" and entered into force on December 1, 2008.

(a) Introduction of new concepts related to the persons who constitute the subject of this law, state authorities that exercise powers in the field of foreigners, treatment of foreigners, the documents of their entry and stay in the RoA, their employment etc;

(b) General rules of entry and stay of foreigners and their family members in Albania;

(c) Rights and duties of foreigners and other entities which have obligations under this Law concerning foreigners;

(d) Conditions and requirements to be met by a foreigner to enter and stay in the Republic of Albania;

(e) Visas and stay permits of foreigners in Albania according to EU recommendations and standards;

(f) The foreigners' rights to be employed, self-employed and to conduct commercial or economic activities in our country;

(g) Coercive and prohibitive measures against entry and stay in our country of those foreigners who do not meet the conditions and requirements or that have violated the rules of entry or stay in Albania;

(h) Administrative measures to depart in case of leaving, forced leaving or expulsion of foreigners;

(i) Detention of foreigners in the confined center before they leave or are expelled from Albania;

(j) The foreigner's obligation to stay in a given territory in the event that they are forced to leave Albania;

(k) Powers of Border and Migration Police to collect, store and process personal data as well as the keeping of evidence about the supervision of foreigners in accordance with EU standards and with the provisions of the Law "On the protection of personal data".

72. Also, the entry, stay and treatment of foreigners in the Republic of Albania are regulated under by-law and normative acts:

- Decision of Council of Ministers No. 439, dated 04.08.2000 "On entry, stay and treatment of foreigners in the RoA" (with the relevant amendments)
- Guideline of the Minister of Public Order No. 1460 dated 21.05.2001 and Minister of Foreign Affairs (No. 2430 dated 14.05.2001) "On entry, stay and treatment procedures of foreigners in the RoA"

73. Pursuant to Law No. 9959 dated 17.7.2008 "On Foreigners", the institutions provided for by the law as the authorities responsible for the treatment of foreigners are working on the drafting of by-laws for the application of this Law. Within this framework, on the part of the Ministry of Interior, Ministry of Labor, Social Affairs and Equal Opportunities and Ministry of Foreign Affairs as well it is being worked on drawing up the Draft-Decision concerning the entry, stay and treatment of foreigners in the RoA, which subsequently will be adopted by the Council of Ministers.

74. Law No. 8432, dated 14.12.1998 "On asylum in the RoA"[15] recognizes the right to asylum or temporary protection to all foreigners who need international protection, refugees or other persons who seek asylum in conformity with the provisions of this Law and

[15] This legal act was not identified in the First Report on the implementation of CAT.

international conventions to which Albania is a party. This law regulates conditions and procedures of granting and suspension of the asylum in the RoA, as well as the rights and duties of refugees and persons under temporary protection. The law "On Asylum" stipulates that Albania recognizes and respects the obligation not to return and deport from its territory, the persons who have obtained or sought the right to asylum or temporary protection in these cases:

(a) To a country where their life or freedom is threatened by reason of their race, religious beliefs, nationality, membership in a particular social group or political opinions;

(b) To a country where they would be subjected to torture or inhuman and degrading treatment or punishment, or any other treatment contemplated in international agreements to which Albania is a party;

(c) To their country of origin, in the event that they have been granted temporary protection, in conformity with the clauses of this Law;

(d) To a third country, which may return or send the person to one of the countries indicated in points "a" and "b" of this article.

75. Pursuant to article 4 of this Law "a refugee" is a foreigner who because of grounded fear of persecution by reason of race, religious beliefs, membership in a particular social group or political opinions, happens to be outside the country of his citizenship and does not have the opportunity, or owing to such a fear does not want to seek the protection of that country, or in case when he, not having a citizenship and happening to be outside the previous country of his usual residence due to these events, does not have the opportunity or does not want to return there because of the said fear. The asylum seeker, whose request for asylum has been refused by the Office for Refugees, shall not be expelled or returned from the territory of the RoA, prior to the signature or granting of legal opportunities for the exercise of procedural rights and guarantees provided for by this Law. In October 2008, the Council of Ministers adopted the DCM, "On some supplements and amendments to law No. 8432, dated 14.12.1998 'On Asylum in the RoA". Subsequently, according to the procedure, this Law is enacted by the Assembly of Albania, (January 2009).

76. Law No. 9098, dated 03.07.2003 "On Integration and family union of persons who have obtained asylum in the RoA" lays down the beneficiary subjects that have been granted asylum,[16] as well as it regulates the procedures of implementation of rights related to the education, employment, health care, social care, housing and family union of the persons who have been granted asylum in Albania.

Article 4
Definition by the internal criminal legislation (Criminal Code) as a violation, of any form of torture, attempt to exercise torture, complicity as well as any participation in torture providing for the relevant punishments

77. Attempts have been made to improve the Albanian legislation and in particular the criminal legislation concerning this field. As was also identified in paragraph 17 above, after the legislative modifications of 2007 to the Criminal Code, the contents of Article 86 "Torture" are in full conformity with the definition of Article 1 of the Convention, also the

[16] Pursuant to Law No. 8432, dated 14.12.1998 "On Asylum in the RoA".

elements and cases contemplated in this Article constitute criminal offenses and are punishable by four to ten years of imprisonment.[17]

78. The Criminal Code defines as a criminal offense "the use of violence by the person entrusted with carrying out the investigations to force the national make a statement, testify or assert his own guilt or that of some one else and provides for an imprisonment sentence from 3 to ten years" (Article 314).

79. By virtue of Article 6 No. 9686, dated 26.2.2007 "On some supplements and amendments to the Criminal Code of the RoA" (as amended) another aggravating circumstance was added to Article 50 of the Criminal Code "aggravating circumstances" and more specifically with the following contents: "committal of an offense instigated by motifs related to gender, race, religion, nationality, language, political, religious or social convictions, beliefs or opinions", constitutes a circumstance which aggravates the punishment.

80. Also, by way of the above-mentioned law, it is stipulated that "The committal of competition acts during the conducting of commercial activity shall be considered as a crime, not only in case it is accompanied by threats and violence, but also when it is committed solely in one of the above mentioned forms" (first paragraph of Article 170/b "Unlawful competition through violence").

81. By virtue of Law No. 9686, dated 26.2.2007, several changes were made to article 311 of the Criminal Code "Intimidation into silence", where this criminal offense is considered not as a criminal misdemeanor but as a crime providing for a higher punishment margin and more specifically an imprisonment sentence ranging from one to four years. Also Article 312/a of the Criminal Code "Intimidation into false declarations or testimonies, expertise or translation" was subjected to changes of this law. The punishment margin was modified in this provision, imposing a higher punishment margin and the previous punishment "fine or imprisonment up to three years" was replaced with the punishment of "imprisonment from one to four years".

82. By Law No. 9859, dated 21.1.2008, "On some supplements and amendments to Law No. 7895, dated 27.1.1995 "The Criminal Code of the RoA" a new provision was added (Article 124/b "Ill-treatment of juveniles"), which treats this criminal offense as a crime and provides for various punishment measures, depending on the circumstances under which the crime was committed and the resulting consequences. More specifically this Article stipulates that:

(a) Physical or psychological ill-treatment of the juvenile by the person in charge of his custody is punishable by imprisonment sentence from three months to two years;

(b) Forcing the juvenile to work, to ensure incomes, to beg or to commit acts which affect his development is punishable by an imprisonment sentence up to four years and by a fine penalty ranging from fifty thousand to one million Albanian lek;

(c) In the event that the offense causes a grave injury to the health of the juvenile or his death, it is punishable by an imprisonment sentence from ten to twenty years.

[17] The contents of Article 86 were identified in the comments on Article 1, paragraph 3.

Article 5
Legislative, administrative and judicial measures against torture, in any part of territory under the state jurisdiction, or on ships and aircrafts registered in the said state, when the accused offender or the victims are its nationals

83. The Criminal Code of the RoA establishes the jurisdiction extension limits and the cases of the application of this Code. The scope of application of this law is provided for in articles 5, 6, 7, 7/a, 8 and 9 of this Code.

84. The Assembly of Albania adopted Law No. 9686, dated 26.2.2007 "On some supplements and amendments to Law No. 7895, dated 27.1.1995 "Criminal Code of the RoA", which provides for a new provision (article 7/a "Universal jurisdiction"), which provides for that Albania has universal jurisdiction over the criminal offense of torture. More specifically, Article 7/a "Criminal Law of the RoA is also applicable to the foreign national, who happens to be in the territory of the RoA and has not been extradited and who has committed the act of torture outside the territory of the RoA. Criminal Law of the RoA is applicable to the foreign national as well, who, outside the territory of the RoA commits any of the criminal offenses, against which, specific laws or international agreements to which the RoA is a party, stipulate the enforcement of Albanian Criminal legislation". This law is applicable to the stateless persons (after the modifications effected to article 3 of the above-cited law). Thus, the Criminal Code stipulates that Albania has jurisdiction to try a person accused of the criminal offense of torture, regardless the territory in which the criminal offense was committed or who committed it, by a national or stateless person. With relation to what was said above, we clarify that the Convention is fully applicable, because "Torture" constitutes already a universal crime in the Albanian Criminal Law and as such the punishment of the guilty perpetrator (regardless his citizenship) is entirely possible.

85. Pursuant to the Code of Criminal Procedure, the criminal jurisdiction is exercised by criminal courts according to the rules established in the Code. Pursuant to CCP as amended (article 12), criminal justice is administered by: (a) first-instance criminal courts; (b) appeals courts; (c) Supreme Court.

86. By virtue of Law No. 8813, dated 13.06.2002, Law No. 9085 dated 19.06.2003 and Law No. 9276, dated 16.09.2004 "On some supplements and amendments to the Code of Criminal Procedure" articles 13 and 14 of CCP were amended as follows:[18]

Article 13
First-instance criminal courts and their composition

(a) The first instance of criminal offenses is tried by the judicial district courts, courts of serious crimes and Supreme Court, pursuant to rules and responsibilities laid down in this Code;

(b) At first-instance courts a single judge tries with relation to:

(i) Requests of parties in the course of preliminary investigation;

(ii) Requests for the enforcement of sentences; c requests for jurisdictional relations with foreign authorities;

[18] These legal provisions were not identified in the First Report submitted by Albania.

(c) Courts of judicial and military districts try by way of a single judge the criminal offenses against which a fine penalty or imprisonment sentence not longer than 7 years is contemplated. Other criminal offenses are tried by a panel composed of 3 judges;

(d) Courts of serious crimes try with a panel consisting of five judges, with the exception of the requests provided for in point 2 of this article, which are reviewed by a single judge;

(e) The trial of juveniles is carried out by the relevant sections, established within the judicial district courts, laid down by decree of President".

Article 14
Appeals Courts and their composition

(a) Appeal courts review at the second instance, with a panel composed of three judges, the cases tried by the judicial district courts;

(b) The military appeal court reviews at the second instance, with a panel composed of three judges, the cases tried by military courts;

(c) Appeals court of serious crimes reviews at the second instance the cases tried by the court of serious crimes, with a panel consisting of five judges. Judgments for requests contemplated in item 2 of article 13 are reviewed by a panel composed of 3 judges.

Article 14/a
Supreme Court and its composition

The Supreme Court tries in colleges with a panel composed of 5 judges and in united colleges.

Article 74
Jurisdiction of judicial district court

"Judicial district court is competent at the trial of criminal offenses provided for by the Criminal Code, Military Criminal Code and other legal provisions, saving those which fall within the jurisdiction of the court of serious crimes or Supreme Court".

Article 75
Jurisdiction of the military court

The military court is competent at the judgment of the military, war captives and other persons, for the criminal offenses provided for in the Military Criminal Code and other legal provisions, saving those which fall within the jurisdiction of Court of Serious Crimes or Supreme Court. Article 75/a establishes the jurisdiction of the Court of Serious Crimes (as amended by Law No. 9276, dated 16.09.2004), which tries the crimes provided for in Criminal Code,[19] including the cases when they are committed by subjects which fall within the jurisdiction of military courts or by juveniles. Article 75/b provides that:

1. The Supreme Court reviews recourses to law violations and the requests for the revision of final judgments.

2. The Supreme Court tries at first instance with a panel composed of 5 justices designated by lot drawing, the criminal offenses committed by the President of Republic, Members of Parliament, Prime Minister, members of the Council of

[19] Articles 73, 74, 75, 79/c/ç, 109, 109/b. 110/1, 111, 114/b, 128/b, 219, 220, 221, 230, 230/a/b 231, 232, 233, 234, 234/a/b, 278/a, 282/a, 283/a, 284/a, 287/a, 333, 333/a, 334.

Ministers, Justices of the Constitutional Court and Justices of the Supreme Court, when they are on duty at the time of the trial.

Article 6, paragraph 1
Legislative and administrative measures related to the custody of persons who have committed acts of torture, attempts to exercise torture, complicity or participation in torture, pending the commencement of criminal proceedings or extradition procedures

87. Albanian legislation provides for a series of legislative measures to take a person into custody or to guarantee his presence.

88. In terms of persons who have committed acts of torture, attempts to exercise torture, complicity or participation in torture, pending the commencement of the criminal proceeding or extradition procedures, the same legal procedures are applied (provided by the legislation in force and CCP) for their custody and treatment as well as related to all the detained persons or those deprived of liberty.

89. Law "On the State police" No. 9749, dated 04.06.2007[20] lays down that the Police Officer, in accordance with this law and the legislation in force, is charged with taking all the necessary measures to prevent the escape of a person in the event of his escort, detention or arrest by the Police (Article 63).

90. Law No. 10002 dated 06.10.2008 "On Interior Inspection Service in the Ministry of Interior" lays down that the Officer of IIS, in the course of exercising his police powers, shall: (a) take, in accordance with the legislation in force, all the necessary measures to prevent the escape of a person in the event of his escort, detention or arrest by the Police.

91. Pursuant to the Code of Criminal Procedure (CCP), the procedural provisions establish the rules of the ways of the exercise of criminal prosecution, investigation and trial of criminal offenses, as well as those of the enforcement of judicial verdicts. These rules are binding on the subjects of criminal proceeding, state bodies, legal entities and nationals (article 2).

92. The CCP clearly lays down the cases of the restriction of the freedom of the person by way of security measures specifically when: a. there exist important causes which endanger taking of evidence or its authenticity; b. the defendant has escaped or there is a danger that he might escape; c. due to factual circumstances and the defendant's personality there is a danger that he might commit serious or grave crimes or similar to that he is being prosecuted for.

93. Pursuant to Law No. 8813, dated 13.06.2002 "On some supplements and amendments to the Code of Criminal Procedure" according to Article No. 244 of CCP, the security measures are imposed at the request of the prosecutor, who submits to the competent court the reasons on which the request is grounded.

1. Even when the court declares its incompetence due to any cause, if there are the conditions and there exists an emergency for the imposition of measures, the court decides to impose the measure and forwards the acts to the competent court.

2. The court shall not request a more stringent security measure than that requested by the prosecutor. Also CCP (points 2 and 3 are amended by the law No, dated 13.06.2002) as regards extradition provides for that the Judicial Police, in

[20] This law repealed Law No. 8553, dated 25.11.1999 "On the State Police".

emergency cases, may arrest the person against whom a request for temporary arrest has been submitted. This Code lays down the necessary rules and procedures to be followed by the relevant bodies (Judicial Police, Prosecutor's Office, Court, and Ministry of Justice) related to this case. Also, pursuant to this Code, the prosecutor, the concerned person and his defense attorney, who may lodge an appeal with the appeals court, as regards the judgment delivered by the court on the coercive measures and seizures.[21]

Article 6, paragraph 3
Measures which provide for and guarantee the communication of the arrested person with the closest representatives of his State, or in case he is a stateless person with the representatives of the State where he usually resides

94. Law No. 8492, dated 27.05.1999 "On Foreigners" (article 62) stipulates that in the event of detention or arrest of a foreigner, the authorities of the Ministry of Public Order notify the diplomatic or consular representation of his country or the Office of United Nations High Commissioner for Refugees if he is a refugee or a stateless person. The notification may not be made solely by virtue of the decision of the Minister of Public Order due to strong reasons of national security or reciprocity.

95. The new law "On Foreigners" (No. 9959 dated 17.7.2008) provides for the notification of the diplomatic representative, (article 84) at the foreigner's request, or if it is stipulated by a bilateral agreement, the Ministry of Foreign Affairs promptly notifies the consular or diplomatic representative of the foreigner's country in Albania of the foreigner's detention in the confined center, as well as the extension of the detention period. In the event that the foreigner has sought asylum or enjoys the refugee status or that of another type of protection from the Republic of Albania, this information shall not be disclosed to the diplomatic or consular representative of his country.

96. Article 85 of this Law lays down the rights of the foreigner detained in the confined center and more specifically the foreigner, who stays in an confined center, pursuant to the provisions of this chapter, shall be acquainted in the language he speaks or understands with every action undertaken by the competent authorities, to keep him in that center, as well as he is entitled to proper human treatment. Pursuant to article 85/3 the foreigner enjoys the right to inform the consular representative of his detention. The foreigner enjoys the right to lodge an appeal with the first-instance court against the violation at that center of his fundamental rights. In case of his readmission, the foreigner is informed about the rights and obligations he enjoys pursuant to the Albanian legislation, in the language he speaks or understands (article 85/4).

97. The normative act (Service Order) by the Director General of the State Police No. 194, dated 26.08.2004 "On the procedure to be followed for the detention of foreign nationals", which is a by-law act, stipulates that the Directorate General of the State Police in the event of the detention of foreign nationals informs in writing the Directorate of Consular Matters in the Ministry of Foreign Affairs.

[21] More detailed information is given in the First Report on CAT, comments on article 6.

Article 7, paragraph 1
Measures of forwarding the case for criminal prosecution against a person accused of committing the criminal offence of torture to the competent authorities if the State does not extradite him

98. Pursuant to the Constitution of the RoA, the extradition shall be permitted only in case it has been expressly laid down in international agreements to which the Republic of Albania is a party and only according to a judicial verdict.

99. Pursuant to the Criminal Procedure Code, the surrender of a person to a foreign state for the enforcement of an imprisonment sentence or of an act which ascertains his prosecution for a criminal offense shall be effectuated only through extradition (article 488). Extradition is permitted solely on the grounds of a request addressed to the Ministry of Justice attaching the relevant documents (article 489). The extradition's conditions are stipulated in article 490 and more specifically:

1. Extradition is permitted provided that it has been clearly expressed that the extradited person shall not be criminally prosecuted, punished or surrendered to another state for a criminal offense which was committed prior to the request for surrendering the person and which is different from that for which the extradition was granted.

2. The above-mentioned conditions are disregarded when:

(a) The surrendering party gives its express consent that the extradited person may be criminally prosecuted for another criminal offense and that the extradited person is not opposed to that;

(b) The extradited person, although he has been given the opportunity, has not left the territory of the country to which he has been surrendered, after forty five days have passed from his release or after leaving the said country he has voluntarily returned.

3. The Ministry of Justice may set other conditions which it deems as appropriate. Pursuant to article 491 the refusal of the extradition request is effected:

(a) For an offense of political character or when it results that the extradition is requested out of political intentions;

(b) When there are reasons to believe that the person sought shall be subjected to persecutions and discriminations on account of his race, religion, sex, citizenship, language, political convictions, personal or social status or cruel, inhuman treatment or punishment or action which constitute a violation of fundamental human rights;

(c) When the sought person has committed a criminal offense in Albania;

(d) When the prosecution commenced or he was tried in Albania although the offense was committed abroad;

(e) When the criminal offense is not stipulated as such by the Albanian legislation;

(f) When the Albanian state has granted an amnesty for the criminal offense;

(g) When the sought person is an Albanian national and there are no agreements which provide for otherwise;

(h) When the criminal prosecution or punishment pursuant to the law of the state who requests him is provided for. The subsequent provisions of the Code of Criminal Procedure Code lay down the procedure to be followed in case an extradition request is received by a foreign state and the relevant authorities as well.

100. In case Albania refuses an extradition request because the person is an Albanian national, then, this request is treated as a notification about the committal of a criminal offense by an Albanian national abroad and pursuant to articles 6 and 7/a of the Criminal Code, the relevant authorities have the obligation to file the criminal offense against the person and to take all the necessary measures according to the internal legislation and international agreements to which Albania is a party, to ensure his presence. Criminal prosecution in Albania is mandatory and the prosecutor is not entitled to decide on the initiation or not of the criminal proceeding depending on the importance and gravity of the criminal offense.

101. Article 82/3 of Law No. 9959 dated 17.7.2008 "On Foreigners" stipulates that in case the foreigner commits a criminal offense during his stay in the confined center, criminal prosecution is initiated against him, pursuant to the provisions of the criminal legislation.

Article 7, paragraph 3
Legislative and administrative measures that stipulate the investigation of persons who commit acts of torture (pursuant to violations and cases laid down in articles 4, 5 of this Convention), as well as the measures taken to guarantee their fair treatment during all stages of the criminal proceeding

102. Legislative and administrative measures that stipulate the investigation of persons who commit acts of torture as well as the measures taken to guarantee their fair treatment during all the stages of the criminal proceeding[22] are the same to those of other persons who are subjected to a criminal prosecution for the criminal offenses provided for by the criminal legislation.

103. Article 4 of the Constitution stipulates that "the defendant is presumed guilty as long as his guilt is not proved by a final court judgment. Any suspicion of the charges is deemed in favor of the defendant". Pursuant to article 5 "The liberty of a person may be restricted by security measures only in cases and ways provided for by the law. The convicts are ensured human treatment and moral rehabilitation". Pursuant to article 27 of the Constitution, "No one shall be deprived of his liberty, only in cases and procedures provided for by the law. The liberty of the person shall not be restricted saving the following cases:

(a) When the person has been sentenced to imprisonment by the competent court;

(b) For non-carrying out the lawful orders of the court or for failure to fulfill any other obligation provided for by the Law;

(c) When there are reasonable doubts to believe that he has committed a criminal offense or to prevent him from committing a criminal offense or from leaving after committing it;

[22] Refer to the following comments on Article 11 of the Convention.

(d) For supervising the juvenile because of education reasons or for escorting him to the competent body;

(e) When the person is a carrier of an infectious disease, he is mentally incapable and dangerous to the society;

(f) For illegitimate entry in the state border, as in the event of expulsion or extradition. No one shall be deprived of liberty solely because he is unable to fulfill a contractual obligation.

104. Pursuant to Constitution (article 28) the person who has been deprived of his liberty, is entitled to promptly be notified in the language he understands of the causes of that measure, as well as about the charges against him and this person shall be informed that he does not have the obligation to make any statement and has the right to immediately communicate with his attorney, as well as to be given the opportunity to have his rights enforced".

105. The person who has been deprived of his liberty, (in cases provided for in article 27/2), more specifically "when there are reasonable doubts that he has committed a criminal offense or to prevent him from committing that criminal offense or from leaving after committing it shall be sent within 48 hours to the court (judge) who rules his pretrial detention or release not later than 48 hours after the review of the documents. The pretrial detainee is entitled to appeal against the judge's verdict. He is entitled to be tried within a reasonable period of time or to be prosecuted unlawfully at large towards a property guarantee (bail) pursuant to the law (article 28/3). In all other cases, the person, who has been deprived of his liberty in extrajudicial ways, shall address a judge at any time, who in turn shall rule within 48 hours on the lawfulness of this measure (article 28/4). Each person, who has been deprived of his liberty, is entitled to human treatment and respect of his dignity (article 28/5).

106. Article 30 of the Constitution stipulates that "Every one is considered not guilty unless his guilt has been proved by a final judicial verdict". Pursuant to article 31, "in the course of the criminal proceeding, every one is entitled to:

(a) Be promptly notified in detail of the charges against him, of his rights, as well as to be given the opportunity to inform his family or relatives;

(b) Have sufficient time and facilities to prepare his defense;

(c) Have the free of charge aid of an interpreter if he does not speak or understand the Albanian language;

(d) Be defended by himself or with the aid of a legal representative chosen by him; to freely and privately communicate with his defense attorney, as well as to be provided with free of charge defense if he does not possess the sufficient means;

(e) To ask questions to the present witnesses and to request the presence of witnesses, experts and other persons who can clarify the facts".

107. Also the Code of Criminal Procedure provides for the rules to be followed in order to ensure a fair, equal and due legal proceeding, to protect personal freedoms and the legitimate rights and interests of the nationals.

Article 8
Legislative measures for the stipulation of acts of torture as extraditable offenses pursuant to existing extradition agreements, as well as agreements to be signed with other States. Extradition as a subject of the conditions provided for by the law in the requesting State

108. As regards the technique followed in drafting, negotiation and signature of bilateral agreements and conventions within the framework of the Council of Europe, it is observed that the contents of the provisions of these international acts do not specify the criminal offenses, which would make extraditable the subject under international search. Pursuant to the Convention of the Council of Europe "On Extradition" of 1957 and all the bilateral agreements the Republic of Albania has acceded to, it is envisaged that the criminal offense on the grounds of which an extradition request is submitted, shall be provided for and punishable by both legislations, the legislation of the requesting country and that of the requested country. Thus, it is sufficient to penalize the criminal activity claimed by both countries and the subject is extraditable. In the RoA, the extradition to other countries of the persons suspected of having committed criminal offences is regulated by the following acts:

- European Convention "On Extradition" of the year 1957 (which was ratified by the Republic of Albania on May 19, 1998 and entered into force on August 17, 1998).
- The Additional Protocol to the European Convention on Extradition (15.10.1975), which was signed by Albania on May 19, 1998 and entered into force on August 17, 1998.
- Bilateral agreements signed with specific states.
- The Constitution of the Republic of Albania (Article 39/2 on Extradition), as well as article 122 on ratified international agreements, which become part of the internal juridical system.
- Criminal Code of the Republic of Albania (article 11). As we mentioned above, within this framework, in the Criminal Code of the RoA "Torture" is considered as a criminal offense (articles 86 and 87) and if an extradition request was submitted, as far as this offense is concerned, the subject would be extraditable.
- Code of Criminal Procedure of the RoA, (Title X, Chapter I). Articles 488–503 provide for the regulation of jurisdictional relations with foreign states. Also they define all the legal procedures regarding the extradition to foreign countries, as well as the extradition procedures from foreign countries to Albania (article 504). Pursuant to international acts, these provisions stipulate the obligatoriness of the "dual criminality" of the criminal offense.

109. Pursuant to CCP provisions, extradition is permitted solely on the grounds of a request addressed to the Ministry of Justice. This request may be addressed to the Ministry of Justice directly or through diplomatic channels, which forwards it to the relevant authorities when the extradition is permitted. Pursuant to article 491 paragraph 1/b of CCP, a person can not be extradited if there are reasons to believe that the said person shall be subjected to persecution or discrimination by reason of his race, religion, sex, citizenship, language, and political beliefs, personal or social status or to other cruel, inhuman or degrading treatment or punishment.

110. International agreements on extradition:

- The Agreement between the RoA and the Arabic Republic of Egypt on extradition (which was ratified by the Assembly of Albania by virtue of Law No. 9214, dated 01.04.2004 and entered into force on 26.07.2004)

- The Agreement between the RoA and the Republic of Italy as an annex to the European Convention on Extradition (13 December 1957) and to the European Convention on the legal assistance to criminal matters (20.04.1959, which aims to facilitate their application (which was signed on 3.12.2007 in Tiranë)
- Extradition agreement between the Albanian Government and the Macedonian Government (15.01.1998)
- Treaty on Extradition between the Kingdom of Albania and USA, which was signed on 1.03.1933

There have been no specific cases under article 4 of the Convention against Torture.

Article 9
Legal assistance which is given to the requesting State in relation to criminal prosecution in the event of criminal offences provided for by article 4 of the Convention

111. Communication procedure between Albania and other countries in the field of mutual legal assistance in criminal matters is regulated by the ratified international agreements and CCP of the RoA.

112. Legal assistance in the field of criminal matters is regulated by:

- Convention of the Council of Europe "On mutual legal assistance in the field of criminal matters", its additional protocols.[23] Pursuant to the ratification of this Convention, Albania undertakes to give the appropriate mutual assistance in criminal matters in conformity with its provisions.
- European Convention "On the transfer of proceedings in criminal matters" which was signed on 19.05.1998, ratified on 04.04.2000 and entered into force on 05.07.2000).
- Additional Protocol to the European Agreement "On transmission of requests for legal assistance", (which was signed on 12.11.2001 and ratified by the Assembly, the ratification instrument being deposited as well).

113. The Code of Criminal Procedure stipulates that relations with foreign authorities in the field of criminal matters are regulated by international agreements, accepted and recognized by the Albanian state, by virtue of generally accepted principles and norms of international law, as well as by the provisions of this Code. Also CCP (Title X, Chapter II, articles 408–504) envisages the international cooperation in the field of legal assistance and (articles 505–511) on letters rogatory from abroad. Pursuant to CCP, the court may impose temporarily a coercive measure prior to the arrival of the extradition request. This measure may be imposed when:

(a) The foreign State has declared that a personal liberty restricting measure or an imprisonment sentence has been imposed or ruled against the person and that it intends to submit an extradition request;

(b) The foreign State has submitted detailed data on the criminal offense and sufficient elements for the identification of the person;

[23] Albania is a party to this Convention (which was signed on May 19, 1995, ratified on April 2000, and entered into force on July 3, 2000).

(c) There is a risk of his leaving the country.

114. The assistance granted by the Albanian justice authorities, respectively the prosecutor's offices and courts, is at a maximum level and these authorities have already gained experience in treatment with priority of requests for legal assistance on all criminal offenses which are the object of these requests.

115. Agreements on mutual legal assistance in the field of criminal matters:

- The Agreement on affording legal assistance in Civil, Family and Criminal Matters with the Czech Republic (January 1959)
- The Agreement on mutual legal assistance in the field of criminal and civil matters – the Convention between the Republic of Albania and Republic of Greece (17.05.1993)
- The Agreement between the RoA and the Republic of Greece on the mutual enforcement of judicial verdicts on criminal cases (May 17, 1993)
- The Agreement between the Albanian Government and the Macedonian Government on the mutual enforcement of judicial verdicts on criminal cases (15.01.1998)
- The Agreement on mutual judicial assistance in the fields of civil, commercial and criminal matters between the Republic of Albania and the Republic of Turkey (20.02. 1995)
- The Protocol of the exchange of the ratification instruments of the Convention on mutual judicial assistance in the fields of civil, commercial and criminal matters between the Republic of Albania and the Republic of Turkey (20 02.1998)
- European Convention on the international validity of criminal trials (28.04.1970)
- European Convention on the transfer of the proceedings of criminal matters of year 1972, (5.07.2000)
- Additional Protocol to the European Convention on mutual assistance in criminal matters of year 1978 (3.07.2000)
- Second Additional Protocol to the European Convention on mutual assistance in criminal matters of year 2001, (which was signed on November 13, 2001, ratified on June 20, 2002, and entered into force on February 1, 2004

There have been no specific cases under article 4 of the Convention against Torture.

Article 10, paragraph 1
Measures taken for the education, giving of information, treatment of personnel who deal with the enforcement of the law related to the prevention of torture (medical staff, public servants, and other persons engaged in the custody, investigation and treatment of each individual, who is subjected to any form of arrest, detention or imprisonment)

116. State Police structures. State Police personnel, who are responsible for the security and treatment of the detained or arrested persons until the moment of the imposition of the security measure "imprisonment arrest" by the court bodies, are selected on the grounds of professional criteria. All the personnel of police structures have the obligation to become familiar with and apply all the legal and by-law acts which sanction the rights and fundamental freedoms of the persons who are deprived of their liberty and are subjected to

continuous training sessions and inspections in this respect. In terms of the familiarization with and respect and observance of human rights and freedoms, continuous and constant training sessions have been carried out, which are related to the enhancement of the level of knowledge and implementation of rights that these category of persons has. Every year, the Directorate General of Police drafts a schedule about the development of training sessions with all the police officers according to their level and rank.

117. All the police officers of the basic level starting from 2003 have been subjected to an intensive one-month training session developed at the County Police Directorates, whereas the training of County Directorate Police of Tirana took place at the Police Academy. With the entry into force of the new law on the State Police (in 2007); all the police officers (enforcement level) are being subjected to a three-month training course at the Police Academy. Pursuant to this Law, the Police Academy is a generic term, which means all the elements of police qualification: Basic School of Police specialized training, training of senior officials etc. This training started in September 2007 and will end in 2010. An integral part of the topics of these training sessions has been and still is the familiarization of all the police officers with international acts, legal and by-law acts, which regulate human rights and fundamental freedoms. The experts of the State Police who do not have a university degree in the field of police (but a university degree in another field) were subjected to a four-month technical and vocational training at the Academy of Police.

118. In application of law on the State Police, "The Regulation of State Police Personnel" was adopted (Decision of the Council of Ministers No. 804, dated 21.11.2007), which aims, inter alia, at the definition of rules and procedures related to the training of the State Police personnel. This Regulation envisages the development of training sessions at the Basic School of Police and article 34 stipulates that the Training Manual of this School is drafted and updated by the Training Department and is approved by the Director General of Police.

Penitentiary system[24]

119. Establishment of professional capacities of the penitentiary system employees, so that they can meet all the needs of all the convicts' categories, as well the qualitative changes the penitentiary and pretrial detention systems are going through, has been and still remains a priority of DGP structures.

120. For the purpose of developing a training system for all the prison personnel, well-organized and planned, with precise goals and objectives, for guaranteeing the safety, human treatment, respect of dignity and re-integration of prisoners in society, the Training Center of Prisons, which earlier functioned at the sector level, operates actually within the structure of the Directorate General of Prisons. This Center aims at:

(a) Development of basic training of all the employees who are appointed to the penitentiary service;

(b) Further training during the development of the career of the employees being adapted to the development and reform requirements;

(c) Specific training sessions for the staff that works with specific groups of prisoners such as women, juveniles, mentally-ill persons, persons with another status etc.;

(d) Drawing up of policies and generalization of positive experiences.

121. As regards the basic upbringing and training of the employees of the penitentiary system, the drafting of programs and modules has been completed. The international

[24] Detailed information may be found in the third part of this Report, in the comments related to the conclusions and recommendations of CAT Committee (paragraph 8 (q)).

standards have found the best reflection in the new programs, where each lesson topic has a specific panel related to international norms. The topics which are included in these programs are related to national and international mechanisms for the prevention of torture. Special topics on the treatment of specific and vulnerable groups are included, such as women, juveniles, the elderly as well as knowledge about the cultural combination, types of criminal offenses, and social composition of the prisoners. The Directorate General of Prisons is cooperating with specialized institutions (such as the Trauma Center and the asylum (mental hospital)) for a better treatment of the persons who suffer from mental disorders and who have other social problems.

122. Continuously and with a view of guaranteeing the observance and protection of the rights of the convicts and pretrial detainees, the Directorate General of Prisons (Training Sector) has organized a series of training sessions with the penitentiary system personnel. The employees recruited in the Prison Police, as a structure which has the duty of guaranteeing the security and order in the penitentiary system , took a two-week training course for the basic level employees, which contains the most important knowledge in respect of the functioning of prisons, the relevant legal and by-law framework, human rights and other more specific issues. During these instructional courses, the new prison staff was informed about the prohibition of torture as well as on the observance of prisoners' rights and dignity. The Prisons' Training Center develops and applies the basic training program of 22 days for the employees recently recruited.

123. Also, concrete achievements have been identified in regard of the training of the penitentiary system personnel, and as a result of the continuous support of international organizations and civil society in the field of human rights (namely the Council of Europe, Albanian Committee of Helsinki, Legal Juvenile Clinic etc). To the end of the awareness raising and training of the personnel who serves in prisons, the project implemented by the Ministry of Justice and the Albanian Committee of Helsinki during the years 2006–2007, aimed at the increase of the awareness level and familiarization with human rights and law enforcement by the prison administration (namely the pretrial detention facility administration, Lezha prison). The objectives of this one-year project have been the improvement of the standards of the observance of human rights, increase of theoretical and practical knowledge level of the prison personnel, promotion of change of mentality for the treatment of prisoners, as well as the capacitating for undertaking an action plan to enable the running of prisons from the human rights viewpoint.

124. Educational staff of the prison structures has participated in a series of training sessions and study visits within the country and abroad, and based on the knowledge and experience acquired, the organization of continuous training sessions of the personnel, and of the persons who serve their sentences has been envisaged.

125. With the financial support of the European Commission Delegation in Tirana, within the framework of CARDS 2004 Program, in May 2007, the implementation of the project "Human running of prisons" started, which is jointly being implemented by the Directorate General of Prisons and Albanian Committee of Helsinki. This project aims at the improvement of the observance of the rights of convicts and pretrial detainees and the increase of the knowledge level for the purpose of enhancing the professionalism of prisons staff. Among the activities under implementation within the framework of this project, the most important ones are the strengthening of management and functional capacities and the initial upbringing and training program for the employees of the Prison Police, which are developed by the Prison Training Center (Directorate General of Prisons); training of prison senior staff, as well as the training of the new prison personnel which are becoming operational (the prisons of the cities and towns of Fushë-Krujë, Vlorë and Korçë).

126. Directorate General of Prisons in the course of the implementation of the Action Plan for the Training Center has had the following objectives:

(a) Adoption of the concept that without a good training of the staff there cannot be provided a good, human and professional service to the convicts;

(b) Promotion of the Action Plan for the Training Center in the entire penitentiary and pretrial detention system;

(c) Functioning of the Prison Training Center as an effective structure which will operate as the only service which offers the staff training to the system;

(d) Offering of support to the infrastructure to have appropriate premises for a Training Center;

(e) Budget support to the activities scheduled in the Action Plan for the period 2008–2010;

(f) Support to the involvement in the development of training by trainers outside the Training Center but within the system.

127. In the National Plan "On the implementation of the Stabilization and Association Agreement" (adopted by DCM No. 463, dated 5.07.2006, amended by DCM No. 577, dated 5.09.2007 and DCM No. 1317 dated 1.10.2008) related to the "Short-term implementation activities" the following activities have been envisaged:

(a) Overall training of educational staff on the human rights issues and promotion of rights observance in terms of pretrial detainees and convicts treatment;

(b) Training of educational staff who deals with juveniles' treatment in the premises of sentence serving and pretrial detention ones;

(c) Spreading of part-time elementary education in all PSEIs;

(d) Recruitment of the civil and police staff for the new prisons of Fushë-Krujë and Korça.

128. Training of judges and prosecutors. The School of Magistrates, established by virtue of Law No. 8316, dated 31.07.1996 is a public institution, with institutional, academic and administrative independence, which ensures the magistrates' vocational upbringing and training (judges, prosecutors). Vocational upbringing and training includes the initial upbringing and training program of the future magistrates and the further upbringing and training of the judges and prosecutors on duty. Pursuant to Law No. 9414 dated 20.05.2005 "On some supplements and amendments to Law No. 8316, dated 31.07.1996 "On the School of Magistrates" (article 23) the participation in the further upbringing and training activities is mandatory. In addition to the Initial Training Program, the School of Magistrates develops the further vocational upbringing and training of judges and prosecutors on duty. This School has submitted its Further Training Program for the period 2006–2009.

129. A very important characteristic of the further upbringing and training the School of Magistrates carries out, and which is being consolidated year after year, is its flexibility, which allows the curricula to be developed in accordance with the training needs of the judges and prosecutors. This program is drafted in such a way as to meet the training needs collected from many sources, for example from interviews conducted with judges and prosecutors, round tables organized for this purpose, forms filled out by judges and prosecutors in the course of training sessions where they have participated, following the dynamic modification of laws and the process of their approach to the community law, the obligations arising before the judiciary and prosecutor's offices from the Stabilization and Association Agreement, recommendations of international organizations which monitor and support the reform process in the field of justice etc. The Program's objective is the

upbringing and training of prosecutors, judges on human rights, in conformity with the international commitments.

130. Training of medical personnel in the field of mental health. Ministry of Health, with the assistance and support of the World Health Organization has trained all the medical personnel in the field of mental health in the hospitals, psychiatric wards, or ambulatory structures (in the cities of Elbasan, Korça and Tirana). Within the framework of the Stability Pact for Albania, continuous training sessions of the personnel working in the field of mental health were carried out (namely in the cities of Vlora, Berat, Fier, Tirana and Korça). Personnel of psychiatric wards in the city of Shkodër have been continuously trained by the Dutch Association "The Door". These training sessions aim at the identification and evaluation of the patients' abilities and skills to work, the promotion of the individual skills of patients inside and outside the hospital, rehabilitation of patients who are eligible to be employed, as well as the development and management of various activities.

Article 10, paragraph 2
Incorporation of prevention of torture in the regulations and guidelines of institutions which are involved in taking into custody, interrogation or treatment of each person who is subjected to any form of arrest or imprisonment

131. High structures of the Ministry of Interior and Directorate General of the State Police (DGSP), continually, by means of a series of normative acts have highlighted that the staff of the State Police shall comply with their functional duties solely in accordance with the law, by observing the nationals' rights and freedoms, including those nationals who are detained (arrested), or who are deprived of liberty, namely:

- Letter rogatory of the Minister of Public Order No. 392, dated 25.02.2003 "On the observance of human rights in the course of escort, arrest and serving of penal sentences"
- Letter rogatory of the Director General of State Police No. 3525/2, dated 28.07.2003 "On the prevention of torture and protection of nationals' rights and freedoms by the Police"
- Service Order of the Director General of the State Police No. 194, dated 26.08.2004 "On the procedure to be followed for the detention of foreign nationals"
- Letter rogatory of the Director General of the State Police No. 218, dated 14.09.2004 "On some issues of pretrial detainees' treatment"
- Letter rogatory of the Director General of the State Police No. 481, dated 11.08.2005 "On a better understanding and implementation of the nationals' escort to the police bodies"
- Letter rogatory of the Director General of the State Police No. 744, dated 05.12.2005 "On the application of lawfulness during the escorts of the nationals to the police structures"
- Service Order of the Director General of the State Police No. 153, dated 02.03.2006 "On improvement of living conditions and guarantee of rights and freedoms of pretrial detainees and the escorted persons to the police bodies"
- Letter rogatory of the Director General of the State Police No. 178, dated 10.03.2006 "On taking of measures for the implementation of the recommendations of the

Council of Europe Committee for the Prevention of Torture and Inhuman Treatment for guaranteeing the rights of the nationals deprived of liberty"

- Order of the Minister of Interior No. 2191, dated 25.09.2006 "On guarantee and observance of human rights and fundamental freedoms in the course of escort of nationals to the police premises and pretrial detention facilities"
- Letter rogatory of the Director General of the State Police No. 643, dated 17.09.2007 "On the prevention of arbitrary and negligent acts and the exceeding of use of force by the police services in the course of carrying out their duty"
- Service Order of the Director General of the State Police No. 711, dated 11.10.2007 "On the meeting of the requirements of the Law "On the State Police", as regards the use of force and treatment of escorted persons"
- Letter rogatory of the Director General of the State Police No. 68, dated 28.01.2008 "On the observance of human rights during their escort to the Police, as well as the detention and arrest instances"
- Guidelines of the Minister of Interior No. 421, dated 07.03.2008 "On setting the rules for the search of persons"
- Letter rogatory of the Director General of the State Police No. 703, dated 07.08.2008 "On the familiarization with the preliminary evaluative report of the delegation of the European Committee for the Prevention of Torture (CPT) and taking of measures for the implementation of its recommendations"
- Order of the Director General of the State Police No. 945, dated 27.10.2008 "On the norms and parameters required for the reconstruction or construction of security chambers for the arrested or detained persons, in the police stations"

132. Law No. 9749, dated 04.06.2007 "On the State Police" (article 74) stipulates that: when it does not constitute a criminal offense, each action or non-action of the Police officer, which is contrary to the Discipline Regulation, adopted by Decision of the Council of Ministers, is considered as a disciplinary violation. Article 75 provides for the disciplinary measures against the Police officers in the event of disciplinary violations.

133. Discipline Regulation of the State Police (adopted by virtue of Decision of the Council of Ministers No. 786 dated 4.6.2008) provides for the disciplinary measures to be taken against the police officers when they commit disciplinary violations as well as the procedures to be followed. For the purpose of enhancing the dignified communication of the police officers, the new regulation lays down the relevant obligations for the State police personnel and the cases of their general detention if there are complaints against them. The Regulation stipulates the obligation to wear the uniform while on duty, and the prohibition of wearing it off-duty. This Regulation also lays down the obligations and the rules of conduct for the police officers, on or off duty, punitive measures in the event of violation of discipline as well as the measures to be taken in case of breach of this Regulation, which amount to dismissal from the police force. For all the disciplinary violations, against the police officers shall be taken disciplinary measures which vary according to the violation committed up to their dismissal from the police force and initiation of criminal proceeding against them. Article 6 lays down the obligations and rules of conduct while on duty, also "the police officer shall comply with the obligations and the rules of conduct while on duty, treat all the nationals equally, as well as carry out his tasks without any discrimination on account of gender, race, color, language, religious beliefs, ethnicity, political, religious or philosophical opinions, sexual orientation, economic, education, social statues or parental belonging. Pursuant to article 11 of the Regulation, the following are considered as grave disciplinary violations: committal of indecent acts, illicit or unreasonable use of force, acceptance of gifts etc. The positive impact of the application

of this Regulation is seen in the decrease of the number of violations committed by the police officers in the course of the duty.

134. Regulation of the State Police Personnel (adopted by DCM No. 804, dated 21.11.2007), whose object is the setting of rules, policies and procedures for a fair and effective enforcement of the Law on State Police and the legislation, aims at the development of a skillful and efficient personnel in respect of observance of human rights.

Penitentiary system

135. General Regulation of Prisons sanctions the prohibition of the use of torture, use of force and committal of acts not grounded on the law by the prison personnel against the convicts. Pursuant to this Regulation, each convict shall be acquainted with his rights and obligations arising from the law, this regulation and the prison internal regulation. Inter alia, it is contemplated the obligation of the prison administration to effectuate a human and educative treatment of the convicts through modern and effective administration ways, without any discrimination on account of race, color, sex, language, religion, political opinion, national or social origin, economic circumstances etc.

136. Pretrial Detention Regulation (adopted by order of the Minister of Justice No. 3705/1, dated 11.05.2006) stipulates the prohibition of the use of torture in any pretrial detention institution or facility.

137. The Discipline Regulation of the Prison Police (adopted by order of the Minister of Justice No. 3706/1, dated 12.05.2006) stipulates that the Prison Police officers shall avoid any act of torture or ill-treatment which encroaches on the convicts' health.

Adoption of internal regulations in some penal sentence enforcement institutions

138. In the penal sentence enforcement institutions where the internal regulations are lacking, the work for their adoption is being accelerated. This request was instigated also by the recommendations made by the Ombudsman or organizations for human rights after the observations carried out in respect of observance of prisoners' rights in the penitentiary system.

139. The National Plan for the Implementation of Stabilization and Association Agreement, in respect of "Short-term legal initiatives" provides for the adoption of some supplements and amendments to the General Regulation of Prisons. The Directorate General of Prisons has prepared the draft of the General Regulation of Prisons, which provides for a special provision for the prevention of torture in these institutions. The Ministry of Justice has completed the work on the preparation of the final draft of the General Regulation of Prisons, which includes the organization and development of labor activities by the convicts as well as their labor remuneration or the purpose of taking the necessary suggestions and opinions, the draft-regulation in question was forwarded to the responsible state institutions as well as to human rights organizations operating in the prison field. These institutions have submitted their opinions and suggestions, which were reflected in the final material, and very soon it will be proceeded with the procedures for the adoption of the regulation by the Council of Ministers. Consequently, the approval of internal regulations, which include the rights and duties of the convicts in all institutions/prisons, such as pre-detention or sentence serving facilities, as well as the review of existing internal regulations (in force) may be effected after the adoption of the General Regulation of Prisons. The Ministry of Justice has prepared the internal draft-regulation of prisons.

Article 11
Exercise of supervision over the rules of interrogation, regulations, guidelines, investigation methods and practices, as well as the measures for protection and treatment of persons, who are subjected to any form of arrest, detention or imprisonment, for the purpose of the prevention of any case of torture in the entire territory

140. For the exercise of supervision over the rules of interrogation, regulations, guidelines, investigation methods and practices, as well as the measures for protection and treatment of persons, who are subjected to any form of arrest or imprisonment,[25] for the purpose of the prevention of any case of torture in the entire territory, the provisions provided for in the Constitution and Albanian legislation have been applied.

141. Pursuant to the Code of Criminal Procedure,[26] when an arrest or detention takes place, the prosecutor's office of the country where the arrest or detention is effectuated is promptly notified. The arrested or detained person is informed that he does not have any obligation to make a statement, and he is entitled that at the moment of arrest or detention to become acquainted with the reasons of his arrest or detention, the criminal offense or accusations he is charged with, the rights he enjoys, to request a defense attorney or to be provided with one free of charge when he does not possess the necessary means to contract an attorney, as well as to inform his relatives etc.

142. Article 37 of the Code of Criminal Procedure (with the relevant supplements) stipulates that: "When a person, who has not been summoned in the capacity of the defendant, makes statements before the prosecuting authority, from which arise data related to the incrimination in his charge, the prosecuting authority discontinues the interrogation, warning him that after these statements investigation can be conducted towards him and inviting him to appoint an attorney. The previous statements shall not be used against the person who made them." Article 38/1 of the Code of Criminal Procedure stipulates that:

> 1. The defendant, even if an isolation security measure has been imposed against him, or who has been deprived of liberty because of any other reason, is interrogated or examined unlawfully at large, with the exception of cases when measures shall be taken to prevent the risk of escape or violence.
>
> 2. Methods or techniques shall not be used, either with the defendant's consent, in order to influence his freedom of will or to change the memory and fact evaluation ability.
>
> 3. Prior to the interrogation, the defendant is informed that he is entitled to remain silent and notwithstanding his silence, the proceedings shall continue".

143. Article 39 of the CCP stipulates that:

> 1. The prosecuting body informs the defendant, clearly and accurately, of the facts attributed to him, the existing evidence against him and if the investigation is not affected the evidence sources as well.
>
> 2. The prosecuting body invites the defendant to explain everything he considers as useful to his defense and asks him direct questions in that respect.

[25] Refer to the above-mentioned comments on article 7, paragraph 3.

[26] We are submitting here the legal regulation which the CCP provides for this issue, because it was not addressed in comments related to article 11 of the First Report.

3. When the defendant refuses to answer, this is recorded in the interrogation minutes. Also, in the interrogation minutes, the physical features and the defendant's particulars are noted down, if appropriate.

144. In order to guarantee a fair treatment during the criminal proceeding in CCP (article 98), is stipulated that "The person who does not speak the Albanian language is interrogated in his native language and the minutes are kept in this language as well. The procedural acts, which are given to the defendant at his request, are translated into the same language. The violation of these rules brings about the invalidity of the act". Pursuant to article 238 of the CCP, by virtue of imprisonment arrest warrant, the court orders the judicial police to place the defendant with the pretrial detention facilities at the disposal of the prosecuting body. Article 263 of the CCP establishes the pretrial detention time duration and the pretrial detention becomes void if from the start of his application, the time limits stipulated in this article expired, prior to the submission of acts in the court.

145. Pursuant to article 61 of Law No. 9749, dated 04.06.2007 "On the State Police" the police officer shall treat the persons equally and carry out his duties without any discrimination on account of gender, race, color, language, religion, ethnicity, political, religious or philosophical opinions, sexual orientation, economic, educational or social status, parental belonging etc, in accordance with article 18 of the Constitution.[27] The detained persons are placed with the premises of the State Police until the moment when the court imposes the security measure of "imprisonment arrest".

146. Law No. 10002 dated 06.10.2008 "On the Internal Inspection Service in the Ministry of Interior", article 43 stipulates that: The Internal Inspection Service employee has the duty of:

(a) Being aware and acting in accordance with the laws and other by-laws in force;

(b) Acting with professionalism, impartiality and in accordance with the code of ethics;

(c) Treating persons equally and carrying out their duties without any discrimination, in accordance with the law and the required standards;

(d) Respecting the dignity and physical integrity of each service employee.

147. As regards the treatment of nationals who have been deprived of liberty, the relevant structures (Ministry of Interior and the Director General of Police) in continuation have issued a series of normative acts (orders, letters rogatory) addressed to the local police structures.[28] In the Letter Rogatory of the Director General of Police No. 68, dated 28.01.2008 "On observance of human rights during their escort to the police, as well as the cases of detentions and arrests in flagrante delicto" it is laid down that:

- The legislation related to the human rights when they are escorted, detained or arrested in flagrante delicto shall be revised with all the police officers on the basis of a special program and namely: (a) Constitution of the RoA (articles 27 and 28) (b) Chapter IV of the First Part and Chapter III, Title V of the First Part of the Code of

[27] Article 18 of the Constitution defines the equality of the nationals before the law. 2. No one may be unjustly discriminated on account of gender, race, religion, ethnicity, language, political, religious or philosophical opinions, economic, educational or social status or parental belonging. 3. No one shall be discriminated on account of the reasons mentioned in paragraph 2, if there does not exist a reasonal and objective vindication.

[28] More detailed information is given in the third part of this Report in the comments on the Committee's conclusions and recommendations, paragraphs 7 (i) and 8 (i).

Criminal Procedure (c) Fourth Part of Law No. 9749, dated 04.06.2007 "On the State Police" (d) Law No. 8291, dated 25.02.1998 "Code of Police Ethics"

- Taking the necessary organizational and technical measures for the application of procedural rules in the event of escorts, examinations and interrogations, as well as detentions and arrests in flagrante delicto for committal of criminal offenses, evaluating in particular such requirements which are related to the time and place of their venue, as well as informing them about the rights they enjoy as subjects of the criminal proceeding
- To pay special care to the fulfilment of requirements, rules and procedures established in the event of summoning, escort, detention and escort/or arrest in flagrante delicto of juveniles and women, considering every violation in this regard as a grave encroachment on the human rights
- All the senior officials of the police structures, in the event that they are informed about violations related to the observance of the rights of persons escorted, detained or arrested in flagrante delicto, shall promptly notify the superior structure according to the jurisdiction in the Directorate General of Police, the Prosecutor's Office, as well as they shall analyze the case in question establishing concrete measures for their prevention and bringing the responsible persons before the court

148. Law No. 8328 dated 16.04.1998 "On the Rights and Treatment of Prisoners"[29] sanctions provisions related to the exercise of supervision of application of law and rules in the sentence serving institutions, as well as the observance and protection of convicts' rights. This Law provides for provisions related to the exercise of supervision by the prosecutor, prosecutor's duties as well as the forms of supervision exercised by the prosecutor (articles 68, 69, 70) of this law.[30]

149. Article 71 of this law contemplates the court powers more specifically: "The court, in the territory of which the institution is located, reviews by a single judge all the cases stipulated expressly in this law, as well as other cases related to the convict's rights, which are not resolved by the institution at the convict's appeal or the prosecutor's request, saving the cases in relation to which the Code of Criminal Procedure has laid down the relevant powers.

150. As regards the review of the case by the judge article 72 stipulates that:

1. The judge reviews the case and passes a judgment with relation to what has been appealed against or requested in trial with the mandatory participation of the director of institution or his legal representative and the prosecutor. If the case may not be reviewed without the presence of the convict, the hearing takes place in appropriate premises of the institution where the convict is kept.

2. In the review of the case, the attorney requested by the convict or appointed ex officio to convicted juveniles, the convicts with mental disorders, pregnant women or breastfeeding women, as well as to convicts of foreign citizenship, shall participate.

3. Ungrounded requests or appeals or repeated ones for the same cases or reasons are refused. The convict, the director of the institution and the prosecutor may lodge an appeal against the judgment within 5 days after being informed.

[29] Until the entry into force of law No. 9888, dated 10.03.2008 "On some supplements and amendments to the law No. 8328, dated 16.4.1998 "On rights and treatment of prisoners".

[30] These provisions were identified in the First Report submitted by Albania.

4. The appeal of the convict and that of the director does not suspend the enforcement of the sentence. If the appeal is lodged by the prosecutor, the enforcement is carried out after the review of the case by the court.

151. As regards the review of the appeals, article 73 stipulates that the Court reviews the appeals pursuant to the rules of case reviewing at the second instance.[31] If the annulment of judgment is ruled, the case is reviewed in merits and is conclusively settled by virtue of a final judgment". With relation to the enforcement of sentences, article 74 of the law stipulates that "Sentences are enforced ex officio by the director of the institution and in the event of his non-action with the expiry of the time limit set in the verdict; they are enforced by the Directorate General of Prisons by order of the prosecutor".

152. Law No. 9888, dated 10.03.2008 (article 31) has repealed articles 68, 69, 70 of law No. 8328, dated 16.4.1998 "On rights and treatment of prisoners", which provide for the prosecutor's right to exercise the supervision of the sentence serving institutions, prosecutor's duties and supervision forms related to the enforcement of law on convicts and protection of their rights. Article 32 of this law amended article 71 "Court powers" of law No. 8328, dated 16.4.1998, and article 71 on the grounds of these amendments has the following contents:

"The Court, in the territory of which the institution is located, reviews by a single judge all the cases stipulated expressly in this law, as well as other cases related to the convict's rights, which are not settled by the institution on the basis of the convict's appeal, saving the cases in relation to which the Code of Criminal Procedure has laid down the relevant powers. Article 33 of Law No. 9888, dated 10.03.2008 amended paragraphs 1, 3 of article 72 "Review of case by the judge" of Law No. 8328, dated 16.4.1998, as well as it repealed paragraphs 3 and 4 of article 72. According to these amendments article 72 has the following contents:

1. The judge reviews the case and passes a judgment with relation to what has been appealed against or requested in trial with the mandatory participation of the director of institution or his legal representative and the prosecutor. If the case may not be reviewed without the presence of the convict, the hearing takes place in appropriate premises of the institution where the convict is kept.

2. In the review of the case, the attorney requested by the convict or appointed ex officio to convicted juveniles, the convicts with mental disorders, pregnant women or breastfeeding women, as well as to convicts of foreign citizenship, shall participate.

Pursuant to article 34 of Law No. 9888, dated 10.03.2008, article 73 of law No. 8328, dated 16.4.1998 is repealed. Pursuant to article 35 of this law, article 74 "Enforcement of sentences" is amended and has the following contents: the final judgments, delivered by the court, if it is not otherwise provided for, are enforced by the director of penal sentence enforcement institution."

153. By virtue of Law No. 9888, dated 10.03.2008 (article 36), several provisions were added to law No. 8328, dated 16.4.1998 "On the rights and treatment of prisoners" (articles 74/1, 74/2, 74/3), which provide for the establishment of the National Mechanism for the prevention of torture, and cruel, inhuman or degrading treatment or punishment within the Institution of Ombudsman. These provisions stipulate very clearly the powers and

[31] Article 73 of Law No. 8328, dated 16.04.1998 was repealed by Law No. 9888, dated 10.03.2008 and was effective until the entry into force of Law No. 8328, dated 16.04.1998.

guarantees of the activity of this National Mechanism, as well as the supervision forms related to the enforcement of this law in terms of the protection of convicts' rights as regards the prevention of torture.[32] Supervision of the National Mechanism is carried out by way of:

(a) Requesting of information by the institution administration;

(b) Verification of documents, equipment or premises related to the convict or the pretrial detainee, inside and outside the institution;

(c) Receipt of information by individuals who enjoy the status of visitor or state bodies and non-governmental organizations, which have inspected or visited the institution, according to the power conferred to them by the law, as well as the attorney of the convict or pretrial detainee.

154. To carry out the supervision process, the National Mechanism may engage experts of relevant fields as well. In any case, and notwithstanding the violations and irregularities found out during the verification, the experts of this mechanism take the minutes which are signed by the director of the institution or someone else entrusted by him, with the right of reflecting the observations and remarks.

155. Pursuant to the law "On Organization and Functioning of the Prosecutor's Office in the RoA", the Directorates of Investigation and Inspection of Criminal Prosecution, which coordinate the work, inspect and help the prosecutor's offices within the courts in exercising their functions, operate within the Prosecutor's General Office.

156. Prosecutors at national level, in exercising the criminal prosecution function at the preliminary investigation phase supervise the lawfulness of the activity of judicial police agents/officers aiming at the observance of these principles and criminal procedural norms, which provide for the conditions and criteria for arrest or detention in flagrante delicto and which prohibit illegitimate conducts or acts during their prosecution.

157. The Prosecutor General has issued a series of normative acts namely:

- Order No. 72, dated 1.03.2004 "On the enforcement of penal sentences and supervision of imprisonment sentence serving". This order, in addition to other things, stipulates that in case the prosecutor, while supervising the imprisonment sentence serving finds out violations which constitute criminal offenses, shall file the proceeding and exercise criminal prosecution against the responsible persons.
- Special Circular of the Prosecutor General No. 1760/1, dated 28.06.2005. The Prosecutor General, by virtue of this act forwarded to the prosecutor's offices of all levels, informed them about the Conclusions and Recommendations for Albania of the Committee Against Torture of UNO, drawing the attention of the prosecutors and judicial police officers to the fact that the identified problems such as the concerns and recommendations in application of the convention against torture, shall be the object of their activity.
- Guideline No. 228/1, dated 3.03.2006 "On the report of the European Committee for the Prevention of Torture". This special guideline forwarded to all the prosecutors and judicial police officers regulates the way of proceeding and investigation of ill-treatment cases of persons deprived of liberty.

[32] More detailed information regarding the powers, and the carrying out of the supervision by this Mechanism is given in the comments on article 2 and article 13, paragraph 1.

- Guideline of the Prosecutor General No. 2 dated 8. 03. 2007 "On guarantee and observance of human rights during the criminal prosecution". This Guideline[33] was forwarded to the prosecutor's offices of all levels and sections and services of judicial police of all State Police structures. Inter alia, this Guideline stipulates that:

  1. Prosecutors and officers/agents of judicial office of all structures and levels shall guarantee the observance of individual rights and fundamental freedoms during the criminal proceeding and in this respect they shall be supervised by the heads of relevant structures of all levels of prosecutor's offices and judicial police.

  2. Prosecutors of first instance shall review and inspect in merits the lawfulness of investigative actions carried out by the judicial police, guaranteeing the observance of human rights by the police.

  3. During the interrogation of the arrested, detained or escorted person, the prosecutor shall observe if they have any ill-treatment signs and in the event of finding out these signs, they shall immediately act to verify the ill-treatment and the notification of the relevant police authorities.

  4. The prosecutor and the judicial police officer shall guarantee the right to defense of the arrested or detained person or of the defendant or person subjected to investigations.

  5. First instance prosecutors, every two months from the enforcement of an arrest warrant, shall inform in writing the court which passed that judgment, related to the proceeding's progress and status, the new administered data and circumstances, and this information is accompanied by copies of relevant acts taken from the investigation file.

158. Law No. 8331, dated 21.04.1998 "On the enforcement of penal sentences"[34] has as its object the enforcement of penal sentences and other legal orders, as well as the way of serving of sentences saving the imprisonment sentences which are regulated by a special law. According to this law, judicial verdicts related to security measures are enforced as well, as long as the Code of Criminal Procedure does not provide for otherwise. Pursuant to article 2, enforcement of penal sentences means carrying out of the orders contained in the final criminal judgment and application of verdicts, which, according to the Code of Criminal Procedure, shall be promptly enforced, with the aim of convicts' re-education, of restoration of rights of persons unjustly prosecuted and the rights of legal entities encroached on by criminal offenses, influencing on their prevention.

Article 7 of this law stipulates that for the protection and fulfillment of his rights, to the convict is guaranteed the communication with competent bodies, lodging an appeal with the court and his defense by an attorney. The defense attorney, at the request of the convict or when he deems it right, is entitled to meet the convict, to observe the relevant rules, to request clarifications, to take the necessary information, to request taking of measures under their jurisdiction from the bodies in charge of the enforcement of penal sentences, to request the prosecutor's intervention in the event of impediments and submit requests to the court related to the cases under its jurisdiction. Pursuant to article 8 the bodies and officials who carry out the enforcement of penal sentences under this law, are obliged to exercise their powers with correctness, observing the rights, integrity and dignity of the person. The persons charged with the enforcement of penal sentences hold disciplinary responsibility

[33] More detailed information about the contents of this Guideline is given in the third part of this Report, in relation to the conclusions and recommendations of the CAT put forward in paragraphs 7 (i), (g) and (k) and 8 (c), (i), (k) and (g).

[34] The following legal provisions were not addressed in the First Report.

and, if it is the case, even criminal liability, for non-enforcement, delay or enforcement of penal sentences contrary to the law or the person's rights.

159. Chapter VI of this law "Time limits of the enforcement of penal sentences" stipulates that actions for the enforcement of penal sentences shall be immediately undertaken, as soon as the legal conditions are met, and not later than within these time limits (article 48). Pursuant to article 49 "Time limits of prosecutor's actions", it is provided for inter alia that the Prosecutor undertakes the preliminary actions and issues the enforcement order:

1. For imprisonment sentences or mandatory treatment at the medical institutions with pretrial detainees, immediately and in any case, not later than 48 hours from arrival of the criminal judgment.

2. For imprisonment sentences of the persons tried unlawfully at large, not later than 72 hours from the arrival of the judgment.

160. Pursuant to article 50 of this law, the enforcement orders for penal imprisonment sentences and medical measure of mandatory treatment for the pretrial detainees shall be executed within 48 hours from receiving it. For the enforcement orders with sentences or other orders, the enforcement shall start immediately, but no longer than 15 days from receiving it.

161. Pursuant to article 52 the competence for procedural control on the enforcement of penal sentences belongs to the prosecutor within the court that delivered the sentence. When the sentence is enforced in another district, its enforcement is authorized by the relevant prosecutor. The court that delivered the judgment or the court of the district where the sentence is enforced, as regards the issues under its jurisdiction arising from the enforcement, is entitled to request information from the prosecutor and the body about the place of the enforcement and directly checks the regularity of the process.

162. This law (article 53) provides that the prosecutor shall carry out the control by way of:

1. Receiving notification of the commencement and termination of enforcement by the relevant body.

2. Reviewing requests and complaints of the convicted persons and their defense attorneys.

3. Requesting information and direct verifications of documents or at the sentence serving facility in the presence of the relevant official person.

4. Receiving and verification of notifications about facts and circumstances which have an impact on the enforcement of sentences.

5. Taking the opinions of experts of various fields.

6. Cooperating with the internal inspection of the body where the sentence is enforced or state institutions of administrative control.

163. Pursuant to article 56, when appropriate, the prosecutor submits a request to the relevant body to hold the persons who have committed or permitted violations answerable at law for their disciplinary or administrative liability or indemnity. The request is mandatorily reviewed by the competent body and the conclusion is notified to the prosecutor. Also, this law stipulates that the bodies and institutions where the sentence is enforced or which are in charge of the enforcement supervision, as well as their superior bodies within the framework of internal inspection, carry out the relevant verifications. In the event of findings, if they fall within their jurisdiction, they take the necessary measures,

otherwise they request the intervention of the prosecutor, and if appropriate, through the prosecutor they require the reviewing of the case by the court.

164. Article 59 of this law provides for the establishment of Supervising Committees for the enforcement of criminal judgments which contain imprisonment sentences, as a counseling body for the law enforcement in the enforcement of penal sentences and the protection of the rights of the persons who serve their sentence.

165. The National Plan for the Implementation of SSA as regards "Short-term legislative initiatives" envisages the adoption of the draft law on some supplements and amendments to the Law No. 8331, dated 21.04.1998 "On the enforcement of penal sentences " including the probation service as well.

166. With relation to the afore said, a draft law is prepared which in general aims at technical adjustments, additional clarifications, problems emerging during the practical enforcement of the law. This draft law solves the legal and practical problem of the application of alternative sentences in practice in the system of alternative sentence enforcement, as in other European countries, where these sentences have been transformed into incentives for the improvement of general standards and humanitarian regimes for the persons who commit criminal offenses with low social risk.

167. Pursuant to the "General Regulation of Prisons" (No. 3705/1, dated 11.05.2006, articles 49, 50) and Pretrial Detention Regulation (articles 4, 5, 10, 43 and 44), the rights of the convicted persons are supervised by the prosecutor's office and the Court. In case violations have been founded out, the prosecutor submits the request for holding the offender answerable at law. Non-governmental bodies are entitled to carry out the necessary investigation, related to all the cases of violations of human rights. During the interrogation in the pretrial detention or penitentiary facilities, there has not been any ill-treatment case. The interrogation of the arrested persons is carried out in application of the Code of Criminal Procedure, in the presence of the defense attorney in appropriate premises, not being under the influence of psychological or physical pressure.

168. Pretrial Detention Regulation. Given that the pretrial detention system has been administered for a relatively long time simultaneously by both the Ministry of Interior and Ministry of Justice, the pretrial detainees have been treated according to different regulations (for which the responsible institutions were criticized by foreign and domestic observers). In May 2006, by order of the Minister of Justice, the new Pretrial Detention Regulation was adopted, about which the expertise of international and Albanian organizations was consulted. The object of this Regulation is the human treatment free from any discrimination, pursuant to international standards and observing human rights and dignity, during the process of their detention in the pretrial detention facilities. The Regulation sets higher standards in terms of pretrial detainees rights, especially as regards the increase of contacts with their family members and relatives (from 3 meetings per month before to 4 meetings now), as well as, for the first time, the access to information has been enabled, permitting the use of electronic and written media in the pretrial detention premises. With the full administration of the pretrial detention system by the Ministry of Justice, the regulation adopted by the Minister of Justice is applied to all the pretrial detainees.

169. Regulation of Prison Police (adopted by Order No. 3706/1 prot, dated 12.05.2006 of the Minister of Justice), stipulates among the main duties of the Prison Police officers the avoidance of any act of brutality, bad behavior, or action which encroaches on the mental and psychic health of the convicts and pretrial detainees.

170. "Rules of Conduct for the Pretrial Detention and Penitentiary System" were adopted by Order No. 3052/1 prot, dated 25.05.2005 of the Minister of Justice. These rules lay down that the pretrial detention and penitentiary system employees carry out their duties by

protecting the rights of the persons deprived of liberty against unlawful acts, with a high degree of liability and in accordance with the requirements of the legislation in force. In fulfilling the duties charged with by the law, the pretrial detention and penitentiary system employees respect, protect human dignity and support the observance of the rights of every person deprived of liberty. The pretrial detention and penitentiary system employees shall not permit instigate or inflict acts of torture, inhuman or degrading treatment to persons deprived of liberty.

171. Special legislative regulation of the pretrial detainees' status. Law No. 8328, dated 16.04.1998 "On the rights and treatment of prisoners", which in its entirety contains high standards of convicts' rights, stipulates that "this law is also applied to arrested or detained persons, observing the restrictions related to them, defined by other laws" (article 75). Law No. 9888, dated 10.03.2008 "On some supplements and amendments to Law No. 8328, dated 16.4.1998 "On the rights and treatment of prisoners" regulates in a special way the status and the rights of the pretrial detainees. The legislative regulation and not by a by-law act (which was also recommended by the experts of the Council of Europe), constitutes a guarantee to the observance of the rights of this category of persons deprived of liberty. This law provides for accurate and rapid procedures related to the treatment of convicts, pursuant to the fundamental human rights and aims at compliance with the standards in this field. It strengthens the legal regime enforced in prisons, in compliance with international standards including also the treatment of pretrial detainees.

172. Article 6 of Law No. 9888 dated 10.03.2008 stipulates that the pretrial detention facilities are added to the Penal Sentence Enforcement Institutions. The pretrial detainees against whom the court has imposed the security measure of "imprisonment arrest" are put in pretrial detention facilities, (article 10 of law No. 9888, dated 10.03.2008), which are institutions subordinate to the Ministry of Justice (Directorate General of Prisons). The rights of the pretrial detainees are guaranteed under the legislation in force. Article 37 of the above mentioned law amends article 75 of law No. 8328, dated 16.04.1998 and specifically related to the treatment of prisoners[35] are applied also to individuals who are kept in pretrial detention facilities, in accordance with the prison regulation:

> 2. It is prohibited to keep juveniles in the same cell with adults in pretrial detention facilities, or to put minor girls in the same cell with minor boys. Juveniles shall be put in separate cells and sections, creating the opportunity of a special treatment. Minor girls are kept under the supervision and care of solely female personnel.
>
> 3. Pretrial detained women are put in separate cells or sections from men and are kept under the supervision and care of solely women personnel.
>
> 4. The director of the pretrial detention facility , at the request of the prosecutor or the court, restricts the right of the pretrial detainee to have visits, his access to correspondence or phone calls, if that is necessary to the carrying out of criminal procedural actions.
>
> 5. The pretrial detainees do not obtain any rewarding leave. By preliminary consent of the prosecutor and the facility's director, the pretrial detainee may be granted special leave in the event of familial merry occasions or misfortunes as well as in the event of other exclusive cases.

[35] Specifically articles 5–11, 16, 23–28, 30, 32–45, 47–58, 60, 61, 64 of Law No. 8328, dated 16.4.1998 "On rights and treatment of prisoners".

6. Verification of juridical facts and the identification of the above motioned persons are carried out on the grounds of the documents issued on these occasions by the relevant bodies.

7. Admission of the pretrial detainees is done on the basis of the documentation which contains the judicial verdict on the imposition of the security measure of "imprisonment arrest", the minutes of detention or arrest in flagrante delicto, the minutes of personal inspection, identification form, two photos and fingerprints, document of medical check-up, personal certificate and ID, passport or identification document prepared by the police.

8. The release of the pretrial detainee is effectuated only by verdict of court or prosecutor's office. In the event of objective impossibility to leave the facility after being released, the pretrial detainee is sheltered in the facility, until the removal of the impediment to his leaving.

9. Detailed regulation of pretrial detainees' rights and duties, in accordance with the definitions provided for in this law, is stipulated in the prison regulation and other by-law acts. Recent amendments to the law "On rights and treatment of prisoners" guarantee the observance of pretrial detainees' rights and their treatment under better conditions, creating them a greater access to their family members, attorneys, state monitoring institutions like the Ombudsman, if they are guilty and their sentence is pending.

These legal amendments standardize for the very first time a different treatment of women and juvenile convicts from the treatment of other convicted persons (adults, men).

173. Treatment of prisoners.[36] Law No. 8328, dated 16.04.1998 "On rights and treatment of prisoners" (as amended) provides for that the enforcement of imprisonment sentence is carried out by observing the convict's dignity, and it shall be permeated by human feelings. This law defines the main principles for the treatment of convicts such as impartiality, non-discrimination on account of sex, nationality, race, economic and social status, political opinions and religious convictions. The convicts shall be provided with living conditions which reduce to the minimum the prejudicing effect of imprisonment and changes to the life of other nationals. Pursuant to article 32 of this Law the treatment of convicts is carried out by providing them with the appropriate premises and in accordance with their personality data:

2. Treatment objectives include education, vocational upbringing and training, and development of other individual skills, cultural, recreational and sport activities, work, spiritual assistance and other group activities which aim at recreating the ability to be integrated into society.

3. Social and educative of convicts is carried out by means of individual and training activities organized by the personnel of prisons trained especially in the pedagogical field, in cooperation with other employees of the facility.

4. Contacts with the outside world and their families are encouraged and ensured according to individual and group programs. Pursuant to article 41 of this law the convicts are permitted to have meetings and correspondence with their family members and other persons. Meetings are organized in special premises under the control of sight and not hearing by the supervising personnel. Meetings with family members are favored in particular. If the organization of the institution

[36] Detailed information is given in the comments on the conclusions and recommendations of the Committee against Torture (2005) in paragraph 8 (j).

permits it, the convicts may be authorized to stay with their family members beyond the stipulated time limit. According to the criteria of the prison regulation, the visits may take place in reserved premises. The administration of the facility places at the disposal of convicts all the necessary means for their correspondence if they lack them. The telephonic correspondence may be authorized in their relations with family members, in special cases with third parties as well. The convicts are permitted to keep newspapers, magazines and books and to use the other allowed means of information. At the request of the prosecutor, in cases provided for in the law, the court authorizes the inspection of the convict's correspondence. The inspection may be carried out by the director of the facility or by other persons authorized by him in the presence of the prosecutor. The prosecutor's request may suspend the delivery of the correspondence.

174. In the NPISAA, paragraph "Short-term legislative initiatives" provides for:

- Adoption of draft regulation "On the functioning of Supervising Committee for the Penal Sentence Enforcement"
- Adoption of draft law "On some supplements and amendments to the law on Prison Police"

For the preparation of legislative amendments to the law "On Prison Police" the Working Group was set up (with representatives from Ministry of Justice and the Directorate General of Prisons), which worked on the drafting of this law. In December 2008, the draft law was discussed and reviewed in parliamentary session.

Article 12
Legislative and administrative measures for a rapid and impartial investigation of an act if there are reasons to believe that torture has been exercised in any territory under its jurisdiction

175. Pursuant to the Constitution of the RoA, "Anyone, for the purpose of the protection of his constitutional and legal rights, freedoms and interests, or in the event of charges brought against him, is entitled to a fair and public trial within a reasonable time limit by an independent and impartial court stipulated by law."

176. Also, the criminal procedural legislation guarantees the legal proceeding in application of human rights and freedoms and procedural provisions define the rules for the ways of exercise of criminal prosecution, investigation and trial of criminal offenses, as well as the enforcement of penal sentences. These rules are binding on the subjects of criminal proceeding, state bodies, legal entities and nationals as well.

177. The Code of Criminal Procedure[37] stipulates that "each person who is aware of a criminal offense that is ex officio under prosecution shall indict it. In cases provided for by law, the indictment is mandatory. The indictment is submitted to the prosecutor or an officer of judicial police verbally or in writing, in person or by means of a representative."

178. Article 293 of the CCP stipulates that "upon receiving a notification of a criminal offense, the judicial police without delay addresses in writing the essential factual elements and other elements collected until then, to the prosecutor. It notifies, when appropriate, the generalities, the residence and every thing else which is valid for the identification of the person against whom an investigation is being carried out, of the injured party and of those

[37] The following legal provisions provided for by the CCP were not addressed in the First Report.

who are able to report the factual circumstances. If there is an emergency and in the event of serious crimes, the notification is made immediately and verbally. In the notification, the judicial police indicates the day and time it received the notification of the criminal offence.

179. Pursuant to article 294 "after referring the criminal offense, the judicial police continues to carry out the appointed functions, collecting and fixating each valid element to the reconstruction of the fact and individualization of the guilty. It prosecutes especially for the purpose of:

(a) Searching and fixating the objects and prints of the criminal offense, as well as preserving them and the scene of crime as long as that is indispensable;

(b) Search and interrogation of persons who are able to report the factual circumstances;

(c) Carrying out of actions defined in subsequent articles.

After the prosecutor's intervention, the judicial police undertake all the actions delegated especially by the prosecutor, as well as all the urgent actions to prove the criminal offense. The judicial police, when it undertakes actions which require special technical knowledge, shall appoint experts who can not refuse the task they are charged with."

180. Chapter VII of CCP defines the time limits of the termination of investigation. Pursuant to article 323, it is stipulated that within three months from the date the name of the person to whom the criminal offense is attributed, is recorded in the notification registry of criminal offenses, the prosecutor decides to bring the case to court or to dismiss or suspend it.

1. If the authorization of the proceeding is necessary, the lapse of time limit is suspended since the moment the request is made until the prosecutor receives the authorization. Pursuant to 324, the prosecutor may extend the investigation time limit for a period up to three months.

2. Further extensions, each for not longer than three months, may be decided upon by the prosecutor in the event of complex investigation or the objective impossibility to complete them within the extended time limit. The duration of preliminary investigation shall not exceed two years.

3. The decision on the extension of the investigation time limit is notified to the defendant and the injured party.

4. Investigative actions carried out after the completion of the time limit are not valid. Pursuant to 325, the defendant and the injured party are entitled to lodge an appeal with the district court about the time limit extension within ten days from the notification.

5. The complaint is reviewed by the court within ten days, after hearing the defendant, injured party, defense attorney and prosecutor.

6. If the court accepts the complaint, the investigation shall not continue or shall continue only for a time limit set by the court.

7. An appeal may be lodged against the court's sentence, which does not suspend its enforcement.

181. Pursuant to Law No. 749, dated 04.06.2007 "On the State Police" (article 81), related to the independent investigation of the conduct of the police officers, it is stipulated that: procedures for defining the actions to be undertaken when a national believes that the actions or non-actions of the police officer have violated his rights and freedoms are provided for in the Discipline Regulation.

182. The structures in charge of the investigation of an act, if there are reasons to believe that torture was exercised by the police officers in the entire territory are the Prosecutor's Office and the Internal Inspection Service in the Ministry of Interior.

183. Pursuant to Law No. 8749, dated 01.03.2001 "On the Internal Inspection Service within the Ministry of Interior",[38] in the Directorate of Internal Inspection Service, operates a structure directly subordinate to the Minister of interior, whose object is "the prevention, detection and documentation of criminal activity committed by the State Police employees and other structures of the Ministry of Interior" (article 2). Pursuant to article 4 "the verifying activity and preliminary investigation of this service is carried out by observing the constitutional guarantees of human rights and freedoms".

184. The Internal Inspection Service Directorate verifies and investigates with priority those cases when police officers while exercising their duties have violated human rights and fundamental freedoms. In such cases, the first administrative measure to be taken against the police officer who has violated the rights and freedoms of the detained (arrested) nationals, pursuant to the Discipline Regulation of the State Police is "dismissal from his duty or official capacity, and his criminal prosecution" proceeding according to the law and relevant regulation.[39]

185. The Assembly of Albania adopted Law No. 10002, dated 6.10.2008 "On the Internal Inspection Service in the Ministry of Interior".[40] Pursuant to article 3 of this Law, the object of the IIS activity is:

(a) Prevention, detection, documentation and preliminary investigation of criminal offenses committed by the State Police officers, notwithstanding their function or rank, about criminal offenses consumed in the course of duty and due to their official capacity;

(b) Work inspection of all the structures of the State Police about the its compliance with the legislation in force and the required standards, guarantee of accountability, effectiveness and efficiency.

186. Related to the investigative competences of IIS, Law No. 10002, dated 6.10.2008 (article 21) inter alia stipulates that: (1) Internal Inspection Service exercises its powers in accordance with this law, with the Code of Criminal Procedure and other legal and by-law acts in force. (2) In application of their duties, the investigative personnel have the attributes of the Judicial Police. Article 23 stipulates that:

1. In order to fulfil their duty, the investigative employees of IIS have the rights and responsibility to collect, administer and preserve data on the prevention, detection and investigation of criminal offenses committed by the State Police officers, notwithstanding their function or rank, using any lawful source of information.

2. Senior officials of the structures of the State Police and Ministry of Interior, for the enforcement of this law, are obliged to cooperate with this Service.

[38] This law was effective until the entry into force of law No. 10002, dated 6.10.2008 "On Internal Inspection Service in the Ministry of Interior".

[39] The information related to this issue is given in the third part of this Report in the comments on conclusions and recommendations of the Committee against Torture, paragraph 8 (c).

[40] As was identified above, with the entry into force of the law No. 10002, dated 6.10.2008, Law No. 8749, dated 01.03.2001 "On the Internal Inspection Service within the Ministry of Interior" was repealed.

3. When the employees of the State Police, Ministry of Interior and other state institutions, due to their official capacity, are informed on the involvement of State Police officers in criminal offenses, they are obliged to notify this Service immediately.

4. As regards the data collected on the involvement of the employees who are the objects of the work of IIS in criminal offenses, intelligence services inform the IIS within a given time limit and the way provided for in a joint guideline of the Minister of Interior and the senior officials of intelligence services.

5. Authorities invested with police powers may carry out investigations and arrests in flagrante delicto of the police officers, but they are obliged to notify the IIS immediately.

6. The IIS requests from State Police officers declarations about external activities, double employment, investments, assets and gifts or privileges, out of which a conflict of interests may arise, due to their functions of public officials.

7. For the purpose of data collection, the IIS may use secret collaboration with individuals, and in return for remuneration, the secret supervision of persons and premises.

8. The IIS is entitled to inspect and take documents, evidences and information, in hard copies or in electronic format, from all offices, secretariats and archives of the State Police or from any other information source. In case there are grounded reasons that a criminal offense has been committed, the above mentioned objects and documents shall be seized, if the criteria envisaged in CCP are met.

9. Public administration bodies, natural and juridical persons are obliged to submit the identifying data and the information lawfully collected, when requested by the service and are related to the object of its activity, excluding the data, the dissemination of which is prohibited by law.

10. Concrete rules for the use of information sources, defined in this article, about the taking, administration, verification, evaluation of data that are obtained by them are stipulated by a Guideline of the Minister of Interior.

187. Related to the investigation of violations, article 26 of this law stipulates:

1. If from the verification of a disciplinary violation is suspected that a State Police officer has committed an infringement that constitutes a criminal offense, all the case materials are forwarded to the Internal Inspection Service, which proceeds with the investigation of the case, pursuant to the Code of Criminal Procedure.

2. If from the investigation of the case does not result that the police officer has committed a criminal offense, the materials, along with an explanatory report, are returned to the Directorate General of the State Police, within two working days from the taking of this decision. In that case, the State Police may continue with the disciplinary proceeding.

188. The Guideline of the Prosecutor General No. 3 dated 8. 03. 2007 “On the improvement of work and inspection of the prosecutor in the course of criminal prosecution”[41] which was forwarded to be enforced to all levels, sections and services of judicial police of all structures in the State Police, stipulates as follows:

[41] It refers to the third part of the Report, related to the comments on conclusions and recommendations stipulated in paragraphs 7 (i), (g) and (k) and 8 (i), (g) and (k).

1. Notification of charges and the interrogation of the defendant are investigative actions of the prosecutor, which shall be carried out by him and exclusively by a special delegation order issued by him they may be performed by the judicial police officer.

1.1 The defendant shall be heard by the prosecutor who can evaluate his claims and decide on what is to become of them.

1.2 The prosecutor shall meet the defendant prior to the trial.

2. Notification of charges and the interrogation of the defendant by the prosecutors shall be carried out solely if there are sufficient data to take him in the capacity of the defendant.

2.1 If there are not sufficient data for taking the person as a defendant, there shall not be any precipitation to notify the charges or interrogate the defendant.

2.2 Until the administration of sufficient data, the person to be charged may stay in the capacity of the person under investigation.

3. Prosecutors and the judicial police officers shall have the required commitment and responsibility, to finalize the preliminary investigation within optimal time limits, giving each proceeding the necessary time for the collection of data related to the committal of the criminal offense and the individualization of its perpetrator.

3.1 Preliminary investigation shall be completed within three months from the date when the name of the person to whom the criminal offense is attributed, was recorded in the registry of the notification of criminal offenses.

3.2 Prosecutors shall supervise the completion of investigation within the legal time limits, not tolerating any unmotivated delay or discontinuation of investigative actions.

3.3 When the defendants are pretrial detainees, especially when they are juveniles, women or elderly, preliminary investigation shall be completed within the shortest time possible.

3.4 The inspection of the head of the prosecutor's office and prosecutors of the relevant structures of the Prosecutor's General Office shall be focused in particular on the proceedings against persons with the security measure of "imprisonment arrest" or "house arrest".

4. Notification of charges and interrogation of the defendant are investigative actions of the prosecutor, which shall be carried out by him and exclusively by a special delegation order issued by him, they may be performed by the judicial police officer.

4.1 The defendant shall be heard by the prosecutor in order to evaluate his claims and decide on what is to become of them.

4.2 The prosecutor shall meet the defendant prior to the trial.

5. Notification of charges and the interrogation of the defendant by the prosecutors shall be carried out only if there are sufficient data to take him in the capacity of the defendant.

5.1 If there are not sufficient data for taking the person as a defendant, there shall not be any precipitation to notify the charges or interrogate the defendant.

5.2 Until the administration of sufficient data, the person to be charged may stay in the capacity of the person under investigation.

6. The deadline of preliminary investigation may be extended, solely in particular cases, such as voluminous and difficult investigation, involving several defendants — about serious crimes and — for proceedings related to other jurisdiction within the country and abroad. If there are no strong and objectively justified reasons, the investigation deadline shall not be extended.

7. Prosecutors and judicial police officers shall take immediate measures to stop inappropriate and unofficial contacts with the parties under prosecution or any interested person in the settlement of the case, aiming at avoiding any type of corruptive affair or perception.

189. In April 2008 the Joint Order of the Ministry of Interior and Prosecutor's General Office on the functioning of the Judicial Police services in the State Police was adopted. This by-law act serves to the efficient functioning and standardization of Judicial Police procedures and directly coordinates the activities of the State Police and Prosecutor's General Office structures with regard to the fight against organized crime fight against trafficking and criminality in general. This order constitutes a clearer and more consolidated legal instrument for the harmonization, coordination and definition of priorities, competences, responsibilities and obligations of each employee of the Judicial Police structure. The issuance of this joint order will have an impact on the reduction of difficulties and elimination of delays during the preliminary investigation related to the contemplation of dual subordination of the Judicial Police to the Ministry of Interior and the Prosecutor's General Office. This order within the existing legal framework, aims at defining more clearly the functional tasks of the Judicial Police and Prosecutor's Office services in the course of the preliminary investigation. Also, this order stipulates the right and obligation of the state judicial police services to investigate the criminal offenses related by them, as well as the prosecutors' right and obligation to control and inspect the entire investigative process and evaluate the lawfulness of the actions undertaken by Judicial Police officers.

Article 13, paragraph 1
Measures which guarantee that the persons who might have been subjected to torture, are entitled to appeal and to a rapid and impartial review of their case

190. Law "On the State Police" (article 70) envisages the obligation to report complaints and specifically : The police officer reports to his relevant superior or, in the absence of the latter, to the superior of his direct superior, any complaint received with regard to the conduct of another Police officer. Pursuant to article 72, it is stipulated that: The police officer reports to his relevant superior or, in the absence of the latter, to the superior of his direct superior, any violation of which he has sufficient doubts to believe that was committed by another police officer, notwithstanding that he was informed about this violation in the course of duty or under other circumstances.

191. Law No. 8328, dated 16.4.1998 "On rights and treatment of prisoners"[42] (article 49) provides that the convicts may submit their complaints verbally or in writing within:

1. Director of the institution, inspectors, Director General of Prisons and Minister of Justice; District Court of the sentence enforcement and district prosecutor; persons who visit the facility (pursuant to article 43 of this law).

2. The institution is obliged to identify the complaints and ways of their settlement. The receipt and delivery to the defined destination of the written requests shall be documented. Pursuant to article 50, it is stipulated that:

"1. Competent bodies, according to this law review the complaints and requests as soon as possible, but not later than 1 month from their submission, saving the case when there are particular time limits stipulated by special provisions.

2. The convict is entitled to submit a special complaint about the delay of the reviewing of complaints and requests to the prosecutor or the court of the location where he is serving his sentence.

3. If the settlement of the complaint or request is the competence of penitentiary system bodies, the prosecutor orders the termination of reviewing within a given deadline.

4. In all other cases, it is the court that issues such an order. Article 71 of this law, provides for inter alia[43] the powers of the court in the territory of which the institution (facility) is located to review the cases related to the convict's rights, which were not settled by the institution as regards the convict's appeal.

(1) The judge reviews the case and rules with relation to what has been appealed against or requested in trial with the mandatory participation of the director of institution (facility) or his legal representative and the prosecutor. If the case may not be reviewed without the presence of the convict, the hearing takes place in appropriate premises of the institution where the convict is kept.

(2) In the review of the case, the attorney requested by the convict or appointed ex officio to convicted juveniles, the convicts with mental disorders, pregnant women or breastfeeding women, as well as to convicts of foreign citizenship, shall participate.

(3) Ungrounded requests or appeals which are repeated for the same reasons and causes are refused. The director of the institution and the prosecutor may lodge an appeal with the court against the ruling within five days from having been informed. As for the reviewing of appeals, article 73 of this law[44] stipulated that the Court reviews the appeals according to the reviewing rules of the case at second instance. If the annulment of judgment is ruled, the case is reviewed in any case in merits and is conclusively settled by virtue of a final judgment."

[42] The following legal provisions were not put forward in the First Report.

[43] The powers of the court with relation to the exercise of supervision as regards the law enforcment and application of rules in the sentence serving institutions, as well as about the observance and protection of the convicts' rights are identified in comments on article 11.

[44] Article 73 of Law No. 8328, dated 16.04.1998 was repealed by Law No. 9888, dated 10.03.2008.

192. By virtue of Law No. 9888, dated 10.03.2008 "On some supplements and supplements to Law No. 8328, dated 16.4.1998 "On rights and treatment of prisoners (article 30) "the title of the fifth part "Supervision of sentence enforcement" of Law No. 8328, dated 16.4.1998, was amended expressly: "Judicial review of appeals and the role of the Ombudsman". Also, article 22 amended article 50 of the Law No. 8328 dated 16.4.1998 and more specifically it stipulates that: "The convict is entitled to submit a complaint to the highest instances of the penitentiary system and if this complaint is not settled in administrative ways or against the judgment delivered by the court, the convict may address the court which operates where the sentence serving institution is located. This law repealed paragraphs 3, 4 of article 50 of Law No. 8328, dated 16.4.1998.

193. Pursuant to Law No. 9888, dated 10.03.2008 (which amended article 71 "Court Powers" of law No. 8328, dated 16.4.1998), "The Court, in the territory of which the facility is located, also reviews with a single judge cases related to the convict's rights, which were not settled by the institution as far as the convict's complaint is concerned". Article 33 of Law No. 9888, dated 10.03.2008 amended article 72 "Reviewing of the case by the judge", where inter alia is stipulated that:[45]

> 1. The judge reviews the case and rules with relation to what has been appealed against or requested in trial with the mandatory participation of the director of institution (facility) or his legal representative and the prosecutor. If the case may not be reviewed without the presence of the convict, the hearing takes place in appropriate premises of the institution where the convict is kept.
>
> 2. In the review of the case, the attorney requested by the convict or appointed ex officio to convicted juveniles, the convicts with mental disorders, pregnant women or breastfeeding women, as well as to convicts of foreign citizenship, shall participate.

194. As is stated above in paragraph 39, the supervision of the National Mechanism for the Prevention of Torture, is carried out by accepting the written or direct requests and complaints of convicts and the pretrial detention detainees and by taking information, complaints or requests from the convict.

195. Minister of Interior and Director General of Police by way of issued normative acts (orders and letters rogatory) in continuation have drawn the attention of and have assigned tasks to the local police structures about the improvement of work as regards the addressing of requests and complaints of the nationals deprived of liberty.

Article 13, paragraph 2
Legislative and administrative measures pursuant to which complainants and witnesses shall be protected from any kind of ill-treatment or threat as a consequence of the complaint or given testimonies

196. Code of Criminal Procedure of the RoA (article 37/a – "Collaboration with justice" added by Law No. 9276, dated 16.09.2004), provides for the cooperation of the person under investigation or of the defendant, accused of committing a serious crime in complicity.[46] Specifically article 37, paragraph 2, provides that the collaboration conditions are defined in the protection agreement, drafted pursuant to special legal provisions about

[45] Refer to comments on article 11.

[46] The contents of paragraph 1 of this provision was addressed in the above comments on article 4.

the protection of witnesses and justice collaborators. Pursuant to paragraph 3 of this article, when the cooperation agreement is concluded in the course of the trial, the court which reviews the case, rules the reduction of sentence or exemption from the sentence, according to the stipulations of the Criminal Code (article 28). When the cooperation takes place in the course of the enforcement of the sentence, the collaborator of justice may request from the court which delivered the judgment or that of the enforcement location to reduce the sentence. The court delivers a judgment after hearing the prosecutor's opinion. The collaboration agreement may be revoked if the justice collaborator breaches the stipulated conditions or gives false testimony.

197. Law No. 9205, dated 15.03.2004 "On the protection of Witnesses and Justice Collaborators" defines a series of measures for the protection of the complainant and witness from any kind of ill-treatment or threat as a consequence of the request or given testimonies. This law regulates special measures, the way and procedures of the protection of witnesses and justice collaborators, as well as the organization, functioning, powers and relations between the bodies entrusted with the proposal, evaluation, adoption and application of special protection measures. Pursuant to the law, the responsible bodies for the preparation, evaluation, adoption and application of special protection measures of witnesses and justice collaborators are:

(a) Directorate for Protection of Witnesses and Special Status Persons (DPWSSP) which operates within the Directorate General of State Police and extends its activity to the entire territory of the RoA and has the following powers:

- Prepares for reviewing by the Evaluation of Special Measures for the Protection of Witnesses and Justice Collaborators Committee the proposals submitted by the Prosecutor General for taking the special protection measures
- Decides on the application of temporary protection measures until the Evaluation of Special Measures for the Protection of Witnesses and Justice Collaborators Committee takes the final decision, pursuant to cases and ways provided for in this law
- Drafts and signs the agreement on the special protection measures with the persons protected pursuant to this law

The special protection measures are applied to persons, in the capacity of witness or justice collaborator who report or testify acts and circumstances which constitute decisive evidence in a criminal proceeding , about criminal offenses which are classified as "serious crimes" and whose life, because of these reports or testimonies, is exposed to actual, concrete and serious danger.

(b) Evaluation of Special Measures for the Protection of Witnesses and Justice Collaborators Committee which reviews the proposals submitted by the Prosecutor General, adopts the special protection measures, and decides on their amendment, revocation or termination, is comprised of the Deputy Minister of Interior, a Judge, a Prosecutor, an Officer of Judicial Police who are appointed respectively by the High Council of Justice, Prosecutor General and the Director General of Police.

198. In application of Law No. 9205, dated 15.03.2004 "On Protection of Witnesses and Justice Collaborators" a series of normative acts were drafted and adopted for the completion the legal framework:

1. Joint Guideline of the Ministry of Public Order, Ministry of Justice and Prosecutor's General Office "On the conditions, criteria and procedures for defining the temporary, exceptional and special protection measures for witnesses and justice collaborators".

2. Joint Guideline of the Ministry of Public Order, Ministry of Justice and Prosecutor's General Office "On duties, responsibilities and procedures of cooperation and informing between the state institutions".

3. Joint Guideline of the Ministry of Public Order, Ministry of Justice and Prosecutor's General Office "On setting the criteria and procedures for information safeguarding, administration and classification".

4. Joint Guideline of the Ministry of Public Order, Ministry of Justice and Prosecutor's General Office "On setting the criteria and rules for the meetings of Evaluation of Special Measures for the Protection of Witnesses and Justice Collaborators Committee".

5. Joint Guideline of the Ministry of Public Order, Ministry of Justice, Ministry of Finance and Prosecutor's General Office "On the functioning and work procedures of the Evaluation of Special Measures for the Protection of Witnesses and Justice Collaborators Committee, as well as the rights, obligations and treatment of its members".

6. Joint Guideline of the Ministry of Public Order, Ministry of Justice and Ministry of Finance "On the administration rules of necessary assets and funds for the exercise of the activity of the Protection of Witnesses and Justice Collaborators Sector".

7. Order of the Minister of Interior No. 953/3 dated 16.07.2007 and Joint Guideline of the Ministry of Public Order, Ministry of Justice, Prosecutor's General Office and State Police, which provides for the establishment of the Directorate for the Protection of Witnesses and Special Status Persons (DPWSSP).

199. Owing to various practical problems arising in the course of the implementation of special protection measures, the revision of the law "On the Protection of Witnesses and Justice Collaborators" was indispensable. Actually a working group was set up for the revision of this law, and it has prepared the draft-law which is being discussed in terms of the amendments to be made.

200. By Order of the Minister of Justice No. 3185, dated 28.4.2008, "On the categorization of the penal sentence enforcement institutions", a section for the persons who are considered as "justice collaborators" was established within the penal sentence enforcement institution Fushë Krujë", pursuant to the criteria of the law No. 9205, dated 15.3.2004, "On the Protection of Witnesses and Justice Collaborators".

201. Application of protection measures. Directorate for the Protection of Witnesses started the application of protection measures since April 2005. During the period April 2005–2008 two types of measures were applied, temporary protection measures (article 14 of the Law) and special protection measures (article 10 of the Law). The protection measures are applied to a considerable number of cases, involving a substantial number of persons, where the protection of the following categories is included: justice witnesses, justice collaborators, their relatives and family members. The special protection measures that are applied are:

(a) Change of identity;

(b) Change of residence;

(c) Special physical, technical protection measures at the location of the protected person, and during his movements, including the measures for fulfilling the obligations towards the justice bodies;

(d) Protection and special treatment, in cases when for having committed a criminal offense, a security measure was imposed on the justice collaborator or he was sentenced to imprisonment;

(e) Temporary protection of the identity, data and documents of the protected person;

(f) Release of statements by the witness under another identity, their administration by special equipment which deforms the voice and his real appearance;

(g) Social rehabilitation;

(h) Preservation, change and temporary ensuring of the witnesses' jobs;

(i) Granting of financial aid;

(j) Professional re-qualification;

(k) Specialized legal assistance.

202. This Directorate has created the necessary conditions:

(a) For the continuation of school education, relevant cycle, also in the residences they are accommodated;

(b) Ensuring of medical care;

(c) Ensuring of legal defense for civil cases irrelevant to the fact for which the person is taken under protection, (case of taking into custody the justice witnesses;

(d) Ensuring of psychological assistance, due to the stressful phase they have been through. In application of the law, the Directorate for the Protection of Witnesses has its own budget, incorporated within the State Police budget, for the purpose of the implementation of the special protection measures. In these cases, the financial expenditures are borne by its budget.

Article 14
Legislative measures which provide for the ensuring of the right to compensation and instruments for a complete rehabilitation of the victims of acts of torture, including cases when the victim dies

203. Pursuant to the Constitution, any person who was injured because of an unlawful act, action or non-action of state bodies is entitled to rehabilitation and compensation in accordance with the law.[47] The Code of Criminal Procedure of the RoA[48] stipulates that "the person or his heirs, who are injured by criminal offenses, are entitled to request the prosecution of the guilty person and the relevant compensation of the injury inflicted on them:

[47] As it was also informed in the First Report submitted by Albania.

[48] The following legal provisions (articles 58,59) were not addressed in the First Report.

1. The injured person who does not have full legal capacity to act exercises the rights conferred to him by law through his legal representative.

2. The injured person is entitled to submit requests to the prosecuting body and to require the receipt of evidence. When his request is not accepted by the prosecutor, he is entitled to complain to the court within five days after being notified of the fact (article 58)."

204. Article 59 of CCP stipulates that "the person who was injured by the criminal offenses provided for in the Criminal Code[49] is entitled to submit a request to the court and to participate in trial as a party to prove the accusations and to demand the compensation of damages.

1. The Prosecutor participates in the trial of these cases and when appropriate, requests the punishment of the defendant or his acquittal.

2. If the accusing injured person or the defense attorney appointed by him does not appear in the trial hearing without having any reasonable excuses, the court rules the dismissal of the trial. The CCP stipulates the procedures related to the compensation for unfair imprisonment, whereas the Civil Code provides for the compensation of the unlawfully and intentional inflicted injury."

205. The object of Law No. 9381 dated 28.04.2005 "On compensation for unfair imprisonment" is the regulation of cases for obtaining the compensation for unfair imprisonment, including house arrest and the amount and way of its calculation, as well as the procedures for requesting, paying off and compensation of unfair imprisonment. The right to compensation for the served imprisonment is enjoyed by the person who has been declared not guilty or about whom the trial has been dismissed by final judgment of the court or by the prosecutor, or if he was kept in prison beyond the time limit stipulated in the sentence.

206. The Assembly of Albania adopted Law No. 9831, dated 12.11.2007 "On compensation of ex-political convicts of the communist regime", whose object of regulation is the definition of beneficiaries, the amount, criteria and procedures for the obtaining of the financial compensation by ex-political convicts, who suffered the direct persecution of the communist regime, by being subjected to unfair penal sentences, such as imprisonment or mandatory medical measures , as a consequence of final criminal judgments of ordinary courts, special courts or orders of investigation bodies during the period of time from 30.11.1944 until 1.10.1991. Also, the object of this law is the compensation of the family members of the victims executed or shot unjustly because of political motifs, by final criminal judgments of ordinary courts, special courts or orders of investigation bodies (during the period of time from 30.11.1944 until 1.10.1991), as well as the financial compensation for the interned or expelled persons.

207. The aim of this law is giving of financial compensation by the Albanian state to ex-political convicts of the communist regime, who are still alive, to the family members of the executed victims and to the persons who were interned or expelled to camps, as a commitment of the democratic state toward the condemnation and punishment of the crimes of the totalitarian communist regime and guaranteeing a better life to this people. Pursuant to this law, the financial compensation does not exempt taking of other legislative or administrative measures, at present or in the future, in respect of ex-political prosecuted persons or convicts, measures which serve to the restoration of justice and social dignity of this category of people or the creation of favorable conditions for their social re-integration.

[49] Articles 90, 91, 92, 112 first paragraph, 119, 120, 121, 122, 125, 127, 148, 149, 254.

208. Pursuant to article 5 of law No. 9888, dated 10.03.2008 "On some supplements and amendments to Law No. 8328, dated 16.04.1998 "On rights and treatment of prisoners", article 9 of law No. 8328, dated 16.04.1998 was amended, and more specifically the Title: "Re-educative Purpose" becomes "Social Rehabilitation". According to point b article 5, the word "re-education" is replaced with "social rehabilitation" and pursuant to these modifications; article 9, with regard to social rehabilitation stipulates that "the convicts shall be provided with a treatment that aims at the social rehabilitation for their integration into social life".

Article 15
Measures guaranteeing that each statement or testimony, released as a consequence of torture, shall not be used as evidence in any proceeding

209. As was identified above, the use of violence by the person in charge of the investigation, for the purpose of forcing the national to release a statement, to testify or to assert his guilt or that of another, is envisaged in the criminal code as a criminal offense with the respective sanctions.[50]

210. Article 36 of the CCP of the RoA stipulates that "the statements made in the course of the proceeding by the defendant shall not be used as testimonies". Article 37 stipulates that "when a person, who is not taken in the capacity of the defendant, makes statements before the prosecuting authority, from which emerge data demonstrating his incrimination, the prosecuting authority discontinues his interrogation, warning him that after these statements an investigation may be carried out against him and invites him to appoint a defense attorney. The previous statements shall not be used against the person who made them."

211. Article 38 contemplates that "The defendant, even if an isolation security measure has been taken against him, or is deprived of liberty for any other reason, is interrogated while unlawfully at large, with the exception of cases when measures shall be taken to prevent the risk of escape or violence.

1. No methods or techniques which influence the freedom of will or change the ability of the memory and evaluation of facts shall be used, neither with the consent of the defendant.

2. Prior to the interrogation, the defendant is explained that he is entitled not to answer the questions, and even if chooses not to answer the questions, the proceeding will still continue".

212. Pursuant to article 140 of the CCP, the evidence consists of information about the facts and circumstances related to the criminal offense, taken from sources provided for in the criminal procedural law, in accordance with the rules defined by it and that serve to prove the committal or not of the criminal offense, its consequences, culpability or innocence of the defendant and the degree of his liability.

213. Pursuant to article 150, the object of evidence are the facts related to the charges, culpability of the defendant, imposition of security measures, punishment and civil liability, as well as the facts on which depends the application of procedural norms. Pursuant to article 151/1, in the course of preliminary investigation, the evidence is taken by the prosecuting body, according to the ruled stipulated in this Code. 2. At the trial, the evidence is taken at the request of parties. The court rules by issuing an order, exempting the

[50] Refer to comments on article 4, paragraph 78.

evidence prohibited by the law and that which is apparently unnecessary. Disposals on the taking of evidence may be revoked at any phase of judicial review.

214. Pursuant to article 152 of the CCP, evaluation of evidence means the definition of their authenticity and proving power. Each piece of evidence is subjected to examination and scrutiny and does not possess a pre-defined value. The court evaluates the evidence according to the opinion formed after their overall examination.

1. The existence of a certain fact may not be inferred by indicium only if those are really important, accurate and compatible with each other.

2. The statements made by the co-defendant of the same criminal offense or by the person taken as defendant in another proceeding related to the former, are evaluated in unity with the other evidence that confirm their authenticity.

215. Article 321 "Taking of evidence" stipulates that the evidence taking hearing takes place with the indispensable participation of the prosecutor and the defendant's attorney. The representative of the injured party is also entitled to take part in the hearing session.

1. The defendant and the injured person are entitled to participate in the interrogation of a witness or another person. In other cases; they may participate on the grounds of a preliminary authorization of the court.

2. The taking of evidence about facts related to persons who are not represented by their defense attorneys in the trial hearing is prohibited.

3. The minutes, the objects and the documents taken for the securing of evidence, are forwarded to the prosecutor. The defense attorneys are entitled to examine them and to make copies of them.

216. As regards the use of taken evidence, article 322 of CCP stipulates that the evidence taken pursuant to the rules of this chapter may be used in the judicial review only against the defendants, whose defense attorneys were present in the process of the taking of evidence.

2. The judgment delivered on the grounds of evidence taken pursuant to the rules of this chapter, in which the injured person was not able to participate, does not bring about any consequences, saving the case when the defendant himself has accepted them, in silence notwithstanding.[51]

217. The Guideline of the Prosecutor General No. 2 dated 8. 03. 2007 "On guaranteeing the observance of human rights in the course of criminal proceeding" , inter alia stipulates that the prosecutors shall be careful in their evaluation which shall be based on law and evidence, when they formulate the charges or modify them against the person to whom the criminal offense is attributed, avoiding any case of wording of charges or their modification, not grounded on law or evidence, aiming at avoiding the dismissal of the case with or without arrested persons. Also, the prosecutors shall guarantee equality before the law and shall be aware of all the circumstances related to the case, evaluating both the aggravating circumstances and those which acquit the suspected person, the person under investigation or the defendant.

[51] Provisions of the CCP addressed in paragraph 177 above were not put forward in the First Report.

Article 16
Legislative and administrative measures for the prevention of other acts of cruel, inhuman and degrading treatment or punishment, which are not classified as torture according to the definition in article 1 of the Convention, when such acts are committed, instigated, permitted or passed in silence (with the consent or acquiescence) of public officials or other persons acting in an official capacity

218. As was identified above,[52] the Constitution, Albanian legislation and the by-laws in its application, as well as normative acts, which guarantee the observance of the rights of detained, arrested or convicted persons, as well as the prevention of torture , also provide for the prevention of any inhuman and degrading act or punishment, that are not classified as torture.

219. Pursuant to article 28/5 of the Constitution "each person, deprived of liberty according to article 27, is entitled to a human treatment and respect of his dignity".

220. Pursuant to Law No. 8553, dated 25.11.1999 "On the State Police", the police officers, while fulfilling their duties, may not use more force than necessary. In the course of the fulfillment of their duties, the police officers are not permitted to commit acts ungrounded on law, inhuman or degrading treatment or punishment against the individuals.

221. Law No. 9749, dated 04.06.2007 "On the State Police" guarantees the protection and observance of human rights by the State Police employees while carrying out their duties pursuant to the legislation in force, as well as the by-laws. Article 100 of this Law provides for the taking of social measures when:

1. The police officer notifies individuals to appear in police offices under these circumstances:

   (a) To elicit information in order to prevent a potential danger;

   (b) To identify persons who might be aware of the danger or incident;

   (c) To identify the potential offenders.

2. Appearance notification is made by a summons or verbally, defining the reason of appearance, the police officer, time, place and the necessary information to contact the police officer in case of impossibility to appear.

3. If, because of personal or family circumstances, the notified person is unable to appear in the police offices; the police officer may go and take the information to the residence of the notified person. Pursuant to this law, "escort" means the case when a person has violated an administrative rule and his identification creates the necessity of escorting him to the police offices with or without his consent.

222. Pursuant to article 101 the police officer escorts the persons to the police premises or to the order issuing body in the following cases:

(a) To supervise the juvenile for re-education purposes or to escort him to the competent body;

(b) When the person is a carrier of an infectious disease, mentally incapacitated and dangerous to the society.

[52] Comments on articles 2, 4, 10, 11, 14, etc.

2. The escorted persons are entitled to human treatment and respect of their dignity. They are immediately notified of the escort reasons by the police officers.

3. The escorted persons are kept in premises different from those of detained or arrested persons. In these cases, the persons are kept in the police facilities until the matter, for which the escort was carried out, is verified, but in any case not longer than 10 hours.

4. In the event of escort for unlawful entry into the state border, expulsion or extradition, the procedures and the deadlines of keeping the persons in the police premises are defined pursuant to the legislation in force.

5. As regards the escort and keeping of persons in the police offices, the police officer documents the action and immediately informs his superior or the body interested in the clarification of the matter.

6. In all cases of escort and keeping of persons in the police offices, the personal and familial circumstances of the person to be escorted shall be taken into account.

223. Article 106 of this law stipulates that "Protection measures are taken against persons who are mentally ill, drunk, drug-users or persons suffering from infectious diseases. In these cases, the police officer escorts the person to the police premises, health institutions, and rehabilitation centers or surrenders him to his legal guardian or the responsible persons.

224. Article 47[53] of law No. 8328 dated 16.04.1998 "On Rights and Treatment of Prisoners" (as amended), envisages that the convicted person is subjected to body search in any case of entry or exit from the institution and , in other cases, when there are reasonable causes. The body search shall be carried out by respecting the dignity of the convict.

1. The search may be carried out only by persons of the same sex with the convict.

2. The search is carried out by authorization of the institution director, for cases and according to the way contemplated in the prison regulation.

225. As was also identified in the First Report, Law No. 8328 dated 16.04.1998 "On Rights and Treatment of Prisoners" (with the relevant amendments), prohibits the use of physical force against the convicts, if that is not indispensable to stop violent acts, attempts of escape from the institution, as well as to subdue rebellion even if he is passive in carrying out the issued orders. The personnel, who for any reason has used physical force against the convicts, shall immediately inform in writing the institution director, who, on his part, carries out the necessary inspection and provides the convicts with medical assistance and only after that, he verifies the matter. The instruments of physical coercion shall not be used as a punishment, only in cases provided for in the regulation , in order to avoid the attempts of escape from the institution, violence against people, damage caused to objects, as well as to guarantee the health of the person in question. The use of instruments of physical coercion shall be limited in time and for a period longer than 72 hours; the prosecutor's consent shall be taken.

226. Article 23 of Law No. 9888, dated 10.03.2008 "On some supplements and amendments to law No. 8328, dated 16.04.1998 "On rights and treatment of prisoners", has amended article 55 of Law No. 8328, dated 16.04.1998 "On rights and treatment of prisoners" and more specifically pursuant to article 55 of this law[54] "The convicts may be

[53] This provision was not identified in the First Report.

[54] Paragraphs 1 and 2 of article 55 of Law No. 8328 dated 16.04.1998, were effective until the entry into force of Law No. 9888, dated 10.03.2008.

put under special supervision regime, in prisons or high security sections, for a period not longer than three months, when:

(a) They endanger the security or disturb the order in the institution;

(b) They hinder the activity of other convicts through violence and threats;

(c) They try to force the other convicts to submit to them or to take advantage from other convicts;

(d) They instigate the other convicts not to observe or violate the rules individually or in groups.

1. For putting the convicts under the above mentioned regime, the criteria and rules described in article 12 of this law are applied.

2. In case of emergent needs, the Director General of Prisons orders directly the temporary transfer of the convict under the special supervision regime, informing the prosecutor immediately about that, who, within 24 hours shall submit the request to the court, which in turn, by a ruling, confirms or cancels the temporary measure.

3. If the convict, during the special supervision regime, commits the offenses envisaged in this article, the regime period may be extended up to three months for any case, observing the rules for taking this measure.

227. Pursuant to article 56 of this Law, the special supervision regime contains the most necessary restrictions for maintaining order and security, for the exercise of the convicts' rights and for the treatment rules contemplated in the prison regulation.

1. In any case, the coercive measures are not related to requirements of hygiene, health, clothes, food, appliances, keeping, purchasing and receipt of food or other objects stipulated in the institution's regulation, reading of books, religious practices, use of permitted types of radios, aeration, meetings with the defense attorney, as well as with the spouses, children and in the event of juvenile convicts, with their parents.

228. Article 23 of Law No. 9888, dated 10.03.2008 amends article 55 of law No. 8328, dated 16.04.1998 "On rights and treatment of prisoners" and more specifically as regards putting the convict under the special supervision regime for a period longer not longer than three months in the cases identified above. Pursuant to this article "Solely the participation in joint activities or aeration in groups is restricted to the convict under the special supervision regime, by order of the institution director."

229. The General Regulation of Prisons stipulates that "The prison personnel is prohibited to commit against convicts acts that are not grounded in law, or inhuman and degrading treatment and punishment."

230. The Pretrial Detention Regulation stipulates that "It is prohibited to use any type of violence, cruel, inhuman or degrading treatment in pretrial detention institutions or facilities." Also, this Regulation highlights that "the treatment of pretrial detainees shall be impartial and free of discrimination, observing the national and international standards of human rights without any kind of discrimination on account of color, race, sex, ethnicity, religion, gender and age. The use of any form of violence and cruel, inhuman or degrading treatment is prohibited in any pretrial detention institution or facility. This prohibition also includes threats, insults or any other type of violence or verbal expression which gives the impression of endangering the life or the trial of the pretrial detainee or his family members. The Discipline Regulation of Prison Police stipulates that the Prison Police employees shall avoid any act of brutality, bad conduct or other actions which encroach on the mental and psychic health of the prisoners."

In the field of mental health

231. Law No. 8092 dated 21.03.1996 "On Mental Health" is a very important tool for the achievement of aims and objectives within the framework of mental health policy. In application of Law "On Mental Health", (article 44) "Regulation of Mental Health Services" was adopted (by Order of Minister of Health, No. 118, dated 15.05.2007). This Regulation defines that the Ministry of Health is the responsible authority for the development of mental health services aiming at the promotion, prevention, diagnistication, treatment and rehabilitation in the field of mental health.

232. The measures taken in application of Law on Mental Health for the period 2003–2008 are:

- Adoption of National Strategy of Mental Health, "National Policy for the Development of Mental Health Services in Albania" adopted by the Minister of Health in March 2003.
- "Action Plan for the Development of Mental Health Services in Albania" adopted by the Minister of Health in May 2005. The aim and strategical points for the implementation of this plan are the establishment and development on national scale of the community mental health care. During this period, pursuant to the objectives of the Action Plan for the Development of Mental Health Services in Albania and in cooperation with the World Health Organization (WHO) the expected results were achieved and the reform process passed from the emergency phase to the development phase.
- Political Document and Action Plan for the Development of Mental Health Services in Albania, 2005–2007.

233. The Ministry of Health, in cooperation and with the support of the European Office of WHO are working together within the framework of a broad emergency program and humanitarian assistance in the field of mental health, introducing the orientation of community mental health toward the old system which was based on big hospital facilities.

234. A series of by-law and normative acts have been issued in the field of mental health:

- Regulation of Mental Health Services, adopted by Order of Minister of Health, No. 118, dated 15.05.2007. This document stipulates that mental health services shall be offered to all the mentally ill persons without any discrimination on account of gender, race, religion, ethnicity, age, language and the exercise and observance of their rights namely: the right of speech in any place and under any circumstance, the right of observance of moral, religious, political opinions; the right of communication at any moment; recognition and pointing out of the skills and abilities of the patients and not just identification of their difficulties and incapacities; the right of information about any type of medical treatment submitted to them and the right of their involvement in decisions related to their health and life; the right of not being subjected to harmful acts affecting their physical integrity and personal dignity; and in particular, the right not to be subjected to any type of physical punishment; meeting of elementary needs; the right of choosing the professional physician in charge; the right of socialization; the right of deciding on treatments to be carried out by doctors of the same sex; etc shall be guaranteed under any circumstance and at any given moment.
- Order of the Minister of Health on the adoption of "The Clinical Card to be used by Psychiatric Services and the Card to be used by Mental Health Community Centers" (No. 403, dated 26.09.2007). The adoption of these clinical cards aims at improving these documents so that they can be more qualitative and useful to the clinical and community practice.

- Order of the Minister of Health on “Definition of coverage areas of psychiatric hospitals and bedding facilities” (No. 325/2, dated 1.10.2007), related to the referring of cases according to coverage areas.

235. Measures taken to improve the services in psychiatric care structures:

1. Mental Health Services are concentrated in four districts of Albania where psychiatric hospitals and wards are located. Bedding structures are represented by two psychiatric hospitals (asylums): (a) Psychiatric hospital in the city of Elbasan, with a capacity of 310 beds, currently with 300 hospitalized patients and the psychiatric hospital in the city of Vlora with a capacity of 240 beds, currently with 219 hospitalized patients; (b) Two psychiatric wards; one in Tirana with a capacity of 120 beds, currently with 90 hospitalized patients and the other in the city of Shkodër with a capacity of 110 beds and with 75 patients currently hospitalized.

2. Ambulatory structures are represented by neuro-psychiatric cabinets, which are not present in any district and which very frequently cover the needs for both psychiatric and neurological consultations.

3. Mental Health Services for Children and Adolescents are only concentrated in Tirana.

236. The Children’s Development Center and National Center for the Development, Upbringing and Rehabilitation of Children offers several services in this field, whereas in one of the Speciality Policlinics of Tirana, the Ambulatory Psychiatric Service of Children and Adolescents operates. Bedding structures are represented by the Psychiatric Clinic for Children and Adolescents in HCMT.

3. At the service level, some types of mental health community services have been established:

- Tirana region:
  Three Mental Health Community Centers.
  The Home supported by Saint Egidio Community for 5 persons.
  Daily Centers organized by non-governmental organizations (“Alternativa” and “Fountain House”).
- Elbasani region:
  Daily Center for the hospital’s patients
  Supported home for 10 persons
  Revenue generating activity , Social enterprise “Së bashku (Together)”
  Mental Health Community Center
  Supported home for 12 persons (6 women and 6 men) in Cërrik
- Vlora region:
  Mental Health Community Center
  Supported home for 10 women
- Shkodra region:
  Psychiatric ambulatory service in the Policlinic of the city of Shkodra
  Supported home for 10 persons
- City of Korça
  Mental Health Community Center
- City of Berati
  Mental Health Community Center
- City of Peshkopia
  Mental Health Community Center

- City of Gramshi
  Mental Health Community Center

4. The following activities have been planned for the period 2008–2009:

- In the city of Shkodra the construction of three Supported Homes for the accommodation of chronic patients is almost complete, whereas the construction of the acute ward with 35 beds is about to start. Also, the establishment of a Mental Health Center for the patients of psychiatric hospital in the city of Shkodra has been planned.

5. Improvement of medical services. Actually, in HCMT the reconstruction of the main building of the Psychiatry Service is over, and all the necessary measures to completely equip and furnish it are under way. All the patients have been transferred to this building and the offered service is provided at its full capacity.

- As regards the psychiatric hospital in the city of Elbasan, its complete reconstruction is over, which was designed in accordance with the principles of contemporary psychiatry for the observance of human rights enabling the establishment of premises that favor the socialization of patients, better relations with the personnel and the psycho-social rehabilitation of the patient as long as he stays in hospital. The psychiatric hospital and the supported home for 12 mentally ill persons from the city of Cërrik who are actually chronic residents in the hospital of the city of Elbasani have become fully operational.

- With the support of WHO, in the hospital of the city of Korça, the new Mental Health Community Center was established. Currently the training of the multi-disciplinary team is under way. Also, in application of the Action Plan for the Development of Mental Health Services in Albania, for the purpose of strengthening the mental health community services in the psychiatric hospital in the city of Elbasan, the improvement of the service quality and a more efficient use of sources in health structures, by Order No. 151, dated 25.03.2008 of the Minister of Health, the establishment and functioning of a MHCC at the service of the population covered by the Elbasan Policlinic, was adopted.

- Pursuant to the Master-plan on the improvement of the conditions of the psychiatric hospital in the city of Vlorë, in 2007 the draft-idea on the master-plan of the psychiatric hospital complex in the city of Vlorë has already been developed.

- With the financial support offered by the Puglia Region in Italy, in cooperation with the Office of ART GOLD Program in Tirana, the directorate of the psychiatric hospital in the city of Vlorë was granted the necessary funds for the draft-estimate of the reconstruction of a building in Vlorë for the development of the plan of activities for the establishment of new facilities near the Mental Health Community Center in the psychiatric hospital in the city of Vlorë. This project will enable the reconstruction of a part of another building (building of former Dystrophic Hospital) to transform it into a supported home for 10 women of psychiatric hospital of Vlora, as well as the development of social-rehabilitative activities of MHCC for the users of these services and the hospital patients. The project is planned to be in place within 2008. Also, a new building was planned to be built within the territory of the hospital for the accommodation of acute patients who are currently hospitalized in the psychiatric hospital of the city of Vlora, saving the preservation of 2-3 existing objects of the hospital.

- Pursuant to the Joint Agreement dated 07.06.2007, concluded between the Ministry of Health and Saint Eggidio Community in Italy, it is planned to build and make operational within September 2009 family homes with a capacity of 15 people, for the accommodation of chronic patients who are hospitalized in the premises of the University Psychiatry Service. Actually, the site for the construction of these facilities has been already identified.
- In the hospital of the city of Shkodra, the construction of an acute ward with 35 beds has been envisaged. The construction of the new building will enable the accommodation of patients who are actually hospitalized in the psychiatric service of the hospital of the city of Shkodra. The designing task is already in place and this will anticipate the project for the construction of the building within the territory of the hospital. As regards 2008, the investment budget for the construction of this ward in the amount of 10 million lek has already been planned and adopted. The approximate value estimated for the construction of this object is 70 million lek. Within 2008 the construction of three supported homes in Shkodra with a capacity of 15 people each, has been envisaged, for the accommodation of patients who are actually hospitalized in the psychiatric service of the hospital of the city of Shkodra. For the construction and furnishing of these homes, for 2008, 60 million lek have been granted. The tender- procurement procedure has already started.
- Also, the process of negotiations with the Regional Hospital of Shkodra for the establishment of a Mental Health Community Center in the premises of the emergency room of the Central Policlinic of the city is under way.

The necessary measures have been taken in all the psychiatric hospitals and they are systematically being monitored.

6. Treatment of patients, meeting of needs for medicaments and participation in treatment plans of rehabilitative programs. MoH has taken a series of necessary measures for the improvement of living conditions of the patients in psychiatric hospitals. In all the psychiatric hospitals, the creation of conditions for the implementation of rehabilitative programs as well as the spreading of the experience acquired by the practical application of these programs is considered as very important.

- In psychiatric hospitals and services, the medical personnel is being oriented towards the implementation of “open doors policy”. As regards the implementation of “open doors policy”, the raising of awareness of the leading structures of hospitals and medical personnel has been carried out so that the health care in psychiatric hospitals will be oriented towards the implementation of this policy. In the psychiatric hospitals in the cities of Vlora and Elbasan the new practice of open doors service in the admission section is being implemented and the personnel is working on the application of this positive experience in the wards of chronic patients of these hospitals.
- Specifically, in the psychiatric hospital of Vlora, the patients are free to wander within the premises of the hospital, to engage in various activities without any restriction and the types of activities for patients have increased. Nonetheless, not all the patients take advantage of this freedom, because a good part of chronic patients do not have a lot of interests and are very passive. For this category is being worked through individual rehabilitative programs with concrete objectives about the scale of regaining individual independence. Planning and offering of care through individual programs , by

describing the role of each member of the multidisciplinary team as well as the objectives in accordance with the patient's status and potential, constitutes one of the main objectives of the training of the staff, so that they will be supported and strengthened in the future. To enable the documenting of such a practice, the clinic card was approved by the Steering Committee of Mental Health (to be used by the personnel of community and bedding structures), which was reviewed in accordance with the legal requirements for the observance of patient's rights.

- Specifically in the psychiatric hospital of the city of Elbasan:

  (a) The use of occupational therapy is continuing in the Daily Center of the patients under the care of rehabilitation team;

  (b) Ten patients (women) are selected and accommodated outside the hospital in a supported home;

  (c) Patients engage in various activities (for example a small greenhouse is set up in the interior premises of the hospital. This small agricultural activity enables the activization in a paid job of a group of 5 patients, 4 hours a day);

  (d) Extra-hospital social relations are promoted, through visits by various groups (for example with students), thus creating a very pleasant atmosphere for the patients.

- Psychiatric hospital service in Shkodër, in addition to the promotion of extra -hospital social relations, applies also the practice of exchange of groups of patients between these wards and the supported home that operates in Shkodër. Also, in HCMT Tirana, importance is attached to the application of occupational therapy. Individual and group plans have been drafted by a personnel team in charge of this task. This experience is increasingly developing, and has served as the preparatory phase for the patients' discharge from the psychiatric hospital toward supported homes or community centers.

- With regard to this practice, training of staff has been planned, as well as mutual visits for exchanging the positive experiences of the hospitals' personnel.

- As regards the cooperation with the General Hospitals in terms of patients' somatic needs, it can be said that the relations with these hospitals have improved , enabling in most of cases the solution in time of consultation needs by other specialists. It remains to improve in all psychiatric hospitals the cooperation with expert physicians of respective general hospitals to meet in time the needs of the patients hospitalized in psychiatry. The psychiatric hospital of Vlora has signed agreements with the general hospital on the way, place and time of consultation of mentally ill patients with relation to somatic problems.

7. Use of restricting instruments. Restriction of patient is used only for the agitated and violent patients for the purpose of therapy or to avoid their self-injury and that of the personnel and is limited to manual control. Instruments of physical restriction (belts or straitjackets) are very rarely used by order of the doctor or when he is immediately notified. Each physical restriction is noted down in the patient's card and is signed by the physician who has ordered or approved it. In the Psychiatry Service at HSMT in Tirana, there have been no physical restrictions of the patients

in the course of the last 14 years, but solely the pharmacologic restraint has been used.

8. Separation (isolation) of violent or "incontrollable" patients. In the psychiatric hospital of Vlorë there are no isolation rooms, neither in that of Shkodra. In HSMT in Tirana, with relation to psychiatric service, in the design of the reconstructed buildings, the construction of isolation premises in accordance with international standards has been planned. In the psychiatric hospital of Elbasan there are four isolation rooms which are used very rarely and by order of doctors. Whenever an isolation case takes place it is noted down in a special registry.

9. Water and power supply. In general, there are no problems with the water supply of psychiatric hospitals or wards, whereas the power supply still remains problematic, especially for the hospital of Vlorë, because this facility does not have a separate line for power supply. In order to solve the power supply problem, the necessary measures for the purchase of a generator were taken. The hospitals of Elbasan and Shkodra have not encountered any problems in terms of power and water supply.

10. Well-administration of medicaments, improvement of accommodation conditions and personal hygiene of patients.

- In all hospitals, particular importance is attached to the monitoring of medicaments' administration for the purpose of the elimination of prohibited acts. Specifically, in the psychiatric hospital of Vlora, the way of the delivery of the therapy has changed, by packaging the medicaments in special plastic bags where the names of the patients and the instructions for use are written down. In all psychiatric hospitals and wards, measures have been taken for the improvement of accommodation conditions and personal hygiene of patients. In all hospitals there are sufficient beds for all the patients and the necessary material basis has been ensured (such as mattresses, sheets, blankets for use and in reserve etc).

- In the hospital of Vlorë the necessary quantities of beds, mattresses, sheets and blankets have been ensured, thus fulfilling the needs of all the wards. Also, the number of patients who have a bed-side cabinet for personal belongings has increased. It is being worked on drawing up a schedule for the bathing of patients, change of clothes and bed sheets. New seasonal outfits have been bought for patients. The hospital is being oriented towards buying of not identical outfits, in order to strengthen the personal identity and self-respect, considering this as part of the therapeutic process. Notwithstanding all these changes in the well-administration of available resources, in the psychiatric hospital of Vlora there are still dormitories with high capacities which are not in accordance with the norms of modern psychiatric hospitals and wards. Within this framework, the necessary measures are being taken to improve this situation that has an impact on the preservation and restoration of patient's dignity, as well as on their psychological and social rehabilitation. In the psychiatric hospital of Shkodra, Albanian Caritas has brought winter clothes for the patients and so has a Norwegian association. Continually, the directorates of psychiatric hospitals are being oriented to the enhancement of the hygiene level in and off wards. There has been an improvement in the supply of the wards with detergents in accordance with their real needs and the situation is supervised on ward level by the respective heads and chief-nurses. The reconstruction of toilets is under way in the psychiatric hospital of Shkodra. Notwithstanding the improvements, there is

still a lot to be done to ensure and maintain the required level of hygiene in and off the wards (especially the toilets).

11. Observance of nutrition norms for the patients. The food for the patients in hospitals has improved, both from the quantitative and qualitative point of view. The directorates of psychiatric hospitals in Vlorë and Elbasan are working constantly on the improvement of cooking conditions, observance of nutrition norms as well as the improvement of food serving and eating conditions, considering the compliance and maintenance of such a standard as part of the psychological and social rehabilitation of the patients. For the purpose of the improvement of patients' eating conditions, all the necessary measures have been taken for ensuring the needed quantities of tables, chairs, plates, glasses, spoons for all the patients and the room service with all the necessary cutlery has been enabled for all the patients (e.g. in the psychiatric hospital of the city of Vlora, the refectories are furnished with tables and chairs and the kitchens are supplied with all the necessary tools and appliances as well.

12. Meeting of needs of patients with multiple disabilities. In general, the psychiatric hospitals pay care to the treatment of patients with multiple disabilities. The aim is to treat patients with such problems in a particular way. Thus, in the psychiatric hospitals of Vlora and Elbasan, the necessary basic tools are placed at the disposal of the personnel (for the patients who can not move and who suffer from incontinence – about 40 patients in the hospital of Vlora and 50 patients in the hospital of Elbasan). The necessary assistance is ensured to these patients, by establishing the appropriate premises for moving and eating and direct help is offered to them by the personnel.

The measures taken for the prevention of ill-treatment or violence exercised by medical personnel against patients

237. Law on Mental Health and the Regulation of Mental Health Services are the legal and by-law acts which protect and observe the rights of the patients with mental health problems. The Ministry of Health has taken the necessary measures to prevent the cases of ill-treatment or violence against patients. The relevant structures of the MoJ organize regular meetings (three times a week) with the administrative directors of psychiatric hospitals and wards as well as with their medical personnel, and in these meetings they have pointed out the fact that the ill-treatment of patients, including their verbal degrading treatment, is unacceptable and punishable. It has been pointed out that the situation shall be supervised in continuation and the necessary measures shall be taken against the personnel that carry out such practices. The directorates of psychiatric hospitals are following the dynamics of the process of the improvement of patients' treatment by preventing the cases of ill-treatment or violence against patients and the respective disciplinary measures have been taken for the identified cases. The identified cases of ill-treatment are analyzed at the National Committee of Mental Health with representatives of mental health structures, for the purpose of promotion and maintenance of a climate which makes the ill-treatment of patients unacceptable as well as the documented monitoring of such occurrences in all relevant structures.

238. MoH with the support of WHO has set up a working group for the preparation of the Regulation of Mental Health Service Network. This Regulation will provide for the taking of measures for the prevention of ill-treatment and violence against patients cases, the measures to be taken by the steering structures of psychiatric hospitals in terms of cases that may be identified as well as taking the punitive measures against the personnel who has committed such violations.

239. Notification of district court within 48 hours of every case of involuntary hospitalization. Pursuant to Law "On Mental Health", psychiatric hospitals have the

obligation to notify the district court within 48 hours of any case of involuntary hospitalization. In application of this law, the Ministry of Health has issued relevant orders which stipulate that the relevant district court shall be notified within 48 hours of all the cases of compulsory hospitalizations and the practice shall be documented in detail in the clinic card. As regards the chronic sick persons hospitalized contrary to their will, in psychiatric hospitals for a period of several years, the Ministry of Health is cooperating with Ministry of Justice for drawing up the common modalities to the function of the application of the Law "On Mental Health". The Ministry of Health has requested from the psychiatric hospitals the drawing up of a work plan in cooperation with relevant courts for the regular verification of chronic patients hospitalized contrary to their will, as well as the informing of relevant structures of the MoH. Forensic medical procedures on the mandatory hospitalizations shall be documented in personal sample cards, which will be designed and delivered to hospitals.

240. Involuntary hospitalization and treatment in psychiatric services is done for persons who have the ability to approve but who refuse their hospitalization and treatment and for the persons who are disabled to approve their hospitalization and treatment and refuse it.

1. Involuntary hospitalization criteria. A person may be subjected to involuntary hospitalization if the following criteria are met:

(a) The person suffers from a mental disorder;

(b) The person's conditions pose a substantial danger of a serious injury to his health or that of others;

(c) The aims of hospitalization are therapeutic ones;

(d) Less stringent measures could not be applied;

(e) The person's opinion has been taken into account.

Chronic residents who are actually hospitalized in psychiatric services are exempted from this rule because of the lack of other alternatives for their accommodation. To determine if the person suffers from a mental disorder which poses a substantial danger of injury to himself or to others, the involuntary hospitalization may be applied for the minimum necessary period only when:

(a) The behavior of the person demonstrates that it results from such a disorder;

(b) The person's conditions seem to pose such a danger;

(c) Less stringent measures could not be applied to allow the above mentioned determination;

(d) The person's opinion has been taken into account.

The recommendation for the involuntary hospitalization shall be given by:

(i) A specialized center in mental health (Mental Health Community Center as the selected option);

(ii) If that option is not possible, then the recommendation is given by the psychiatrist expert of the relevant coverage area, only after the latter has personally examined the person;

(iii) In the event that there are no specialized services of community psychiatry (ambulatory psychiatrist), the recommendation may be given by the family physician after he has personally examined the person.

2. Involuntary treatment criteria. A person may be subjected to involuntary treatment only when:

(a) The person suffers from a mental disorder;

(b) The person's conditions pose a substantial danger of a serious injury to his health or that of others;

(c) Less stringent measures could not be applied;

(d) The person's opinion has been taken into account.

241. In order to decrease and avoid long term hospitalizations, short-term plans have been drawn up and implemented by the Ministry of Health for 4 priority areas. To this end, wards which function on the basis of structured criteria and are observed by the medical personnel, are established within the psychiatric hospitals. They function as a filter by preventing the inappropriate and long hospitalizations. For example, according to the admission ward results in Vlorë, 65% of the hospitalized patients were discharged after their treatment in this ward, whereas 35% of them were transferred at the end of their treatment in this hospital to other wards of it. Also these wards are used as training structures for the students of nursing, social work or psychology. It shall be highlighted that the establishment of these wards has enabled the improvement of the public attitudes towards mental diseases owing to the practices of a more appropriate and a greater observance of human rights. It is worth pointing out that the patients treated there themselves have stated that their dignity and self-respect, in terms of their mental disorder have improved there and make them more aware of requesting a duly service.

242. Ministry of Health (MoH) in cooperation with the Ministry of Justice and the Directorate General of Prisons is working on the drafting of the Joint Regulation "On security measures against the persons with mental disorders that have committed a criminal offense and are hospitalized in the prison hospital."

243. The National Plan for the Implementation of SAA as regards the "Short-term implementing activities", for the period 2008–2009 provides for fully putting in operation the legal psychiatric hospital in the city of Durrës for persons suffering form metal health problems, but who have committed a criminal offense and are under compulsory treatment. As a result of the cooperation between the Ministry of Health and Ministry of Justice, it is envisaged that within 2009, the construction of this hospital will be completed and it will be fully operational. Currently, these persons are staying at the hospital of Tirana prison, until the moment of the opening of the legal psychiatric hospital in the city of Durrës.

III. Second part: Additional information requested by the Committee against Torture

244. Referring to the general guidelines on the formulation of periodic guidelines (part II) concerning the information requested from the Committee, as regards the review of the First Report of Albania on the Convention against Torture, we clarify as follows. The Albanian Government has provided information on the implementation of the recommendations stipulated in 8, (c), (d), (i) and (l) of the conclusions and recommendations of the Committee Against Torture (CAT/C/CR/34/AL-21 June 2005) on the First Report submitted by Albania, reviewed in the 34th session, 2–20 May 2005. (CAT/C/28/Add.6). This information was submitted by the Albanian government on 15 August 2006 (CAT/C/ALB/CO/1/Add.1 (2006).[55] Through the Second Periodic Report on the Convention against Torture, the Albanian Government submits detailed information on

[55] Refer to the official website of the Commitee against Torture (CAT:http://www2.ohchr.org/english/bodies/cat/cats34.ht).

the continuously adopted measures on the implementation of the recommendations in paragraph 8 (c), (d),(i) and (l) of the conclusions and recommendations of the Committee.[56]

IV. Third part: Measures adopted for the implementation of the conclusions and recommendations of the Committee against Torture (CAT/C/CR//34/ALB)

Conclusions and recommendations, paragraphs 7 (a) and (b) and 8 (a)

245. As we have stated in the first part of this Report, upon the approval by the Albanian Assembly of the Law 9686, dated 26.2.2007 "On some supplements and amendments to the Criminal Code of the Republic of Albania", the contents of the provision "Torture" in the Criminal Code complies with the definition of torture as provided for by the article 1 of the Convention Against Torture.

Conclusions and recommendations, paragraph 7 (c) (i)

246. As regards the period from 2003 to present such statements have not been made by detained persons or the ones who are serving their sentence. There is not any de facto impunity for the law enforcement personnel in the premises of the detention and pretrial detention institutions.

Conclusions and recommendations, paragraph 7 (c) (ii)

247. The Institution of the Ombudsman[57] underscores the fact that to date, the Ombudsman has prevented and effectively investigated the cases of violence and torture whenever he received complaints or ex officio. In cases he managed to prove the claims of the escorted, detained or arrested persons, the pretrial detainees or the sentenced persons on exercise of violence by the State Police officers or the personnel of the pretrial detention centers or prisons, the Ombudsman recommended to the competent bodies to adopt strict attitudes and institute criminal proceedings or requested the taking of disciplinary measures against the persons who have infringed human rights and fundamental freedoms. For the period 2000–2007, the Institution of the Ombudsman requested such measures for 207 police officers and State police officers. During the last three years (2005, 2006, 2007), 69 complaints were filed with the Institution of the Ombudsman in relation to ill-treatments by the State police officers. Fourteen of these complaints were deemed fair and the Ombudsman requested the prosecution of their perpetrators by the Prosecutor's Office, respectively in 11 cases for the criminal offence of "committal of arbitrary acts", whereas in three cases, the committal of the criminal offence of "torture" was determined.

248. The Ombudsman also examined a case of violence report at the police station No. 3 within the Police Department of Tirana in June 2008. As regards this case, on 20 June 2008, the Head of the Unit on Prevention of Torture within the Institution of the Ombudsman appeared before the police station No. 3 in Tirana, demanding an appointment with the injured party and directly met the injured party within the isolation premises of this police

[56] Refer to the comments in the third part of this Report concerning the adopted measures for the imlementation of CAT conclusions and recommendations (comments on paragraphs 8 (c),(d), (i) and (l)).

[57] According to the information of the Ombudsman.

station. One day before the person was detained by the County Police Directorate of Elbasan and then he was transferred to the police station No. 3, Tirana, as he was being sought for the enforcement of a criminal judgment rendered against him.[58]

249. Following an overall examination of the sentenced person, it was established that he had been inflicted injuries on a part of the left arm and in the face. According to the data collected from the detained person, he was having a drink in a house facility in Elbasan and he remembers that he had offended and hit several police officers who had appeared to escort him to the Police station of Elbasan. The above cited person did not mention the specific police officers who had exercised violence against him, but he felt remorse for the actions he had carried out against them. According to the Head of the Unit on Prevention of Torture, such person disagreed to give the authorization/legal consent for the Ombudsman in terms of the further investigation of this case and to bring the perpetrators to justice. The Head of the Unit on Prevention of Torture underscores the fact that the conversation made with that individual was kept confidential, without the presence of civilian persons or police operatives. In application of the article 13/1/2 of the Law No. 8454, dated 4.02.1999 "On the Ombudsman" (as amended), the statement of the person, the other acts were documented in a special file and were filed under the motivation of "non-consent of the injured party on the initiation of the investigation".

Conclusions and recommendations, paragraph 7 (c) (iv)

250. As regards this concern, we inform that at the moment of detention or arrest, the judicial police officers preliminarily inform the detained persons of their own rights. Arguably, there have been cases when the communication and the information on their rights are not effectuated. To provide information to the above cited persons on the rights they enjoy, the following measures are taken:

(a) The judicial police officers and the state police operatives were informed on the rights enjoyed by that category of persons;

(b) Through a series of by-laws of the Minister of Interior, the General Police Director (orders, letters rogatory), this fact was brought to their attention and they were requested to meet such legal obligations to provide information on the respective rights in any case of escort, detention or arrest of citizens.[59]

251. In the pretrial detention premises of the police stations, these persons are informed on their rights which are posted in a written form on the back of the doors of the cells where they are accommodated. This written format included the timetable/schedule of the actions to be carried out during the day (starting from the time they wake up in the morning to going to sleep after the dinner meal). Such papers containing their rights were often torn out and removed by the detained and arrested persons.

252. The trust of the community and of the detained, arrested and pretrial detainees in the implementation of the legitimacy by the law enforcement officers has been continuously raised. To this end, a series of measures are taken:

[58] The District Court of Tirana has rendered against this person the final sentence 592, dated 23.04.2008 by two years of imprisonment, in absentia, for the criminal offence of theft, provided for in the article 134/1 of the Criminal Code. Accordingly, the person was declared wanted by the County Police Directorate of Tirana via the letter No. 8941/1, dated 29.05.2008.

[59] Detailed information on these bylaws is submitted in the first part of this Report, comments on article 10, paragraph 1 of the Convention.

(a) Establishment of several criteria on the selection of police officers to serve the safety and treatment of the detained and arrested persons;

(b) Continuous implementation of various training seminars on the upgrading of their technical professional level;[60]

(c) Strengthening of control by the central structures of the State Police and the District Prosecutor's Office toward the implementation of the service on safety, treatment, communication, interrogation and conduct of investigation with the detained, arrested and pretrial detainees alleging the violation of their own rights or ill-treatment and being subject to violence by the law enforcement officials;

(d) Conduct of controls, inspections, continuous interviews in the pretrial detention facilities of the system of the Ministry of Interior, between representatives from the Ombudsman and organizations operating in the field of human rights such as the Albanian Committee of Helsinki, the Center for Human Rights etc, and the detained, arrested and pretrial detainees;

(e) Initiation of criminal proceedings against police officers who have infringed the rights of citizens deprived of liberty.[61]

Conclusions and recommendations paragraphs 7 (c) (iii) and 8 (b) and (c)

253. Cases of ill-treatment have been progressively reduced and there is not any de facto impunity. The structures of the State Police have not identified cases on the incorrect implementation of investigation or delays concerning the complaints of the detained and arrested persons, for the practice of torture or ill-treatment by the State Police personnel. The initiation of the criminal proceeding on illegal actions and omissions of the State Police officers and the investigation of the complaints are made possible by the Judicial Police Service within the Internal Control Service at the Ministry of Interior and the Prosecutor's Office.

254. According to the law 8749, dated 01.03.2001 "On Internal Inspection Service within Ministry of Interior"[62] and the law 10002, dated 06.10.2008 "On Internal Inspection Service within the Ministry of Interior", the Directorate of Internal Inspection Service prioritizes the verification and investigation of those cases when in the course of the execution of their tasks, the police officers have infringed human rights and fundamental freedoms. As regards the independent investigation of the conduct of the officer of the National Penitentiary Service, the article 64 of this Law stipulates that: (a) the procedures for the investigation of complaints against the officers of the National Penitentiary Service are provided for by the regulation on discipline and (b) when the violation constitutes a criminal offence it is investigated by the prosecutor's office which has jurisdiction over it. Following the initiation of the criminal proceeding, according to the Regulation on the Discipline of the State Police, the police officer is suspended from duty or ceases the function he discharges until the trial of the case and the rendering of a final judgment.

[60] Information on the training seminars conducted for the State Police personnel is submitted in the first part of this Report, comments on article 10, paragraph 1 of the Convention (paragraphs 116–118).

[61] Statistical data on criminal reports against State Police officers are available in the comments on the Committee's conclusions and recommendations, paragraph 8 (r).

[62] The law No. 8749, dated 01.03.2001 is abrogated by the Law No. 10002, dated 06.10.2008.

255. The competent structures have reported two serious cases which have involved the death of citizens:

- In April 2006, a juvenile was escorted to the County Police Station of Korçë, to file a statement report on a criminal offence. His interrogation was made possible without the presence of a legal counsel, one of the parents or a social worker. Following his release, the said citizen hung himself in his house, in Pirg village, Korçë district. In respect of this case, two police officers were suspended from duty and a criminal proceeding was instituted against them. By the end of the investigation, one of the police officers was found guilty by the court for the offence of "abuse of office" and was sentenced to 3 years of provisional imprisonment" and the other officer was subjected to the disciplinary measure of "expulsion from the State Police structure".
- A pretrial detainee was dead in July 2004, at the Police Station of Mirditë of the County Police Directorate of Lezhë, due to the violation of service rules and the ill-treatment by a police officer. In regard to this case, a criminal proceeding was instituted against the police officer and he was found guilty of the criminal offence of "violation of service rules inflicting serious consequences". The court sentenced him to a term of three years of imprisonment.

256. As reported on the basis of the foregoing, the Prosecutor must directly and periodically or without any warning, monitor the institutions of the enforcement of imprisonment rulings, accompanied, as case might be, by experts of related fields. As regards the findings and irregularities or impediments in respect of his monitoring competence, the prosecutor submits a request to the director of the institution on the immediate restoration of justice or the violated rule, in terms of the implementation of the right of the sentenced person and the initiation of the disciplinary, administrative proceeding or compensation against the perpetrators, unless there is room for criminal proceeding. Sections on enforcement of criminal judgments, responsible to monitor the enforcement of criminal judgments, are established within the prosecutor's offices where the sentence serving facilities are located.

257. Through the monitoring of the activity of the judicial police agents/officers in relation to the escorted persons and the pretrial detainees and the practice of several criminal proceedings on the arbitrary acts of several State Police officers, cases are reported on the ill-treatment of the escorted persons, the arrested in flagrante delicto or the detained persons both during the interrogation at the Police Directorates or Police stations in several districts, and keeping the escorted persons in those facilities beyond the legal time limit. The Guideline of the Attorney General, No. 2, dated 8. 03. 2007 "On guarantee and observance of human rights during the trial", stipulates that in cases when signs of ill-treatment are detected or when the arrested, detained or escorted persons complain of ill-treatment by the police during the arrest or custody period at the police station, the prosecutors must immediately proceed to verify the ill-treatment, deeming and establishing, as case may be, the ex officio record of the notification of the criminal offence and notify the police authority thereof. The main problems during the work of the Prosecutor's Office on the investigation and prosecution of criminal offences related to ill-treatment or torture of sentenced or detained persons, basically entail the absence of effective investigation and the absence of controls in sentence serving facilities, absence or a limited number of

criminal proceedings instituted ex officio and the improper classification of charges in cases of the reported ill-treatments.[63]

258. During recent years, cases of ill-treatment against the sentenced persons have been reduced. The treatment of sentenced persons is a basic task of the civilian and police staff and to this end, different programs are drafted on the way, rules and different types of treatment according to various categories of people serving their sentence in prisons and pretrial detention centers. As regards the investigation of complaints and ill-treatments of the sentenced persons, the competent structures conduct investigation by taking adequate administrative measures against the officers who have committed, instigated or allowed actions of torture, cruel or inhuman treatment. The respective structures of the Directorate General of Prisons have examined a series of allegations and complaints. These allegations – complaints are generally related to the relocation from an institution to another, appointments with relatives or family members and other problems on the employment, the provision of facilities for exercising different religious rites etc. During the period 2003 – ongoing, ill-treatment cases are reported but no orders were issued for their implementation by the superiors or the public authorities. In all cases of ill-treatments which are not classified as torture, disciplinary proceedings have been also instituted by the administration of the Penal Sentence Enforcement Institution (PSEI). During this period, there were no cases of negligence in terms of the treatment of each individual case and of the motivation or acquiescence of those treatments.[64] During this period, in the Penal Sentence Serving Institution "Ali Demi", Tirana (where the female sentenced persons serve their sentence in a section), no cases are reported on torture or cases of ill-treatment.

259. The Directorate of Prisons is using its best efforts to make available a free phone line in prisons to file denouncements on the violation of the rights of sentenced persons.

Conclusions and recommendations, paragraph 7 (d)

260. There are no impediments to file a formal complaint with the state public authorities for the supply with medical- legal certificates on practice of torture or other types of ill-treatments. According to the Order of the Minister of Interior (No. 2191, dated 25.09.2006) "On guarantee and observance of human rights and fundamental freedoms during the escort to the police premises and the pretrial detention system", the police structures and services within the police departments and police stations are charged with taking measures and implementing tasks to guarantee such right, i.e.:

(a) For each arrested, detained citizen who is treated in the pretrial detention premises of the State Police, the medical staff has to file a medical card and a file which incorporates his statement concerning the exercise of violence or not by the police operatives, as well as the health concerns he might have;

(b) At the moment of apprehension, all detained and arrested persons are subject to a medical examination by a doctor or a specialized paramedic. In the majority of cases, the examinations are conducted by doctors or paramedics attached to the police stations. As regards the police stations which do not offer such service, assistance is claimed from regional hospital centers. In cases when the detained and arrested persons seek a more

[63] These problems were identified in the last CPT report and the study of the Research Institute of Human Rights and Social Justice, University of London (HRJS).

[64] Detailed information on the reported complaints and the measures taken is submitted in the comments on the recommendation of the CAT Commiteee of Section D, paragraph 8 (r), of the conclusions and recommendations for Albania (2005).

specialized treatment and under hospital conditions, they are sent to those health centers for purposes of treatment;

(c) As regards the medical fitness of the arrested and detained persons, the medical personnel files and fills out the respective medical cards. When complaints are filed or it is reported that such persons are ill-treated and physical violence is exercised against them, relevant actions are carried out to document such a fact and the personnel of the medical service notifies the head of the police station within the county police directorate. To examine the situation, the senior structures of the police station, in cooperation with the Internal Control Service and the Prosecutor's Office, carry out procedural actions to bring the perpetrators to justice.

261. In this context, in order to prevent potential impediments, these persons maintain continuous contacts with the heads of the police stations, the heads of the police services of police stations and police directorates, the prosecutors at the prosecutor's offices within the District Courts, the defense attorneys, whenever these persons request to meet the prosecutors or the heads of the police authorities, listening to and taking into consideration their claims and allegations.

262. The Legal Information Center within the Internal Control Service is operational and each individual (citizen) is free to express himself in a verbal or written form (filling out a concrete application form) in cases when they complain of police officers who have abused their office during the execution of their tasks. In cases when elements of a criminal offence are identified, a criminal report is filed against this police officer with the prosecutor's office, whereas when dealing only with administrative contraventions, disciplinary measures are taken by the competent State Police structures.

263. The legal framework on treatment of sentenced persons that has been continuously improved,[65] guarantees rights on submission of requests, complaints by the sentenced persons and pretrial detainees to the competent structures, (the Directorate General of Prisons, the Ombudsman, the Court). Likewise, the most recent legal amendments of the year 2008 in the law on sentenced persons provide for the right to complaint of the pretrial detainees and prisoners to the senior structures of the penitentiary system and the right to refer to the Court. The establishment of the National Mechanism on Prevention of Torture constitutes an important instrument guaranteeing the pretrial detainees and prisoners the right to file a complaint or submit their complaints.

264. The persons serving their sentence or the pretrial detainees may address the Ombudsman in a written form or directly, without being subject to monitoring. There are no impediments for the sentenced persons and pretrial detainees to submit their complaints. Further, two phone numbers are made available where they may address their complaints to the Ombudsman and the Directorate General of Prisons.

265. The Pretrial Detention Regulation (adopted by virtue of the Order of the Minister of Justice No. 3705/1, dated 11.05.2006) provides for the right to submission of complaints of the pretrial detainees and sentenced persons to all state and non-state institutions. The regulations of prisons and the pretrial detention centers guarantee the right of the pretrial detainees and sentenced persons to inform their relatives or family members via phone, postal correspondence, appointments and information on part of the senior structures of the institution in cases when the detained persons do not have the opportunity. In practice, no impediment is posed by the respective institutions for the implementation of the right of defense by a defense attorney and proper facilities are provided in terms of the relations of the sentenced persons with the defense attorneys and the Ombudsman. In each case, they

[65] Comments on article 13, paragraph 1 of the Convention.

are guaranteed the right to choose a doctor according to the respective specialty. Also, no impediments were identified to various non-governmental organizations operating in the field of human rights, concerning their access to the Penal Sentence Enforcement Institutions, to have a detailed monitoring of the situation, the living conditions, and the observance of the rights of the sentenced persons or the pretrial detainees. In this framework, two free phone numbers are made available (one from the Directorate General of Prisons and the other from the Albanian Committee of Helsinki) offering the opportunity to the prisoners to directly communicate with this organization in respect of their own rights. The General Police Directorate has taken measures in all prisons to ensure the record of cases on the use of force or their coercive means.

266. As regards the receipt of medical certificates by the injured parties, there are no procedural impediments and there have been no complaints in this regard. The medical certificates may be received in the respective institutions or by a specialist in the field of medicine who is supplied with a certificate by the state authorities in relation to his specialty (forensic doctor). In all cases when doctors identify cases of ill-treatment or violence, the latter ones are recorded in medical cards and each sentenced person is provided with medical records sustaining their statements (in conformity with the order 3957, dated 25.05.2006). Additionally, the sentenced person/the pretrial detainee may choose his doctor and is not obliged to be examined only by the doctor hired by the sentence serving institution.

Conclusions and recommendations, paragraphs 7 (e) and 8 (e)

267. The Albanian government is committed to the implementation of the reforms in field of justice, recommended and supported by international partners, in cooperation with the constitutional institutions involved in the system of justice and in accordance with the commitments and obligations stemming from the application of the SAA (article 1, 2, 13 and 78 of the SAA). The reforms in field of justice aim to raise the trust of citizens in the judicial system and to ensure fairness, integrity, professionalism and impartiality while rendering judicial verdicts.

268. Based on the National Plan for the Implementation of the Stabilization Association Agreement,[66] the reform in field of justice aims to enhance the effectiveness of this system by guaranteeing the independence of judicial bodies, increasing the responsibility toward the society, thus being capable to implement international commitments. The final goal of this reform is to meet the requirements for the establishment of a contemporary system of justice through:

(a) Establishment of the rule of law;

(b) Full guarantee of the division and balance of powers, aiming at the enhancement of the independence of the judiciary through the increase and strengthening of the responsibility of the judiciary in the administration of justice;

(c) Improvement of legal mechanisms and procedures preventing and fighting corruption to protection of human rights;

(d) Provision of transparency in the system of justice and the development of professionalism and effectiveness;

[66] Approved by the DCM 463, dated 5.07.2006, amended by the DCM 577, dated 5.09.2007 and the DCM 1317, dated 1.10.2008.

(e) Paving the way for judicial cooperation and integration in principles of liberty, security and justice;

(f) Full institutional and legislative functioning in accordance with the European judicial systems and the *acquis communautaire*; restriction of the immunity of judges and senior state officials, in order to facilitate the criminal proceeding on corrupt offences;

(g) Strengthening and improvement of the penitentiary system in conformity with the international standards;

(h) Protection of victims and social re-integration of sentenced persons. An objective of the Albanian state remains the reform of the Prosecutor's Office (the prosecuting institution), as one of the most important institutions in the fight against crime and corruption. The multi-dimensional reform in this institution shall aim at the improvement of the effectiveness of this institution during the discharge of legal tasks in the fight against crime and corruption.

269. The final goal of the reform in the field of justice is to bring this system in line with the international standards, assessing the contribution of international partners. To reach a broad political consensus, the key orientations of the work of the Albanian Government are as follows:

1. Application of check and balance principle, as well as its proper functioning. Application of the fair and balanced division of responsibilities and powers of the judicial system, in support of the administration of justice.

2. Strengthening of institutional dialogue and cooperation among the Ministry of Justice, the judicial bodies, the Prosecutor's Office, the Ministry of Interior, the State Police and their stakeholders in the field of justice, with the aim of the improvement of the performance of the judicial system and the raise of the trust of private citizens in the justice system.

3. Transparent and effective management of judicial system.

4. Improvement of the process of legislation drafting and its approximation to that of the EU.

5. Continuous improvement of the penitentiary system for the purpose of approximation with international norms and standards.

6. Continuous upgrading of the level of enforcement of judicial rulings and executive titles.

7. Enhancement of transparency and effectiveness in trials observing the protection of personal data and the improvement of the performance of the court administration.

8. Improvement of the legal framework on the effectiveness of criminal justice and elimination of trial delays.

The National Plan in particular specified the legal initiatives and the implementing activities to address the above cited priorities.

270. The current National Plan for the Implementation of the Stabilization Association Agreement (as reviewed)[67] provides for that on the grounds of the obligations stemming from the documents of the European Partnership, the reform in the system of justice

[67] DCM No.1317, dated 1.10.2008 "On some supplements and amendments to the DCM No.463, dated 5.07.2006 "On the adoption of the National Plan for the Implementation of the SSA", as amended.

includes the institutional re-organization, reform of mentalities at the foundation of the system and in tandem, adequate financial and human efforts for its proper functioning. Any action to be undertaken in the framework of the reform in the system of justice has the final goal of the establishment of a contemporary system of justice, capable to implement the acquis communitaire and reflect the standards of the European Union in the field of justice.

271. The policies on courts and judges include:

1. Territorial re-organization of district courts, with the primary objective of a re-distribution of the map of courts in relation to several indicators such as the geographical field, the number of population, the workload (number of cases) of courts and the workload per each judge, in support of the creation of a more effective system.

2. The review of the respective legal framework in relation to the criteria of the appointment of judges, their career promotion, the disciplinary proceeding etc.

3. The re-organization on the appointment of the position of the president of the court.

The anticipated legislative initiatives, in compliance with the commitments launched in the framework of the National Plan for the Implementation of the Stabilization Association Agreement, aim at the review of the legal framework, governing elements of the organization and functioning of the system of justice and various bodies operating in this system. Such legal initiatives aim not only at the amendments of those laws but in particular at their harmonization with each other, detailed specification and clear division of powers of each respective body.

272. Law No. 9877, dated 18.2.2008 “On organization of the judiciary in the Republic of Albania” covers the creation, organization and powers of courts, the conditions, the procedures for the appointment of judges of the courts of first instance, the courts of appeals, the rights and obligations of judges, the disciplinary measures, their dismissal and other issues in regard to the functioning of the courts. The law has provided provisions improving the established criteria on the career of judges, the prevention of the trial delays, and the disciplinary liability in conformity with the respective standards. This law, drafted in accordance with the recommendations of the Council of Europe and two judgments of the Albanian Constitutional Court, defines the independence of judges and shall have directly influence the strengthening of the independence of the judicial power.

273. In the wake of comments on article 10, in relation to the training of judges and prosecutors, the School of Magistrates, in application of the law, has the following tasks:

1. The Initial Vocational Training of eligible judges and prosecutors during a three year program. Pursuant to the law on the Organization of Justice, all eligible magistrates who have a successful academic school performance are appointed as judges and prosecutors. The appointment must be done by respecting the principle of meritocracy (their classification on the basis of their academic school performance). With the new law on the organization of justice, the recruitment of judges and prosecutors is done only by the School of Magistrates and only 10 % of judges and prosecutors in office are selected.

2. The continuous vocational training of judges and prosecutors, the successful implementation of which is interconnected with their qualification and career. The process of training is organized in close cooperation with the High Council of Justice and the General Prosecutor’s Office and is facilitated by the contact points within courts and the prosecutor’s office. It is noticed a remarkable growth of interest of judges and prosecutors to attend such training activities, either through continuous applications to the School of Magistrates or the higher attendance rate.

274. During all types of the conducted activities (both in the initial training for judges and prosecutors, and the training sessions for judges and prosecutors already in office) the School of Magistrates has broadly treated different topics on the observance and protection of human rights. The curriculum of the continuous professional training for judges and prosecutors in office, at the School of Magistrates includes activities which have taken place during recent years on topics related to human rights, torture, inhuman and degrading treatment etc. Such activities are specified below:

1. Study session on European Convention of Human Rights. Fundamental Freedoms: the right to life, the right not to be subjected to torture and cruel and degrading treatment and the right to freedom and security according to the article 2, 3 and 5 of this Convention.

2. Introduction to the European Court of Human Rights.

3. Meaning of criminal offences of trafficking in human beings. Techniques of investigation and their trial (2 training sessions – October 2003).

4. The right of refugees and asylum-related issues (November 2004).

5. Protection of victims of human trafficking in the criminal proceedings. Treatment of women, victims of trafficking (May 2005).

6. Meaning of criminal offences of trafficking of human beings (June 2005).

7. Justice for juveniles (4 training sessions – October 2005).

8. Trafficking in human beings and protection of victims of trafficking (October 2005).

9. Right of refugees and asylum-related issues (November 2005).

10. Family, marriage, cohabitation, divorce – (period 2004, 2005).

275. As regards human rights, the curriculum of the Continuous Training for the period 2006–2009 provides for the following training sessions:

1. Torture in conformity with the article 3 of the European Convention of Human Rights, Constitution, Albanian legislation and unifying judgments of the Supreme Court and judgments of the Constitutional Court.

2. Recognition and application of the jurisprudence of the European Court for Human Rights by the Albanian courts. The due legal process and enforcement of sentences as part of this process. Unenforceable sentences.

3. Freedom of expression.

4. On the European Convention for Human Rights. Additionally, this program provides training sessions on Criminal Code and Code of Criminal Procedure as regards the observance of human rights in the course of the criminal proceeding. Such training sessions are organized with the participation of the relevant experts of the European Council and Albanian representatives.

276. Within the framework of the fifth program of cooperation of the European Commission and the Council of Europe and in cooperation with the Ministry of Justice, the School of Magistrates has implemented the training of the court administration.

277. An important field in the scope of the activity of the School of Magistrates is the field of publications and legal studies. The School of Magistrates publishes its quarterly journal “Juridical Life” which is a scientific publication addressing various topics such as: familiarization with the new legislation, the judicial practice, the international theoretical and practical experience, articles by new legal experts or jurists, promotions of new

juridical books, information on the activities of the School of Magistrates with justice bodies etc.

278. In its work, the School of Magistrates maintains a close cooperation with various institutions such as the High Council of Justice, the General Prosecutor, the Ministry of Justice and the community of judges and prosecutors.

279. Within the framework of the National Plan for the Implementation of the Stabilization and Association Agreement, the School of Magistrates has undertaken the following commitments:

- The conduct of training sessions in different fields of law on judges and prosecutors in office, i.e. in the field of human rights, justice for juveniles etc. In respect of the training of the Court Administration, the cooperation modalities are negotiated in cooperation with the Ministry of Justice.
- Improvement of teaching methodology in the initial and continuous training at the School of Magistrates.

Conclusions and recommendations, paragraph 8 (f)

280. Law No. 9686, dated 26.02.2006 "On some supplements and amendments to the Law No. 7895, dated 27.01.1995 Criminal Code of the Republic of Albania", amended, provides for the application of the universal jurisdiction for the individuals committing acts of torture.[68]

Conclusions and recommendations, paragraphs 7 (g) and 8 (g)

281. As stated above,[69] according to the Code of Criminal Procedure on "General Rules on interrogation", it is established that the statements obtained under conditions of torture cannot be used as evidence. This Code provides for that methods or techniques to influence the freedom of will or to change the memory capability and evaluation of facts cannot be used even if the consent of the defendant is given. The Code of Criminal Procedure provides for that the Court renders a judgment on the basis of the evidence examined and verified in the judicial hearing".

282. The Guideline of the Prosecutor General, No. 2, dated 8. 03. 2007 "Guaranteeing the observance of human rights in the course of the trial" further stipulates that during the stage of the preliminary investigation, the prosecutors must asses in due time the validity of the procedural acts of the judicial police and must not submit evidence against the suspect, the person under investigation or the defendant in cases when they know or believe, based on reasonable grounds, that the evidence is obtained through the use of methods incompliant with the law. During the stage of trial, in allegedly suspicious cases, the prosecutors must request from the court to decide the validity of such evidence.

283. The Directorate General of the State Police is not aware of the cases on statements or testimonies of arrested, detained persons, which have been made as a consequence of torture. To date, no cases are reported when the superior has issued an order on the use of violence or torture against persons who are serving the sentence or the pretrial detainees in the system of prisons.

[68] Information on the specifications of this law is submitted in the first part of this Report in the comments on article 5 of the Convention.

[69] Refer to the comments on article 15 of the Convention.

Conclusions and recommendations, paragraph 8 (h)

284. As regards the compensation and treatment of victims, the reflection of the obligations stemming from the provisions of international acts ratified by Albania, they are ongoing, but since that process is too costly, the solution is discussed with the Ministry of Finances in order to raise a preliminary compensation fund. The same line of action is followed in terms of the measures to be taken for the compensation programs in general, aiming at the provision of social assistance and social integration of the victims. It must be underlined that the implementation of such recommendation is in progress but we should take into account that such a mechanism has a high financial cost.

285. Rehabilitation of ex-political convicted and persecuted persons during the communist regime (also refer to comments on the article 14. In application of the law No. 9831 dated 12.11.2007 "On compensation of the former political convicts of the communist regime"; a special administrative section was established within the Ministry of Justice. This unit deals with the applications for compensation due to political sentences enforced in Albania during the period 30.11.1944–01.10.1991. The structure is equipped with the relevant personnel and is working on the examination of the documentation required for the recognition of the right to financial compensation. According to the above cited law, December 2008 is the latest deadline of application for the financial compensation of the former political convicts or their relatives. More than 15000 applications for compensation were filed with the Ministry of Justice until November 2008, accompanied by the respective documentation and they are already under the examination process. The Council of Ministers adopted in December 2008, the decision on the list of compensation of 1100 ex-political convicted and persecuted persons, to a total value of 2 billions Lek. The distribution is expected to be effected by January 2009.

Conclusions and recommendations, paragraphs 7 (i) and 8 (i)

286. The Constitution provides as follows:

"During a criminal proceeding, everyone has the right:

(a) To be immediately notified and in detail of the accusation made against him, of his own rights, as well as to have the possibility to notify his family or the next of kin;

(b) To have the time and sufficient facilities to prepare his defense;

(c) To have the free assistance of an interpreter, when he does not speak or understand the Albanian language;

(d) To be defended by himself or with the assistance of a legal defense chosen by him; to communicate freely and in private with him, as well as to be assured free defense when he does not have sufficient means (article 31)."

287. Article 48 of the Code of Criminal Procedure provides that:

1. The defendant has the right to choose not more than two defense attorneys.

2. The selection is made by a statement before the prosecuting authority or by an act delivered to the defense attorney or mailed to him by registered letter.

3. The selection of the defense attorney for the detained, arrested or imprisoned person, unless he has made the selection, may be provided by a relative in forms provided by paragraph 2.

288. Article 49 stipulates that:

1. The defendant who has not selected a defense attorney or who has remained without him shall be assisted by a defense attorney appointed by the prosecuting body if he requires so.

2. When the defendant is under eighteen years old or with psychic or physical handicaps rendering him unable to use self-defense, the assistance of a defense attorney is compulsory.

3. The board of the bar chamber shall make available to the prosecuting authorities the lists of lawyers and sets up the criteria of their appointment.

4. The court, the prosecutor and the judicial police when carrying on operations requiring the assistance of the defense attorney or the defendant has not got any, shall notify the appointed defense attorney of the operations in question.

5. When the presence of the defense attorney is required and the selected or appointed defense attorney has not been provided, has not appeared or has abandoned the defense the court or the prosecutor appoints another lawyer as substitute, who shall exercise the rights and shall assume the obligations of the defense attorney.

6. The appointed defense attorney may be substituted only for lawful reasons. He shall lose the functions when the defendant shall select his defense attorney.

7. When the defendant does not have sufficient incomes, the expenses for the defense shall be afforded by the state.

289. Article 50 stipulates that:

1. The defense attorney has the rights the law confers to the defendant, except those personally reserved to the latter.

2. The defense attorney has the right to communicate freely and in private with the detained, arrested or the punished person, to be notified beforehand of the conduct of investigations where the defendant is present and to participate in them, to ask questions to the defendant, witnesses and experts, to get acquainted with all materials of the case on termination of investigations.

3. The defendant may render null and void, by express statement, the action carried out by the defense attorney before a judgement is rendered by the court in relation to this action.

290. Pursuant to article 53:

1. The person arrested in the flagrante delicto or the detainee has the right to consult his defense attorney immediately after the arrest or the detention.

2. The detained defendant has the right to consult his defense attorney since the moment of the execution of the security measure.

Since the moment of detention, persons are provided defense by an attorney save the cases when they have disagreed thereof.

291. Pursuant to article 35 of the Code of Criminal Procedure, the assistance provided to the juvenile defendant, is specified as follows:

1. The juvenile defendant shall be provided legal and psychological assistance at any status and degree of the proceedings with the presence of the parents or other persons requested by the juvenile and consented by the prosecuting authority.

2. The prosecuting authority may carry out actions and compile acts for which is required the participation of the juvenile without the presence of the persons set out in paragraph 1 only when this is in the interest of the juvenile or when the delay may seriously affect the proceedings, but always in the presence of the defense attorney.

292. Pursuant to article 49/2 in case when the defendant is under 18 years old, the assistance by a defense attorney is mandatory. In application of this Code, during each stage of the criminal proceeding (investigation, trial, enforcement of the penal sentence), the juveniles are assisted by their defense attorneys. In cases when the juveniles or their relatives do not have the opportunity to afford financial expenses for their defense, the latter one is offered free of charge by the state.

293. The treatment of juveniles in the pretrial detention centers within the police stations for the period 2003–2008 complies with the requirements of the Code of Criminal Procedure. The treatment of juveniles is made in the premises of the pretrial detention center within the police stations due to lack of special institutions to deal with the security and treatment of such category of persons, guaranteeing their stay in cells separated from the other adult pretrial detainees.

294. While providing legal assistance, the NGO, "Legal Clinic for Juveniles" played an important role on provision of free legal assistance for the category of this age group. Starting from January 2006, the Directorate for Juveniles attached to the Ministry of Justice,[70] has distributed some questionnaires which were filled out by the juveniles in the Pretrial detention center "Jordan Misja" in Tirana and the Prison of Vaqarr. According to these questionnaires, all juveniles were provided with assistance by a defense attorney since the moment of their detention.

295. Article 107 of Law 9749 dated 4.06.2007 on the treatment of escorted persons stipulates as follows:

1. If a person is escorted to the police in conformity with the article 101 of this law,[71] then he must be immediately informed on the reasons of such escort.

2. The escorted person must be immediately offered the opportunity to notify a relative or a person entrusted by him. If the escorted person is not capable to exercise his own rights on the basis of the foregoing, and if it does not run counter to the person's will, the Police notifies ex officio the above cited persons. When the escorted person is a juvenile, in each case the person who is responsible for his custody is immediately notified and this is also the case for the adults for whom legal guardians are appointed.

3. Men and women are escorted to separate premises.

4. The juveniles are escorted to separate premises from adults.

296. Law 9749, dated 04.06.2007 "On State Police (article 64) stipulates that:

1. When a police officer is entrusted to safeguard a person for whom he deems that he/she needs medical care, the police officer must seek medical assistance and take necessary measures, effectively applicable, to protect the person's life and health.

[70] Presently, this Directorate functions within the Ministry of Justice as the Office for Minors and Family Law.

[71] Refer to the comments on article 16.

2. If a police officer causes injury to a person while carrying out an action in execution of his tasks, he must seek medical assistance and take effectively applicable necessary measures and protect the person's life and health.

297. Article 110 of the Law on medical examination stipulates as follows:

1. To prevent the threat to life, a person must be subjected to a medical check-up. Therefore, the taking of blood samples or other body interventions by a doctor in accordance with medical rules for purposes of examination, is allowed without the consent of the person if this does not damage his health and the measure is deemed necessary by the doctor.

2. The medical check-up of the person is conducted by virtue of a court judgment saving the cases of imminent threat when the police officer carries out his task upon his own initiative. The data collected in the course of the check-up may be used solely for the purpose of this article, namely the prevention of the serious threat to health.

Pursuant to article 120, the medical measures on escorted persons and their treatment are effected in accordance with the rules and conditions stipulated in the respective normative acts.

298. Law No. 10002 dated 6.10.2008 "On Internal Control Service at the Ministry of Interior', (article 45/b) provides for that the internal control service officer, in the course of the exercise of the police competences, must seek medical assistance and take the effectively applicable necessary measures to protect the life and the health of the escorted, detained or arrested persons for whom there are reasonable grounds to provide health care.

299. In application of the above cited legal acts, the Minister of Interior and the General Police Director have continuously sent normative acts (orders and letters rogatory) to the local police structures in respect of the guarantee of the rights of citizens deprived of liberty.

1. Order of the General Police Director No. 711, dated 11.10.2007 "On implementation of the requirements of the law "On State Police" concerning the treatment of escorted persons". This order specifies the tasks for the county police directorates and the police stations in respect of the improvement and guarantee of the rights of citizens who are escorted to the police premises for various verifications:

(a) Taking of measures on enforcement and implementation of the right to notify the relatives or any other person chosen by him on the whereabouts or the location. The communication and disclosure of the cause and reason of the escort;

(b) The communication of the right to have and be defended by a defense attorney;

(c) In cases of the escort of foreign citizens, they have to be informed on their legal rights in their language or in another language they understand;

(d) With regard to juveniles, the mandatory presence of a legal counsel, a social worker or one of the parents has to be ensured;

(e) For the juveniles and those who lack the opportunity, the notification of their relatives has to be done by the police officer who escorts them through the service of the operational hall of the police station or the county police directorate;

(f) A column including the number and the telephone number of the person or the defense attorney notified by the escorted person or the refusal of such

right has to be recorded and added in the registry of the escorted persons, and the personnel of the respective service has to make the respective notice;

(g) Before assuming the police patrolling service, the requirements of the law "On State Police" (articles 101, 106, 107 and 118) have to be read and interpreted in the service instructions.

2. The letter rogatory of the General Police Directorate "On observance of human rights during the escort to the police station and in cases of detentions or arrests in flagrante delicto" (No. 68, dated 28.01.2008). It stipulates the following tasks for all police structures:

(1) The review of specific parts of the legislation on human rights in cases when the persons are escorted, detained or arrested in flagrante delicto:

(a) The article 27 and 28 of the Constitution;

(b) The chapter IV of the First Part and the Chapter III, Title V of the First Part of the Code of Criminal Procedure;

(c) The Fourth Part of the law No. 9749, dated 04.06.2007 "On State Police";

(d) The law No. 8291, dated 25.02.1998 "Police Code of Ethics".

(2) The taking of comprehensive organizational and technical measures on the implementation of procedural rules in cases of escorts, interrogation and detentions or arrests in flagrante delicto for the committal of the criminal offence, particularly assessing such requirements in relation to the time and place where they are kept and their notification on the rights they have as subjects of the criminal proceeding.

(3) The strict application of standards, rules and procedures specified in cases of summons, escort, interrogation, detention and escort/or arrest in flagrante delicto of juveniles and females and the consideration of such rules as serious violations of human rights.

(4) The taking of administrative, penal measures by the heads of the police structures and in cases when they are informed on violations related to the respect of rights of the escorted, detained or arrested persons in flagrante delicto, they have to immediately notify the superior structure according to the jurisdiction of the State Police Directorate General and examine the case in question, specifying the concrete measures on their prevention and bringing the perpetrators to justice.

In each case, the right of a specialized doctor is guaranteed.

3. The guideline of the Minister of Interior, No. 421, dated 07.03.2008 specifies rules on the conduct of the persons' control.

300. The Guideline of the Prosecutor General "On guarantee and observance of human rights during the trial" (No. 2, dated 8. 03. 2007), which is submitted for application to the prosecutor's offices of all instances and the sections of the judicial police services of all structures attached to the State Police, provides for the following instructions:

1. Officers and/or judicial police agents who have made an arrest or detention in flagrante delicto or have escorted a person against whom investigation is conducted or who have taken over the arrested, detained or escorted persons, must immediately notify the prosecutor on duty and/or the head of the Prosecutor's Office of first instance of the country where the arrest, detention or escort is made.

2. In such cases, the prosecutor on duty or the prosecutor appointed by the head of the Prosecutor's Office must immediately verify the lawfulness of the conducted investigation actions and the observance of human rights by the judicial police.

3. The prosecutor must interrogate the arrested or the detained person in the presence of the defense attorney informing them on the fact for which the criminal proceeding was instituted and the reasons of the interrogation. The arrested or the detained persons cannot be interrogated by the judicial police officer without having a specific delegation order by the prosecutor.

4.1 When the arrested, the detained person, the defendant or the person under investigation have chosen a defense attorney or have requested the appointment of a defense attorney ex officio, their interrogation must be always conducted in the presence of the defense attorney. Exception from this rule may be made only when the provision of data by the person against whom investigation is conducted, is made in the scene of crime or for notable criminal offences prior to the escort, arrest or detention of the person.

4.2 In cases it is requested the appointment of a defense attorney ex officio, prior to his/her appointment, the prosecutor may make available to the arrested, detained person, the defendant or the person under investigation, the list of defense attorneys participating in the defense chosen ex officio, to offer them the opportunity to choose one of the listed defense attorneys.

4.3 When the defense attorney appointed ex officio does not ensure effective legal defense on the complaint or the request of the arrested, detained person, the defendant or the person under investigation or ex officio, after deeming if there are reasonable grounds, the prosecutor decides the appointment of another substitute defense attorney, complying with the procedure cited above in the point 4.2.

4.4 The defense attorney does not need to ask for an authorization by the prosecutor to visit or contact his arrested or detained client, but it is sufficient for him to have a power of attorney by the arrested or detained person or his relatives or the decision of the prosecutor on his appointment ex officio, as well as the license issued by the National Bar Chamber.

301. In application of the above cited legal acts and by-laws, the local structures of the State Police have taken relevant measures and they have provided access at any time to the defense attorneys to enter the premises of the pretrial detention system of the Ministry of Interior, fixing an appointment with the detained and arrested persons.

Conclusions and recommendations, paragraphs 7 (j) and 8 (j)

302. For the reporting period, the pretrial detention premises of the system of the Ministry of Interior have been far from the required international conditions and standards. The infrastructure of those premises is too old and obsolete as it is inherited from the totalitarian system. In view of the improvement of conditions in those premises, several interventions and partial investments are made, covering the wall painting, clean-up, replacement of parquets, replacement of sleeping kits such as mattresses, blankets and sheets, increase of toilet facilities, taking of measures to prevent humidity in some premises, provision of heating devices in districts under cold climate conditions, installment of ventilation fans in several pretrial detention centers with aeration problems etc. The duration of stay of the pretrial detainees in the pretrial detention center of the Ministry of Interior is specified in the Code of Criminal Procedure by the prosecutor's office and the court.

303. In 2005 the pretrial detention center of the police station of Kurbin was refurbished and in 2006, 2007, the facilities for keeping and treating the detained or arrested persons in the police stations No. 1, 2, 3, 4 in Tirana and the County Police Directorate of Tirana, were subjected to refurbishment as well. Several pretrial detention centers suffered from the following serious problems:

(a) Overcrowding and in several cases with over the double of the holding capacity as in the pretrial detention centers of the police stations of Elbasan, Fier, Shkodër, Berat, Korçë, Lushnjë, Berat;

(b) There have been impediments and challenges for the transfer to prisons of the persons sentenced by virtue of a final judgment due to the overcrowding of prisons.

304. From 2003 to present, the overcrowding of the pretrial detention centers under the police administration, mostly due to the non-transfer in due time of the persons sentenced by virtue of a final judgment to the Penal Sentence Enforcement Institutions within the Ministry of Justice, has turned into a genuine concern. This situation has continued to be aggravated until the moment of the full transfer of the pretrial detention system and their facilities to the authority and the administration of the General Directorate of Prisons and such process became fully operational in February 2007. However, this problem has been progressively improved as a result of the cooperation between the State Police Directorate General and the General Directorate of Prisons.

305. Following the implementation of this process, all persons against whom under the security measure of "imprisonment arrest" taken by virtue of a court ruling, are transferred to the respective facilities of the General Directorate of Prisons but such transfer as the initial stage is often carried out with difficulties and delays due to the objective failure of the structures of the General Directorate of Prisons to attract and accommodate in their facilities the arrested persons after the court ruling is rendered.

306. To improve the work done in this respect and to ensure a smooth process of the timely transfer of the pretrial detainees from the security cells of the police stations to the Penal Sentence Enforcement Institutions, in December 2007, the State Police Directorate General signed a joint agreement with the Director General of Prisons, No. 7217, dated 17.12.2007 and No. 9885, dated 14.12.2007 "On improvement and higher job effectiveness of subordinate structures to guarantee freedoms and rights of pretrial detainees". The purpose of this joint agreement is to prepare the ground for the timely transfer of the arrested persons to the Penal Sentence Enforcement Institutions, decentralizing the process and avoiding the intervention and the approval by central structures for any case of need for transfer, specifying more clear rules and procedures in this respect.

307. This agreement is generally applied by all local structures of the State Police and the Penal Sentence Enforcement Institutions, saving the cases of the delayed transfers of the pretrial detainees from the security cells of the police station of Vlorë and the County Police Directorate to the premises of the Penal Sentence Enforcement Institutions due to the overcrowding of the premises of those institutions.

308. In addition to problems and shortcomings identified for all persons that were in the premises of the pretrial detention centers under the administration of the State Police, problems and difficulties are faced in respect of hygienic-sanitary conditions by the female detained and arrested persons. They were kept in separate cells secured by gates with two locks but without toilets inside the facilities.

309. As regards the female pretrial detainees, this category was secured and treated in such premises until the imposition by the court of the security measure of "imprisonment arrest" and further they were transferred to the pretrial detention centers to the authority of the Ministry of Justice, Directorate General of Prisons, specifically to the Pretrial detention

Center No. 313, Tirana, a specific institution for females. This problem was solved after the pretrial detention system was transferred to the authority of the Directorate General of Prisons.

310. Presently, there are difficulties to ensure proper living conditions within the premises where the female arrested and detained persons are kept for the period of 48 hours until the imposition of the security measure by the court and the transfer to the pretrial detention system under the administration of the Directorate General of Prisons.

311. Pursuant to article 12 of Law No. 8328, dated 16.04.1998 "On rights and treatment of prisoners", amended by Law 9888, dated 10.03.2008, the penal sentence enforcement institutions are as follows: maximum security prisons; ordinary prisons, low security prisons; special and pretrial detention institutions. The establishment, classification and closing of the institutions of enforcement of penal imprisonment sentences or special sections within those institutions are effected by virtue of the order of the Minister of Justice.

312. According to article 13, the maximum security prison is the institution where imprisonment sentences are enforced for subjects of organized crime and other convicts, who, while committing the criminal offence or serving the sentence are characterized by attitudes and behaviors that have rendered impossible the accommodation of other categories in prisons:

2. The accommodation of the sentenced persons in maximum security prisons if the court has not rendered a ruling is effected upon the request of the prosecutor to that court.

3. When the sentenced person serves the sentence and he has to be transferred to a prison of maximum security, according to the provisions of this law, the request of the prosecutor is submitted to the court of the district where the institution is located.

4. The transfer from the maximum security prison to the other sentence serving institutions is effected upon the request of the sentenced person to the court where the institution is located.

5. Restrictions of the rights of the sentenced person are made in maximum security prisons in cases and according to the criteria expressly stipulated in this law.

6. Upon the order of the Minister of Justice, sections of maximum security prison may be established in the prisons of other categories, where the above cited rules are applicable. According to article 14 (amended), the prisons of ordinary security are those institutions where the sentence is served by all sentenced persons, except the ones that are accommodated in maximum security prisons, low security prisons and special institutions:

(a) If the court has not specified in the imprisonment sentence the type of the institution where the sentence shall be served; the convicts are accommodated in a prison of ordinary security;

(b) The distribution and the transfer of sentenced persons to prisons of ordinary security are effected by the Directorate General of Prisons. Upon the order of the Minister of Justice, sections of low security may be established in prisons of ordinary security.

313. According to article 15, prisons of low security are those institutions where the convicts serve their sentence for criminal contraventions, for criminal offences committed due to negligence and for other criminal offences which are punishable by a term not exceeding 5 years of imprisonment. The Director General of Prisons, upon the request of the institution where the convict is serving the sentence or upon his own initiative, may

decide the transfer to a prison of low security of the sentenced persons whose remainder of the sentence to be served is not less than 2 years of imprisonment and have observed the internal regulation of the institution. According to article 10 of the law 9888, article 15 of the Law No. 8328 is followed by new article 15/1: Pretrial detention institutions are those institutions where individuals under the court security measure of "imprisonment arrest", are kept.

314. According to article 17 of the above cited law, women and juveniles regularly serve their sentence in special institutions adapted only to them and if they are not made available, in special sections within other institutions, in accordance with the provisions of this law. Mothers are allowed to keep their children until they turn 3 years old. Special nurseries are operational to furnish care and assistance to those children.

315. Law 8328, dated 16.4.1998 "On rights and treatment of prisoners" (article 23) stipulates that:

> 1. The buildings of prisons and special institutions intended to be used by the sentenced persons must be constructed and structured in such a way so as to meet the criteria to lead a normal life and ensure the implementation of treatment program activities.
>
> 2. The existing buildings are progressively adapted to be used with special divisions by a limited number of groups of sentenced persons whereas the projects of new buildings are approved for divisions usable for up to 4 sentenced persons, complying with the required spaces.

316. Law No. 9888, dated 10.03.2008 (article 14) amended article 23 of Law No. 8328 dated 16.4.1998:

> 1. The buildings of institutions of enforcement of penal imprisonment sentences must be designed, built or reconstructed so as to meet normal living conditions. They must have adequate spaces for the implementation of common activities and meet the individual requirements of sentenced persons or pretrial detainees.
>
> 2. The rules and criteria for the technical conditions to be met by the new buildings of the institutions of enforcement of criminal sentences are specified by a joint order of the Minister of Justice, Minister of Health and the Minister covering the construction field.

317. **Information on the number and distribution of Penal Sentence Enforcement Institutions.** Currently, by virtue of the Order of the Minister of Justice "On categorization of Penal Sentence Enforcement Institutions" (No. 3185 dated 18.04.2008) (Penal Sentence Enforcement Institutions (PSEI) such institutions are listed as below:

- Penal Sentence Enforcement Institution — Vaqarr — prison with a section of ordinary security and a special section for juveniles sentenced to imprisonment
- Penal Sentence Enforcement Institution in "Ali Demi" Street, Tiranë – prison with a section of ordinary security, a section of low security, a section for sentenced women and pretrial detainees with children up to 3 years old
- Penal Sentence Enforcement Institution of Fushë Krujë – prison with a section of maximum security, a section of ordinary security, a pretrial detention section and a section for persons deemed as "collaborators of justice"
- Penal Sentence Enforcement Institution of Burrel – prison with a section of maximum security, a section of ordinary security and a pretrial detention section

- Penal Sentence Enforcement Institution of Tepelenë – prison with a section of maximum security, a section of ordinary security, a pretrial detention section and a pre-detention section for juveniles
- Penal Sentence Enforcement Institution of Lushnjë – prison with a section of ordinary security
- Penal Sentence Enforcement Institution of Rrogozhinë – prison with a section of ordinary security, a pre-detention section and a pretrial detention section for juveniles
- Penal Sentence Enforcement Institution of Peqin – prison with a section of maximum security, a section of ordinary security and a pretrial detention section
- Penal Sentence Enforcement Institution of Krujë — special institution — a special section for elderly people over 65 years old, a section of maximum security, a section of ordinary security, a special section for sick persons with mental disturbances and a pretrial detention section
- Penal Sentence Enforcement Institution of Lezhë – prison with a section of ordinary security, a pretrial detention section and a pretrial detention section for juveniles
- Penal Sentence Enforcement Institution of Korçë – prison with a section of maximum security, a section of ordinary security, a pretrial detention section and a pretrial detention section for juveniles
- Penal Sentence Enforcement Institution in "Jordan Misja" Street, Tiranë – Pretrial detention institution with a pretrial detention section for juveniles, a pretrial detention section for women, a prison section of maximum security and a prison section of ordinary security
- Penal Sentence Enforcement Institution in "Mine Peza" Street, Tiranë – pretrial detention institution, with a prison section of maximum security and a prison section of ordinary security
- Hospital Center of Prisons – special institution for the health treatment of pretrial detainees and persons sentenced to imprisonment and a section for persons under the court medical measure of "compulsory medication in a medical institution"
- Penal Sentence Enforcement Institution of Vlorë – pretrial detention institution with a section of pretrial detention for women and a pretrial detention institution for juveniles
- Penal Sentence Enforcement Institution of Durrës – pretrial detention institution with a pretrial detention for juveniles
- Penal Sentence Enforcement Institution of Sarandë – pretrial detention institution
- Penal Sentence Enforcement Institution of Berat – pretrial detention institution
- Penal Sentence Enforcement Institution of Tropojë – pretrial detention institution
- Penal Sentence Enforcement Institution of Kukës – pretrial detention institution

318. **Information on the imprisonment of women.** Currently, 93 women serve their sentence in the Penal Sentence Enforcement Institution in Tirana city, in the section of sentenced women (statistics of September 2008) and such number has been progressively increased on annual basis. There have been problems with the law non-enforcement. For instance conjugal visits were not allowed and permissions for good conduct were not granted to the sentenced women. Currently, the conjugal visits are made even by women as law provides and permissions for good conduct are granted. The most recent amendments

of the law "On rights of prisoners" provide for that the maximum security measure is not applicable to women, which means that their regime is less stringent and the benefits for reduction of sentence per year for proper conduct are augmented from 45 days per year to 90 days per year.

319. As regards the establishment of special institutions for women, this problem has still remained unsolved.

320. **Treatment of juveniles.** The sentenced persons or pretrial detainees who are juveniles are treated in special sections in prisons (in this context, we cite the Penal Sentence Enforcement Institution of Vaqarr). In the pretrial detention premises the juveniles are treated in special sections, rooms, cells, without any contacts with the adult pretrial detainees in the pretrial detention premises.

321. To improve the treatment of juveniles sentenced to imprisonment (in the Penal Sentence Enforcement Institution of Vaqarr), the qualification of the staff dealing with juveniles is required and to this end, the Directorate General of Prisons has cooperated with different organizations. Additionally, necessary measures are taken (by virtue of the order of the Minister of Justice), so as in all prisons the sentenced juveniles are prevented from communication and contact with the adult sentenced persons. The establishment of a special institution for the treatment of imprisoned juveniles is attached priority by the Ministry of Justice. It has currently been transferred to the authority of the Ministry of Justice which is located within the Municipality of Kavaja town and the legal documentation is ensured for the implementation of construction works which have started by the end of 2007 with the financial support of CARDS EU Program 2004. Upon the functioning of this institution (provided for in 2009), the imprisoned juveniles shall be treated in a special educational institution under optimal conditions for their age and they shall be treated by a specialized personnel.

322. During the period 2003–2008, the Ministry of Justice applied the policy of the establishment of new prison institutions in order to enhance the capacities and guarantee normal conditions for the purpose of sentence serving.

323. As regards the improvement of the sentence serving conditions and to ensure a better infrastructure of the penitentiary system, necessary measures are taken to build new capacities or improve the conditions in the existing ones. Specifically, we may cite:

- The construction of prison in the town of Korçë (first stage] financed by the Program CARDS 2002 to an amount of 2, 5 million Euro. The second stage for the construction of this prison is financed from CARDS 2004 to an amount of 2, 5 million Euros. The new prison in the town of Korçë has a holding capacity of 312 persons. This institution started to function in September 2008 and currently it is subject to full accommodation. Prisoners are treated in this institution and the pretrial detainees for the County of Korçë are accommodated in a special section and they were previously accommodated in the old pretrial detention center attached within the premises of the police station. The Ministry of Justice has selected the personnel of this institution and necessary technical and material measures are taken to make it fully operational by 2008.
- Construction and operation of the Prison of Fushë-Krujë. This prison has a holding capacity of 312 prisoners. It is supplied with the necessary functional infrastructure and the relevant personnel is selected. Prisoners are accommodated from the Penal Sentence Enforcement Institutions (PSEI) being subject to overcrowding, namely 52 persons from the PSEI of Rrogozhinë, 34 persons from the PSEI of Vaqarr, from the PSEI of Burrel and the pretrial detention center of Durrës. Prisoners and pretrial detainees under the security measure of imprisonment arrest are treated in this

institution and prisoners whose place of residence falls within the jurisdiction of this field, shall be accommodated therein.

- Construction and operation of the Prison of Peqin. In the framework of EU Program CARDS 2005, the bidding procedures are implemented for the preparation of the project-applications for the pretrial detention centers of Elbasan, Fier, Berat, Dibra, Gjirokastra and Shkodra. Due to the support of IPA EU Program (2007–2009), funds are raised for the construction of pretrial detention institutions for the counties of Shkodër, Fier and Elbasan, to an amount of 16.5 million Euros.
- The establishment of the institution of juveniles with the assistance of the Program CARDS 2004 to the amount of 1, 5 million Euros. The taking over and the operation of this institute are expected to be in place by February 2009.

324. Conditions of pretrial detention centers: In application of the Decision of the Council of Ministers 327, dated 15.05.2003 "On the transfer of the pretrial detention system to the authority of the Ministry of Justice" the pretrial detention system is fully transferred from the Ministry of Interior to the authority of the Ministry of Justice. Presently, some of the pretrial detention centers are transferred to sections of the existing Penal Sentence Enforcement Institutions whereas in the cities of Sarandë, Berat, Durrës, Kukës, Tropojë, the pretrial detention centers shall continue to be located in the premises of the police stations until the construction of new buildings is in place. The treatment of the pretrial detainees shall be significantly improved with the functioning of the new prison in Durrës city.

325. **Pretrial detention center in Vlora.** Except for the pretrial detention center of Vlora, the conditions and treatment of the pretrial detainees in the pretrial detention institutions under the subordination of the Ministry of Justice have been fairly improved. The foreign and Albanian organizations which have monitored the situation of human rights during this period, have continuously included in their reports the remarks on the level of the observance of human rights. They have requested from the Minister of Justice the law enforcement and to assume full responsibilities for the treatment of pretrial detainees. As regards the "improvement of the living conditions in the isolation cells and the escort of the nationals to the police station premises of Vlora, we clarify that the Penal Sentence Enforcement Institution of Vlora has been operational within the premises of the Police station of Vlora. Due to the inherited infrastructure and the failure of accommodation in another institution, the Ministry of Justice has taken measures through the Directorate General of Prisons for the pretrial detainees of this pretrial detention center, in order to improve their living conditions and to refurbish and supply this pretrial detention center with the required infrastructure.

326. Within the framework of the CARDS Program (2002–2004–2005), an amount of 4.4 million Euros is allocated for the pretrial detention center of Vlora. The PSEI of Vlorë started to function in March 2008 and is fully accommodated thus meeting modern standards. The pretrial detainees, who were previously treated in the pretrial detention cells of the Police Station of Vlora, are accommodated therein. The pretrial detention institution of Vlora has a holding capacity of 125 persons. In addition to the pretrial detainees in the pretrial detention cells within the Police Station of Vlorë, due to the proximity with the court, about 14 pretrial detainees from the PSEI in Rrogozhinë town who were being tried by the Court of Appeals of Vlorë were accommodated in the new institution. There is a total of 19 juveniles in the establishment of juveniles, 3 of whom are transferred from the PSEI (pretrial detention center) of Berat, under better living conditions. With the functioning of the PSEI of Vlorë, the conditions of treatment and application of the rights of pretrial detainees in this County are far better and compliant the required standards for the treatment of prisoners. The pretrial detention sections are established within the newly constructed prisons where the pretrial detainees who were previously treated in the

premises of the pre-detention center of the police stations (from the pretrial detention centers of Vlorë, Durrës, Berat, Rrogozhinë, etc) are accommodated. The material conditions of treatment and observance of their rights are significantly improved in relation to the miserable and poor conditions of the pretrial detention centers within the police premises.

327. Starting from September 2008 the implementation of the pilot project launched by the Ministry of Justice in cooperation with the Spanish Agency for International Cooperation for Development (AECID) has started in the pretrial detention center of Vlorë (and in the PSEI of Fushë-Kruja). This project entails the support to the Albanian penitentiary system on the implementation of a program of activities and measures including the Individualized Intervention Programs and the vocational courses for the re-integration of persons sentenced to imprisonment. This project shall be closed in November 2009.

328. Termination of the construction of the new pretrial detention center in Durrës city. With the financing of the state's budget, the taking over of the new pretrial detention building in Durrës city is underway, where the pretrial detainees of that county shall be accommodated. As identified above,[72] with the termination and operation of the building of the psychiatric hospital within this pretrial detention center, the persons under the court measure of "compulsory medication in a medical institution", who are currently treated in the prison hospitals, shall be accommodated therein. The psychiatric institution shall be administered by the Ministry of Health.

329. Treatment of the issue of prisons' overcrowding. One of the problems currently faced by the penitentiary system in Albania is the overcrowding of prisons. Such phenomenon directly influences the quality of the application of the rights of prisoners and the smooth implementation of work by the penitentiary administration. In some prisons, the phenomenon of overcrowding is more prevalent (currently the holding capacity in all PSEI-s totals 4,166 persons/current situation — 5,064 persons; overcrowding — 898 persons)[73] and the situation is deteriorated if we consider that the overcrowding refers to the holding capacity and not to the legal standard for the space belonging to each prisoner. The large number of prisoners reduces the period of their aeration, the time for meeting the next of kin or relatives, individual treatment by social care workers etc. To ensure the sustainable solution of the problem of overcrowding in prisons, the target is shifted to the drafting and implementation of policies in order to tackle and avoid such problems and ensure the proper treatment of persons serving their sentence in such institutions.

330. The Ministry of Justice has planned to take measures in the legislative and infrastructure field in order to minimize the problem of prisons' overcrowding. From legislative point of view, the draft law "On Probation Service" is prepared. Such draft law provides for the establishment of a special structure for the prosecution of the alternative sentences to imprisonment or community measures and sanctions. The implementation of such measures shall reduce the number of persons entering prison premises, thus avoiding the negative effects of imprisonment for the persons themselves and the respective cost for the state. Regardless of the measures undertaken for the significant improvement of the situation of the overcrowding in prisons and pretrial detention centers, the problem of overcrowding requires complex intervention in both the short and long term run.

331. In respect of the observance of human rights in the penitentiary system, the National Plan for the Implementation of the Stabilization Association Agreement has provided for the conduct of short-term implementing activities (for the period 2007–2008):

[72] Refer to comments on article 16.

[73] These figures are reported by the Directorate General of Prisons.

1. Distribution of sentenced persons to institutions close to their places of residence.

2. Implementation of a special system for the employment of pretrial detainees and sentenced persons.

3. Additional premises within the pretrial detention center in Jordan Misja Street in Tirana and in the prison of Rrogozhina.

4. Full operation of the pretrial detention center and of the center for mentally ill persons in Durrës.

5. Full operation of the pretrial detention center in Vlora.

6. Implementation of the necessary logistic infrastructure for the operation of the prison of Fushë-Kruja.

7. Implementation of the necessary logistic infrastructure for the operation of the prison of Korça.

Mid-term implementing activities (2009–2010) in NPISAA:

1. Design and construction of the prison in Tirana and the pretrial detention centers in Kukës, Shkodra and Gjirokastra.

2. Full operation of the pretrial detention center in Elbasan and of the pretrial detention center in Fier.

3. Installation of the heating system in all prisons.

Table 1
Foreign assistance for the improvement of the penitentiary system

Institution	*Donor*	*Program/ implementing agency*	*Project title*	*Value*	*Commence-ment deadline*	*Implement-ation deadline*
Ministry of Justice	European Union (EU)	CARDS 2004	Improvement of the infrastructure of the institutions under the subordination of the Ministry of Justice. Rehabilitation of the prison of Korça and Fushë-Kruja. Construction, refurbishment of pretrial detention centers.			
Ministry of Justice	EU	CARDS 2005	Investments in the infrastructure of the judicial and penitentiary system (pretrial detention centers of Lezhë and Berat)	1.3 mln Euros	ongoing	ongoing
Ministry of Justice	EU	IPA 2007	Support to the implementation of the Master-plan on the pretrial detention centers (Fier and Elbasan)	10 mln Euros	ongoing	ongoing

332. The Ministry of Justice is also committed to the process of the implementation of recommendation of the CE Committee on Prevention of Torture for the improvement of the living conditions of prisoners. The Ministry of Justice has prepared and submitted some detailed and sound[74] proposals to the responsible authorities in relation to the construction of a new prison. Specifically, procedures have started for the provision of a site which is located in the Municipality of Kamëz, for the construction of a new prison with a holding capacity of 800–1000 prisoners. The municipality of Kamëz has officially confirmed that it owns a surface of 40.000 m2 and has expressed its willingness and readiness for the continuation of further legal procedures. The Directorate General of Prisons deems that the location of the site is appropriate for the construction of the prison.

333. Improvement of conditions for the treatment of sentenced persons. According to the law 8328, dated 16.4.1998 "On rights and treatment of prisoners" the premises where the sentenced persons live, must have adequate spaces with basic natural and artificial lighting, to enable the stay, work and active recreation. Further, they need to be well-ventilated and supplied with hygienic services. The heating system of the premises has to function in accordance with the climate conditions.

1. When sleeping in individual cells is not possible, the shared accommodation of the sentenced persons in the cell must be arranged in such a way so as to prevent conflicts and mutual negative consequences. To this end, referral is made to the criteria of age groups, the type of the committed criminal offences and the intellectual and psychic features of the sentenced persons.

2. A special bed and an appropriate sleeping kit are provided for every sentenced person. The minimum quota for the surfaces, volumes, lighting and aeration of the premises for sentenced persons are specified in the regulation of prisons in conformity with the recommendations of the Ministry of Health.

334. Pursuant to article 25, each sentenced person is ensured clothing and other personal effects in sufficient quantity, in a good state and clean, so as to meet the normal living conditions.

1. With the permission of the administration the sentenced persons may keep clothing and personal effects which must be clean and appropriate, as well as objects of a special moral or personal value.

335. As regards the personal hygiene and environment, article 26 of this law provides that the sentenced persons are ensured the premises, necessary equipment and personal hygiene items, in proportion with the number of users, thus meeting the required personal hygiene standards. In application of the recommendations on the improvement of the material conditions of treatment in the penitentiary system, the Directorate General of Prisons has taken measures as follows:

1. In the long term run the number of prisoners has to be reduced with the establishment of new prisons.

2. To meet the bedding needs for all prisoners.

3. The situation of the personal hygiene in all prisons, is improved (including the prison of Krujë, the Hospital of Prisons etc). Each sentenced person is supplied with hygiene items for personal clean-up and the environment where he lives.

[74] Referring to the results of the study conducted by the Research Institute of Human Rights and Social Justice in the University of London, for the implementation of recommendations of the CE Committe on Prevention of Torture.

4. The boiler for the central heating is installed in the prison of Tepelenë, the facilities of the prison are improved and a toilet is fixed per each room.

5. Investment is made for the pretrial detention center in "Jordan Misja" Street, Tirana, in order to create toilet facilities to the prisoners and reconstruct the water supply and sewerage network.

6. The reconstruction of the prison of Lezhë has terminated and the surface of the aeration square in the prison of Burrel is enlarged. With the provision of funds, intervention is planned for the improvement of shower facilities in the prison of Vaqarr. Likewise, in respect of the continuous improvement of the living conditions of the sentenced or detained persons, the water supply in prisons or pretrial detention premises is improved.

336. TV sets are installed in such facilities, conditions are ensured for the exercise of religious rites, visits with relatives or the next of kin have become more frequent, improvement is noticed in respect of the visits with relatives, telephone calls and correspondence. The provision of legal assistance is significantly improved and facilities are offered to enable contacts between the sentenced persons and the lawyers or the Ombudsman. The Directorate General of Prisons has taken measures for the improvement of the program on the organization of different activities for prisoners. Special plans are designed for different activities such as reading of books, visiting the library, organization of sports activities, handicraft etc. Due to a special fund, new titles of books are added to the libraries of several institutions.

337. Aeration period: law 8328, dated 16.4.1998 "On rights and treatment of prisoners" (article 28) stipulates as follows:

1. The sentenced persons who do not work outdoors and all other sentenced persons are entitled to stay in outdoor facilities not less than two hours per day during the days off.

2. This period of time may be reduced but not less than 1 hour per day because of exceptional reasons and only upon the order of the director of the institution.

3. The aeration in outdoor facilities is made available in groups in addition to the sentenced persons under isolation measures.

338. Law 9888, dated 10.03.2008 (article 18) amended the last paragraph of the article 28 of the law 8328 dated 16.4.1998 "On rights and treatment of prisoners"). It provides for that the aeration in outdoor facilities is made available in groups in addition to the cases provided for in the article 53 when for disciplinary violations, the following disciplinary measures are taken:

(a) Exclusion from special activities up to 10 days;

(b) Exclusion from the aeration in group not exceeding 20 days;

(c) Exclusion from all common activities up to 20 days.

339. The Directorate General of Prisons has taken measures so that all the prisoners have the right of aeration every day of the week including Sundays and official holidays. Also, measures are taken for the exercise of religious rites. The Directorate General of Prisons has taken measures so as the "aeration cells" in the PSEI of Vaqarr are not used any longer for the accommodation of the sentenced persons. The sentenced persons under "a regime of special supervision" may be entitled to aeration, to own books, to exercise religious rites and they are given a copy of the decision on the measure.

340. Improvement of nutritional standards for the sentenced persons and pretrial detainees. To improve the nutritional standards of the sentenced persons and pretrial

detainees, based on the international recommendations on human rights, the responsible state structures have proposed and adopted the new nutritional standards. In this respect, the World Health Organization and FAO have cooperated with each other. Since June 2007, the application of the new nutritional standards has started throughout the entire penitentiary and pretrial detention system.[75] Starting from January 2008, the Directorate General of Prisons is the responsible institution for the provision of food according to the new nutritional standards and the provision of the necessary materials and items for the pretrial detainees kept in the premises of the police stations. Such standards were also applied for all other pretrial detainees who were in the PSEI-s. The nutritional standards for sentenced persons and pretrial detainees in the system of prisons and pretrial detention are applied in accordance with the respective division, namely the ordinary prisoners, the employed prisoners and the sick prisoners. The effects of the application of the new nutritional standards are related to the change of the structure of the nutritional standards in quantity, quality and assortment. The structure of the nutritional standards includes 17 articles compared to 12 articles of the previous standards. Such standards ensure a higher food quality and compared to the previous ones, the daily calories benefited from the prisoners are tripled, in accordance with the customary nutritional standards.[76]

341. Employment of prisoners. Law 8328, dated 16.4.1998 "On rights and treatment of prisoners", in its article 34 stipulates:

> 1. The work is organized by the directorate within and out of the institution, using the assistance of other subjects.
>
> 2. During the serving of the imprisonment sentence, they cannot be obliged to work with the sentenced persons who have met the requirements for old age retirement, crippled persons of first and second class, pregnant women, insofar as provided for by the law in force and persons who do not have adequate physical and health situation to do the job they are charged with. The sentenced persons who have psychic problems may work only when this serves therapeutic purposes.
>
> 3. The work does not have a punitive character and is remunerated according to the criteria specified by a special decision of the Council of Ministers.

342. Law 9888, dated 10.03.2008 (article 18) amended article 34 of law 8328, dated 16.4.1998 "On rights and treatment of prisoners" and acknowledges the right of work to the prisoners. The sentenced persons shall already have the opportunity to engage in different jobs in the prison premises during the sentence serving period. By this law, higher financial profits are guaranteed because the sentenced persons shall be subjected to the probation service, they shall be paid for their work done and shall have other benefits in support of their re-integration in the society.

343. To ensure the involvement of the prisoners in different activities during the imprisonment term, the General Draft Regulation of Prisons, (which is in the last stage of review) has provided for the employment of prisoners in support of their rehabilitation, vocational training and capacity to earn their living after their release from prison. Such an act provides for the opportunity to the prisoners to work on their account, to be employed on account of the institution where they are accommodated and on account of the enterprising subjects out of the prison. They have to be remunerated for their job and such

[75] Until May 2007 the nutritional treatment of the sentenced persons was made on the basis of standards of the year 1975.

[76] For ordinary prisoners from 2210 k/cal to 2615 k/cal per day, for employed sentenced persons from 2800 k/cal to 3033 k/cal per day and for the sick sentenced persons from 2930 k/cal to 3345 k/cal per day.

remuneration shall not be lower than the minimum salary at national level, approved by the Council of Ministers. Priority shall be attached to the employment of the persons sentenced to long term imprisonment and the ones who are sentenced to life imprisonment.

344. Permissions for good conduct: law 8328, dated 16.4.1998 (article 59) provided for the permission for good conduct to the sentenced persons for the observance of the regulation of prisons, active participation in the treatment programs or good actions and conduct. They shall be given permissions for good conduct in one or several cases not to exceed 20 days per year. The recent amendments to the law on treatment of sentenced persons specify the criteria to give permission for good conduct to prisoners. Such permissions were previously provided for in the General Regulation of Prisons (which is a by-law) and were granted by the Director of the respective prison. According to those amendments, the director of the institution may give permissions for good conduct for a maximum of 20 days per year to the sentenced persons who observe the internal regulation of the institution, adopt a good conduct and do not pose social dangerousness for the implementation of their emotional, personal, economic and cultural interests. For the sentenced persons who are juveniles, the duration of the permission shall not exceed 20 days for any case it is given and in total; it shall not exceed 45 days per year. The permissions for good conduct are part of the rehabilitation treatment and their application is pursued by the employees of the respective service. The permission for good conduct in prisons or sections of maximum security is given only upon the order of the Minister of Justice or upon his authorization by the Director General of Prisons. In case of refusal of the permit, the prisoner may file a complaint to the court which decides on the request for the permission for good conduct.

345. Education of sentenced persons: According to the conducted studies, the prevalence of illiteracy is appalling thus creating impediments to the rehabilitation work, thwarting re-integration and representing one of the main concerns of the return of the sentenced person in the road of crime. The respective structures of the Directorate General of Prisons (Sector of Social Issues) have taken measures for the education of the sentenced persons, attaching priority to the juvenile sentenced persons (not only the sentenced persons who are subject to the compulsory education but also the other juvenile sentenced persons). According to the agreement signed with the Ministry of Education and Science of the year 2000, the school for the juvenile sentenced persons of the PSEI of Vaqarr is already operational. In the course of the full implementation of the educational process, difficulties have been continuously encountered in this institution due to the lack of interest in education by the juvenile sentenced persons, thus delaying the process of commencement. The staff has made its best efforts to raise the awareness of the sentenced persons on the importance of education. In 2006, efforts were made to draft and conclude a new agreement on the extension of the educational process to all PSEI-s, based on the practices followed for the functioning of the school in Vaqarr.

346. Due to the support of various organizations, the Educational Sectors in prisons and pretrial detention centers have continuously conducted an informal process of education, focusing on the illiterate sentenced persons. A class with two teachers of the educational system for the illiterate pretrial detainees is established in the pretrial detention center of Durrës city and such pretrial detainees have shown interest in education.

347. During 2008 the Ministry of Justice prepared a draft memorandum of cooperation with the Ministry of Education, aiming at the practical implementation of the right of education of the pretrial detainees and the sentenced persons in the Penal Sentence Enforcement Institutions (PSEI). This draft memorandum, inter alia, provides for that the education has to be implemented on full time or part time basis in a teaching adapted facility within the Penal Sentence Enforcement Institution. The full time education shall be implemented only for students at the age of the compulsory education whereas the part time

education shall be implemented in all PSEIs. Within the framework of this draft memorandum, a pilot project will be initially implemented in several PSEIs such as in Rrogozhinë, Korçë and Peqin, to be further extended throughout the entire penitentiary system.

348. Transfer to prisons of persons sentenced to imprisonment by a final verdict. To solve the problem of the prolonged accommodation of the sentenced persons in the pretrial detention cells, which is contrary to the legislation in force and the rights of prisoners, the Ad Hoc Order of the Minister of Justice 3768/1, dated 10.05.2006 was adopted. This act specifies the taking of measures for the full withdrawal from the pretrial detention cells of all persons for whom it has expired the legal procedure for the enforcement of the imprisonment sentence. The Directorate General of Prisons has taken measures so as each person sentenced by a final verdict is transferred without delay to the institutions to serve the imprisonment sentence. In all cases, upon the delivery of the prosecutor's execution order to the pretrial detention directorates, within a very short period, the sentenced persons were transferred to the PSEI-s for serving their sentence. In respect of the improvement of the work and the required infrastructure, according to the Decision of the Council of Ministers 523, dated 15.08.2007, the structure is filled with the necessary civilian and police personnel for the proper functioning of the pretrial detention centers. Prior and following the takeover of the pretrial detention centers by the Ministry of Justice and for the ongoing period, no cases were reported for the accommodation of the persons sentenced by a final verdict in the pretrial detention cells.

Conclusions and recommendations, paragraphs 7 (k) and 8 (k)

349. Law 9749, dated 04.06.2007 "On State Police" (article 101/3) specifies "keeping the persons escorted to police stations until the verification of the case on which he is escorted, shall not exceed 10 hours". This provision was also included in the previous law "On State Police". During that period of 10 hours, verifications and clarifications are made, evidence is collected. By the end of this period for the ones for which doubts are not substantiated and evidence is not collected, they are released and for those who prove (there are evidence) that they are perpetrators of the criminal offences, after 10 hours it is imposed the measure of the arrest in flagrante delicto or detention.

350. The Order of the Minister of Interior "On the guarantee and observance of human rights and fundamental freedoms during the escort to the police premises and the pretrial detention system" (No. 2191, dated 25.09.2006) specifies that for the detained and arrested persons, the preliminary period of verification of 10 hours is calculated in the deadlines of detention and arrest (the time of detention or arrest is documented and calculated starting from the time of the deprivation of the person's liberty and not from the time of the drafting of the record on arrest or detention). In such case, there is not any addition of 10 hours above the 48 hours. Following that period (48 hours) the detained or arrested person is brought before the court to be subject to review, evaluation and imposition of the security measure, to hold if he shall be treated under "imprisonment arrest" or if he shall be released.

351. The Guideline of the Prosecutor General No. 2 dated 8. 03. 2007 "On the guarantee and observance of human rights during the trial" also specifies that the prosecutors of first instance need to take into account the legal conditions and criteria for the imposition of the security measures to select and request to the court proper personal security measures, thus avoiding any security measure in contravention to the law, and reducing the period of the measure of arrest in cases when such measure is ordered to guarantee the taking or proving of evidence. The Guideline of the General Prosecutor No. 3 dated 8. 03. 2007 "On improvement of work and inspection of the prosecutor during the prosecution" specifies:

1. In case the defendants are arrested in flagrante delicto, the investigation has to be terminated by the prosecutor within 48 hours and along the imposition of the security measure, the direct trial has to be claimed, saving the cases when the prosecutor deems that other investigation has to be conducted.

2. The prosecutor may proceed in the same manner as above, even when the defendant has confessed the committal of the offence and his culpability is explicit, terminating the investigation within 15 days and claiming the direct trial.

Conclusions and recommendations, paragraph 7 (l) and 8 (l)

352. Upon approval by the Albanian Assembly of Law No. 9398, dated 12.05.2005 "On some supplements and amendments to law No. 8454, dated 04.02.1999 "On Ombudsman", the competences of this institution are extended and strengthened to guarantee human rights. By this law, a provision (article 19/1) is added which provides that the Ombudsman or the persons authorized by him are entitled to have access at any time, without limitation and preliminary authorization, but informing the head of the institution thereof, to all institutions of public administration, prisons, premises where the police or the prosecutor's office keep the escorted, detained or arrested persons, (pretrial detainees), in units or state institutions, psychiatric hospitals, asylums, orphanages and any other premises when there is relevant data, deeming that human rights and fundamental freedoms are allegedly violated. The access to all of the above cited premises may be ensured both to investigate a specific complaint or notification, and upon the initiative of the Ombudsman for purposes of inspection or study. In these cases, the representatives of the Ombudsman may fix an appointment, talk confidentially and without the presence of the official persons with any person kept in those premises. Any type of correspondence of those persons with the institution of the Ombudsman must not be hampered or checked. In this way, the creation of sentence establishments toward the external control mechanisms provides effective measures for the prevention of abusive practices and improvement of conditions of the sentence and pretrial detention premises.

353. The institution of the Ombudsman has conducted periodic controls, visits and inspections in the premises of the Police Stations, informing the respective structures thereof and it has also conducted other unannounced inspections without any preliminary warning. The representatives of the Ombudsman are allowed to have access to those premises at any time and without any specific authorization. The Minister of Interior and the director of the State Police have ordered the respective police structures for the implementation of legal powers of the Ombudsman to have an appointment at any time and without any delays with any person inside the isolation premises. Additionally, the Institution of the Ombudsman and the Ministry of Interior are coordinating joint actions in order to enable meetings with police operatives, in view of promotion and recognition of legal powers of that Institution.

354. The Ombudsman, particularly in annual reports, has repeatedly made a series of recommendations in terms of which he deems that their observance shall lead to the prevention of torture, ill-treatments and violations of law.[77]

355. The Unit for Prevention of Torture which functions within the Ombudsman's Institution, (established in early 2008) inspected until early July 2008 the prison of Kruja, the prison of Burrel, the Pretrial Detention Center of Korça and Tropoja. From July 2008 to November 2008, the Unit for Prevention of Torture has inspected 45 buildings including

[77] These recomendations are included in the Annex 1 attached to this Report.

prisons, pretrial detention institutions, police stations, psychiatric hospitals, military units, centers of asylum seekers and illegal immigrants. For all the conducted inspections the Ombudsman submitted written recommendations to the respective institutions, claiming the improvement of conditions and treatment of persons deprived of liberty. In some cases in the course of inspections, it is reported physical violence and the Institution of the Ombudsman carried out concrete actions and filed a report with the Prosecutor's Office against the suspected perpetrators in official capacities.

356. Pursuant to article 43 of Law .8328, dated 16.4.1998 "On rights and treatment of prisoners", and the visits to the institution by outsiders were allowed upon the authorization of the Minister of Justice for prisons of maximum security and in other institutions, according to the regulation of prisons.

1. The Prosecutor may directly authorize representatives from the non-governmental organizations to visit institutions where sentenced persons or pretrial detainees are accommodated, to ascertain the claims concerning the guarantee and observance of their rights.

357. Further, this article determines the senior state authorities and the judges and prosecutors who may visit those institutions without any authorization:

1. Judicial police officers may have access to institutions for purposes of carrying out their duty by means of an authorization issued by the prosecutor.

2. In emergent cases, the authorization is also issued by the head of the institution.

3. The Director General of Prisons determines the employees who are entitled to have access to institutions.

4. For representatives of religious communities, the rules provided for in this law are applicable.

358. Law 9888, dated 10.03.2008 amended article 43 of Law 8328, dated 16.04.1998:

1. Penal Sentence Enforcement Institutions may be visited without an authorization by the President of the Republic, the Speaker of Parliament, the Prime Minister, the President of the Constitutional Court, the Deputy Speaker of Parliament, the Deputy Prime Minister, the Minister of Justice, the President of Supreme Court, the Prosecutor General, the members of parliament, the Deputy Minister of Justice, the Ombudsman, his commissionaires and deputy commissionaires, the Director General of Prisons and his deputies, the director of Penitentiary Police, the director and inspectors of internal inspection of prisons, the members of the monitoring commission for the enforcement of penal sentences, judges and prosecutors on duty and lawyers of prisoners and pretrial detainees.

2. Authorization is not required for those who escort the prisoners referred to in the said paragraph, but there shall not be more than two of them.

3. Other persons who are not envisaged in the first paragraph may have access to institution only upon the authorization of the director of the institution.

4. These persons, in case of refusal without any reasonable grounds of the issue of the authorization by the director of the institution, are entitled to file a complaint with the Director General of Prisons. For the representatives of religious communities, the rules provided for in this law are applicable.

359. In the premises where detained, arrested persons and pretrial detainees of the system of the Ministry of Interior are accommodated and treated, in addition to the appointed

police personnel, representatives from the following institutions and bodies have the right of access and exercise of controls and inspections:

- Prosecutors of district prosecutor's offices
- Representatives of Ombudsman
- Representatives of Albanian Committee of Helsinki
- Representatives of Institute for Human Rights and Minorities
- Representatives of legal clinic for the defense of juveniles
- Representatives of UN and CE international bodies dealing with the protection of basic human rights

Representatives of NGOs are provided beforehand with authorizations and permits of access to the police stations. The State Police structures shall continuously take measures to prepare the ground and facilities to carry out the mission of such institutions and organizations.

Conclusions and recommendations, paragraphs 7 (m) and 8 (m)

360. Medical examinations and controls are conducted by the medical staff of the police stations for the detained and arrested persons who are kept and treated in the police station premises within 24 hours from the detention or arrest. In the police stations with no medical personnel, the examinations are conducted by doctors from health regional centers. Such an obligation is specified in the Order of the Minister of Interior No. 2191, dated 25.09.2006 "On guarantee and observance of human rights and fundamental freedoms during the escort to the police premises and the system of pretrial detention cells".

361. According to article 16 of Law 8328, dated 16.4.1998, specific medical institutions or sections in prisons or in hospitals out of the penitentiary system, serve the medication of the sentenced persons who are sick or with mental or psychic disorders. The accommodation of the persons in those institutions and sections may be provided for in the court sentence or in the course of the enforcement of the sentence, with the approval of the prosecutor and in emergent cases, with the approval of the director of the prison where the sentenced person is accommodated, immediately informing the prosecutor thereof. The exit from those institutions is made upon the proposal of the head of the institution and with the approval of the prosecutor. For the accommodation, refusal of accommodation, exit or refusal of exit, the sentenced person, the defense attorney or his legal guardian have the right of complaint to the court within five days from the receipt of notice thereof. All rights of sentenced persons in the medical institutions and sections are observed in conformity with this law insofar as they are applicable under hospital conditions. By a joint order, the Minister of Justice and the Minister of Health determine the way of the enforcement of this law in their regard. Upon the order of the Prosecutor in those institutions there may be accommodated sentenced persons who have medicine-oriented professions or other necessary fields where there are no impediments to them pursuant to this law. The accommodation of the sentenced persons in those institutions is made by the court in cases specified in the Code of Criminal Procedure. On the grounds of the recommendation of the medical service of prisons or other medical institutions, the prisoners are transferred to those institutions by virtue of the order of the prosecutor. The exit and accommodation of the sentenced persons in prisons are carried out by the authority which had decided the execution of the decision in respect of the institution.

362. According to article 57 of Law 8328, dated 16.4.1998 "Use of force and forms of physical coercion" during the physical coercion, the sentenced person must be under the continuous control of the health care.

363. Article 29 of law 8328, dated 16.4.1998 "On rights and treatment of prisoners" provides for:[78]

1. The administration of the institution provides conditions, resources and personnel for the protection of the health of the sentenced persons.

2. The organization and implementation of the health service are conducted by the administration of the institution in cooperation with the prison's hospital and the competent state health bodies.

3. The health service must provide: (a) diagnosis and cure of diseases; (b) supply with medicaments and medical equipment; (c) prophylaxis for diseases taking special care of infectious and contagious diseases; (d) provision of the hygiene of environment and sanitary education of sentenced persons; (e) security measures for special processes of treatment and work.

4. Each institution is provided with health and pharmaceutical services meeting needs for the protection and preservation of the health of sentenced persons.

5. The sentenced persons who are suspected of having contagious diseases are immediately isolated in specific premises.

6. In cases when psychic illnesses are suspected, proper measures are applied without delay, observing the rules on psychiatric assistance and mental health.

7. Special services function within the institutions where women serve their sentence, in support of pregnant and breastfeeding women.

8. In cases of contagious diseases or diseases which cannot be diagnosed and cured under the conditions of the institution, the sentenced persons are transferred to the prison's hospital, as need be, to health institutions out of the penitentiary system, according to the rules provided by this law.

364. Article 33 of aw 8328, dated 16.04.1998 provided for:

1. The medical service is provided throughout the entire period of stay in this institution, notwithstanding the requirements of the sentenced persons.

2. The medical staff must identify and immediately report the diseases requiring specialized training.

3. The sentenced persons may seek to be examined at their own expenses by a doctor of their choosing.

4. When the medication of the sentenced person cannot be ensured by the health service of the institution, upon the order of the prosecutor, he is transferred to the prison's hospital and if need be, even to other medical institutions.

5. In emergent cases, the director of the institution is competent to proceed as above upon initiative, immediately informing the prosecutor thereof.

6. The sentenced person, the defense attorney and the legal guardian of the juvenile have the right to file a complaint with the court within 5 days from the refusal of the request for being subject to medication in conformity with this article.

365. Law 9888, dated 10.03.2008 (article 17) amended article 33 of Law 8328 dated 16.4.1998 in respect of the medical service:

[78] Law 9888, dated 10.03.2008 has abrogated the article 29 of the Law 8328, dated 16.04.1999.

1. The medical service is provided throughout the entire period of stay in this institution regardless of the requirements of the sentenced persons.

2. The administration of the institution provides conditions, resources and personnel for the protection of the health of sentenced persons.

3. The organization and implementation of the health service are conducted by the administration of the institution in cooperation with the prison's hospital and the competent state health bodies.

4. The sentenced persons may claim to be examined at their own expenses by a doctor of their choosing.

5. The health service must provide: (a) diagnosis and cure of diseases; (b) supply with medicaments and medical equipment; (c) prophylaxis for diseases taking special care of infectious and contagious diseases; (d) provision of the hygiene of environment and sanitary education of sentenced persons.

6. Each institution is provided with health and pharmaceutical services meeting needs for protection and preservation of the health of sentenced persons.

7. The sentenced persons who are suspected to have contagious diseases are immediately isolated in specific premises.

8. Special services function in the institutions where women serve their sentence, in support of pregnant and breastfeeding women. The medical staff immediately identifies and reports the diseases requiring specialized treatment.

9. In cases of contagious diseases or other diseases which cannot be diagnosed and cured under the conditions of the institution, the sentenced persons are transferred to the prison's hospital and when necessary, they are transferred to the University Hospital Center of Tirana and hospital institutions at county and district level, under its subordination. The diagnosis and cure of diseases in those centers are made in conformity with a joint guideline of the Minister of Justice and the Minister of Health.

10. In emergent cases, when the life of the sentenced person is put at risk, he is transferred for medication to the prisons' hospital or to regional hospitals.

11. The regional hygienic-sanitary institutes visit the institutions of the enforcement of criminal judgments at least twice a year, to monitor the hygienic-sanitary situation of the premises and the measures taken for the prevention of infectious diseases.

366. Adequate measures have been taken in the institutions of sentence and pretrial detention for the improvement of rules as regards the medical examinations and drugs (medicine) administration. Each sentenced person or pre-detainee is offered health care by the medical staff of the penitentiary system and the personnel of the Ministry of Health. Such institutions are supplied with medical facilities for the conduct of medical examinations and basic medical instruments to offer medical service on a 24 hour basis. With the accommodation of the sentenced persons or the pretrial detainees in the institution, the medical examination is conducted within 24 hours by the doctor of the institution, and such examination is recorded in the medical card. The sentenced persons and the pretrial detainees are supplied with those medical cards prepared in accordance with the required standards. The Directorate General of Prisons has taken proper measures to furnish each prisoner with his own medical card. The medical data is recorded in the personal medical card which is accessible only by the medical personnel.

367. Each medical examination is conducted without the presence of the police officer or the civilian staff. Confidentiality is kept between the doctor and the prisoners. Additionally, the employees of the health service in all prisons carry out their activity in full professional autonomy and without influence of internal or external prison-related factors. The medical data of prisoners are treated as confidential and the appointments between doctors and patients are made without the presence of the other employees of the penitentiary administration. Based on the medical history of the patient (the prisoner) the doctor decides on the conduct of laboratory or image tests and examinations. Laboratory and image texts and examinations are not conducted within 24 hours saving the cases of emergencies due to lack of medical devices. Consequently, such tests and examinations are carried out after several days in the institutions which are under the subordination of the Ministry of Health. The persons identified with serious diseases are provided qualified medical assistance from doctors of civilian hospital and if necessary, they are treated in other health institutions under the subordination of the Ministry of Health. The pretrial detainees and the sentenced persons who suffer from mental health disorders are subjected to drug therapy and they are in the continuous focus of the health sector. Each person is individually treated in a specific manner.

368. Medication in Prison's Hospital. The Directorate General of Prisons has taken proper measures so as each pre-detainee or prisoner who needs more specialized medication in accordance with legal criteria, is transferred and treated without delay to the Prison's Hospital.[79] Currently, no complaints of prisoners or other subjects have been filed on this matter with the Ministry of Justice.

369. As regards the term "poor medical care" it may be stated that the general problems in the health service in Albania, the lack of the necessary medical infrastructure etc are reflected and influence the provision of service in the penitentiary system. The medical staff in the penitentiary system offers the same health care and service as for the remainder of the population. The health care in prisons has been significantly improved because investments are made on medical equipment and medicaments. Agreements were concluded with the institutions under the subordination of the Ministry of Health. In the National Plan for the Implementation of the Stabilization Association Agreement, the "Short-term implementing activities" provide for the reconstruction of the Hospital Center of Prisons and its supply with medical device or equipment.

370. Treatment of "criminally irresponsible persons" in a special institution. Currently, the persons under the court medical measure of "compulsory medication in a medical institution" (criminally irresponsible persons) are treated in the Hospital of Prison which has the function of a specialized medication of prisoners. About 75 persons or more than half of the persons currently treated in this institution, accommodated in a special section, are persons under the court medical measure of "compulsory medication in a medical institution". According to the law, this category must be treated by the Ministry of Health whereas the Ministry of Justice has the sole responsibility of the security of the institution (article 42 of the Law 8092, dated 21.03.1996 "On mental health"). To solve this problem,[80] it is provided for this community to be accommodated in a special hospital building close to the new pretrial detention center of Durres. Currently, works have started and it is planned the termination of the construction of this building and its operation by 2009.[81] There is a total number of 78 patients under the medical measure of "compulsory medication in a medical institution" who are currently treated in the Hospital Center of

[79] EC Committee on Prevention of Torture has reported that there had been repeated complaints by prisoners and a lack of cooperation between institutions.

[80] In accordance with the recommendation of EC Committee for the Prevention of Torture CPT.

[81] Refer to the comments on article 16.

Prisons. This community shall be accommodated in the new medical and psychiatric institution which is being built in Durrës city.

371. In respect of the case when the courts have examined ex officio their rulings on the imposition of the medical measure, pursuant to the article 46/3 of the Criminal Code, 3 related cases were reported during the period (2007–June 2008).

372. The Directorate General of Prisons through the Hospital Center of Prisons launched the initiative and informs the responsible courts of the examination of the rulings on the imposition of the medical measure for the remainder of the persons treated in this institution. Consequently, most of the courts have instituted procedures for the examination of their rulings and request information from the Hospital Center of Prisons to deem if their hospitalization is still necessary. Following the notification from the Hospital Center of Prisons, a case is reported when the District Court of Lushnjë examined the medical measure.

373. In parallel to the construction of the hospital building in Durrës, the Ministry of Justice and the Ministry of Health have taken joint actions for the delegation of the responsibility of the treatment of the community of persons under the medical measure of "compulsory medication in a medical institution", in conformity with the law "On mental health".

374. Training of medical personnel. A series of training sessions and specialization courses are organized for the medical personnel of the Directorate General of Prisons (14 doctors). Pursuant to the Order of the Minister of Justice No. 4979, dated 29.06.2006, the specialist doctors of the University Hospital Center of Tirana once a week go to the clinics of their specialties for purposes of informing and training. A cooperation agreement is concluded with the Association "Aksion Plus" for purposes of the implementation of several activities on protection of health prisoners, including the training of the medical penitentiary staff. These activities aim at the prevention of various diseases, reproductive health, psychological counseling and social support, conduct of joint studies to identify the situation on the use of drugs in prisons, programming of activities and measures that might be undertaken for the prevention and reduction of this phenomenon. In cooperation with the Civil Society, the Directorate General of Prisons implements the raising of awareness policies for all sexually transmitted diseases. The medical personnel of high and middle ranking is trained on AIDS, Hepatitis, Tuberculosis and Drug-related issues.

Conclusions and recommendations, paragraph 8 (m)

375. To improve the health service, in 2008, the Directorate General of Prisons proposed to the Ministry of Justice to conclude a cooperation agreement with the Ministry of Health concerning "the provision of health, medical, laboratory and image service in all institutions of the enforcement of criminal rulings at national level". Additionally, cooperation between the Hospital Center of Prisons and the University Hospital "Mother Theresa" was requested through institutional channels for the provision of medical image and laboratory assistance for that part of the community hospitalized in the Hospital of Prisons. A proposal was made to the Prime Minister and the Minister of Justice for the inclusion of the sentenced persons and the pretrial detainees in the Health Insurance scheme. Efforts were made to establish cooperation with the Directorate of Regional Health Authority for the provision of gynecological medical assistance for imprisoned women and pretrial detainees. Based on the progress of the implementation of such proposals and guidelines from central institutions, proposals shall be made by the Directorate General of Prisons for the transfer of the health sector of the penitentiary system to the authority of the Ministry of Health.

Conclusions and recommendations, paragraph 7 (n)

376. Law 8492, dated 27.05.1999 "On foreign nationals", (article 4, last paragraph) stipulates that: "when foreign nationals have committed acts or have made propaganda against sovereignty, national security, constitutional order and public security before they turn 18 years old, they are entitled to request from the Minister of Interior the examination of their application for entry, visa or permit of stay in the Republic of Albania. Chapter V of this Law "Compulsory exit, rights and obligations", (article 46) specifies that the sending away of a foreign national from the territory of the Republic of Albania is based on an exit order issued by the competent authority within the Ministry of Public Order in cases when:

(a) There is a final judicial verdict;

(b) His visa application is refused;

(c) The deadline for its use and stay has expired;

(d) The validity of the permit of stay is refused or has expired.

377. Article 47 of this law "Expulsion" (coerced expulsion)" specifies that the foreign national is expelled (coercively expulsed) upon a special order of the authorities of the Ministry of Public Order (currently, the Ministry of Interior) when:

(a) He has not left or there are substantiated doubts that he shall not leave the Republic of Albania in conformity with the provisions of such law;

(b) Hehas entered or illegally stays in the Republic of Albania;

(c) He has been expelled from another state and is re-admitted by the Albanian authorities on the grounds of obligations or signed agreements.

378. The foreign national is sent away or expelled to the country where he has come from, to the country of origin, to the country of his residence or to another country which admits the foreign national (article 48) and against the decision of exit or expulsion, the foreign national may file an administrative complaint with the court. This law (articles 50, 51, 52) specifies the cases of expulsion which are made upon the order of the Minister of Interior, the procedures of the enforcement of the exit order and of the immediate enforcement of the exit order, as well as the procedures of complaint for the review of the order. As regards the sending away of the foreign national in cases he has committed a criminal offence (article 53), it is established that the procedure of complaint against the order for the sending away of a foreign national who has committed a criminal offence, must be terminated within the period when the foreign national is kept detained or under other security measures. In case of sentence enforcement, the exit order is executed right after the serving of the sentence. This law also stipulates the procedures for the administrative and judicial complaints (article 56), in cases of the refusal of any application, punishment measures or fines, according to the cases provided for in this law.

379. According to the new law on foreign nationals, the Albanian institutions have the right of expulsion of the foreign nationals in cases when their stay in Albania jeopardizes the public order and security and when the foreign national is declared an unwanted person (persona non grata). The foreign national has the right of complaint to the court and in cases when the court renders the judgment and the foreign national does not leave in accordance with the said judgment, then the respective bodies have the right of expulsion. In respect of "unwanted persons" the article 8 stipulates that the Minister of Interior, for vital interests of the state, constitutional and legal order, national security and public order, by a justified order, declares a foreign national unwanted in cases when:

(a) He acts or makes propaganda against the sovereignty of the Republic of Albania, national security, constitutional order and public security and order;

(b) He is sentenced to a term of imprisonment for a criminal offence deliberately committed in the Republic of Albania on which the Albanian legislation provides for a minimum sentence of not less than three years of imprisonment;

(c) He is a member of terrorist organizations or supports and carries out anarchist actions against the rule of law;

(d) He is declared under search by international institutions for crimes against mankind, crimes of war or other serious crimes;

(e) He represents a threat to the country or violates the relations of the Republic of Albania with other states;

(f) There are substantiated doubts that he shall enter or stay in the territory of the Republic of Albania to commit a crime or actions that represent a threat to the Republic of Albania;

(g) He is involved in organized crime, trafficking in human beings, drugs, illegal crossing to/or through the Republic of Albania and any other illegal trafficking or acts, according to the data collected from the responsible institutions of national security.

380. This law specifies that the foreign national is declared "unwanted person" for a period of not less than 10 years from the date of such declaring and his entry or stay in the Republic of Albania is refused during that period. The Minister of Interior, upon the request of the foreign national, examines the request for entry, visa or permit of stay in case the adult foreign national has committed one of the above cited acts when he has been a juvenile. The foreign national or his relatives residing in Albania have the right to file a complaint with the court of first instance against the order of the Minister of Interior on declaring a foreign national "unwanted person", within 10 days from the day of the receipt of his notice thereof.

Conclusions and recommendations, paragraph 8 (n)

381. Pursuant to the law No. 9959, dated 17.7.2008 "On foreign nationals", which became effective on 1 December 2008, the respective institutions have the right to expel foreign nationals who do not meet the legal criteria of stay in Albania.

382. This law (chapter VI) provides for provisions concerning the general conditions on the refusal, exit and expulsion of the foreign national who does not meet any longer the conditions for entry or further stay in Albania. It specifies cases when the foreign national is refused entry or stay in the Republic of Albania and the measures to be taken by the state competent bodies for his exit. This chapter makes reference and due to the problematic it covers is related to the chapter III of this law, which treats the conditions of entry and stay in Albania and the unwanted persons. Importance is attached to the right of foreign nationals to file a complaint with the administrative and judicial bodies according to the rules specified in this law and in the Albanian legislation in force within the clearly specified deadlines for each case.

383. Section I of the chapter VI of this law specifies the general conditions for the refusal, exit and expulsion of foreign nationals. Article 68 provides for measures on the execution of the refusal of entry and the right of complaint of the foreign national against the action of the Border and Migration Police for the refusal of entry to the authority of a higher rank of the State Police, within 5 days from the day of the receipt of notice thereof.

384. Section II of this chapter provides for provisions on the measures of exit which are taken in cases provided for by law, the procedures to be followed (the execution order and the execution deadline), as well as the procedures of complaint and its execution. The

article 70/5 specifies that “the exit order is communicated to the foreign national in a language he understands, informing him of the complaint procedures. The form and contents of the exit order are specified by virtue of the order of the Minister of Interior”. The article 71 of this law specifies the complaint procedures against the exit order and it is also provided for that the foreign national, subject of an exit order, has the right of complaint within 30 days to the central authority of the Border and Migration Police which settles the case within 5 days. Following the taking of the decision, the foreign national may file a complaint with the court of first instance within 10 days from the date of the reply of the central authority of the Border and Migration Police. The Court settles the case within 30 days from the date of the complaint is filed. The exit order for the foreign nationals is executed within 60 days from the date of the receipt of notice thereof by the foreign national, except for foreign nationals who have a financial obligation when the deadline for the execution of the exit order is 90 days.

385. Section III of chapter VI, provides for provisions on the administrative measure of exit by force which is taken as the execution of exit was not rendered possible and because the stay of the foreign national in the Republic of Albania has become unacceptable for reasons referred to in the law, the execution procedures and the complaint to the court. Article 73 specifies that the exit by force is an administrative measure taken by the Border and Migration Police for the exit of the foreign national from the Albanian territory because:

(a) He has not left the country within the time limits provided for in the exit order;

(b) He has not left Albanian territory within 60 days following the expiry of the deadline of stay of visa or the deadline of stay, provided for in this law for foreign nationals entering without a visa;

(c) He has not requested the renewal of the stay permit following the expiry of the period of its validity and the period of the termination of validity has expired 60 days;

(d) He is refused asylum in an irreversible and irrevocable manner and has not left the country according to the provisions provided for in this law;

(e) He has served the sentence imposed by an Albanian court for a deliberately committed crime for which the Albanian criminal legislation provides for a minimum sentence to one year of imprisonment.

2. In case the foreign national becomes subject of exit by force according to this article, he is kept detained in a confined center, pursuant to the article 83 of this law until the execution of the exit order.

3. The foreign national who does not own a travel document shall appear in person or accompanied by the competent authorities to the diplomatic and consular representations accredited in the Republic of Albania, to be furnished with such a document.

4. If in the Republic of Albania there is no diplomatic and consular representation of the country of the foreign national, the central authority of the Border and Migration Police requests the supply with a travel document in the country of origin or in the diplomatic and consular representation available in the Republic of Albania, via the Consular Directorate within the Ministry of Foreign Affairs.

5. In case the diplomatic representation does not agree to issue a travel document, the central authority of the Border and Migration Police, in cooperation

with the Ministry of Foreign Affairs supplies the foreign national with a travel document which serves the implementation of exit by force of the foreign national.

6. In application of this law, the central authority of the Border and Migration Police may issue a transit permit if the foreign national is not supplied with a travel document pursuant to the points 3 and 4 of this article.

7. The foreign national is informed in a language he understands that against him the administrative measure of exit by force shall be executed, explaining to him the cause of the issue of the order, date and place where it shall be executed, the means of his transportation to the place of destination and the deadline of the entry prohibition.

386. The format of the order of exit by force is approved by way of the order of the Minister of Interior. According to article 74 of this law "the foreign national has the right to file a complaint against the order of the exit by force within 5 days with the highest administrative police authority, which settles the case within 5 days. The foreign national has the right to address the court of first instance to complain against this order within 5 days from the date of the reply of the highest administrative police authority. The court must settle the case within 10 days. The foreign national is kept in the confined center under the conditions of immediate exit until the court of first instance has rendered the judgment.

387. Section IV provides for the expulsion as a serious measure taken when due to the fault of the foreign national his exit by force is not made possible or when his stay in the country threatens the public order and security or in case he is declared an unwanted person. The article 76 specifies the procedures and the execution of the expulsion order and the article 77 specifies the category of persons who are not expelled. The article 78 provides for the right of complaint against the order for the expulsion of the foreign national or his relatives to the court of first instance within 15 days from the date of the receipt of a written notice about this expulsion order. The decision of the court of first instance may be appealed against within 5 days to the respective court of appeals which reviews the case with precedence.

388. Section V of this chapter covers the measure of the detention of the foreign national and his keeping in the confined center which is a Center that is established and functions on the grounds of rules specified by the decision of the Council of Ministers, to accommodate the foreign nationals with irregular stay in the Republic of Albania or those that have become subject to expulsion or exit by force until the effective conditions of their sending to the place of destination, are met. The institution of the detention in the confined center is a new concept introduced by this law. This section specifies the rights and obligations of the foreign nationals accommodated therein and their right to address the court in accordance with the legal procedures in force. Pursuant to the article 79, the detention in the confined center is an administrative measure taken and executed by the state authority responsible at regional/local level for the treatment of foreign nationals, against the foreign national under an order of exit or expulsion by force or for the foreign national re-admitted on the grounds of international agreements. The foreign nationals are detained in a confined center until the legal procedures are implemented to enable their exit from the Republic of Albania to the place of destination or in case the exit cannot be effected, it is proceeded in conformity with the provisions of this law. The state authority responsible at regional/local level for the treatment of foreign nationals may detain for reasons of public security the foreign nationals, whose identity or reasons of stay are not clear.

389. The foreign national is notified in a language he understands that he has the right to be provided with legal defense by an attorney chosen by him or ex officio and to contact with his relatives. Article 80 provides for the subjects and cases of detention in a confined

center of foreign nationals who are detained by the Border and Migration Police in the confined center. The foreign nationals who are subject to a detention order in a confined center has the right to file a complaint with the court of first instance in terms of this measure, within 10 days from the written notice concerning the detention or the extension of detention. The complaint against the court judgment is filed within 10 days from the date of the announcement of the decision and is reviewed with precedence by the respective court of appeals (article 81) within a deadline of 10 days. The duration of the detention in a confined center is at maximum 6 months and the Border and Migration Police which takes the decision on the detention in the confined center may extend the period of detention in case the causes of detention continue to exist but not exceeding 12 months (article 82).

390. Pursuant to article 83/1 when a detention measure is imposed against the foreign national, he is kept confined in a center specifically established for foreign nationals in order to meet the conditions for the return to the country of origin or the country where he has come from:

1. The center is established and functions in accordance with a decision of the Council of Ministers.

2. The detention is made in the respective institution if the foreign national is released after the deliberate committal of a crime. The foreign nationals detained in an imprisonment institution are kept isolated from other persons in the pre-detention center or from the other prisoners and enjoy all the rights and obligations enjoyed by the other detained persons, in conformity with the Albanian legislation in force.

3. The Local Border and Migration Police takes immediate measures for provision of care to the family members of the detained foreign nationals, who have remained without supervision, accommodating them in the confined center. Further, this section provides for the measure of the compulsory stay of the foreign national in a certain territory as a coercive measure which obliges the foreign national to stay in this projected territorial unit. This measure is imposed by the Border and Migration Police to oblige the foreign national to stay in a specific territory in case the detention measure cannot be imposed against him or because he is supplied with a stay permit for humanitarian causes without meeting the conditions of stay in the Republic of Albania.

391. The foreign nationals waiting to return to their country of origin are generally accommodated in the provisional reception centers which are managed by the Ministry of Interior and the Ministry of Labor, Social Affairs and Equal Opportunities and in their dwellings. Presently, the Administrative Reception Center of foreign nationals with irregular stay in Albania and of the nationals from third countries who shall be re-admitted on the basis of re-admission agreements is under construction. This Center is to be built by EU funds and shall have a holding capacity of about 100–150 people. It shall be managed by the Directorate of Border and Migration.

392. In respect of concrete cases of expulsion, return and extradition of persons from other countries other than Albania in direction of other states when there is a strong reason to believe that he would be subject to torture, according to the information of the State Police Directorate General; there is no information for the identification of such cases. In 2006, there are cases of expulsion of persons who have returned to the country of origin or the country where they have transited to enter Albania — 9 nationals and for the first four months of the year 2008 — 41 nationals. The reasons of return are: (a) illegal stay in Albania; (b) they have been returned from the police authorities of the neighboring countries; (c) they were captured while using forged travel documents.

393. Cases of granting of asylum and refusal of asylum. For the period 2003-ongoing, the Citizenship and Migration Directorate within the Ministry of Interior has taken 112

decisions of which 77 are related to asylum and 35 treated refusals of asylum. 8 applications for asylum were filed during the year 2008. The asylum seekers are accommodated in the National Reception Center in Babrru, Tirana. This Center offers very good reception standards with a holding capacity of 150–200 persons.

Conclusions and recommendations, paragraphs 7 (o) and 8 (o)

394. As regards the taking of measures to combat sexual violence, we clarify that the Criminal Code provides for as criminal offences the sexual crimes accompanied by more severe sanctions in cases of sexual violence against juveniles or persons who are incapable to protect themselves.

395. Domestic violence, legislative measures. The Criminal Code entails a series of provisions covering domestic violence, i.e. the criminal offence against the freedom of the person; the criminal offence against moral and dignity; the criminal offence against children, marriage and family; sexual crimes. This provides for aggravating circumstances when the victim is a juvenile, a pregnant woman and the consequences that may be inflicted by the criminal offence. The continuous amendments in the Criminal Code have provided for not only specific provisions to protect children and females from ill-treatment, sexual abuse, trafficking, prostitution, pornography, sexual offences, but the legal developments have continuously provided for significant increase of sentence terms against the perpetrators of criminal offences.

396. Article 35 of the Code of Criminal Procedure provides for the obligation of the court to call a psychologist or social worker who shall give his opinion after examining the situation of the child, the conditions where he lives and where it is more appropriate for the child to live. The opinions and feelings of the child are taken into consideration by the court.

397. The Family Law, (approved by the law 9062, dated 8.05.2003, which became effective on 21.12.2003) as regards cases of domestic violence provides for the taking of emergent measures by the court upon the request of the other spouse when one of the spouses does not meet his obligations and threatens the interests of the family. The article 62, “Measures against violence” provides for that the spouse who is subject to violence has the right to address the court upon request for the imposition of the emergent measure of exit from the conjugal dwelling of the spouse who exercises violence”.

398. The Code of Criminal Procedure (article 6) provides for the free assistance by a defense attorney for the defendant who does not have sufficient financial resources. The Ministry of Justice is working on the issue of by-laws which provide for free legal assistance to victims of domestic violence. A series of NGOs operate in Albania, offering free legal assistance to specific subjects.

399. Law 9669, dated 18.12.2006, “On measures against domestic violence” amended by the law 9914 dated 12.5.2008 aims at the prevention and reduction of domestic violence in all its forms through proper legal measures and guarantee defense by legal remedies to the family members who are victims of domestic violence, paying special attention to children, elderly people and disabled persons. According to this law, “violence is considered any action or omission of a person against another person which inflicts the violation of the physical, moral, psychological, sexual, social, economic integrity”. This law is of administrative-civil character aiming at the creation of the coordinated network of governmental institutions to respond in due time to cases of domestic violence and the issue of immediate orders of defense by the courts. This law was an outcome of the initiative of civil society and was proposed at the Albanian Assembly by 20.000 electors. During the lobbying process with reference to this law, contribution was offered by the governmental

institutions responsible for the prevention and struggle against domestic violence. The key responsible authority for the monitoring of the law enforcement is the Ministry of Labor, Social Affairs and Equal Opportunities which has a coordinating, supportive and monitoring role to the law enforcement.

400. The law became effective on 1 June 2007 and in its application there were approved several by-laws on the establishment of the structures responsible for issues of domestic violence. We cite some of the by-laws as below:

(a) The Order of the Prime Minister No. 202, dated 05.12.2007 "On establishment within the Ministry of Labor, Social Affairs and Equal Opportunities of the structure for measures against domestic violence". The Sector for Measures against Domestic Violence is established within this ministry and plays a coordinating and monitoring role in conformity with the law;

(b) The Order 379, dated 3.3.2008, "On measures to be taken by the State Police for prevention and reduction of domestic violence";

(c) The Order of the Minister of Health No. 13, dated 23.01.2008 "On supply of persons subjected to domestic violence with the respective medical record";

(d) The Order of the Minister of Health No. 14, dated 23.01.2008 "On identification of cases of domestic violence in the registry and individual card for victims of domestic violence";

(e) The Order of the Minister of Health No. 15, dated 24.01.2008 "On medical treatment of persons subjected to domestic violence at public health institutions", aims at the provision of medical and psychological service for persons subjected to domestic violence;

(f) The Order 981 dated 31.10.2008 "On measures to be taken by the State Police for prevention and reduction of domestic violence";

(g) In November 2008 the Cooperation Agreement between the responsible ministries for the enforcement of Law 9669 was approved, dated 18.12.2006 "On measures against domestic violence" (as amended) on 14.11.2008. Upon the signature of this agreement, it was established the mechanism of coordination of responsibilities of all institutions charged by law, the completion of the recommendations of the Progress Report of European Commission for the period October 2007–October 2008.

401. In application of law No. 9669, dated 18.12.2006 "On measures against domestic violence", the State Police launched a plan of necessary measures to combat violence against women in Albania,[82] and for the training of the police officers on the way how to solve or settle domestic violence problems or conflicts. Additionally, the functionaries charged with those matters, in conformity with law, are ordered to record all complaints against conjugal violence which are subject to investigation and to strengthen the cooperation with the organizations that are capable to offer assistance to victims of conjugal violence. The Ministry of Interior is one of the responsible authorities for the establishment of special sectors on prevention and combat against domestic violence (article 7/1/a of the law "On measures against domestic violence"). In pursuance of this obligation, in July 2007 special currently operational structures were established at central and regional level. At central level, in the Department for Investigation of Crimes (Directorate against Serious Crimes) these structures are called "Sectors", whereas in the County Police Directorates, at

[82] These measures are also undertaken in application of the recomendations of the Committee of the CEDAW Convention in respect of this matter (paragraphs 32, 33).

regional level, they are called “Sections” for the Protection of Juveniles against Domestic Violence. The function of these structures is the prevention and combat against violence in family environments, the violence against juveniles and the periodic collection of statistical data concerning this phenomenon. Such data shall start to be reported by the end of 2008. According to the monitoring of the enforcement of law 9669, dated 18.12.2006 “On Measures against Domestic Violence” and the data submitted by the Ministry of Labor, Social Affairs and Equal Opportunities, it has resulted as follows.

Table 2
Statistical data on domestic violence during 2008

Periudha kohore	*Number of cases reported by police*	*Injured persons under 18 years old*	*Lawsuit – applications for defense orders*
January–March	184	29	71
April–June	171	13	70
First half of the year 2008	355	42	141
January-September 2008	612	67	253

402. Another important step for the enforcement of this law shall be the continuous organization of training sessions for the employees who encounter specific cases of domestic violence. Such training sessions shall be conducted in cooperation with the Faculty of Law and the School of Magistrates. During 2008 it was implemented the training of the officers and employees from the police, health, social services etc, in relation to the prevention of domestic violence. Also, the Directorate of Policies of Equal Opportunities within the Ministry of Labor, Social Affairs and Equal Opportunities, in cooperation with the international organizations such as UNDP, UNFPA, OSCE, has organized a cycle of training sessions to the police officers, health and social service personnel.

403. The objective of the organization of such training sessions which were attended by about 720 employees from different institutions has been the strengthening of capacities of the structures offering protective and supportive services to the victims of domestic violence. The training sessions on the strengthening of capacities of structures shall continue in the future.

404. Following the examination of the cases of violence against women, various phenomena are highlighted in relation to the not so distant past of the Albanian society, particularly in the couple relationships such as arranged marriages, migration of males and negative social consequences to family relationships, differences in employment status, remuneration, discrimination in the remote fields of the country and problems of ownership associated with domestic violence. There is a small number of cases of regular psychological ill-treatment reported by women because the community, mainly in rural fields, is not adequately civilized to report to the police flagrant cases of the violence of men against women, fathers against daughters or children against elderly parents etc.

405. As regards cases of domestic violence for the year 2005, the Ministry of Interior,[83] based on the identification of criminal events, has recorded and identified 102 cases of the exercise of domestic violence. According to the classification of those cases by the specialists of the Ministry of Interior, violence is manifested in the following forms:

[83] Information of the Ministry of Interior, March 2006.

Table 3 (a)
Forms of violence 2005

Forms of violence	*Number of cases*
Murders	21
Attempted murders	10
Threatening for murder	15
Injuries	8
Forced sexual intercourse	1
Illegal deprivation of liberty	2
Insulting and battering	23
Theft of property	3
Forcing to carry out an abortion	2
Sexual offences	1
Abandonment of juveniles	1
Inducing to suicide	3
Destruction of property	5

406. During 2006, the General Police Directorate (Department against Terrorist Acts and Open Crimes), identified a total of 208 cases of domestic violence reported by the victims or their relatives. Compared to the same period of 2005 there is an increase with 112 cases. This increase is not real but it is related to a more accurate identification and more serious evaluation of that criminal phenomenon by the local police structures. The criminal offences in conjugal relationships during 2006 count 108 cases when the spouses prevail with 95 cases as perpetrators of those criminal offences.

Table 3 (b)
Forms of violence 2006

Forms of violence	*Number of cases*
Murders of spouses	8
Attempted murders	4
Threats for murders	29
Injuries	17
Inducing to prostitution	1
Insulting and battering	25
Coercion for cohabitation	3
Inducing to suicide	2

407. There have not been identified any cases of ill-treatment or violation of the female detained or arrested persons by the police officers. The female detainees are kept and treated in the pretrial detention premises of the Ministry of Interior only for the period from the detention or arrest until the court imposes the security measure of “imprisonment arrest”. Further, they were transferred to be secured and treated in the Pretrial detention Institution 313 within the Directorate of Prisons.

408. The policy on reduction of violence against women. Upon the initiative of the Ministry of Labor, Social Affairs and Equal Opportunities during the period 2006–2007, within the framework of a comprehensive process, it was drafted the National Strategy of Gender Equality and Domestic Violence (2007–2010) (adopted by the Decision of the Council of Ministers No. 913, dated 19.12.2007), which aims at the inclusion of gender issues and domestic violence in public policies through concrete action plans for the advancement of gender equality and minimization of the phenomenon of domestic violence. One of the priorities of this document on basis of respective fields is also the increase of awareness to the phenomenon of violence, legal and administrative defense as well as the support to the individuals affected by domestic violence and the violence perpetrators. In respect of domestic violence, this strategy is focused on several key sectors for the prevention, combat against domestic violence and support of victims of violence, combat against violence and the support of victims of domestic violence. Further, the Ministry of Labor, Social Affairs and Equal Opportunities conducted a series of activities within the framework of the Campaign of the Council of Europe on violence against women. This ministry, supported by the UNDP published the poster "Violence against women destroys – All together for a family and society free of violence", distributing it all over the country. Additionally, awareness raising programs on domestic violence are organized by the media (Radio-Tirana), as well as publications in the daily press are made available. Within the framework of the campaign against domestic violence, during 2007 a series of activities were carried out in cooperation with the civil society and a public raising awareness campaign was realized in relation to the law "On measures against domestic violence" (implemented in 12 prefectures of the country).

409. The measures undertaken for the integration and rehabilitation of the victims of domestic violence. For the integration of the victims of violence in daily life, in application of the law 7995 dated 20.09.1995 "On promotion of employment", the Decision of the Council of Ministers No. 632, dated 18.09.2003 "On program of employment promotion of female unemployed jobseekers", financial support is offered to the employers who hire females particularly from categories such as Roma women, women over 35 years old, divorced females with social problems, violated and disabled women.

410. Order 394, dated 23.02.2004 of the Minister of Labor, Social Affairs and Equal Opportunities "On fees of Vocational Training System" specifies that there are no registration fees for the categories of Roma community, trafficked and violated women and girls for the vocational training courses offered by the Public Vocational Training Centers. Such courses aim at the qualification and development of the vocational skills of the above cited groups, offering them broader opportunities in the labor market. The Ministry of Education and Science, through Circular 8373, dated, 26.11.2006 "On taking of measures for the improvement of the educational work at school and prevention of violence" specified the necessary measures against violence at school and domestic violence, particularly where women and girls are subjected hereto. In application of this circular and the recommendations of the study "Violence against children in Albania" implemented by UNICEF, a plan of activities was drafted at national level, such as the announcement of the national action in education to say "Stop to school violence against children".

411. The Ministry of Labor, Social Affairs and Equal Opportunities, in cooperation with the Center of Gender Alliance for Development (NGO) carried out the study "Domestic violence – Current situation", which examined the situation of Albania on the phenomenon of domestic violence. This study was conducted by a group of experienced and field-qualified experts who, in their analysis, took into consideration the data for the period 2000–2005 provided by organizations and centers offering social services in support of victims of domestic violence. Additionally, data on prevalence of domestic violence during 2005 was furnished by the Ministry of Interior. This study provided for the drafting of the National Strategy and the Action Plan against Domestic Violence. Referring to this study

from the data collected in all centers and associations (without including the counseling line of Tirana) which have in focus of their work the combat of violence against women and offer services for victims of violence, it has followed that: of 7799 cases they had treated, 6199 are cases when assistance is claimed to escape from domestic violence. Certainly, these figures cannot be considered at all as definitive indicators of the dimensions of the phenomenon of domestic violence but on the other hand, this information must not be disregarded as it is a manifestation of the fact that women and girls, in majority of cases resort to service centers due to domestic violence.

412. According to the data of the Counseling Center for Women and Girls in Tirana, for the period 2000–2005, of 9,834 registered cases, 9,405 were cases where violence was exercised (95.6%). Such study drew several important conclusions on the most prevalent forms of violence, which proved to be as below: (a) emotional violence is the form of violence most often encountered within the family environment; (b) economic violence is most often encountered in urban fields; (c) physical violence is most often reported in rural fields; (d) sexual violence is the least reported form of violence. (e) Disabled women, migrant women, Roma women and women from rural fields were the most threatened ones; (f) Women who were most often subject to violence belonged to the age groups from 18 to 23 years old and 37–45 years old.

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413. According to law 8328, dated 16.4.1998 “On rights and treatment of prisoners”, the Directorate General of Prisons was indirectly responsible for the treatment of “arrested and detained persons”. Such legal remedy was comprehensible as during the period of the decree of such law, the Directorate General of Prisons was not objectively capable to be in charge of the pretrial detention system which was distributed throughout the entire territory of the country, and because of the problems inherited in the infrastructure of the penitentiary system. Consequently, the pretrial detainees continued to be treated at the institutions under the subordination of the Ministry of Interior. By virtue of law 8678, dated 14.05.2001 “On organization and functioning of the Ministry of Justice”, the latter one was directly responsible for “the management of the pretrial detention system and the enforcement of penal sentences”, and such process started to be progressively applied in practice. Article 6/12 provides for “the Ministry of Justice manages the pretrial detention system and the enforcement of penal sentences”. Since the time such law became effective, it may be affirmed that there has been a gradual progress for the transfer of the pretrial detention system to the authority of the Ministry of Justice, and a series of difficulties and challenges were encountered.

414. Based on the Decision of the Council of Ministers No. 327 dated 15.05.2003 “On transfer of the pretrial detention system to the authority of the Ministry of Justice”, it was decided the transfer of the pretrial detention system (including the premises and equipment) from the authority of the police stations of the Ministry of Public Order to the authority of the Directorate General of Prisons, which is an institution under the subordination of the Ministry of Justice. The approval of this decision is a qualitative effort and a step ahead for the transfer of the pretrial detention system to the authority of the Ministry of Justice and such process has faced numerous difficulties. In application of this Decision, to pave the way for the smooth transfer of the pretrial detention system from the Ministry of Public Order to the authority of the Ministry of Justice, necessary normative acts were approved (the Joint Order between the Minister of Justice No. 3750/1. dated 10.07.2003 and the Minister of Public Order No. 883 Prot dated 16.07.2003).

415. In July 2003 the two Ministries approved a joint action plan for the transfer of the pretrial detention system to the authority of the Ministry of Justice. The Directorate General of Prisons assumes:

- The provision of internal treatment of the pretrial detention premises, financial treatment and the supply with clothing and personal armament of the Penitentiary Police, the implementation of legal actions with the pretrial detainees, which are relevant to the Prosecutor's Office and the courts
- The State Police Directorate General had the following duties:
    - Maintenance of external security of the pretrial detention premises
    - Provision of cooking facilities such as food and other kitchenware
    - Health insurance based on respective needs and obligations and the practices specified by both institutions in the action plan
    - Escort of pretrial detainees during the implementation of the court process

Additionally, in application of this Decision, a "Joint action plan for emergency cases in the pretrial detention system" was adopted, which aimed at the prevention of events inflicting serious consequences (approved by the Joint Order of the Minister of Justice and the Minister of Public Order, November 2003). Further, with the transfer of several police operatives of the County Police Directorate to the personnel of the Directorate General of Prisons, the escort of the pretrial detainees to court hearings and the expertise required from the prosecutor's office and the District Court of Tirana, were made by the personnel of the Directorate General of Prisons.

416. In 2004, due to the assistance of the European Union, the Ministry of Justice in cooperation with the Austrian Ministry of Justice drafted "The Master-plan for the Albanian Pretrial Detention System". Conclusively, it was proposed the establishment of a pretrial detention center at regional (county) level, which would bring together the pretrial detainees accommodated in some police stations at county level. The Pretrial detention Master-plan is progressively implemented by the Ministry of Justice. In 2005, the Ministry of Justice was committed to have under its administration the pretrial detention centers of the regions (Counties) of Shkodër and Lezhë and the transfer of the pretrial detainees in the prison of Lezhë. However, a part of the pretrial detainees continued to be accommodated in the pretrial detention cells of the County Police Directorate of Shkodër. By virtue of the Joint Order "On transfer of the pretrial detention center of the county of Shkodër from the Ministry of Public Order to the authority of the Ministry of Justice", (between the Minister of Justice No. 1248 dated 25.02.2005 and the Minister of Public Order No. 559 dated 21.03.2005), the pretrial detention centers of the County of Shkodër were transferred. In 2005, half of the overall number of the pretrial detainees was treated in the pretrial detention cells in the police stations where the living and housing conditions and the observance of human rights did not comply with the international standards and the Albanian legislation.

417. Until early 2007, almost 50 per cent of the pretrial detainees at national level were accommodated in the pretrial detention cells within the police stations under the subordination of the Ministry of Interior, in poor conditions which were below the legal standards for treatment and guaranteeing of their rights. With the approval of the Joint Order 581/1, dated 24.01.2007 and the Order 432, dated 23.01.2007, of the Minister of Justice and the Minister of Interior, "On transfer of the pretrial detention to the authority of the Ministry of Justice", the majority of the pretrial detainees were accommodated in special sections in prisons under far better material conditions. Due to the failure of accommodation in other institutions of the enforcement of penal sentences, the remainder of the pretrial detainees is still accommodated in some pretrial detention premises within

the police stations which are subject to refurbishment and improvement of housing conditions. The personnel of those pretrial detention centers is filled with the necessary civilian staff and military or police staff and the new Pretrial Detention Regulation, approved by the Minister of Justice, is applicable to all pretrial detainees.

418. As a standard of the Council of Europe and deemed as a priority by the Ministry of Justice, the process of the transfer of pretrial detention system was fully completed in May 2007. Since June 2007, the pretrial detention system is fully administered by the Ministry of Justice.

419. In October 2007 the transfer to the authority of the Ministry of Justice of the entire civilian and police staff and security was completed, whereas the escort during the judicial hearing would be made by the operatives of the Penitentiary Police.

420. The full transfer of the pretrial detention system from the Ministry of Interior to the authority of the Ministry of Justice has been one of the most sensitive problems inherited in the system of prisons.[84] With the approval of the Joint Order of the Minister of Justice and the Minister of Interior it was implemented the full de facto transfer of the pretrial detention system to the authority of the Ministry of Justice. In February 2007 the transfer of all other pretrial detention centers (of premises and of the pretrial detainees) to the authority of the Ministry of Justice was completed, whereas the transfer of the personnel that served in pretrial detention centers, which escorted the pretrial detainees during the court hearings, continued to remain under the authority of the Ministry of Interior. In May 2007 the full transfer of responsibilities for the pretrial detention centers from the Ministry of Interior to the authority of the Ministry of Justice was completed. Almost all pretrial detention centers function in separate sections within the Penal Sentence Enforcement Institutions (PSEI). The pretrial detention in the town of Korça is transferred to the premises of the new prison of Korça with a holding capacity of 350 persons, built by the financial support of Cards Program 2002, 2004 of the European Commission whereas the pretrial detention centers in the towns of Tropoja, Kukës, Durrës, Saranda, Berat continue to function within the premises of the Police stations. The transfer of the pretrial detention system under the administrative responsibility of the Ministry of Justice constitutes a step forward in the improvement of the standards of the Albanian penitentiary system.

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421. As we have identified in the first part of this Report,[85] several by-laws adopted by the Minister of Interior and the State Police Director General (orders and letters rogatory) have specified measures and tasks for the police operatives to guarantee the enforcement of such rights and measures against the abusers, violators of human rights or perpetrators of ill-treatment and violent acts.

422. The General Regulation of Prisons, inter alia, specifies the obligation of the penitentiary administration for the implementation of human and educational treatment of sentenced persons through modern effective ways of administration, without any discrimination on account of race, sex, color, language, religion, political opinion, national or social background, economic situation etc. According to the Regulation, each sentenced person must be informed on his rights and obligations stemming from the law and respective regulations. To this end, the library of the institution makes available the

[84] This fact is also highlighted in the reports of the domestic and foreign organizations which have monitored the observance of human rights in prisons.

[85] Refer to comments on article 10 of the Convention, in the first part of this Report.

respective legal acts and by-laws. For the illiterate sentenced persons this communication is verbally provided by the educational service.

423. For the purpose of information on human rights and fundamental freedoms leaflets with information on international conventions were disseminated to all central and local structures of the State Police. As regards the familiarization and informing on rights and treatment of prisoners and pretrial detainees, the Directorate General of Prisons in cooperation with the European Mission of Assistance to the Albanian System of Justice (EURALIUS) contributed to the preparation of a full group of legal acts and by-laws in the field of the Albanian penitentiary system. Two publications are made available, one for the prisons' administration and the other for the sentenced persons. These publications are disseminated to all institutions of the enforcement of penal sentences and are made available to the prisoners and the personnel of the sentence enforcement institutions. At the Penal Sentence Enforcement Institution in Tirana where female convicts serve their sentence, a leaflet on rights and obligations of women sentenced in this institution was disseminated to the latter ones and their relatives.

424. Training of police operatives: A major part of the police operatives (of middle and senior ranking) have conducted three month training courses organized by the police mission PAMECA and ICITAP, and they also attended training courses organized by the US Department of Justice and the Academy of Law Enforcement Forces in Hungary, USA. As regards the measures undertaken for the personnel of the State Police central and local structures on prevention of torture and degrading acts, a series of training courses were provided for the year 2008, which were given precedence in respect of the Thematic Plan for the Training of the State Police. The topics of those training courses were as follows:

1. Escort to the police station, training of the escorted persons, inspection of persons and their safety.

2. Police and human rights, practical aspects on human rights during the police service.

3. Police and human rights.

4. Police and rights of minorities. 4. Program on protection of witnesses.

5. Components of protection of witnesses.

6. Domestic violence.

7. Treatment of victims at cross-border points.

8. Exchange of experience on human rights between Albania and Italy.

425. Police operatives continuously participate in the training courses conducted by various organizations operating in the field of human rights and fundamental freedoms. Specifically, in cooperation with EC, OSCE, UNICEF, continuous training courses were established for the police operatives of basic, middle and senior ranking, with the following topics:

(a) Treatment of victims of trafficking;

(b) Human rights and domestic violence policing;

(c) Trafficking in human beings;

(d) Children's protection;

(e) Measures against domestic violence.

426. Training courses of the personnel of the penitentiary system.[86] The continuous training of the civilian and police staff is a prerequisite and priority of the work of the Directorate General of Prisons. Additionally, activities are carried out in the framework of the Memorandum of Cooperation between the Directorate General of Prisons and the Albanian Committee of Helsinki, concerning the strengthening of the Training Center of the Directorate General of Prisons so as it becomes an Academy of the Penitentiary System. We distinguish among the activities financed by EC CARDS Program (2004), the project "Human orientation of prisons applied for the period of time (May 2007–October 2008), to a value of 478.198 Euro". The development of a full system for the selection, basic training and continuous training is one of the objectives of such project. Further, we distinguish among the activities for the training of the personnel of the penitentiary system:

1. The training course "Enhancement of management skills of the heads of prisons and pretrial detention centers" organized by the Directorate General of Prisons, the Council of Europe and the Albanian Committee of Helsinki. This training was attended by all heads of prisons and pretrial detention centers.

2. Training of 11 prison employees in Holland, organized in cooperation with the Albanian Committee of Helsinki. The local trainees who participated in that training organized a cycle of training courses for the civilian and police staff in 10 prisons and pretrial detention centers.

With the support of the Council of Europe, two employees of the sectors of education participated in a study visit to Estonia (March 2008) and three social workers and psychologists of the sectors of education in prisons participated in a regional conference. Based on the experience acquired from those training courses, they have organized training courses for the personnel and some of the topics treated in those training courses were:

(i) Role of communication in the reduction of aggressiveness;

(ii) Development of prisoners' social skills;

(iii) Facing peer group pressure;

(iv) Control of anger of the sentenced person;

(v) Phenomenon of frustration and effective ways for its management;

(vi) Communication and reward.

427. The educational staff in the penitentiary system have treated various topics with groups of sentenced persons and pretrial detainees. It is worth mentioning the educational staff in the pretrial detention of Vlorë, which has treated a series of topics such as: "Communication between the sentenced persons", "Professional Ethics", "Stress and Burn-out phenomenon". The topic "Sexual Violence" was treated at the Pretrial detention center of Rrogozhinë, particularly with the sentenced persons or the pretrial detainees who are sentenced or are pending the sentence for that criminal offence. The Directorate General of Prisons, in cooperation with the Albanian Committee of Helsinki, organized a train the trainers training (October 2007) on "Issues of treatment of women and juveniles" and further it was implemented the training of staffs in institutions (April 2008). The women's prison "Ali Demi" has continuously organized internal training courses of the employees on human rights' cases, treatment of sentenced persons in accordance with the international standards. In May 2008, in cooperation with the Albanian Center against Torture and Trauma, a meeting with the staff was conducted to contemplate the amendments of the law

[86] Refer to the comments on article 10, paragraph 1.

"On Rights and Treatment of Sentenced Persons and Pretrial detainees", the creation of the National Mechanism for Prevention of Torture and the UN Convention against Torture. The educational staff of the Prison of Vaqarr treated topics such as "Role of work in the education and integration of sentenced persons", "Role of communication in preventing actions and behaviors in contravention to the Regulation" etc.

428. The Ministry of Foreign Affairs, the Ministry of Justice in cooperation with the Directorate General of Human Rights and Legal Matters of the Council of Europe organized the workshop on the application of the article 3 "prohibition of torture" of the European Convention for Human Rights in the context of trials of the European Court for Human Rights for Albania. This meeting was attended by representatives from the line ministries, the Directorate General of Prisons, the State Police Directorate General, experts in field of human rights, representatives from civil society etc. We may mention among the issues addressed in this round table:

- The right for the observance of arrest conditions, standards established by the jurisprudence of the European Court for Human Rights (ECHR). Setting good examples.
- The rights of persons sentenced in Albania. The law on rights of persons sentenced in Albania and its enforcement.
- An overview of the measures undertaken and the future measures for the enforcement of the ECHR sentences in relation to the sentence conditions in Albania.
- Current concerns of the Albanian complainants in relation to the article 3 of the European Convention of Human Rights, concerning the prohibition of torture.
- Challenges of Albanian authorities in respect of the enforcement of judgments in relation to point 3 "prohibition of torture" of the European Convention on Human Rights.

Table 4
Foreign assistance in support of the training of the staff of the penitentiary system

Institution	*Donor*	*Program/ implement-ing agency*	*Project's title*	*Value*	*Deadline for commencement of the project*	*Deadline for termination of the project*
Ministry of Justice	European Union (EU)	CARDS 2004	Human orientation of prisons	0.478 mln Euros	2007	2008
Ministry of Justice	UNICEF		For a better observance of rights of juveniles and women at pretrial detention institutions	0.044 mln Euros	2007	2007
Institutions of the Judicial System and institutions under the subordination of the Ministry of Justice	SOROS		Monitoring of relations between EU and Albania, particularly in fields related to the judicial system, prisons/pretrial detention centers, minorities, bailiff service, elections' system	0.478 mln Euros 0.478 mln Euros	2007	2007

Institution	*Donor*	*Program/ implement-ing agency*	*Project's title*	*Value*	*Deadline for commencement of the project*	*Deadline for termination of the project*
Ministry of Justice	EU	CARDS 2004	Training of the staff of the prison of Fushë-Kruja		ongoing	ongoing

429. Additionally, within the framework of the Spanish Agency for International Cooperation for Development (AECID) training seminars were conducted for 88 specialists of social and juridical personnel in the Penal Sentence Enforcement Institutions, with the following topics:

1. Sentence serving system, leading line and general principles of the sentence serving enforcement.

2. Management and administration of the sentence serving system.

3. Sentence serving centers.

4. Human resources.

5. Penitentiary treatment as a fundamental right for the social re-involvement.

6. The inspection of the sentence serving activity.

7. Contents and development of professional reports.

8. Contents and implementation of different therapeutic programs taken place in the sentence serving premises such as: Program on the prevention of suicide, Program on drug addiction, Program on sexual violence, Program on gender violence, Program for young people, Program for disabled people, Program for modules of respect.

430. General Prosecutor's Office. Having adequate knowledge on key fields to be financially supported by the respective donors according to the study conducted by the HRJS[87] for the implementation of the recommendations of the Committee on Prevention of Torture of the Council of Europe, to guarantee the fundamental right of each individual against ill-treatment, this institution proposes the organization of training courses for prosecutors and judicial police officers on the investigation and prosecution of the criminal offences related to ill-treatment. The organization of training courses on the investigation and prosecution of ill-treatment in general and of torture in particular, aims to overcome the above mentioned problems and guarantee to any detained or sentenced person human dignity as laid out by the Constitution and the International Conventions.

431. In particular, the objectives of the training courses were as follows:

1. Further increase of awareness of the prosecutors and the judicial police that ill-treatment is morally intolerable and legally punishable in a democratic society. Ill-treatment and torture are very serious offences flagrantly violating the most fundamental human rights guaranteed by the Constitution and the International Conventions in this field.

2. Expansion of knowledge and professional skills of the prosecutors and the judicial police to understand more fairly and accurately the criminal offences related to torture and ill-treatment. This becomes even more necessary when it is taken into account that in 2007 torture was defined as a criminal offence.

[87] Study conducted by the Research Institute of Human Rights and Social Justice in the University of London (HRJS).

3. Building of necessary human capacities, a group of prosecutors and judicial specialized police officers to investigate and prosecute the criminal offences related to torture and ill-treatment.

4. Implementation of effective and prompt investigation by the Prosecutor's Office and the judicial police.

5. Correct classification of the criminal offences and bringing charges in accordance with the seriousness of the ill-treatment.

6. Prevention of personal ill-treatment of detained or sentenced persons. The expected results from the training are:

(a) Prosecutors and judicial police officers to be self-aware and professionally capable to understand the risk of ill-treatment;

(b) Prosecutors and judicial police officers specialized in the ill-treatment field;

(c) Effective and prompt investigation and prosecution;

(d) Correct classification of the criminal offences related to ill-treatment;

(e) Prevention of ill-treatment.

It is proposed that the prosecutors charged with the monitoring of the sentence enforcement or pretrial detention premises, judicial police officers involved with the detention, arrest and interrogation of the detainees and judicial police officers from the penitentiary police participate in the training. The General Prosecutor's Office offers its premises for the implementation of such training courses.

432. Training of medical personnel in field of mental health. Improvement of the quality of service offered to mentally ill patients. As regards the provision of multidisciplinary treatment, there are qualitative changes in the structure of the personnel of hospitals and psychiatric services because social workers and psychologists are recruited.

433. Considering the education of the medical staff (doctors and nurses) of the network of mental health services as an important objective, the Ministry of Health in cooperation with the World Health Organization has continuously conducted a series of training courses of that staff. Based on the Action Plan, in respect of the training of personnel in hospitals and psychiatric wards, importance is attached to the inclusion of societal mental health issues. To this end, activities are carried out in all coverage fields and qualitative and quantitative results of such training activities are reported.

434. The number of the trained personnel has been continuously increased (for instance, the number of the psychiatrists is increased, from 33 in 1999 to 46 in 2003). Specifically, since 2005 the doctors of the psychiatric service within the Hospital University Center of Tirana are trained. Training was provided for all psychiatrists of ambulatory services and a significant number of nurses from the psychiatric hospital and psychiatric wards (namely, 35 nurses from the psychiatric hospital of Elbasan, 10 nurses from the psychiatric hospital of Vlorë and 5 nurses from the psychiatric wards of the hospital in Shkodër and 10 nurses from the psychiatric ward in the hospital of Tiranë). The University Clinic of Psychiatry as the responsible institution for the development of educational curricula for several university institutions has included issues of societal mental health. The department of neuropsychiatry at the Hospital University Center of Tirana is working to build an action strategy for training. The drafting of a specific curriculum is underway and work is done to design the required modalities.

435. With the short-term objective of establishment of a Community Center of Mental Health, the training of the multidisciplinary team at the hospital of Korça is ongoing.

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436. Statistical data on lawsuits against State Police officers (the period 2003–2008). The following table provides concrete cases (for the period 2003–2008) in respect of illegal acts carried out by the personnel of the State Police who, in the course of their daily activity, have carried out arbitrary acts, battery or slight injury of nationals, in terms of which the Directorate General of State Police (The Directorate of Internal Control Service) has brought suits for the police officers.

Table 5
Cases of ill-treatment and respective measures in the penitentiary system

Classification of acts	*Number of cases*	*Number of subjects that have committed them*	*Senior ranking*	*Middle ranking*	*Basic ranking*
		Year 2003			
Arbitrary acts	12	14 subjects	1 subject	6 subjects	7 subjects
Battery	1	1 subjects		1 subject	
Slight injury	4	4 subjects		2 subjects	2 subjects
		Year 2004			
Arbitrary acts	29	29 subjects	4 subjects	15 subjects	10 subjects
		Year 2005			
Arbitrary acts	13	15 subjects	1 subject	7 subjects	7 subjects
Slight injury	3	3 subjects			3 subjects
		Year 2006			
Arbitrary acts	13	15 subjects	2 subjects	9 subjects	4 subjects
Slight injury		4 subjects		1 subject	3 subjects
		Year 2007			
Arbitrary acts	19	32 subjects	2 subjects	11 subjects	19 subjects
Slight injury	4	7 subjects		2 subjects	5 subjects
		Year 2008 – First trimester			
Arbitrary acts	5	7 subjects	1 subject	3 subjects	3 subjects
Slight injury	1	1 subject		2 subjects	2 subjects

437. During the period from 2003 – to present time, 12 complaints were lodged against ill-treatment (in the Penal Sentence Enforcement Institutions of Vaqarr, Lezhë, Krujë and Rrogozhinë). Three criminal proceedings were instituted from the Prosecutor's Offices of the respective districts in relation to such cases. In all cases, the Directorates of institutions have taken the administrative measures "suspension from duty" against the responsible employees and for 2 cases it was taken the measure of "dismissal".

438. During the period from April 2007 to the present, the Internal Inspection Service in Prisons has criminally prosecuted several employees of the penitentiary administration accused of "abuse of office" in the Directorate General of Prisons or special prisons such as in the prison of Burrel, Korçë, and Sarandë. This Service exercises its legal competences on the grounds of information or complaints of prisoners, particularly in cases of claims on the exercise of violence against them and through confidential meetings with the prisoners to elucidate potential causes and circumstances in case of the exercise of violence. For the criminal proceeding of the perpetrators of violence acts, the Internal Inspection Service in Prisons has established close cooperation with the Prosecutor's Office in order to evidence and document the criminal activity. As reported, in a case of the exercise of violence against a juvenile prisoner, which took place on 20 February 2006 in the prison of Vaqarr, the Directorate General of Prisons has taken the measure of dismissal against the responsible person, employee of basic ranking (in the Penitentiary Police).

Statistical data identifying the indicators on bringing and representing the charge in the trial[88]

439. For the year 2003 the Prosecutor's Office recorded 124 criminal cases with 76 defendants, divided in terms of the following criminal offences:

- A criminal case with a defendant for the criminal offence of torture, provided for in the article 86 of the Criminal Code where the defendant is tried and sentenced to imprisonment; 65 criminal cases with 28 defendants for the criminal offence of "arbitrary acts", provided for in the article 250 of the Criminal Code, where 4 defendants are tried and sentenced to fine and a defendant is sentenced to imprisonment
- 58 criminal cases with 47 defendants for the criminal offence of " abuse of office" pursuant to the article 70 of the Military Criminal Code, where 11 defendants were found guilty and 6 are sentenced to fines and 5 to imprisonment

440. For the year 2004 the Prosecutor's Office recorded 82 criminal cases with 42 defendants for the criminal offences divided as follows:

- Five criminal cases with 5 defendants for the criminal offence of "torture" provided for in the article 86 of the Criminal Code where only 1 is found guilty and sentenced to imprisonment; 37 criminal cases with 14 defendants for the criminal offences of "arbitrary acts" provided for in the article 250 of the Criminal Code where 3 defendants are found guilty and sentenced to fine
- 40 criminal cases with 23 defendants for the criminal offence of "abuse of office" pursuant to the article 70 of the Military Criminal Code where two defendants are found guilty and sentenced to fines

441. For the year 2005 it is reported that the prosecutor's office has exercised criminal prosecution and brought a charge to the court for 16 criminal proceedings against 19 persons. The persons against whom charges are brought to the court and are sentenced for ill-treatments of persons who are deprived of liberty, are 17 employees of the State Police, of whom 10 are of middle ranking or police officers up to service chiefs and 6 of basic ranking on the duty of police agents and 2 are police officers in correctional institutions.

442. For the year 2006 the Prosecutor's Office exercised criminal prosecution and brought charges to the court for 14 criminal proceedings against 23 persons of whom 8 persons are tried and sentenced and trial is pending for the other persons. The persons

[88] Statistical data according to the General Prosecutor's Office.

against whom charges are brought to the court and are sentenced for ill-treatments of persons who are deprived of liberty, are 20 State Police employees of whom 6 are of middle ranking or commanders or chiefs of service up to police officers and 14 are of basic ranking, on duty of police agents, and 3 employees of the Penitentiary Police in correctional institutions.

443. In 2007, the Prosecutor's Office registered 56 criminal proceedings against 67 police officers:

- Of these 28 proceedings are dismissed due to absence of criminal elements.
- For 14 processes the non-institution is decided, 3 criminal proceedings are suspended for non-discovery of the perpetrator and 4 defendants are brought for trial where 3 of them are found guilty and sentenced to fine whereas one is pending the trial.
- Nine criminal proceedings are still under investigation. The persons in question are accused of arbitrary acts against nationals in conformity with the article 250 of the Criminal Code and of "abuse of office" in conformity with the article 70 of the Military Criminal Code.

444. Statistical data on the tried criminal cases and the nationals sentenced for intentional criminal offences against health, provided for in the Section III of the Criminal Code (articles 86–90). Source: Ministry of Justice.

Table 6 (a)
Crimes and contraventions 2003: intentional criminal offences against health

Articles of Criminal Code	*Criminal offences*	*Settled cases*	*Sentenced persons*
86	Torture	4	2
87	Torture inflicting serious consequences	-	-
88	Serious intentional injury	65	74
88/a	Serious injury under severe psychic shock	-	-
88/b	Serious injury exceeding limits of necessary defense	1	2
89	Slight intentional injury	178	133
89/a	Not titled in the Criminal Code	-	-
90	Other intentional injuries	114	80

Table 6 (b)
Crimes and contraventions 2004: intentional criminal offences against health

Article of Criminal Code	*Criminal offences*	*Settled cases*	*Sentenced persons*
86	Torture	3	0
87	Torture inflicting serious consequences	-	-
88	Serious intentional injury	37	49
88/a	Serious injury under severe psychic shock	28	10
88/b	Serious injury exceeding limits of necessary defense	2	1

Article of Criminal Code	*Criminal offences*	*Settled cases*	*Sentenced persons*
89	Slight intentional injury	233	149
89/a	Not titled in the Criminal Code	-	-
90	Other intentional injuries	463	106

Table 6 (c)
Crimes and contraventions 2005: intentional criminal offences against health

Article of Criminal Code	*Criminal offences*	*Settled cases*	*Sentenced persons*
86	Torture	2	2
87	Torture inflicting serious consequences	-	-
88	Serious intentional injury	54	51
88/a	Serious injury under severe psychic shock	3	4
88/b	Serious injury exceeding limits of necessary defense	3	4
89	Slight intentional injury	219	192
89/a	Not titled in the Criminal Code	-	-
90	Other intentional injuries	440	105

Table 6 (d)
Crimes and contraventions 2006: intentional criminal offences against health

Article of Criminal Code	*Criminal offences*	*Settled cases*	*Sentenced persons*
86	Torture	-	-
87	Torture inflicting serious consequences	-	-
88	Serious intentional injury	70	73
88/a	Serious injury under severe psychic shock	4	6
88/b	Serious injury exceeding limits of necessary defense	3	3
89	Slight intentional injury	270	203
89/a	Not titled in the Criminal Code	1	0
90	Other intentional injuries	364	83

Table 6 (e)
Crimes and contraventions for the first nine months of 2007: intentional criminal offences against health

Article of Criminal Code	*Criminal offences*	*Settled cases*	*Sentenced persons*
86	Torture	-	-
87	Torture inflicting serious consequences	-	-
88	Serious intentional injury	49	56

Article of Criminal Code	*Criminal offences*	*Settled cases*	*Sentenced persons*
88/a	Serious injury under severe psychic shock	-	-
88/b	Serious injury exceeding limits of necessary defense	1	1
89	Slight intentional injury	185	59
89/a	Not titled in the Criminal Code	-	-
90	Other intentional injuries	294	34

The statistical information for the year 2007 and for the first trimester of 2008, on criminal cases and sentenced persons is in the stage of review (according to the Ministry of Justice).

445. The following cases of ill-treatment or violence against mentally ill patients and the measures undertaken are reported.

Table 7 (a)
Cases of ill-treatment or violence reported in the psychiatric hospital of Vlora

Number of cases	*Reported case*	*The personnel that has exercised it*	*Undertaken measures*
Year 2003 – No cases of ill-treatment or violence			
		Year 2004	
Two cases	Violence against the patient (this case is not proved)	Custody	"Warning notice for dismissal"
		The nurse of the shift	
		Year 2005	
One	Physical violence against two patients	The nurse of the shift	"Warning notice for dismissal"
		The janitor	
		Year 2006	
One case	Non-provision of assistance for a patient who is already found dead out of the ward (during that period he was not hospitalized). Absence of notification of the night shift doctor and interventions in the personal effects of the patient.	Nurse	"Dismissal" for the nurse and two custodians
		Two custodians	
		One janitor	"Warning notice for dismissal" to the janitor
		Year 2007	
Four cases	1. Physical and verbal violence against the patient (the case is not proved)	1. Custodian	1. "Warning notice for dismissal"
	2. Ill-treatment against the patient. (the case is not proved)	2. Custodians	2. "Warning notice for dismissal"
	3. Physical violence against the patient	3. Janitors	3. "Dismissal" of the janitor. "Remark" for the head-nurse, nurse and custodian.
	4. Verbal violence against the patient.	4. Janitors	4. "Warning notice for dismissal"

Number of cases	*Reported case*	*The personnel that has exercised it*	*Undertaken measures*
		Year 2008	
One case	Non-observance of the procedure of money retention and complaints on bribery.	1. Two nurses 2. Two nurses	1. "Dismissal" of two nurses 2. "Warning notice for dismissal" for two nurses.

Table 7 (b)
Cases of ill-treatment or violence reported in the psychiatric hospital of Elbasan

Number of cases	*Reported cases*	*The personnel that has exercised violence*	*Undertaken measures*
Years 2003, 2004, 2005 – No cases of ill-treatment or violence			
		Year 2006	
Two cases	1. Violence against the patient (the case is not proved)	1. Custodian	1. "Written remark"
	2. Physical violence against the patient (the case is proved)	2. Custodians	2. "Dismissal"
		Year 2007	
One case	Violence against the patient (the case is not proved)	Nurses	"Warning notice for dismissal"

No cases of ill-treatment or violence are reported in the psychiatric wards of the hospitals in the cities of Shkodër and Tiranë.

Conclusions and recommendations, paragraph 9

446. As regards the recommendation of the Committee on the wide dissemination (for purposes of familiarization) of conclusions and recommendations (CAT/C/CR/34/ALB), we inform the Committee that such conclusions and recommendations are submitted to all state institutions to make provisions for their implementation. This document is published on the official website of the Ministry of Foreign Affairs in Albanian and English language: www.mfa.gov.al/web/Coventions_Reports_for_Human_Rights_65_2.php.

Conclusions and recommendations, paragraph 10

447. As regards the recommendation of the Committee that the Albanian state must provide within one year, information on its response to the recommendations contained in paragraph 8 (c), (d), (i) and (l), we report that the Albanian Government has provided information on their implementation in August 2006 (CAT/C/ALB/CO/1/Add.1).[89] This Report also contains detailed information on the measures undertaken for the implementation of such recommendations for the period 2005–2008.

[89] Refer to the Second Part of this Report.