



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

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Committee on Enforced Disappearances

**Consideration of reports submitted by States
parties under article 29 (1) of the Convention**

Reports of States parties due in 2012

Albania*

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I. Introduction

1. The International Convention for the Protection of All Persons from Enforced Disappearances¹ is ratified by the Republic of Albania² by the law No. 9802,³ dated 13.09.2007. In accordance with this law, the Republic of Albania declares that pursuant to article 31, paragraph 1 of the Convention, it recognizes the competence of the Committee on Enforced Disappearances⁴ to receive and consider communications from or on behalf of individuals subject to its jurisdiction, claiming to be victims of a violation by Albania of provisions of this Convention. Pursuant to article 32, the Republic of Albania declares that it recognizes the competence of the Committee to receive and consider communications, in which a State Party claims that another State Party is not fulfilling its obligations under the Convention.⁵

2. In accordance with article 29 of the Convention, Albania submits to the Committee on Enforced Disappearances, the report on the measures taken to implement the obligations laid down by this Convention.

3. Albanian authorities consider the reporting process including the process of preparation of national report as a mean to ensure compliance with international obligations, and as well as an opportunity to assess, to present the situation of human rights for the purpose of adopting necessary legal provisions and implementation of the Convention. The delays for the submission of the report are related to adoption of a legal framework that provides for enforced disappearance as a criminal offense, as well as difficulties encountered in implementing the Convention. Due to these circumstances, we apologize for the late submission of this report, and we thank the distinguished Committee of Convention for its comprehension.

4. This initial report has been prepared in accordance with the Guidelines of the Committee on Enforced Disappearances (CED), on the form and content of report⁶. Referring to the guidelines, the report is completed by the Common Core Document⁷ in accordance with the harmonized guidelines on reporting under the international treaties on human rights.⁸ The report was compiled in accordance with Resolution A/68/268 “Strengthening and enhancing the effective functioning of the human rights treaty body system” adopted by the General Assembly on 9 April 2014.

5. The report was prepared by the Ministry of Foreign Affairs in cooperation with central institutions and independent institutions. Pursuant to the Order of the Prime Minister No. 112, dated 5.3.2014 “For the establishment of the inter-institutional working group on drafting the reports for implementation of international conventions on human rights”, the Ministry of Foreign Affairs coordinates the process of preparation of the national reports in the framework of the implementation of the conventions on human

¹ Hereinafter Convention.

² Hereinafter RA.

³ This law is published on Official Gazette No. 125, date 27.09.2007 and the website of the Centre of Official Publications: http://www.qbz.gov.al/botime/fletore_zyrtare/2007/PDF-2007/125-2007.pdf.

⁴ Hereinafter CED Committee.

⁵ Articles 2 and 3 of the Law No. 9802, dated 13.09.2007 “On the ratification of the UN international convention for the protection of all persons from enforced disappearances”.

⁶ CED/C/2; 8 June 2012.

⁷ Core Document (HRI/CORE/ALB/2012 found in: <http://www2.ohchr.org/english/bodies/coredocs.htm>).

⁸ HRI/GEN/2/Rev.6; 3 June 2009.

rights. The report was prepared in cooperation with the Ministry of Justice and General Directorate of Prisons, Ministry of Interior and General Directorate of State Police, Ministry of Social Welfare and Youth, Ministry of Health, General Prosecution Office. In the preparation of this report are involved several independent institutions as: Ombudsman, Commissioner for the Protection against Discrimination, Commissioner for the Right of Information and Protection of Personal Data.

6. Appreciating the contribution and cooperation of the civil society in the field of human rights, non-governmental organizations dealing with human rights are informed for the preparation of this report, and are encouraged to be involved in this process, by presenting their contributions.

7. According to internal legal procedures related submission of reports for implementation of human rights conventions, this report is adopted by a Council of Minister Decision.

8. The report contains information on the general, institutional and legal framework on the prohibition and punishment of enforced disappearances, and information on measures for the implementation of Articles 1-25 of the Convention.

II. General legal framework for the prohibition of enforced disappearances

9. Albania is committed to the continuous improvement of standards for the protection, observance of human rights and fundamental freedoms. In this context, the improvement of national legislation in accordance with international obligations is a priority. Albanian Constitution, the ratified international agreements as part of domestic legal system, the laws, and normative acts of the Council of Ministers (bylaws) ensure the practical implementation of human rights in practice. Albanian legislation, which is constantly being improved and completed, constitutes as well a guarantee for the prevention of enforced disappearances reflecting the spirit of the Convention.

A. Constitutional, criminal, administrative provisions, on the prohibition of enforced disappearances

10. Republic of Albania has a comprehensive system for the protection of human rights, fundamental freedoms. Albanian Constitution provides several provisions related civil, political, economic, social, cultural rights and fundamental freedoms, as well as the institutions for the protection of human rights. The Constitution provides that the human rights and freedoms are indivisible, inalienable and inviolable and stand on the foundation of the legal order (Article 15). Article 17 of the Constitution stipulates that the restriction of rights, freedoms provided in it can be established only by law for a public interest or for the protection of the rights of others individuals and cannot violate the essence of freedoms and rights. As a constitutional obligation, in fulfillment of their duties, all institutions, must respect the rights and fundamental freedoms, and contribute to their realization. The Constitution stipulates that the rights, freedoms and obligations set forth apply equally to the Albanian nationals as well as the foreigners and stateless persons. The Constitution provides that “no one may be subject of torture, and other cruel, inhuman or degrading

treatment or punishment”; “no one may be deprived of liberty except in cases and under procedures provided by law, foreseeing even his rights”.⁹

11. The Constitution guarantees the right of life by law, banning the death penalty in all circumstances, in times of peace or war. This penalty has not been applied in the RA, from the ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms (in 1996).

12. The Criminal Code (CC)¹⁰ is based on the Constitution, the general principles of the international criminal law, the ratified international treaties. The CC defines the criminal offenses, penalties, other measures taken against their perpetrators. Criminal acts are divided into felonies and misdemeanours. Their differentiation is made in each case under the provisions of the special part of the CC. The domestic criminal legislation aims to protect the independence of the state and entirety of its territory, human dignity, rights and freedoms, constitutional order, property, environment, coexistence and understanding of Albanians with the national minorities, the religious coexistence from the, as well the prevention and the punishment of criminal offenses. The CC is based on the constitutional principles of the rule of law, equality before the law, justice in determining guilt and punishment, protection of the best interest of the children, humanity, the principle of non-discrimination and equal treatment of citizens.

13. Given the necessity of providing specific provisions in domestic legislation in accordance with the obligations under this Convention, a special provision on “enforced disappearance is included in the Criminal Code¹¹”, in accordance with the definition of Article 2 of the Convention, its other Articles, as well as the penal sanctions. Based on article 5 of the Convention, the “enforced disappearance” is provided for as a crime against humanity with relative sanctions.

14. Regarding the criminal offense of enforced disappearance, the Criminal Code foresees the superior’s criminal responsibility. Referring to Article 7 of the Convention, which stipulates the obligation of the State party to consider the crime of enforced disappearance punishable by appropriate penalties taking into account the extent of its extreme dangerousness, the CC sanctioned severe punishment measures. Based on Article 7, paragraph 2/b of the Convention, the Criminal Code provides as an aggravating circumstance when the offence of enforced disappearance: is committed by causing the death of the person; is committed against children, pregnant women or persons who for various reasons are not able to be protected. Based on Article 25 of the Convention, this Code provides as a criminal offense “the illegal removal of children who are subjected to enforced disappearance; or children, whose father, mother or legal guardian is subjected to enforced disappearance; or children born during the captivity period of enforced disappearance”. According to amendments of Criminal Code,¹² the implementation of its provisions rests upon the principle of protecting the best interest of the child.

15. In the spirit of international conventions on human rights, based on the constitutional principles of the rule of law, humanism, protection of dignity, rights, fundamental freedoms, the Albanian criminal legislation provides other provisions on “offenses against liberty” that contain elements of the definitions under article 2 of the Convention.

⁹ Reference to information on Article 17.

¹⁰ Civil Code adopted by the law No. 7895, dated 27.1.1995, as amended.

¹¹ Law No. 144/2013, dated 2.05.2013 On some additions and amendments in the law No. 7895, dated 27.1.1995 “Criminal Code of RA” as amended.

¹² Detailed information regarding the offense of enforced disappearance as following.

16. Criminal Code provides the prohibition of torture, punishment or cruel, inhuman or degrading treatment. The CC (Article 86) provides torture as a criminal offense in compliance with article 1 of the Convention against Torture. Under Article 87 of this Code, torture derogatory treatment and other inhumane acts, are provided as a criminal offense, as well the cases when these acts have serious consequences. It provides as an offense “abduction or hostage-taking of a person” with the appropriate sanctions, even when it is committed against a minor under the age of 14, and “illegal deprivation of freedom” with the relevant penal sanctions.

17. The inclusion “of enforced disappearance” in the Criminal Code, as a specific criminal offense, with the degree of punishment in accordance with its level of dangerousness, and other legal provisions on the unlawful deprivation of freedom, abduction, holding a person hostage, torture, penalty or cruel, inhuman or derogatory treatment constitute an appropriate legal framework¹³ to prevent such acts and ensure non-avoidance of enforced disappearance by the state, and the compliance of international obligations arising from becoming party to the Convention.

18. The Criminal Procedure Code (CPC)¹⁴ stipulates that the duty of the criminal procedural law is to ensure a legally fair, equal, regular proceeding, to protect the personal freedoms, rights and lawful interests of citizens, to contribute to the strengthening of the rule of law and implementation of the Constitution and domestic laws. It aims to ensure full procedural protection of human rights and fundamental freedoms guaranteed by the Constitution and international instruments, and the efficiency of criminal procedure. This Code provides that the rights and freedom of the person may be restricted by means of precautionary measures only in cases and ways specified by the law. This Code guarantee the prohibition of torture, inhuman or degrading treatment and punishment against the suspect, the defendant or other participant to proceedings, as well human treatment and moral rehabilitation of detainees/prisoners.

19. The Civil Code provides that a person who is missing from the place of residence or his last residence and for whom there are no news for more than two years, at the request of any person concerned, he can be announced disappeared by court decision.

20. The Military Penal Code defines the military offenses, penalties, other measures taken against the offenders. The military offenses are divided into military crimes and military offenses. Their differentiation is made in each case under the provisions of the special section of the Code.

21. Law No. 8737, dated 12.2.2001 “On the organization and functioning of the Prosecution Office” stipulates provisions on the organization and functioning of this Office. Law No. 8677, dated 11.02.2000 “On the organization and functioning of the Judicial Police” provides the functioning of the Judicial Police and the concrete procedural actions during the criminal proceedings.

22. The “Police Ethics Code” contains the principles and norms during the performance of tasks assigned by law, requiring equal application of the law for individuals, regardless of their political, religious convictions, race, social status and state, nationality, citizenship, economic conditions. It determines the prohibition of any act of torture or other act that damages their personality and dignity. Law No. 108/2014 “On the State Police”¹⁵ stipulates that the State Police has the mission to maintain the public order, security, guaranteeing the

¹³ Referring to information below.

¹⁴ CPC approved by law No. 7905, dated 21.03.1995 as amended.

¹⁵ Law No. 108/2014 abolished the previous law No. 9749, dated 04.06.2007, “On the State Police”.

rule of law, in accordance with the Constitution and international acts, while respecting human rights and freedoms.

23. Albanian legislation on the prison system, on the execution of court judgments, and treatment of prisoners, detainees provides for legal and sublegal measures to guarantee their rights, in order to prevent any form of torture, inhuman, derogatory treatment. The scope of the law “On the execution of criminal judgments” is to enforce the criminal judgments and other legal commandments, the way of serving the sentences except the sentences with imprisonment regulated by a special law. The execution of judgments containing sentences, limits only those rights, to the extent and time, as established by the criminal decision, respecting all rights legally acknowledged, unless otherwise specified in this law.

24. Law “On the rights and treatment of pre-detainees and detainees”¹⁶ aiming the protection of their rights, in accordance with international standards. By amendments adopted in 2008 on the Law “On the rights and treatment of prisoners” the term isolation of pre-detainees and detainees (detained persons) was removed. They are treated without discrimination based on sex, race, ethnicity, language, religion, political, religious, philosophical belief, sexual orientation, gender identity, economic, educational, social condition, parental affiliation, age, family situation, marital status, health condition, disability, nationality, affiliation to a particular group, as well any other ground which constitute discrimination. Law “On Prison Police”¹⁷ determines that the Prison Police guarantees order, security in the Institutions for the Execution of Criminal Judgments, in accordance with the law, respecting the rights and freedoms of pre-detainees and detainees.

25. Law No. 244/2012 “On Mental Health” aims to protect and promote mental health, guaranteeing the rights, improving the quality of life for people with mental health disorders. The law provides for equal treatment without discrimination of these persons, respecting their physical integrity, human dignity, protection from discrimination, prohibition of torture, punishment or cruel, inhuman or derogatory treatment. The exercise of the rights of persons with mental health disorders may be limited only in cases provided by law. These restrictions are in proportion to the dictated health situation, and cannot affect the essence of the freedoms and rights.

26. Law No. 108/2013 “On Foreigners” regulates the regime of entry, residence, employment, exit of foreigners to/from Republic of Albania. The law provides for the issuance of the removal order of a foreigner, when having served a sentence given by the Albanian courts for an intentional crime, for which the Criminal Code provides for a minimum sentence of not less than 2 years in prison. Law No. 121/2014 “On Asylum in RA” defines the conditions, procedures for granting/withdrawing asylum, subsidiary protection, temporary protection to asylum seekers, refugees, persons under temporary, subsidiary protection. The law sets out the principles, the basic conditions for guaranteeing the right of foreign persons, those without citizenship to seek international protection. This law provides the principle of “non-refoulement”, including the case when a state has a credible reason that the asylum seeker could be at risk of enforced disappearance.

¹⁶ Law No. 8328 dated 16.4.1998, amended by Law No. 9888 dated 10.03.2008 and the Law No. 40/2014.

¹⁷ Law No. 8321, dated 2.04.1998 “On Prison Police” (amended by Law No. 8757, dated 26.03.2001, Law No. 9375 dated 21.04.2005, and Law No. 36/2014).

B. International instruments on enforced disappearances

27. Republic of Albania is a party to international conventions on human rights in the framework of UN, and of a number of other international instruments proving its commitment to fulfill its international obligations on human rights. International instruments, in which RA is a party, that address particular provisions, which provide directly or indirectly for the prevention of enforced disappearances, are as following:

- European Convention for the Protection of Human Rights and Fundamental Freedoms (ratified by law No. 8137, dated 31.07.1996) specifically the provisions (the right of life, prohibition of torture, the right to liberty and security); its additional protocols (protocols 1, 2, 3, 4, 5, 6, 7, 8, 11, 12, 13, 14). In connection with the death penalty was adopted the law No. 9639 dated 09.11.2006 “On ratification of Protocol No. 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms on the abolition of the death penalty in all circumstances”.
- International Covenant on Civil and Political Rights.
 - The Optional Protocol to the International Covenant on Civil and Political Rights (ratified by Law No. 9725/7.05.2007).
 - Second Additional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty (ratified by Law No. 9726, 05.07.2007).
- Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (adhered to by Law No. 7727/30.06.1993).
 - Optional Protocol to the Convention against Torture OPCAT (ratified by Law No. 9094, dated 03.07.2003), for the establishment of the National Mechanism for Prevention of Torture.
- European Convention for the Prevention of Torture and Inhuman Degrading Treatment or Punishment (ratified by law No. 8135/31.7.1996).
- The Rome Statute of International Criminal Court (ratified by law No. 8984/23.12.2002).
- European Convention on Extradition (ratified by law No. 8322/04.02.1998) and its two Additional Protocols.
- Council of Europe Convention “On the Transfer of Proceedings in Criminal Matters” (ratified by Law No. 8497/10.06.1999).
- Council of Europe Convention “On mutual legal assistance in criminal matters” (ratified by law No. 8498/06.10.1999).
- The Geneva Convention of 1949 and its Additional Protocols.
- Albanian authorities have an effective cooperation with the European Committee for the Prevention of Torture (CPT). CPT has conducted, 11 monitoring visits in Albania.¹⁸

¹⁸ Information regarding the CPT monitoring visits: <http://www.cpt.coe.int/en/states/alb.htm>.

C. Status of the Convention in domestic legislation

28. In Albania, the international law enjoys a privileged position in relation to domestic one and it is in this sense that the Convention prevails over domestic law. The Constitution determines the obligation of the Albanian state to implement the international law. According to Article 122 of the Constitution, any international agreement ratified by the Parliament becomes part of the domestic law after its publication in the Official Journal. Article 122 of the Constitution provides that the international law applies directly, except when it is not self-executable and its application requires the promulgation of a law. International agreements ratified by the Parliament have priority over national laws that do not comply with it. Likewise, the norms issued by the international organizations prevail in case of conflict, over the domestic laws when the agreement is ratified by the Republic of Albania.

29. Based on general rules and principles on implementation of legal norms, it can be concluded that the subjects (individuals) may apply and require the application of only those articles of the Convention, the implementation of which is guaranteed by the current legislation and for which there is no need to establish internal mechanisms. Taking into account the obligations deriving from this Convention, in cases where a specific article of the Convention requires the adoption of internal legal provisions or establishment of internal mechanisms for its implementation, we underline the provision of “enforced disappearance” as a criminal offense. Based on Article 122 of the Constitution, we consider that this Convention is part of domestic legislation, but on the other side, all provision of Convention is not self-executable. In accordance of Article 122, we underline that is necessary to identify the provisions of the Convention that can be implemented by the domestic legislation, as well as those that can be implemented in practice by adopting concrete measures. From an overview of actual domestic legislation, it can be concluded that some provisions of the Convention are applied directly or indirectly in the domestic legislation.

D. Institutional framework (judicial authorities, institutions, national mechanisms) on the protection, promotion of human rights

30. Albanian Constitution sanctions the principle of separation, balance of powers (legislative, executive, judicial). The judicial power is exercised by the Supreme Court, courts of appeal and courts of first instance, established by law. The Constitutional Court guarantees respect for the Constitution and makes its final interpretation. It is also an important institution in the protection of human rights, for it makes the final adjudication of the individual complaints regarding the violation of the constitutional rights to a fair legal process, after all legal remedies for their protection have been exhausted.

31. Related the protection of human rights and implementation of domestic legislation, a comprehensive legal framework on judicial system has been adopted. Competent Courts are: District Courts; Courts of Appeals; the Supreme Court; the Constitutional Court; the Court of First Instance for Serious Crimes; the Court Martial; the Administrative Court. The judicial authorities, who according to their jurisdiction also address issues related to the content of the Convention, are: the Constitutional Court, the Supreme Court, the district courts, including the Court of First Instance for Serious Crimes. The Court of First Instance for Serious Crimes considers and judges the offenses under its criminal law, including the offense of enforced disappearance.

32. The Criminal Procedure Code provides that the Court is the body that guarantees justice. Regarding the “criminal courts” it is stipulated that criminal justice is established by: the criminal courts of first instance; the Courts of Appeal; the Supreme Court. The

Court of First Instance for Serious Crimes conducts its activity from 2004 having as objective the fight against serious and organized crime, as well as the qualitative and effective adjudication of these offenses. This Court exercises its territorial jurisdiction throughout the Albanian territory, and judges the criminal offenses under Criminal Code, including cases that are under the jurisdiction of the Court Martial. The Military Court is competent to judge the soldiers, prisoners of war and other persons for the offenses under Military Criminal Code, under other legal provisions, except the cases judged by the Court of Serious Crimes and the Supreme Court.

33. According to the Constitution, the Prosecution Office exercises the criminal investigation and represents the accusation in court on behalf of the state. Law “On the Organization and Functioning of the Prosecution”¹⁹ provided that: the prosecution exercises the criminal proceedings and represents the accusation in court on behalf of the state, adopts measures and oversees the enforcement of criminal judgments, as well as performs other duties prescribed by law. The prosecutors perform their duties in accordance with the Constitution, the laws, their powers, observing the principles of a fair, legally equitable proceeding, the protection of human rights, freedoms. The Prosecution Office is a centralized structure directed by General prosecutor, and other structures are: the Council of the Prosecution, and judiciary prosecutor’s offices.

34. The mission of the State Police is to maintain order, public security, ensuring the rule of law in accordance with the Constitution, the international treaties, while respecting the human rights, freedoms. The fulfilment of the mission of the State Police is related to the respect for human rights and freedoms, in particular for the persons deprived of their liberty, the accompanied, arrested, detained in police facilities. In its activity, the state police is guided by the law and respect for human rights, fundamental freedoms. The duties of the State Police are:

- (a) The life protection, safety and personal property of persons;
- (b) The maintenance of public order and safety;
- (c) Prevention, detection, investigation, of criminal acts, and perpetrators, in accordance with the criminal law, criminal procedural law;
- (d) Undertaking awareness and information campaigns, to prevent the criminal offenses, misdemeanours, and increasing partnership with the public;
- (e) Exercising duties in compliance with domestic legislation.

35. The Ombudsman is a constitutional, independent institution exercising its activity in defense of the rights, freedoms, legitimate interests of individuals, who could be affected by the illegal, irregular actions/inactions of the public administration bodies, and from third parties acting on its behalf. In the framework of the Convention against Torture and its Optional Protocol, this institution exercises the powers of the National Mechanism for Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment “(NMPT).²⁰ The law “On the rights and treatment of pre-detainees and detainees” stipulates that NMPT, monitors implementation of legislation on human rights, and is functioning within the structure of Ombudsman’s Office. NPMT submits recommendations to the relevant authorities in order to improve the conditions and treatment of detainees. Amendments on the law “On the Ombudsman” (law No. 155/2014) provided the establishment of the NMPT

¹⁹ Law No. 8737/12.02.2001, amended.

²⁰ By law No. 9888, dated 10.03.2008 are adopted provisions in the law No. 8328, dated 16.4.1998 “On the rights and treatment of persons sentenced to imprisonment”, determining the NMPT competencies and functions. Information on the NMPT is provided below.

as a separate Section at the Ombudsman's Office. The NMPT exercises its functions in accordance with the Constitution, the international treaties ratified, and domestic legislation.

36. The Commissioner for Protection against Discrimination (CPD) is an independent institution established by the law No. 10221, dated 04.02.2010 "On protection from discrimination". This law provides the right of every person to:

- (a) Equality before the law, and equal protection by the law;
- (b) Equality of chances, opportunities to exercise and enjoy the rights and freedoms, participation in public life;
- (c) Effective protection from discrimination, and from any form of conduct that encourages discrimination.²¹

E. Relevant information

37. From the entry into force of the Convention, on the territory of the Republic of Albania are not investigated or prosecuted any case of enforced disappearance.

38. Elements of enforced disappearance can be identified during the communist regime and according to official data are resulting 5,157 persons as former convicted for political reasons, executed without a court decision, during the period from 30.11.1944 until 1.10.1991. Law "On the compensation of former political convicted of the communist regime",²² and several bylaws for its implementation provide the compensation of former political for the following categories: convicted with prison; capital punishment by court decision; extrajudicial killings; insulation at investigating offices; hospitalization to a medical institution; exile. Pursuant to this law is adopted the decision of the Council of Ministers (DCM)²³ "For the determination of the administrative review procedures related the claims, and financial compensation for the families of the victims unjustly executed without trial, for political reasons, from 30.11.1944 until 1.10.1991".²⁴

39. In the Ministry of Justice, Ministry of Social Welfare and Youth, Ministry of Finance are established the appropriate structures dealing with administrative proceedings for financial compensation of former political persecuted.

40. Institute for Integration of Former Politically Persecuted, compiles and conducts programs of integration policies for former politically persecuted of the communist regime. Institute for Studies of Communism Crimes and its Consequences, an independent institution is functioning with the aim to study and to identify political persecution by the communist dictatorship in Albania, during the period 1944-1991. Its mission is information and raising awareness of the public related violation of human rights in Albania during the communist regime. Through studies and publications, this institution aims to reveal the truth, circumstances and history, as part of the moral rehabilitation to these victims.

41. The Albanian government will take an important step for creating the Disappeared Persons Section within Institute of Integration Former Politically Persecuted, aiming

²¹ Detailed information about national institutions and mechanisms on the protection and promotion of human rights is provided in the Common Core Document of Albania, (paras. 87-104).

²² Law No. 9831, dated 12.11.2007, amended by the law No. 10.111, dated 2.04.2009 and law No. 94/2014.

²³ DCM No. 933, dated 17.11.2010, amended by DCM No. 356, dated 24.04.2014.

²⁴ Information on financial compensation of former political convicted and the families of person convicted and executed without a court decision is presented on article 24 as following.

finding the disappeared persons during the period of communism. This section will have the following objectives:

(a) Collection of evidence from survivors of the communist dictatorship related executions with or without trial; died persons in prisons; killed persons at investigatory offices or psychiatric hospitals; taken by police forcibly from their homes, and then disappeared without a trace or killed without warning; executed persons in border who attempted to escape, during the period 1945-1991 and then buried in collective graves or unknown location;

(b) A database on disappeared persons including data as name and surname, sex, country, date of birth, place and date, and where is not possible the supposed year and circumstances of disappearance;

(c) To collect information, to find and monitor the return process and exhumation of disappeared persons, in close cooperation with central and local institutions.

42. After the fall of communism in 1991, it may mentioned the case of Remzi Hoxha, who is under review of the Working Group on Enforced or Involuntary Disappearances (WGEID). Following the periodical requests of WGEID, Albanian authorities are submitting informations on this case. Related this case, the Court of First Instance for Serious Crimes and Court of Appeals for Serious Crimes as well, have completed the review of this case related to Remzi Hoxha as affected party. Related Court Decisions the defendant was find guilty for committing the offence of “torture with serious consequences” which brought about the death of Remzi Hoxha. The file of this case is currently in the study phase at the High Court of Albania.

43. Albanian authorities underline that following the adoption of the Dick Marty Report,²⁵ in his capacity of rapporteur of the Parliamentary Assembly of the Council of Europe, they have given full and unhindered co-operation to the EULEX investigators of these alleged crimes on Albanian territory. Considering it of utmost importance that the allegations raised in this report are investigated fully and in a transparent manner, the Albanian Parliament adopted the law “On jurisdictional relations in criminal matters with the EULEX special investigation unit” in May 2012. Based on this law, EULEX prosecutors are allowed to investigate within Albanian territory on the alleged implications of Albania in the illicit trafficking in human organs on Albanian territory, having full support of all competent institutions. With regard to the independent and separate investigation by the Albanian authorities, as is requested by the Assembly, Albanian authorities stated that their investigations have until now not confirmed Mr. Marty’s findings.

III. Information on the implementation of articles of the Convention

Article 1

Absolute prohibition of enforced disappearances

44. Albanian Constitution does not contain any provision authorizing, permitting the enforced disappearance. Based on article 1 of the Convention, which stipulates the obligation of States Parties to provide the absolute prohibition of enforced disappearances

²⁵ Adopted by the Resolution 1782, on 25 January 2011 of Parliamentary Assembly of the Council of Europe.

under domestic legislation, we inform that the Criminal Code provides a specific provision defining enforced disappearance as a criminal offense punishable with relevant penal sanctions based on its riskiness. Considering that enforced disappearance cannot be justified in any case, this Code provides concrete cases on the superior's criminal responsibility related the commission of such offense.

45. According to second paragraph of this article, Constitution provides that:

(a) Limitations of the rights and freedoms provided for in this Constitution may be established only by law, in the public interest or for the protection of the rights of others. A limitation shall be in proportion to the situation that has dictated it;

(b) These limitations may not infringe the essence of the rights and freedoms and in no case may exceed the limitations provided for in the European Convention on Human Rights. It expressly defines the prohibition of torture, inhuman and degrading treatment and the prohibition of forced labour, except in cases of execution of a judicial decision, the performance of military service, a service that results from a state of war, from a state of emergency or from a natural disaster that threatens human life or health. The extraordinary measures that can be imposed because of a state of war, state of emergency or a state of natural disaster last for as long as these conditions continue. The principles of operation of public organs, and the extent of the restriction of human rights and freedoms during the existence of the situations that require extraordinary measures, are defined by law. The law shall define the principles, areas, and manner of compensation for losses caused as a result of the restriction of human rights and freedoms during the period in which extraordinary measures are imposed. Actions taken as a result of extraordinary measures shall be in proportion to the level of risk and shall aim at re-establishing conditions for the normal operation of the state as soon as possible. Likewise, provisions are set forth on the non-limitation of basic freedoms, liberties, political rights, economic and social rights during the state of war, a state of emergency.²⁶

46. In addition of enforced disappearance as a criminal offense and its qualification as a crime against humanity, the Criminal Code provides as following: "Acts committed by persons in time of war such as murder, maltreatment or expulsion for slave labour, as well as any other inhuman exploitation to the detriment of civilian population or in occupied territory, the killing or maltreatment of war prisoners, the killing of hostages, destruction of private or public property, destruction of towns, communes or villages, which are not ordained from military necessity, are sentenced with no less than fifteen years of imprisonment, or life imprisonment".

47. In Albania there is no law on the state of war or internal political destabilization, aiming the regulation or justification of the violation of the rights of persons arrested or detained, therefore to justify or authorize enforced disappearance, arrest, detention, abduction or any other form of deprivation of liberty, torture, inhumane and degrading treatments. In these cases the same provisions prescribed by the legislation in force will apply. The law "On the State Police" stipulates that "the status of the State Police does not change even in a state of war, emergency or natural disasters". The law provides for measures to maintain public order and safety. The Law defines specific actions to be carried out by the police officers pursuant to the responsibilities set out in the law.

48. On death penalty is adopted the law No. 9639, dated 09.11.2006 "For ratification of Protocol 13 to the European Convention on Human Rights and Fundamental Freedoms on the Abolition of the Death Penalty in All Circumstances. By law No. 9722, dated

²⁶ Fundamental rights and freedoms provided by provisions of Albanian Constitution cannot be limited, namely Articles 15, 18, 19, 20, 21, 24, 35, 29, 30, 31, 32, 34, 39/1, 41, 42, 43, 48, 54, 55.

30.04.2007,”On some amendments to the Law No. 8003, dated 28.09.1995 “The Military Criminal Code”, death penalty, which has been envisaged as a measure of punishment in cases of committing serious crimes in wartime by the military entities defined in this Code was abolished.

Article 2

Definition of enforced disappearance

49. Pursuant to Article 109/c of Criminal Code, the provision of “enforced disappearance” comprises the constituent elements of the definition of enforced disappearance Namely “enforced disappearance” as a criminal offence implies or is conducted: through arrest, detention, abduction or any other form of deprivation of liberty of the person; carried out by public officials (agent of the state) or by persons acting with the authorization, support or acquiescence of the state; followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or the whereabouts of the disappeared person; denying to this person the necessary assistance and its protection of the law.

50. Definition of enforced disappearance is formulated in accordance with the definition provided by Article 2 of Convention. The definition of enforced disappearance provided by Albanian Criminal Code, ascertains the following elements:

(a) There is an arrest, detention, abduction or any other form of deprivation of liberty of the person;

(b) That conduct is carried out by public officials/agents of the State or by persons acting with the authorization, support or acquiescence of the state);

(c) The conduct is followed either by the refusal to acknowledge the deprivation of liberty or by concealment of the fate of the disappeared person;

(d) The final or objective result of this conduct is that the disappeared person is placed outside the protection of the law.²⁷ Referring to this constituent element of definition of enforced disappearance, we clarify that the provision on enforced disappearance foresees specifically this element, as a result of the three other constituent elements of enforced disappearance, as defined above.

51. According to the definition of enforced disappearance contained in Criminal Code, we underline that the denial of aid/assistance and placement of the disappeared person outside the protection of the law, is an objective result or consequence of three other constituent elements of enforced disappearance and is not a conditional element of this offense.

52. We underline that enforced disappearance is provided/qualified by Criminal Code as a particular offence against the person, and as a “crime against humanity” when is conducted against a group of civilian population for certain grounds/motives. Article 74 of this Code provides as following: “killings, enforced disappearance, massacres, slavery, internal exile and deportation, as well as any act of torture or other inhuman treatment committed under a concrete plan premeditated or systematically against a group of civilians, for political, ideological, racial, ethnic and religious grounds is punished no less than 15 years or life imprisonment. This provision is in accordance with Rome Statute on the International Criminal Court; meanwhile after the ratification of this Convention was

²⁷ Article 109 of Criminal Code provides specifically “by denying him the necessary assistance and protection of the law”.

undertaken the legislative initiative to include within the category of “crimes against humanity” as well “enforced disappearances”.²⁸ Related the definition and provision of enforced disappearance as a criminal offence by Albanian Criminal Code are taken into considerations the obligations contained in Articles 2, 3, 5, 6, 7 of Convention.

Article 3 Investigation

53. According to this Article 3 of Convention, given that the acts of enforced disappearances committed by persons or groups of persons acting without the authorization, support or acquiescence of the State have elements of the definition of enforced disappearance, we clarify that the domestic penal legislation provides several offenses which have elements similar to enforced disappearance, but don't have the second element of this offense.²⁹ Specifically, Criminal Code provides similar offenses which contain elements of enforced disappearance as: kidnapping or holding a person hostage and illegal deprivation of liberty. These cases are considered under other relevant provisions of the Criminal Code.

54. Under Criminal Code is provided as following:

(a) Kidnapping or holding a person hostage in order to gain wealth or any other benefit, aiming at preparing facilities for the commission of a crime, helping the concealment or removal of perpetrators and accomplices in the commission of a crime, imposing certain requirements or conditions for political purposes or any other purpose, shall be punished by imprisonment or fine;³⁰

(b) When this offense is committed against a minor under 14 years is punishable with imprisonment and fine;³¹

(c) Kidnapping or holding hostage a person or a minor under the age of 14, preceded or accompanied by physical or psychological torture, when is committed more than once against several persons, shall be punished with imprisonment of not less than 20 years and when it caused the death with life imprisonment, and a fine of five million to 10 million lekë.

55. Related the offence of “Kidnapping or holding a person hostage in mitigating circumstances”, is provided as following: “when the person kidnapped or held hostage is voluntarily released before the end of the seven days of kidnapping or hostage, without achieving the purpose of the crime and when against this persons are not committed acts of torture or other damage to health, is punishable with imprisonment from three to five years. The unlawful deprivation of liberty of a person constitutes a criminal offense and is punishable by fine or imprisonment up to one year. When this offence is accompanied by serious ill-treatments, carried out in cooperation against several persons, or more than once, is punishable with imprisonment from three to seven years.

56. According to criminal prosecution, Criminal Code provides that for criminal offences committed by Albanian citizens within the territory of the RA, is applied the

²⁸ Enforced disappearance is provided in Criminal Code as a crime against humanity by the law No. 144/2013.

²⁹ That conduct is carried out by agent of the state or by persons or groups of persons acting with the authorization, support or acquiescence of the state.

³⁰ Penal sanction from ten to twenty years, and and fine from two million to five million lekë. According to exchange rate approximately 130 lekë=1 USD.

³¹ Penal sanction not less than 15 years and a fine of three million to seven million lekë.

domestic criminal law. Criminal Procedure Code contains specific provisions (related investigation information about offenses; conditions to conduct the prosecution; the activity of the police, judicial police, the prosecutor's activity, etc.) for the investigation of the criminal offences provided by the Criminal Code. Under this Code, the organs in charge to conduct investigations are: the Prosecution and the Judicial Police that conduct, within certain powers, the necessary investigations related to the criminal prosecution. The investigations are directed by the prosecutor, who has at his disposal the judicial police. Related the preliminary investigations, according to the cases provided by law, the decision is taken by the court, based on the request of the prosecutor, the injured party and private parties.

Article 4

Definition of enforced disappearance as a crime

57. Pursuant to Article 4 of the Convention, enforced disappearance is provide in Albanian Criminal Code as a separate offense, in line or consistent with the definition of Article 2 of this Convention. Enforced disappearance is envisaged as a qualitatively distinct crime from other criminal offenses that may have elements associated with it, but they have a different nature from that. According to this Code, enforced disappearance is provided for as an offense distinct from other criminal offenses provided for that have similar elements with enforced disappearance, namely: the abduction of a person; abduction of children; arbitrary arrest; illegal deprivation of freedom; crimes against life (removal of life), or other criminal offences. Article 109/c of the Criminal Code contains all the elements of enforced disappearance³² and we assess this provision is in line with the obligations stipulated in Articles 2 and 4 of the Convention.

Article 5

Enforced disappearance as a crime against humanity

58. Pursuant to Article 5 of the Convention, which states that “widespread or systematic practice of enforced disappearance constitutes a crime against humanity, as defined in applicable international law and shall attract the consequences provided for by it”, the Criminal Code provides for the “enforced disappearance” as a crime against humanity. Law No. 144/2013 has amended Article 74 of the Criminal Code “crimes against humanity”, in which “enforced disappearance” carried out by a premeditated concrete plan or systematically against a group of civilian population is foreseen as “a crime against humanity” and not merely as a widespread or systematic practice of enforced disappearance. Specifically: “killings, enforced disappearance, exterminations, enslaving, internal exile and expulsion, as well as any kind of torture or other ill-treatment and violence, which are committed according to a concrete premeditated plan, against a group of civilians for political, ideological, racial, ethnic and religious motives are sentenced with no less than 15 years or life imprisonment. Under Article 75 of this Code “acts committed by different persons in time of war such as murder, maltreatment or expulsion for slave labor, and any other inhuman exploitation to the detriment of civil population or in occupied territory, the killing or maltreatment of war prisoners, the killing of hostages, destruction of private or public property, destruction of towns, commons or villages, which are not ordained from military necessity, are sentenced with no less than fifteen years of imprisonment, or life imprisonment”.

³² As explained in paragraph 50 above.

59. Offenses contained in the Articles 74 and 75 of Criminal Code are in accordance with Article 9 of Albanian Constitution, which stipulates that “no one can be accused or found guilty of a criminal offense, which is not considered as such by the law at the time where is committed, with the exception of cases, which at the time of their commission are constituted war crimes or crimes against humanity, under the international law.” Criminal Code defines “the widespread and systematic practice of enforced disappearances as a crime against humanity”, providing “enforced disappearance” as a crime against humanity, in compliance with applicable international law.

Article 6

Criminal responsibility

60. Regarding criminal responsibility in connection with enforced disappearance, including superior responsibility Criminal Code specifically provides: the Superior who:

(a) Knew that subordinates under his effective authority and control were committing or about to commit a crime of disappearance, or the Superior consciously data and information which clearly indicated such a fact;

(b) Exercised effective responsibility for and control over activities which were concerned with the crime of enforced disappearance; or

(c) Did not take all necessary and reasonable measures within his power to repress or punish the authorization, support and approval of the commission of an enforced disappearance or to submit the matter to the competent authorities for investigation and prosecution. Based on the foregoing, the domestic legislation defines the principles of criminal responsibility in accordance with applicable international law.

61. Criminal Code also contains provisions which provide for both misdemeanours and criminal offenses (with appropriate sanctions), namely “Committing acts or giving arbitrary orders, by an official acting in a state function or public service while exercising his duty, which affect the freedom of citizens, failing to take measures to stop an unlawful situation” (Articles 250, 251). According to Article 248 of this Code related “Abuse of office/misconduct” is provided that “commission of actions and inactions intentionally in violation of the law, which constitutes failure to comply with the duty of the officer in charge of a state function or public service, when these actions/inactions have brought about severe consequences for the legitimate interests of citizens or the state, are punishable with a fine or imprisonment up to seven years”. Article 253 on “Violation of equality of citizens”, provides that: “the commission of discrimination because of duty and its exercise by the employee in charge of a state function or public service, based on origin, sex, health status, religious, political, trade union activity or because of belonging to a particular ethnic group, nation, race or religion, which consists in creating unfair privileges or in refusing a right or benefit stemming from the law, is punishable by fine or imprisonment up to five years”.

62. Under Article 5 of Criminal Code are provided the aggravating circumstances, which among other circumstances is included the commission of the by abusing the public office. Regarding co-culpability, it provides: complicity, agreement between two or more persons to commit an offense, as well as the definitions of accomplices in committing the offense specifically “the organizers, executors, instigators, aides Organizers are those who organize, manage the activity for committing the offense Executors” are the persons, who perform direct actions for committing the offense. “Instigators” are those persons, who instigate others to commit a criminal offense. “Aides” mean persons who, through advice, guidance, provision of tools, removal of obstacles, promise to hide the accomplices’ tracks or objects derived from the offense, help to commit them.” It provides for the responsibility

of accomplices, who are organizers, instigators and aides who are equally responsible as the executors of the crime committed by them. In determining the punishment for accomplices, the court must consider the level of participation and the role played in the commission of the offense. The Criminal Procedure Code provides: “the person under investigation or the defendant, who is accused of a serious crime, committed in complicity, when cooperating with the prosecutor and the court, must give full information and without any reservation or condition to all the facts, events and circumstances that serve as a crucial test for the detection, investigation, trial and prevention of serious crime and repair the damage caused by them”. The terms of cooperation are set forth in the protection agreement, drafted under special legal provisions for the protection of witnesses and collaborators of justice.

63. The law “On the State Police” provides that the police officer is held individually responsible for the lawfulness of any act or omission in the exercise of his duty. Regarding the obligation to enforce the order, the law stipulates:

(a) A Police employee must carry out all lawful orders given to him by a person higher in function or in rank;

(b) Where the Police employee has reasonable cause to suspect that an order given to him by a superior is unlawful, he must without delay make that cause known to the superior and request that the order be given in writing;

(c) In cases where non-reinforcement of the order till it is given in writing endangers the life of another person, the employee must execute this order;

(d) When even after the implementation of the procedures defined in this article, a police officer continues to have reason to suspect that the order is illegal, he should:

(i) Opposes the order, except as provided in paragraph 3 of this Article;

(ii) Immediately informs the police officer, who is directly in a higher position than the superior who gave the order, and about measures taken by him pursuant to this Article;

(e) Procedures for granting, transmission, management of the order are defined in the Regulation of Police.

64. The law “On the Organization and Functioning of the Prosecution in the RA” determines that the orders and instructions of the highest prosecutor are given in writing and are binding on a lower-rank prosecutor. This definition makes it possible to eliminate the cases of giving arbitrary verbal orders by public or state office employees. The Prison Police Law stipulates that employees of the prison police are obliged to execute the orders given by the superiors, according to the functional rank and, to equal proportions, with the hierarchy of rank. Orders must be given in accordance with the functional office, and not in conflict with the law and with the dignity of the person, who they are addressed to. An employee of the Prison Police should implement all the orders, which are given by superiors, unless the order is contrary to the law, in any case, based on law and evidence. In cases where the Prison Police officer considers that order is illegal, he should immediately notify the supervisor and should demand that the order is given in writing. For the order given, in any case, will be responsible the employee who gave the order and the employee who implemented the order, when the latter did not act in accordance with the provisions of this Article. These cases constitute a ground for initiation of disciplinary proceedings against them.

Article 7

Punishment of enforced disappearance

65. According to Article 109/c of Criminal Code³³ enforced disappearance is envisaged as a specific criminal offence with the relative penalties, specifically: “Enforced disappearance through arrest, detention, abduction or any other form of deprivation of liberty of the person by public officials/agent of the state or by persons acting with authorization, support or acquiescence of them, followed by the refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, by denying the assistance and necessary protection in compliance with the law, constitute a criminal offence and it is punishable by imprisonment from seven to fifteen years. The maximum penalty provided for the offense of enforced disappearance is fifteen years.

66. Criminal Code defines sanctions in case the supervisor was aware of the commission of this offense, namely: The superior who:

(a) Knew that subordinates under his/her effective authority and control were committing or about to commit a crime of enforced disappearance; or disregarded data and information which clearly indicated this fact;

(b) Exercised effective responsibility for and control over activities which were concerned with the crime of enforced disappearance; or

(c) Failed to take all necessary and reasonable measures within his or her power to prevent or repress the authorization, support and acquiescence of enforced disappearance; or to submit the matter to the competent authorities for investigation and prosecution. The crime of enforced disappearance is punished with imprisonment from three to seven years. When this offense has resulted in the death of a person, when the offense causes the death of a person is punishable with imprisonment of not less than thirty years or life imprisonment.

67. With regard to Article 7, paragraph 2/b of the Convention, Article 109/c of the Criminal Code provided as aggravating circumstances the cases when the offense is committed by the superior, when the offense has caused the person’s death, the disappearance of pregnant women, wrongful removal of children, who are subject to enforced disappearances, namely: “When the offense of enforced disappearance is committed against children, pregnant women or persons who for various reasons cannot be protected, or is accompanied by severe physical suffering, committed in collaboration, against several persons, or more than once, it is punishable with imprisonment from ten to twenty years. The wrongful removal of children, who are subjected to enforced disappearance or children whose father, mother or legal guardian is subjected to enforced disappearance or children born during the period of enforced disappearance (captivity of a mother subjected to enforced disappearance), constitutes an offense punishable with imprisonment from five to ten years.”

68. According the Article 74 of Criminal Code, enforced disappearance is envisaged as a crime against humanity when it is committed according to a specific premeditated plan, or systematically against a group of civilian population for political, ideological, racial, ethnic and religious motives, the offense of enforced disappearance and it is punishable no less than fifteen years or to life imprisonment.

³³ Provided by the law No. 144/2014.

69. Article 50 of Criminal Code defines the aggravating circumstances, related the penalties for committing different offenses:

- (a) When the act committed is based upon weak motives;
- (b) When the act is committed for the purpose of making responsible or hiding the criminal responsibility of a third person, or for avoiding the conviction for another criminal act, or for gaining or providing wealth or other benefits;
- (c) When the criminal act is committed cruelly;
- (d) When a crime is committed after a conviction for a previous crime;
- (e) When actions that aggravate or increase the consequences of a criminal act are committed;
- (f) The commission of the criminal act by abusing the public office or the religious service;
- (g) When the act is committed against children, pregnant women, or other people who, for different reasons, cannot protect themselves;
- (h) Commission of a criminal offence during or after the issuing of a court protection order gains domestic violence;
- (i) When the act is directed against representatives of other states;
- (j) When an offence is committed by profiting from family, friendship, hospitality relations;
- (k) When the act is committed in collaboration;
- (l) Committing the penal act more than once;
- (m) When the act is committed using weapons, military ammunitions, explosive, burning, poisonous, and radioactive substances;
- (n) Commission of the offence is due to motives related to gender, race, colour, ethnicity, language, gender identity, sexual orientation, political, religious, or philosophical convictions, economic, educational or social status, parentage, parental responsibility, marital or family status, civil status, residence, health status, genetic predispositions, disability, affiliation with a particular group.

70. Criminal Code envisages as a mitigating circumstance, the commission of the offense under the influence of wrong actions or instructions of a superior. Other mitigating circumstances are:

- (a) When the act is committed due to motivations of positive moral and social values;
- (b) When the act is committed under the effect of a psychiatric distress caused by provocation or the unfair acts of the victim or other person;
- (c) When the act is committed under the influence of wrong actions or instructions of a superior;
- (d) When the person who has committed the act demonstrate deep repentance;
- (e) When the person has compensated for the damage caused by the criminal act or has actively helped to eliminate or diminish its consequences;
- (f) When the person is delivered before competent authorities after committing the criminal act;

(g) When the relationship between the offender and the victim are normally improved. Despite the above mentioned circumstances, the court may also consider other circumstances to justify the mitigation of the sentence.

Article 8

Statute of limitations of enforced disappearance

71. Article 66 of Criminal Code stipulates the statute of limitations for criminal prosecution. Criminal prosecution shall not be conducted if from the moment the act was committed until the moment that the person is held defendant, have elapsed:

(a) Twenty years on crimes for which the law provides sentences of no lower than ten years of imprisonment or other heavier punishment;

(b) Ten years on crimes for which the law provides sentences between five and ten years of imprisonment;

(c) Five years on crimes for which the law provides sentences up to five years of imprisonment or fine;

(d) Three years for criminal contraventions for which the law provides sentences up to two years of imprisonment;

(e) Two years for criminal contraventions for which the law provides fines.

72. Pursuant Article 66 and 109/c of Criminal Code, it can be concluded that statute of limitation of enforced disappearance as an offence with relevant penalties provided under Article 109/C is ten years (minimum limit) and twenty years (the maximum limit) as stipulated in criminal law.

73. Related the non-prescription (non-operation of the statute of limitations on criminal prosecution), according to Article 67 of Criminal Code “there is no statute of limitation operative/applicable for the criminal prosecution against war crimes and crimes against humanity”. Given the fact that enforced disappearance is provided as a crime against humanity (Article 74 of Criminal Code), and there are not statute of limitation for crimes against humanity (pursuant Article 67 of this Code) there is no statute of limitation applicable for enforced disappearance qualified as a crime against humanity.

Article 9

Jurisdiction

74. According to Article 5 of Criminal Code (CC) the criminal law applies to the territory of the Republic of Albania (RA) and in the legal sense, the Republic of Albania’s territory in the sense of criminal law, is defined as the land space, the width of the territorial and internal maritime waters, the air space extending over the land space and over the territorial and internal maritime waters space, as well as over any other place under the sovereignty of the Albanian State, such as the residencies of the Albanian diplomatic and consular missions, the ships carrying the flag of the Republic of Albania, the ships belonging to the military navy, (the carriers) and civil and military aviation wherever they happen to be. Article 6 of CC provides the applicable law on criminal acts committed by Albanian citizens. As concerning criminal acts committed by Albanian citizens within the territory of the Republic of Albania (RA), the criminal law of RA shall apply. This criminal law shall also be applicable to the Albanian citizen who commits a crime within the territory of another country, when that crime is concurrently punishable, unless a foreign court has given a final sentence. The rule of Concurrent Sentence is not executed in the

territory of another state in the event of crimes of corruption in public or private sectors, and also exercise of illegal impact. In the sense of this Article, Albanian citizens shall also be considered those persons who apart from the Albanian citizenship hold another one too. Given the fact that “enforced disappearance” is defined as a criminal offense, the CC determines the jurisdiction over the offence of enforced disappearance, for the trial of a person accused for this crime, regardless of the territory or by whom the offense was committed, (citizen, and foreigner). We clarify that Article 9 of Convention is fully applicable, as “enforced disappearance” is provided for as a criminal offence.

75. The Albanian criminal laws apply to the foreign citizen, who commits a crime in the territory of the RA, and is held responsible on the basis of the criminal law. The criminal law of the Republic of Albania is also applicable to a foreign citizen who, outside of the Republic of Albania, commits one of the following crimes against the interests of the Albanian State or an Albanian citizen:

- (a) Crimes against humanity;
- (b) Crimes against the independence and constitutional order;
- (c) Crimes with terrorist purposes;
- (d) Organizing the prostitution, illegal trafficking of human beings, children and women, manufacturing and illegally trafficking arms, drugs, other narcotic and psychotropic substances, nuclear substances, pornographic materials, and illegal traffic of art works, and objects that have historical, cultural, and archaeological values;
- (e) Crimes which affect the life or health of Albanian citizens, to which the law provides for a punishment by imprisonment of five years or any other heavier punishment;
- (f) Laundering the proceeds of the criminal offence or criminal activity;
- (g) Corruption in the public or private sector crimes, and insider trading;
- (h) Criminal offences in the area of information technology.

76. Under Article 7/a – Universal jurisdiction, the criminal law of the Republic of Albania is also applicable to the foreign citizen, who is situated in Albanian territory and has not been extradited, and who has committed outside of this territory a one of the following crimes:

- (a) Crimes against humanity;
- (b) War crimes;
- (c) Genocide;
- (d) Crimes with terrorist purposes; financing of terrorism;
- (e) Torture.

77. Albanian criminal law is also applicable to the foreign citizen, who commits outside of Albanian territory one of the criminal offenses for which specific laws or international agreements, in which Albania is party; provide the applicability of Albanian criminal law. In this context, a foreign citizens who has committed enforced disappearances outside the country should be extradited or should be judged in Albania. This provision on the application of criminal law allows for the judgment in Albania. Under Article 8 of CC, is provided applicable law on criminal acts committed by a person without nationality. If a person who does not hold any nationality commits a criminal act within Albanian territory or a crime outside it, the provisions of Articles 7 and 7/a of this Code shall apply.

78. The provisions of Criminal Code are also applicable for criminal offences committed against persons protected from international law. Unless the international

treaties ratified by the Albanian state otherwise provide, an internationally protected person is:

(a) Head of a state, including a member of the collegial body who discharge the functions of the head of state under the Constitution of the state in question, the head of the government or the minister of foreign affairs, if they are in another state and the family members accompanying them;

(b) Each representative or official of a state or any official or agent of an international organization of inter-governmental character who, at the time and place of the commission of the criminal offence against them, their office, their private buildings or their means of transport, shall enjoy in accordance with the international law, special protection from any assaults against them, their freedom and dignity and their family members. Based on the foregoing, in the case of persons accused of enforced disappearance shall not have immunity.

Article 10

Precautionary measures

79. According to Article 27 of Constitution the person's liberty may be restricted only in cases, and according to the procedures provided by law. The liberty of the person may be restricted when there is a reasonable suspicion that he has committed a criminal offense or to prevent the commission by him of a criminal offense or his escape after its commission. Albanian legislation provides legal measures to take a person into custody or to ensure his presence. The person deprived of liberty has the right to be informed immediately in a language that he understands, of the reasons for this measure, as well as the accusation he is charged with and that person must be informed that there is no obligation to make a declaration and he has the right to communicate immediately with his lawyer, and be given the possibility to exercise his rights. "Every person deprived of liberty under Article 27 has the right to humane treatment, respect for his dignity. The person deprived of liberty³⁴ respectively "when there is a reasonable suspicion that he has committed a criminal offense or to prevent the commission by him of a criminal offense or his escape after its commission, must be sent within 48 hours before a judge, who decides on his detention or release not later than 48 hours from the moment he receives the documents for consideration. The detainee has the right to appeal the judge's decision and to be tried within a reasonable period of time or to be released pursuant to law. The person whose liberty is taken away extra judicially may address a judge at any time, who shall decide within 48 hours regarding the legality of this action. Every person whose liberty was taken away pursuant to article 27 of Constitution has the right to humane treatment and respect for his dignity (Article 28). Under Article 28 everyone whose liberty has been taken away has the right to be notified immediately, in a language that he understands, of the reasons for this measure, as well as the accusation made against him. The person whose liberty has been taken away shall be informed that he has no obligation to make a declaration and has the right to communicate immediately with his lawyer, and to have the possibility to exercise his rights.

80. Based on the criminal procedural legislation, which provides legal procedures for their custody and treatment as for all detained, accused of committing other crimes, or who have been deprived of liberty, these legal procedures also apply to persons who are accused of committing acts of enforced disappearance while awaiting for the start of criminal proceedings, or extradition procedures. Under Code of Criminal Procedure (CCP), when an

³⁴ According to the cases provided under Article 27/2 of the Constitution.

arrest or detention is carried out, the prosecution of the country where the arrest or detention is done is immediately notified. The person arrested or detained is informed that he has no obligation to make a statement, he is entitled to from the moment of arrest or detention to be informed of the causes of arrest or detention, the crime, charges that weigh on him, the rights that he enjoys, to seek a legal defender or be provided with such free of charge when he has no money to pay for a lawyer, to inform his relatives.

81. To ensure a fair treatment during the criminal proceedings the CPC stipulates that “a person who does not speak Albanian is interrogated in the mother tongue and the records are held in this language. Procedural acts given at his request are translated in the same language. Breach of these rules causes the documents to be invalid”. This Code states that “when before a prosecuting authority a person, who is not taken as a defendant, makes statements, of which data for incrimination against him are coming out for charges against him, the prosecuting authority interrupts the interrogation, warning him that following these statements he may be investigated and invites him to appoint a defence lawyer. Former statements cannot be used against the person who has made them”.

82. The CPC (Article 38/1) envisages that:

(a) The defendant, even under a custodial remand order or when deprived of freedom for any other ground, shall be interrogated in a free state, except in cases when measures must be taken to prevent the danger of escaping or violence;

(b) No methods or techniques, which influence the free will or change the memory ability and evaluation of facts, may be used, even with the consent of the defendant;

(c) The defendant, before the interrogation starts, is informed that he has the right not to reply and if he does not reply the proceedings will continue”.

83. Under Article 39 is provided that:

(a) The proceeding authority explains to the defendant, in a clear and precise way, the fact attributed to him, acquaints him with the evidence that exist against him and, when investigations are not prejudiced, tells him their sources.

(b) This authority asks him to explain everything that he deems useful for his defence and makes him direct questions.

(c) When the defendant refuses to reply, this shall be stated in the records and when it is necessary, the physical features and specific signs of the defendant are stated in the records.

84. Criminal Procedure Code envisages provisions related to the criteria and conditions of personal security measures (restrictive, detaining measures). No one may be subject to personal security measures if there is no reasonable suspicion, based on evidence. In the case of restriction of liberty, security measures can be taken only in cases and manner stipulated by law. Cases of restriction of liberty with security measures in particular:

(a) There are important reasons which threaten the collection or truthfulness of evidence;

(b) Defendant has escaped or there exists the danger that he escapes;

(c) Because of the factual circumstances and the defendant’s personality there is danger that he may commit serious crimes or of the same type as that for which he is being prosecuted.

85. In establishing the security measures the court shall consider the suitability of each of them to the degree of security needs in each concrete case. Every measure must be

proportionate to the gravity of the fact, the sentence provided for the offense in question. The security measures with prison custody should be taken only when other measures are inadequate because of the seriousness of the offense and the defendant. Restrictive measures provided are:

- (a) Ban to leave the country;
- (b) Obligation to be present before the judicial police;
- (c) Prohibition and obligation to reside in a certain place;
- (d) Property security (bail);
- (e) House arrest;
- (f) Remand in custody;
- (g) Temporary hospitalization in a psychiatric hospital.

86. According to the CPC, precautionary measures are imposed based on the demand of the prosecutor who presents to the competent court the grounds on which this demand is based. Even when the court states its non-competence on any ground, if the conditions and the urgency for assigning the security measures exist, it shall so assign and transfer the file to the competent court. The court cannot assign a more severe security measure than the one applied for by the prosecutor. The enforcement of security measures is made by the police officer entrusted with the execution of the arrest warrant. In case of suspicion about the authenticity of the decision that has ordered the security measure or for the authenticity of the identity of the person subject to the order, judicial police officers and agents in charge do not execute it. Notices on decisions on other precautionary measures are served to the defendant by the court. Interrogation of the arrested person, against whom the court has issued the remand into custody or house arrest order, is made no later than 3 days from the execution of the remand order.

87. The CPC contains provisions on arrest and detention in flagrancy of suspect for a crime. Arrest or detention are not permitted where from the circumstances of the fact it emerges that the act was committed to fulfill a duty, or in the exercise of a legal right, or when there is a cause for impunity. The prosecutor interrogates the arrested or detained in the presence of a counsel elected or assigned ex-officio. He shall notify the arrested or detained of the fact for which he is being prosecuted and the reasons for interrogation. The CPC determines the immediate release cases of the arrested or detained due to confusion, failure to respect the law. When the arrest or detention warrant has lost its power due to the violation of the deadline of the application for the measure validation, the prosecutor orders, that the arrested or detained person shall be released immediately. In these cases the release is also ordered by the judicial police officer, who shall immediately inform the prosecutor of the place where the arrest or detention is carried out. The application for assessment of the arrest or detention in court is done by the prosecutor within 48 hours of arrest or detention. The disrespect of the delay influence that arrest or detention will lose power. Revocation and replacement of coercive detention measures take place when the terms and conditions of their implementation are missing. Likewise, there are envisaged cases of cessation of the security measures. When the arrest loses power, the court decides on the immediate release of the person against whom it is taken. This Code sets deadlines for the duration of the detention, the extension of this period, the suspension of deadlines and maximum deadlines duration for other security measures (Articles 263-267).

88. According to the CPC by decision with arrest in prison, the court orders the judicial police to place the defendant in detention available to the prosecuting authority. The Code defines the terms of the length of detention and detention loses its effect if from the start of

its implementation, the term envisaged by this article has expired, without evidence being submitted to the court.

89. The law “On the State Police”, provides that: the police officer accompanies persons to police premises:

- (a) When he/she was sentenced to imprisonment by a competent court;
- (b) When he/she fails to comply with lawful orders of the court or any obligation prescribed by the law;
- (c) When there is reasonable suspicion of having committed a criminal offense;
- (d) Preventing the commission of an offense;
- (d) When he/she has escaped after committing a crime;
- (e) To identify the person against whom investigations are being conducted under the conditions specified in the CPC.
- (f) For illegal border crossing, cases of expulsion or extradition.

90. The accompanied person is not treated on equal conditions with the person detained or arrested and, in any case, the accompaniment should last to the clarification of the case, but no more than 10 hours. Related cases of accompaniment for illegal entry of the state borders, expulsion, extradition procedures, and time limits are set by the domestic legislation. The accompanied person enjoys the rights recognized by the Constitution, and domestic legislation.

91. Law on State Police provides that the accompanied person has the right to be informed in a language that he understands, of the reasons for accompaniment. The person must be informed that he has no obligation to make any statement, and the right to communicate with a lawyer or another person. Police officer carry out the arrest and detention of the person, pursuant to the provisions of CPC (Articles 109, 111).

92. In order to respect and guarantee the rights of the arrested/detained in the police facilities are approved the following by laws:

- (a) “Standard operating procedures” regarding the arrest/detention, physical control and treatment of the persons arrested/detained”;
- (b) Manual “On the rules of treatment and security of detainees and arrested in the security rooms in the police units” defines procedures and rules for holding, handling and securing those arrested/detained; and police obligations for respecting human rights; norms and standards for material condition in Police facility; health treatment and their other rights;
- (c) Statement for information on legal rights to persons arrested/detained by Police Facilities;
- (d) “Standard operating procedures related public order and security, and “physical control of the escorted people, blocking and documentation of personal items founded”;
- (e) Register for identifying, addressing and resolving complaints/requests of the persons deprived of liberty, in the State Police premises”;
- (f) Standard procedures “For identifying, addressing and resolving complaints/requests of persons deprived of liberty, in the State Police premises”;
- (g) Electronic central database for the registration and management of data for the escorted and detained/arrested persons;

(h) Performance of duties and responsibilities in compliance with domestic legislation for accompaniment to the premises of Police”, and “Standard operating procedures, while respecting and guaranteeing the rights of persons deprived of liberty”.

93. Code of Criminal Procedures contains provisions regarding jurisdictional relations with foreign countries, namely the extradition abroad; the extradition request to the Ministry of Justice; conditions for extradition, rejection of the request for extradition; When receiving the extradition request from a foreign state, if it does not reject it, the Ministry of Justice sends it along with the documents to the prosecutor at the court of jurisdiction. After receiving the request, the prosecutor orders the person concerned to appear before him in order to be identified and obtain his eventual consent on extradition. The person concerned is informed that he is entitled to be assisted by a defense counsel. Within 3 months from the date when the request for extradition has arrived, the prosecutor submits to the court a request for review.

94. Upon request of the Ministry of Justice, submitted through the prosecutor, coercive measures can be taken versus the person against whom extradition has been requested. In defining the coercive measures are applied the provisions of this Code in order to ensure that this person, does not escape. These measures and seizure are not imposed when there are reasons to believe that there are no conditions on granting a decision in favour of extradition. Coercive measures are revoked when within three months from the beginning of their execution, the proceedings before the court is not completed. At the request of Prosecutor the deadline may be extended, but not more than a month, when it is necessary to make particularly and complex verifications. The Court is responsible for imposing the security measures. The court may impose temporarily a coercive measure before the request for extradition. This measure may be imposed if:

(a) The foreign country has declared that a measure restricting his personal freedom or a prison sentence is taken against the person and a request for extradition will be submitted;

(b) Foreign state has submitted data with regard to the offense, and sufficient elements to identify the person;

(c) There exists risk of absconding. According to this Code, the prosecutor, the person concerned and his counsel may appeal the court decision on coercive measures, seizures, before the Court of Appeal.

95. In cases of emergency, the judicial police can arrest the person against whom the request for provisional arrest is filed. CPC sets out rules and procedures required to be followed by the relevant authorities (judicial police, prosecutors, courts, Ministry of Justice) concerning the case. Within 48 hours the prosecutor brings the arrested before the court established in territory when the arrest has been done, as well providing relevant documentation. Within 48 hours from the arrest, the court approves it if the conditions are met or orders the release of the detainee.

96. For the implementation of the restrictive measures, as soon as possible and no later than 5 days after the execution of the measure or its assessment, the court verifies the identity of the person and takes his eventual consent for extradition. The court shall notify the interested person of the right to a counsellor and in his absence it appoints a lawyer ex officio. The lawyer must be notified at least 24 hours in advance, of the above mentioned actions and has the right to participate during the proceeding. The consideration of the request for extradition is made by the court, with the participation of the prosecutor, the person whose extradition is sought, the lawyer and eventual representatives of the requesting state.

97. For the notification of other states, besides the procedural legislation is applied the law “On jurisdictional relations with foreign authorities in criminal matters,”³⁵ It provides that the surrender of a person under investigation, defendants or convicted, to a foreign state, are carried out according to the rules of the Albanian legislation and international agreements, in which Albania is a party.

Article 11

Obligation to prosecute and extradite

98. Albanian legislation and Criminal Procedure Code (CCP) provides for the jurisdiction and powers of prosecuting the criminal offenses, including enforced disappearance. The exercise of criminal jurisdiction is conducted according to the rules provided in this Code (Article 69). The Criminal Court examines all that is necessary for giving the decision, and decides according to the rules provide by law. The lack of jurisdiction is brought even when raised in principal, and in every stage of the trial. The Court renders a decision and orders, where appropriate, and decides submission of acts to the competent body. When lack of jurisdiction is raised during the preliminary investigation proceedings the prosecutor decides to send the acts to the court of competence to take a decision. Based on the CPC, the judicial district courts are competent to judge the criminal offenses, other than those falling under the competence of the courts of serious crimes, the military court and the Supreme Court (Article 74). The Court for Serious Crimes judges a series of crimes stipulated by this Code, including crimes against humanity, kidnapping, holding a person hostage, unlawful deprivation of liberty. The Military Court is competent to judge the military, prisoners of war and other persons for offenses provided by the Military Criminal Code and other provisions, except those falling under competence of the Court for Serious Crimes Court and the Supreme Court.

99. The Constitution and Albanian legislation guarantee equality before the law, the presumption of innocence, the right to a legal representative/lawyer, a due fair process at all stages of the investigation, obtaining evidence, prosecution and trial, as well as guaranteeing the rights and fundamental freedoms of the defendant. In accordance with Constitution “Everyone, in order to protect his legal and constitutional rights, freedoms and interests, or in the case of charges against him, has the right to a fair and public judgment within a reasonable time limit by an independent and impartial court established by law”.

100. The Constitution provides that “No one may be deprived of his liberty except in cases and under the procedures provided by law”. Freedom of a person cannot be restricted, except in the following cases:

- (a) When he/she is punished with imprisonment by a competent court;
- (b) When he/she fails to comply with lawful court orders or fails to comply with an obligation determined by law;
- (c) When there is reasonable suspicion of having committed a criminal offense or preventing him/her from committing an offense, or escaping after its commission;
- (d) For the supervision of a minor for purposes of education or for escorting him to a competent organ;
- (e) When the person is a carrier of a contagious disease, mentally incompetent and dangerous to the society;

³⁵ Law No. 10193, dated 3.12.2009, amended by the law No. 100/2013.

(f) For illegal state border crossing or in cases of expulsion or extradition. No one may be deprived of liberty just because he is not able to fulfil a contractual obligation.

101. According to Albanian Constitution, “no one can be accused or found guilty of a criminal offense, which was not provided as such by the law at the time of its commission, with the exception of cases, which at the time of their commission they constituted war crimes, crimes against humanity under the international law”. The defendant is presumed innocent until proven guilty by a final court decision. During criminal proceedings everyone has the right:

- (a) To be informed of the charges brought against him, and about his rights, to have the possibility to notify his family or its parental;
- (b) To have time and sufficient facilities to prepare his/her defence;
- (c) To have the free assistance of an interpreter if he does not speak or understand the Albanian language;
- (d) To defend himself or with the assistance of a legal counsel of his choice;
- (e) To communicate freely and privately with him, and to be provided free of charge public defender when he does not have sufficient means;
- (f) To ask question to witnesses who are present and request the presence of witnesses, experts and other persons who can clarify the facts. Constitution provides that “No one can be compelled to testify against himself or his family or to confess his guilt. Nobody can be declared guilty on the basis of data collected in an unlawful manner” (Articles 29-32).

102. Domestic criminal legislation aims at providing a legal, equal and fair proceeding, to protect the personal freedoms, rights and lawful interests of citizens. Procedural provisions define the rules for the conduct of the prosecution, investigation and trial of criminal offenses, and the enforcement of judicial judgments. These rules are binding on the subjects of criminal proceedings, state organs, legal entities and citizens.

103. Under Articles 4 and 5 of Criminal Procedural Code is provided that the defendant is presumed innocent unless proven guilty by a final court decision. Any doubt on the charge shall be considered in favor of the defendant. The freedom of person may be restricted by remand orders only in cases and ways prescribed by law. No one shall be subjected to torture, punishment or derogatory treatment. Persons convicted to imprisonment are ensured human treatment and moral rehabilitation.

104. In order to ensure defense, CPC stipulates that the defendant has the right to defend himself or with the assistance of a defense counselor. The defendant who has no defense counselor is notified by the prosecutor that he can be assisted by an appointed ex officio defender. The elected or appointed defender is notified at least 24 hours before the interrogation, inspection or hearing proceedings. When the delay might damage, the defender’s notification is made urgently. The defense counselor helps the defendant to guarantee his procedural rights and its legal interests. It can be elected even by his relatives. The defendant, who has not elected a defense counselor or who has remained without any, shall be assisted by a defense counselor assigned by the proceeding authority, if he requires one. When the court, prosecutor and judicial police must carry on an action which stipulates for the assistance of a defense counsel and the defendant has no defense counselor, they notify the assigned defense counselor. When the presence of the defense counselor is required and the assigned defense counselor is not presented, or has withdrawn from the defense, the court or prosecutor assigns another defense counselor in substitution. When the defendant has no sufficient means, the defense expenses shall be covered by the state. Defense counselor enjoys the rights recognized by law to the defendant, except those

preserved to the latter in person. Defence counsellor has the right to communicate freely with the person detained, arrested or convicted, and to have prior notice of the investigative actions conducted in the presence of the defendant, and to participate in them, to ask questions to the defendant, witnesses and experts, to have access to all the materials of the case as well the conclusion of the investigations. The defendant may declare non validity of an expressed statement, or action carried out by the defense counselor before that a court decision is rendered. Arrested person in flagrante or detained, has the right to contact his defense counselor immediately after arrest or detention. The defendant under pre-detention has the right to contact his defense counselor from moment of execution of security measure against him.

105. Albanian language is used in all the stages of the criminal proceedings. Persons, who do not know Albanian, can, use their language through an interpreter and they have the right to speak and to become aware of the evidence and acts, as well as the conduct of the proceedings. The law "On the State Police" determines that the accompanied person has the right to be notified in a language that he understands, about the reasons of third accompaniment; he shall be notified that he is not obliged to make a statement, and has the right to communicate immediately with a person of his trust and the lawyer.

106. The law "On legal aid",³⁶ sets out the criteria for obtaining legal aid for persons who: seek to be defended by a defence counsel in criminal proceedings in all its stages and, who due to lack of financial means could not choose a lawyer or have remained without. Beneficiary subjects of legal aid are:

- (a) Albanian citizens residing in Albanian territory;
- (b) Foreign citizens who receive it on the basis of reciprocity;
- (c) Stateless persons, with a residence permit under the legislation applicable;
- (d) Persons with foreign citizenship or stateless persons who request to obtain a residence permit, and who are applying for asylum or are following the appeal procedures on administrative and judicial decisions related refusal of a residence permit or asylum application.

107. Under Criminal Procedural Code contains provision aiming at obtaining evidence during the investigation and criminal proceedings: These provisions apply equally in cases where the defendant is an Albanian citizen and a foreign citizen, including the case of commission of enforced disappearance. "Evidence" is information about facts and circumstances of the offense; taken from sources provided by the law; in accordance with the rules set by it; that serve to validate the commission or non-commission of the criminal offense, and consequences deriving from it; the defendant's guiltiness or innocence, and its responsibility. Object of evidence is constituted by facts relevant to the charge, guilt of the defendant, issuing of the security measure, punishment and civil liability, and also the facts on which the application of procedural rules depends. During the preliminary investigation, evidence is obtained by the proceeding authority, conform the rules provided for under this Code. During the trial, evidence is obtained upon the request of the parties. Court rules by order, excluding evidence prohibited by law and those which are patently unnecessary. Provisions on obtaining evidence may be revoked at any stage of the trial. According to Article 152 of CPC, the evaluation of evidence is to establish their authenticity and their evidential power. Each evidence is subject to consideration and has no predetermined value. The Court evaluates the evidence based on its conviction after their examination in their entirety. Establishment of a fact may not be induced based on indications, except

³⁶ Law No. 10 039, dated 22.1.2008, amended by Law No. 77/2014.

when these evidences are important, accurate and in accordance with each other. Statements made by a co-defendant in the same criminal offence or by a defendant in a related proceeding are evaluated in accordance with other evidence confirming their accuracy.

108. Criminal Procedural Code stipulates that the hearing for obtaining evidence is held with the indispensable participation of the prosecutor and the defence counsellor. Entitled to participate is also the representative of the injured party. They shall be entitled to participate when a witness or another person must be interrogated. In other cases they may participate with the prior authorization of the court. It is prohibited to take evidence on facts dealing with persons, who are not represented by a defence counsellor at the hearing. All documents obtained for securing the evidence are delivered to the prosecutor. The defence counsellor have the right to consult and copy them out. Regarding the use of evidence obtained, the CPC provides that evidence obtained pursuant provisions of this Code can be used in judicial review only against the defendants, whose defence counsellors have assisted in getting them. The decision issued on the basis of evidence obtained under the rules of this Code, in which the injured party has not been able to attend, does not bring any consequences This Code provides that the court renders a decision based on the evidence examined and verified in court hearing.

109. The competent authorities in charge with investigation of acts that constitute criminal offenses, and of the alleged perpetrators: the State Police, Prosecution, Judicial Police. The Criminal Procedure Code (CPC) determines that the bodies charged with criminal prosecution are the Prosecutor and the judicial police who conduct, within their assigned competence, all necessary investigations connected to criminal prosecution. In this framework, they are authorities responsible for prosecuting the offense of enforced disappearance. The Prosecutor leads the investigations and has the judicial police under his charge. The Institution of Prosecution exercises criminal prosecution and takes measures for the purpose of exerting criminal proceedings under the CPC, and the law “On the Organization and Functioning of the Prosecution of RA”. The prosecutor’s functions are exercised:

(a) In the preliminary investigations and trials of first instance, which are followed by the prosecutors at courts of first instance;

(b) In trials of cases appealed by the prosecutors in the courts of appeal and the Supreme Court.

110. According to this Code, the Judicial Police conducts investigative actions that are assigned or delegated by the prosecutor. Criminal justice is given by:

(a) Criminal courts of first instance;

(b) Courts of appeal;

(c) Supreme Court.

111. CPC stipulates that during the preliminary investigation in the cases provided by law, the court decided upon request of the prosecutor, the defendant, and injured and private parties.

Article 12

Efficient investigation

112. Criminal Procedure Code (CPC) envisages a number of provisions on the reporting of facts and offenses by competent authorities as well as by persons, who know about the offenses provided for by the Criminal Code, including the injured persons, and the

competent authorities for investigation and criminal charges. In this regard, this right is guaranteed to persons who may be subject to or victim of the offense of enforced disappearance. This Code includes provisions related to the competences of competent authorities to carry out criminal proceedings.

113. With regard to being informed of the offense, the CPC stipulates that the Prosecutor and the police are informed of the criminal offense on their own initiative and through announcement made by others. The judicial police, even on its own initiative, must be informed of the offenses, prevent their coming of further consequences, search for their perpetrators, conduct investigations and collect everything which contributes to the application of criminal law. The judicial police carries out any investigative action, that has been ordered/delegated by the prosecutor. Also it receives data from persons who can show advantageous circumstances for the purposes of the investigation. CPC envisages provisions on the activity with the initiative of the judicial police and referral of the offense to the Prosecutor. The judicial police document all actions undertaken. Based on the law "On the organization and functioning of the judicial police," the Judicial Police carries out procedural activities during the phases of criminal proceedings ordered or delegated by the proceedings body or on its own initiative, according to the procedural rules and legislation applicable. The principal duty of the judicial police, in the capacity of subject of the criminal proceedings, is to obtain knowledge about criminal acts, to prevent further consequences because of them, to carry out full and comprehensive investigative activities, on their own initiative or by order or delegation, for discovering the perpetrators, obtaining evidence about their criminal activity, as well as other duties contemplated in the Criminal Procedure Code and in other legal provisions, aiming at implementing the criminal law.

114. Criminal Procedural Code and Law on Prosecution Office stipulate that the Prosecutor carries out the investigation and he conducts any investigative action deemed necessary. He may request from the judicial police to carry out the act specifically delegated, including interrogation of the accused and confrontations, in which the defendant and his counsellor participate. In this case, the judicial police respect the provisions for assignment and participation of the defence counsellor in the investigations.

115. The CPC envisages "criminal report from the citizens". Any person that has received notice of a criminal offence ex-officio must lodge a criminal report of it. In cases specified by law, criminal report is compulsory. The criminal report is submitted orally or in writing to a prosecutor or to a judicial police officer, personally or through a representative. Also public officials, who during the course of their work or because of their functions or service, receive notice of a criminal offence that is prosecuted ex-officio, are bound to lodge a written criminal report even if the person, whom the criminal offence is attributed, is not identified. The denunciation is submitted to the prosecutor or the judicial police officer.

116. This Code determines detailed provisions on: the terms of the proceeding; ensuring the source of evidence; data on the person against whom investigations are being conducted; assistance of the defence counsel to attend during the controls and verifications, receiving data from the aggrieved person and from those who can indicate favorable circumstances for the purposes of investigation, applying certain rules for obtaining testimony; the right of the prosecutor and the defendant to seek from the Court the provision of evidence; the right of a person who has been informed that investigations are being conducted against him, to appear before the prosecutor and to enter a plea; preliminary investigations; judicial review; taking of testimony, questioning of witnesses and third parties; adjudication and making the decision; cases, remedies and entities that have the right to appeal the court decision.

117. In connection with the deadline of the completion of the investigation of criminal offenses, CCP (Article 323-325) determines that within three months after the date in which

the name of the person, to whom the criminal offence is attributed, is noted down in the register of notifications of the criminal offences, the prosecutor decides to bring the case before the court or to dismiss or suspend it. When an authorization to proceed is required, the continuation of the deadline shall be suspended from the moment of the request until the day when the authorization is granted to the prosecutor. The Prosecutor may extend the deadline of investigations up to three months (Article 324). Further extension, not more than three months, may be done by the Prosecutor in case of complex investigations or when it is objectively impossible to terminate them within the prolonged deadline. The term of the preliminary investigations may not exceed two years. The decision for prolonging the deadline of investigations is notified to the defendant and the injured person. The investigation operations performed after the expiry of the time period may not be used. The defendant and the injured have the right, within ten days from notification, to appeal the decision of the prosecutor prolonging the investigations in the district court. After hearing the defendant, the defense lawyer, the injured and the prosecutor, the court shall examine the appeal within ten days. If the court accepts the appeal, the investigations may continue or continue only for a term fixed by itself. The decision of the court may be appealed, but this does not suspend the execution of the decision. After carrying out the necessary investigation operations, the judicial police shall deliver the acts to the prosecutor. After examining, the prosecutor decides to bring action before the court or dismiss the case. The CPC envisages the cases of dismissal of the charges or case in any stage of the proceedings, the prosecutor decides the dismissal of the charge or case in every stage of proceedings.

118. Attorney General's Instruction on the criminal prosecution provides that notice of the charges and the defendant's questioning constitute investigative actions of the Prosecutor, to be carried out by him himself and exceptionally by special order his delegation could be performed by the judicial police officer. The defendant should be heard by the prosecutor, to evaluate his claims and decide what should be done with him. The announcement of the charges and interrogation of the defendant by the prosecutors should be performed only when there is sufficient evidence to take him as a defendant. When there is no sufficient evidence for taking the accused person as a defendant until the administration of sufficient data, the charged person might remain in the quality of the person under investigation. Preliminary investigations should be concluded within 3 months from the date on which the name of the person that is attributable to the offense is listed in the offense notice register. Prosecutors must oversee the completion of the investigation within the legal deadlines. Attorney General's Instruction "On guaranteeing and observance of human rights in the criminal process" provides that prosecutors should check the legality of investigative actions conducted and the respect of human rights by the judicial police.

119. Regarding the protection of the plaintiff, witnesses and persons participating in the investigation, Law No. 10173, dated 22.10.2009 "On the protection of witnesses and collaborators of justice" provides for special measures, temporary and exceptional, the manner and procedure of the protection of witnesses and collaborators of justice, the organization, functioning, competencies, relations between the bodies responsible for the proposal, evaluation, approval and implementation of the protection program. The law stipulates that "the witness of justice" implies a person who, as a witness or injured person makes statements or testifies to facts and circumstances that constitute evidence in a criminal proceeding and that, because of these declarations or testimony, is in a dangerous situation. The law defines the bodies responsible for the protection of witnesses, collaborators of justice, the duties, powers, their protection program, concrete protection measures (special measures, temporary, emergency measures). The implementation of the witness or collaborator's protection program is decided upon only if he is at risk, is suitable to be included in the program and, at his free will, accepts to participate actively in its implementation. The State Police, detention facilities or institutions for the execution of

criminal judgments, according to the level of risk to witnesses, collaborators of justice and persons connected with them, can order and implement extraordinary protective measures, as set forth in this law or other laws or acts that govern their activity. The CPC envisages provisions on “collaboration with justice”, namely the cooperation of the suspect or defendant, who is accused of a serious crime committed in complicity.

120. Law “On the State Police”, stipulates that the duty of the State Police is to investigate the criminal offenses, and their perpetrators, in accordance with the criminal law and the criminal procedural law. Every person accompanied, detained or arrested in the police premises, every other citizen, against whom police officers are carrying out actions under the provisions of this law or who are violated in the course of these actions, has the right to apply/complain orally or in writing to the police executives or other state institutions, which have the obligation to treat them. This law provides for the responsibility of the police officer to:

(a) Reporting to the appropriate superior or, in his absence, to the superior’s superior of any complaint about the behaviour of another police officer and of any violations, when there are substantial grounds for believing that it is committed by him, irrespective of whether he has been informed of such a thing during the performance of the duty or other circumstances;

(b) Reporting to the superior or, in his absence, the superior’s superior, any offense for which he has reasonable suspicion to believe that has been committed by a person, irrespective of whether he has been informed of this violation during the performance of the duty or other circumstances.

121. Normative acts (orders and rogatory letters³⁷) provide the rules and standard procedures for fulfilling the duties and responsibilities under the law, respecting the rights, freedoms, prevention of violations of human rights and abuses. Also they determine the adoption of standard operating procedures for identifying, addressing and resolving complaints/requests of persons deprived of liberty, in the premises of the State Police.³⁸

122. Within Attorney General’s Office are established the Directorates of Investigation and Control of Criminal Proceedings, which coordinate the work, control and assist the Prosecution offices at the courts in exercising their functions. The prosecutors on national level, in the exercise of the function of prosecution in the preliminary investigation stage, monitor the legality of the actions of the judicial police officers/agents aiming at respecting these principles and criminal procedural norms, provided for by the conditions, criteria for arrest in the act, or detention and prohibiting illegal conduct and actions during their proceedings. Prosecutors perform: actions necessary to ensure the sources of evidence and other elements that serve criminal law enforcement; any investigation and action ordered or delegated by the proceeding body.

123. In connection with providing access to competent legal authorities in places of detention, the Albanian legislation provides that the competent institutional structures (such as police, prosecution, etc.), and independent institutions (the Ombudsman) and other institutions/organizations have the right of conducting inspections, monitoring, controls in institutions where the accompanied/detained people are held and in the penitentiary institutions. In the institutions where the accompanied/arrested are held, the request-complaint mechanism functions, while maintaining and respecting the confidentiality in every case.

³⁷ Normative Acts of the Minister of the Interior and the General Police Director.

³⁸ Detailed information is provided as follows, article 17.

Article 13 Extradition

124. According to Albanian Constitution, extradition can be granted only when it is expressly provided for in international agreements to which is a party and only by a judicial decision. Albania has ratified the European Convention “On Extradition” and its additional protocol in 1998, and has signed bilateral agreements with individual states. In addition, based on Article 122 of Constitution, which states that international treaties have precedence over domestic legislation and any international agreement ratified by the Parliament becomes part of domestic law, the Convention on Enforced Disappearances, serves as necessary legal basis for the extradition cases of enforced disappearance, and can be applied directly through the practice of jurisdictional relations with foreign authorities.

125. Criminal Code (Article 11) provides that extradition may be granted only when it is expressly provided in international agreements to which the RA is a party. Extradition shall be granted when the offense which constitutes the object of the application is provided as such simultaneously by both the Albanian and the foreign law. Given that in the Criminal Code of the RA “enforced disappearance” is provided as a criminal offense and if any application is submitted for extradition, in terms of offense, the subject would be extraditable. After the entry into force of the Convention, Republic of Albania did not receive or submitted any request for extradition on enforced disappearance.

126. Under this Code, the extradition shall not be granted:

(a) If the person to be extradited is an Albanian citizen, unless otherwise provided for by the treaty;

(b) If the criminal offense constituting the object of the request for extradition is of a political or military nature;

(c) When there is reasonable ground to believe that the person requested to be extradited will be persecuted, punished or wanted because of his political, religious, national, ethnic, racial beliefs;

(d) If the person requested to be extradited has been tried by a competent Albanian court for the criminal offense for which the extradition is requested.

127. Criminal Procedural provides the procedure to be pursued in cases when an extradition request is received from a foreign state and the relevant authorities. Competent authorities to pursue and determine the procedures of extradition are: Ministry of Justice, the prosecutions of the judicial districts and courts of judicial districts with competences and territorial jurisdiction to review the requests for extradition. This Code provides that the extradition is permitted only on the basis of a request to the Ministry of Justice. Attached to the extradition request are:

(a) Copy of the sentence by imprisonment or of the act of proceedings;

(b) Explanation report on the criminal offence in charge of the person subject to extradition, time and place of the commission of the offence and its legal qualification;

(c) Legal provisions to be applied, indicating whether for the criminal offence subject to extradition, law of foreign state on death penalty;

(d) Personal data and any other possible information which serves to determine the identity and the citizenship of the person subject to extradition.

128. Ministry of Justice may impose other appropriate conditions.

129. With regard to the terms of extradition, it is envisaged that:

(a) Extradition is permitted by stated condition that the person subject to extradition shall not be prosecuted, sentenced, surrendered to another country for a criminal offence which has occurred before the request for extradition, and which differs from that which the extradition is provided for;

(b) Above requirements shall not be taken into consideration when:

(i) The extraditing party gives expressed consent that the extradited is prosecuted even for another criminal offence and he has no objection;

(ii) The extradited, although had the possibility, has not left the state territory, after 45 days from his release or when he has returned voluntarily;

(iii) Ministry of Justice may impose other appropriate conditions.

130. The extradition request may be refused:

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

(b) When there are grounds for thinking that the person subject to extradition shall be subjected to persecution or discrimination on account to;

(c) When the person subject to the request for extradition has committed a criminal offence in Albania;

(d) When proceedings started or he was being tried in Albania regardless that the criminal offence has been committed abroad;

(e) When the Albanian state has provided an amnesty for this offence;

(f) When the requested person is an Albanian citizen and there is no agreement providing otherwise;

(g) When the prosecution or the punishment is provided under legislation of the state requiring the extradition.

131. According to Albanian legislation, based on the fact that this Convention stipulates that enforced disappearance should not be considered as an offence of political character, we underline that enforced disappearance is not considered as an offense of a political character.

132. In the case when the extradition request is rejected because that person is an Albanian national, then this application is treated as a notice of the commission of an offense by an Albanian citizen abroad and under the Criminal Code, the relevant authorities are obliged to register a criminal offense against the person and take all necessary measures under domestic legislation and international agreements, where the RA is a party to ensure his presence. Criminal proceedings in the RA are mandatory and the prosecutor has no right to decide whether or not to start criminal proceedings depending on the gravity of the offense.

133. The Criminal Procedure Code (CPC) provides for the regulation of the jurisdictional relations with foreign countries. Also it sets the legal procedures on extradition to and from abroad.³⁹ Based on international acts, these provisions define the mandatory obligation of “dual criminality” of the offense. According to CPC, the surrender of a person to a foreign

³⁹ Articles 488-504 of the Criminal Procedure Code.

country for the execution of a prison sentence or an act proving his prosecution for a criminal offense can be done only through extradition.

134. Republic of Albania is a party to the Council of Europe Convention “On Extradition”,⁴⁰ and its three protocols, as well as a series of bilateral agreements. Pursuant this Convention, and other bilateral agreements the RA is a party, it is contemplated that the offense on the basis of which a request for extradition is submitted, should be provided for and criminalized by the law of the requesting country and that of the requested country. In this context, it is sufficient to criminalize the alleged criminal activity by both countries and the subject is extraditable.

135. Relations with foreign authorities in criminal matters are governed by international agreements accepted by the Albanian state, principles and generally accepted norms of international law and criminal procedural legislation. Law No. 10193, dated 3.12.2009 “On jurisdictional relations with foreign authorities in criminal matters”, provides that the surrender of a person under investigation, accused or convicted, in the direction of a foreign state is conducted according to the rules of Albanian legislation and international agreements to which the RA is a party. This law contains provisions on extradition from Republic of Albania, namely: the conditions for extradition; the competent authorities (Ministry of Justice, Prosecution, Court); consideration of the request for extradition; judicial decision on extradition; guarantees regarding the extradited person, etc.

Article 14

Mutual legal assistance

136. In connection with mutual legal assistance in criminal matters, Albania has ratified a number of international agreements, the granting of mutual necessary assistance in criminal matters in accordance with its domestic legislation, namely: 1) the Council of Europe Convention “On mutual legal assistance in criminal matters”⁴¹ and its additional protocols; the European Convention “On the Transfer of Proceedings in Criminal Matters”⁴²; the Additional Protocol to the European Convention “On the transmission of requests for legal assistance”. Albania has also signed a bilateral agreement on judicial cooperation in criminal matters with other countries.

137. Under Code of Criminal Procedure, relations with foreign authorities in criminal matters are regulated by international agreements to which Albania is a party, principles and norms of international law and provisions of this Code. This Code provides detailed provisions on jurisdictional relations with foreign states, the international cooperation in the field of legal aid, international letters rogatory (rogatory letters from and to abroad).⁴³ The CPC provides that the Ministry of Justice is the competent authority regarding the letters rogatory from abroad. Ministry of Justice decides to grant support to the letter rogatory of a foreign authority regarding communications, notices, obtaining evidence, unless it considers that the requested actions endanger the sovereignty, security, and interests of state. The letter rogatory is not granted when it is clear that the actions required are expressly prohibited by law, in violation of fundamental principles of rule of law, and for grounded reasons affecting development of process.

⁴⁰ Ratified on May 19, 1998 and entered into force on August 17, 1998.

⁴¹ Signed on May 19, 1995, ratified on April 4, 2000 and entered into force on July 3, 2000.

⁴² Signed on May 19, 1998, ratified on April 4, 2000 entered into force on July 5, 2000.

⁴³ Articles 505-511 of the CPC.

138. This Code envisages judicial proceedings for executing the foreign letter of application. The prosecutor, after taking the acts from the Ministry of Justice, submits the request to the court. Execution of the letter of application is not accepted:

(a) In cases when the Ministry of Justice does not give support to the letter rogatory;

(b) When the fact for which the foreign authority proceeds is not provided as a criminal offence by the Albanian law.

139. Regarding submission of letters rogatory to foreign authorities, CPC provides that letters rogatory of courts and prosecutors addressed to foreign authorities for notifications and obtaining evidence, are sent to Ministry of Justice. Ministry of Justice orders, within 30 days after receiving this letter rogatory, to not give support to it, when it considers that the security or other important interests of the state could be endangered. In emergency cases, the proceeding authority may decide to initiate proceedings directly, informing the Ministry of Justice. When the foreign country has imposed conditions on usability of acts required, Albanian proceeding authority is obliged to respect them, if they are inconsistent with the restrictions provided by the law.

140. The CPC contains provisions on enforcement of criminal judgments. Ministry of Justice delivers to the prosecutor of the district court, the foreign criminal decision against Albanian citizens or foreigners or stateless persons, who are residents in Albanian state, or to persons criminally prosecuted in Albanian. Ministry of Justice requests the recognition of a foreign criminal decision considering that this decision should be executed in accordance with international agreement, The Prosecutor requests the recognition of the foreign decision, before the district court, and necessary information can be requested from the foreign authorities. Republic of Albania has not received any request, and has not submitted an application for legal aid under this Convention.

141. Law No. 10193, dated 03.12.2009 “On jurisdictional relations with foreign authorities in criminal matters” determines additional procedural rules in the field of jurisdictional relations with foreign authorities in criminal matters. This law is widely applied unless special rules are provided by international agreements to which Albania is a party. Provisions of this law are applied in:

(a) Proceedings related to criminal offenses, which, at the time of the application, are under the jurisdiction of the judicial authorities of the requesting State or in Albania;

(b) Proceedings under the jurisdiction of the European Court of Human Rights or other international courts, whose jurisdiction is accepted by Albania.

142. This law stipulates: the foreign judicial authorities; the local judicial authorities (Ministry of Justice, Prosecution, Court); types of letters of request (rogatory letter, request) establishing international jurisdictional relations; general rules on submission to competent authorities; and procedures. Law envisages provisions on the recognition, execution of foreign criminal judgments, the competent authorities (Ministry of Justice, Prosecutor, Court). It envisages provisions on the transfer of criminal proceedings in a foreign country, if the person is suspected of committing a criminal offense punishable under the Albanian criminal law, namely: the conditions of transfer; procedures for requesting and the submission of the application; competent authorities, such as the transfer of criminal proceedings from foreign countries.

Article 15

International cooperation

143. The Albanian institutions are undertaking some steps to establish cooperation with domestic and foreign partners for the creation and functioning of the Department for Locating Missing Persons from the crimes of communism at the Institute of Integration of Former Politically Persecuted. The International Commission on Missing Persons (ICMP) as an important partner is supporting this initiative, and subsequent measures will be taken for signing of a bilateral agreement.

Article 16

Refoulement

144. The Constitution establishes the prohibition of collective expulsion of aliens and provides that the expulsion of individuals is permitted in cases specified by law; the fundamental rights, freedoms, obligations for Albanian citizens are also valid for foreigners, stateless persons unless their exertion relates specifically to the Albanian citizenship.

145. According to the law No. 108/2013 On foreigners⁴⁴ “refoulement” is obligation to return a foreigner, subject to an expulsion order, as an administrative measure issued by responsible authority for border and migration, to the forceful removal of foreigners from Albanian territory, on following cases:

- (a) Illegal entry into Albanian territory;
- (b) Readmission in another country, according to readmission agreements;
- (c) It has been declared persona non grata, according to the law;
- (d) His presence is considered a serious threat to public order and security;
- (e) He is convicted of a crime, for which the Albanian legislation provides for a minimum sentence of 3 years in prison.

146. If the foreigner is subject to expulsion from the responsible authority, he is being detained in a detention center, till the execution of the deportation order. “Closed center” is an administrative institution, with a certain level of security and limitation of freedom, in which only foreigners who are subject to deportation can be placed. Temporary measures are alternative measures undertaken by the authority responsible for the implementation of a foreigner’s expulsion order from the territory. This law provides the conditions and category of persons that are not deported, and exceptionally, a foreigner may be deported, if the person’s attitude jeopardizes public order, security, and constitutes a threat to national security.

147. The Law “On Asylum”⁴⁵ defines “non-refoulement” as obligation to prohibit expulsion or refoulement of a foreigner or stateless person, where his life or freedom is threatened, for reasons of race, religion, nationality, membership in a particular social group or political conviction. By virtue of the principle of “non-refoulement”, this law provides that Albania recognizes and respects the authorities’ obligation not to return or refuse, extradite or remove outside its territory persons who have obtained or sought

⁴⁴ This law is aligned with EU directives. It has repealed the law No. 9959, dated 17.7.2008 “On foreigners”, which also provided provisions on the prohibition of deportation.

⁴⁵ Law No. 121/2014 aligned with EU directives.

asylum or other forms of protection and the concrete cases. The law expressly provides for the implementation of this principle in the case when in a country reliable grounds exist that the asylum seeker could be at risk of being subjected to enforced disappearance.

Article 17

Prohibition of secret detention

148. Albanian legislation does not contain any provision with regard to secret detention or unofficial detention. Also there has been no case of secret detention, after the entry into force of this Convention. Albanian Constitution states that no person shall be deprived of liberty except in cases and under the procedures provided by law. The freedom of a person may not be limited, except in the following cases:

- (a) When he is punished with imprisonment by a competent court;
- (b) When he fails to comply with lawful orders of the court or fails to comply with an obligation determined by law;
- (c) When there are reasonable doubts that he has committed a criminal offense or to prevent his committing an offense or escaping after having done so;
- (d) For the supervision of a minor for purposes of education or for escorting him to a competent organ;
- (e) When the person is a carrier of a contagious disease, mentally incompetent and dangerous to society;
- (f) For illegal entry at state borders or in cases of deportation or extradition.

149. The same prediction is made by the CPC as well, which states that a person's freedom may be restricted by security measures only in cases and manner prescribed by law. CPC provides for the rules to be followed regarding the fair, equal and due legal proceeding, to protect personal freedoms and legitimate rights and interests of the citizens.

150. Law "On the State Police" provides that arrested and detained persons are held in police facilities until the determination of a security measure by the court, respecting the rights provided by law. According to Criminal Procedural, when an arrest or detention is carried out, the prosecution is immediately notified of the place of arrest or detention. Among other tasks related to the exercise of criminal prosecution, investigation, the prosecutor take measures to enforce the decisions in accordance with the rules set out in this Code. This Code provides that the authorities for the trial of offenses and making a decision on the deprivation of liberty are: the district courts; serious crimes courts and the Supreme Court, pursuant to the rules of this Code. CPC provides detailed provisions on the judicial review, court decision, decision making. Judicial Police, in the quality of the subject of criminal proceedings, undertakes procedural actions for the execution of criminal judgments. The General Directorate of Prisons is the institution responsible for organizing, directing, controlling the execution of penal judgments with imprisonment and with the precautionary measure "arrest in prison" in the prison system, in accordance with the law on the rights of prisoners and detainees and the General Regulation of Prisons.

151. The law "On the rights and treatment of prisoners and detainees", stipulates that the suffering of sentences with imprisonment is made only in specially designated places and subject to this law are all prisoners with a final decision of the Albanian courts, and of the foreign courts, in accordance with international agreements. The Institution for Execution of Criminal Judgements are institutions under the General Directorate of Prisons and their duty is the reception, disposition, treatment and social rehabilitation of prisoners. These institutions are divided in: High-security prison; Ordinary prison; Low-security prison;

Special institutes; Detention institution. The detainees against whom the Court has imposed the security measure of “arrest in prison” are placed in detention institutions.

152. The law “On the execution of criminal judgments” has as object the execution of criminal judgments and other legal rulings, the way of serving sentences except those with imprisonment which are governed by a special law and the court decisions on security measures for as much as not determined otherwise by the CPC. By execution of a criminal judgment it is understood the execution of the orders contained in a final criminal decision, the decisions of immediate execution, with the aim of the prisoners’ rehabilitation, the reinstatement of the rights of persons unjustly prosecuted and legal rights of juridical subjects affected by the offense, influencing on their prevention. The law provides effected control by the Prosecutor, inter alia, through the search for information and direct checks on the documents or in the place of serving the sentence, in the presence of official person.

153. Albanian legislation guarantees the right of arrested and detained persons, to communicate with a counsel. The person arrested in flagrance or detained person has the right to communicate with defence counsel immediately upon arrest or detention. The detained defendant has the right to speak with his counsel since the moment of the execution of the security measure. In every institution for the execution of the criminal judgments, is established the reception commission, informing the detainees and prisoners in an understandable language on the institution’s regulations, their rights and obligations, the right to a counsel and to benefit legal assistance, the rules and procedures for submission of claims and complaints. The authorities immediately provide written information about the rules in the institution, their rights and obligations. They have the right to meet their relatives, other persons periodically. For the prisoners who for various reasons have no personal contact with their family members, through the social workers, the institutions aim at restoring these contacts. Also they have the right to telephone and correspondence with the family members, relatives and their friends, which take place under visual control and not hearing of the supervisory personnel, as well as the right to written correspondence, maintaining its confidentiality. Likewise, they are guaranteed their right to have confidential meetings with members of the supervisory committee, the elected or ex officio defence counsel, the representatives of international organizations, representatives of NGO-s, operating in the field of human rights, according to cooperation agreements between General Directorate of Prisons and civil society. Detained persons have the right to information about their rights and obligations arising from the law, the general regulation of prisons and internal regulation of the Criminal Sentence Serving Institutions/Prisons.

154. Detained persons with foreign citizenship are entrusted with the necessary facilities for communicating with the diplomatic/consular representatives of the respective state. To the prisoners, whose her country has no representation in the RA, the refugees, stateless persons are provided the same facilities to communication with the diplomatic representatives of state in order to protect their interests, as well as the national or international authorities.

155. Law “On the execution of criminal judgments” provides that the counsel at the request of the convict or when he deems it proper, has the right to meet the inmate, observing the relevant rules, to seek clarification, to obtain the necessary information, to demand from the bodies in charge of the execution of the judgment, to adopt measures in their jurisdiction, to seek the intervention of the prosecutor, when there are obstacles, and submit requests to the court for matters under its competence.

156. Treatment and the respect of the rights of accompanied/detained persons is controlled and monitored by Directorate of Professional Standards, as an internal mechanism, within State Police. In case of violations, are carried out several actions for the initiation of the disciplinary proceedings for the police officers found responsible. Internal

Affairs and Complaints Service, an independent structure of the State Police, carries out inspections and controls on all central and local structures of the State Police. For all cases founded in violation of the laws/regulations and which constitute a criminal offence, procedural actions are conducted for the initiation of the criminal prosecution. As well Ombudsman conducts inspections/controls at any time, without prior notice. Likewise, a cooperation agreement is signed with the Commissioner for Protection from Discrimination and the civil society to conduct monitoring visits.

157. Ensuring access to competent legal authorities in prisons or places of detention and. Supervision of observance of the rights of prisoners is carried out by specialized institutions and structures within or outside the prison system. The Institution for Execution of Criminal Judgments can be visited without authorization by: the President of the Republic, the Speaker of Parliament, Prime Minister, Chairman of the Constitutional Court, Deputy Chairman of Parliament, Deputy Prime Minister, Minister of Justice, President of the Supreme Court, Attorney General, MPs, Deputy Minister of Justice, the Ombudsman, his commissioners and the assistant commissioners, the director, control inspector of prison, members of the supervisory commission for the execution of criminal judgments, judges, prosecutors, as well counsel of prisoners/detainees.

158. The Law on Prisoners and Detainees, stipulates that the Ombudsman, who performs the role of the National Mechanism for Prevention of Torture monitors the implementation of this law for the protection of prisoners' rights, exercising these powers:

(a) The regular monitoring of the treatment of individuals deprived of their liberty in places of detention, arrest, imprisonment, with a view to strengthening, if necessary, the protection of individuals from torture, cruel, inhuman or degrading treatment or punishment;

(b) Making recommendations to the relevant authorities to improve their treatment, condition and to prevent torture and cruel, inhuman or degrading treatment or punishment.

159. During the exercise of his duty, the Ombudsman is guaranteed:

(a) The receipt of any information on the number of persons deprived of their liberty in places of deprivation of liberty, the number of places and their location;

(b) Receiving information on the treatment of these individuals, the conditions of detention;

(c) Free access to all places, environments where freedom of the individual is limited;

(d) Verification of documents, facilities, equipment, environment;

(e) Conducting private interviews with individuals deprived of their liberty, either personally or with a translator if necessary, and any other person who can provide the necessary information;

(f) The choice of places that he wants to visit and of the individuals he seeks to interview.

160. This supervision is realized through: receiving requests/complaints from prisoners/detainees in writing, or directly through the displayed phone numbers, and through access to information, complaints, requests of prisoners; receiving information from individuals who have visitor status or state authorities or non-governmental organizations that have inspected the institution, according to the competence given by the law and from the counsels of the prisoners or detainees.

161. The places of detention and prisons are inspected periodically by the Committee for the Prevention of Torture and Inhuman and Degrading Treatment (CPT) of the Council of Europe. Likewise, the General Directorate of Prisons has signed cooperation agreements with non-governmental organizations in the field of human rights, which are allowed at any time to visit, inspect the detention facilities, prisons, relevant documentation and make direct contact with imprisoned persons without the presence of the prison police officers.

162. Albanian Constitution guarantees the principle of the presumption of innocence until guilt is proven by final court decision, and the right of every person to appeal a judicial decision to a higher court, except when the Constitution provides otherwise. The Albanian constitution and legislation guarantees the right to appeal to every person deprived of liberty, their representatives or lawyers, on the legitimacy of the deprivation of liberty.

163. Law “On the State Police² provides that any person accompanied, detained or arrested has the right to address the court at any time. This law, the by-laws, administrative acts of the police structures have as objective to fulfill duties, responsibilities, and to guarantee the rights of persons deprived of liberty. Specific work standard procedures are provided on:

(a) Accompaniment, treatment of the persons accompanied, notified to be presented before the police, the use of firearms by the police, the use of force;

(b) Standard procedures for the treatment, and protection of detained/arrested person in police facilities.

(c) Adoption of the “Standard declaration on the rights of persons detained/arrested”, on the rights of arrested/detained persons in police facilities; “Registry for the identification, addressing and resolving complaints/requests of persons deprived of liberty, in the Police facilities”.

164. Criminal Procedural Code (CPC) provides that “no one may be found guilty and punished for the commission of an offense without a court judgment”. According to this Code, the defendant or his counsel may appeal against the security measure to the highest court. CPC provides that the Court considers and assesses the measure of a arrested or detained person; when the arrest or detention is unlawful, the court decides on the immediate release of the arrested or detained person; the court is competent for the decision of dismissal when prosecution should not have started; should not continue; when the offense is extinguished; the Court makes a decision of acquittal when:

(a) The fact does not exist or its existence is not proved;

(b) The fact does not constitute a criminal offense;

(c) The fact is not provided by the law as a criminal offense;

(d) The offense is committed by a person who cannot be charged/sentenced;

(e) It is not proved that the defendant has committed the offense he is charged with;

(f) The fact is committed in the presence of a legitimate reason/cause of impunity, and when there is doubt.

165. In these cases the court orders the release of detained defendant and declares the removal of other security measures. If the defendant is found guilty of the offense attributable, the court give the sentence with the type and extent of punishment.

166. This Code provides detailed provisions on the cases and remedies of appealing the court’s decision. The district court is competent to judge the criminal offenses, except those pertaining to the jurisdiction of the court for serious crimes and the Supreme Court. The

Supreme Court examines recourses for violations of the law and the requirements for the review of final decisions. The remedies are: appeal, recourse to the Supreme Court and request for review. The right to appeal belongs to the one to whom the law expressly acknowledges such a thing. The defendant can appeal personally or through his counsel. The criminal court decision is executed immediately after it becomes final. The decision of acquittal, the exclusion of the defendant from conviction and dismissal of the case, is executed immediately after the announcement. In cases specified by law, the review of the decisions that have become final, it is allowed at any time even if the sentence is executed or erased. Crimes acquittal decisions can be reviewed at the request of the prosecutor, but on condition that 5 years have not passed after the decision. For the execution of a prison sentence, the prosecutor issues an execution order. The court that issued the decision is competent to examine the requests and claims related to its execution. The court proceeds with the request of the prosecutor, the person concerned or the defence counsel. The court gives a decision, which is notified to the parties and the defenders. The decision may be appealed, but it does not suspend execution, unless the court decides otherwise. At the stage of execution, the court is competent to decide on the cessation of the offense after conviction, to extinguish the penalty, the additional penalties, confiscation or restitution of personal items, and it is competent for each case provided by law.

167. Law on the Rights of Prisoners and Detainees provides that the Court, in whose territory the institution is located, examines cases dealing with prisoners' rights, which are not resolved by the institution following the appeal of the convict or request of the prosecutor, with the exception of cases for which the Criminal Procedure Code has defined the competences. Based on the law "On the Internal Control Service in the Prison System", the internal control service in prisons, dealing with the cases of violations of prisoners/detainees' rights. The General Regulation of Prisons stipulates that the rights of detained persons are monitored by the Prosecutor and the Court. In cases of violations, the prosecutor submits the request for holding responsible the person, who committed the violation.

168. Law "On the execution of criminal judgments" guarantees appeal to the court and defence by a counsel. The organs and employees that execute the decisions under this law are duty bound to exercise the powers correctly, respecting the rights, honour and dignity of the person. The persons charged with the execution of criminal judgments have disciplinary and criminal responsibility for, delay or execution of decision in violation the law and the rights of the person. This law defines the terms of the execution of the criminal decisions, the performance of preliminary actions and issuance of an enforcement order by the prosecutor at the court that rendered the decision. The competent court has the right to request information from the prosecutor and the institution where the decision is executed, and considers the regularity of the execution. The law provides for carrying out controls, supervision of the execution by the institutions and conducting internal control. As well is provided the creation of Supervisory Commissions for the execution of criminal decisions, as an advisory body for the implementation of the law on the execution of sentences with imprisonment and protection of the rights of detainees.

169. The General Regulation of Prisons determines the admission, registration procedures of detainees to the Institutions for Execution of Criminal Judgements (IECJ), the conditions of admission, personal file, fundamental registers of detainees, as well as the data reflected in them. Fundamental registers of detainees are opened in any penitentiary institution. They contain the following information:

- (a) Full information on the identity of the prisoner (name, paternity, surname, date of birth, place of birth, residence, relatives he can communicate with, etc.);
- (b) Information on the crime committed, the sentence, the court that issued the decision, number, date of the decision, the date of arrest, place of arrest, the date and order

of the prosecutor for execution, any subsequent court decision that changed the former decision or that incurs consequences in its execution, any amnesty, pardon;

(c) Date, time of admission and release. In case of prisoner's death, the date, place and time of death, cause of death, a copy of the act of death and the person or authority to whom the remains were delivered are reflected in the fundamental register of detainees.

170. Admission of detainees is effected based on the documentation that must necessarily contain the following documents:

- (a) The decision of the court ruling on a security measure "arrest in prison";
- (b) The minutes of detention or arrest in flagrante;
- (c) The record of personal search;
- (d) Identification form with two photos and fingerprints;
- (e) Identification document;
- (f) Medical control document;
- (g) Personal certificate;
- (h) For female detainees, ultrasound echo.

171. Admission of convicts is done by order of the General Director of Prisons, after issuance of execution order of the court decision. Personal file, contains:

- (a) Final court decision determining the punishment by imprisonment;
- (b) Order of the prosecutor to execute this decision;
- (c) The arrest decision;
- (d) Records on detention;
- (e) Records on personal control;
- (f) Identification form with two photos and fingerprints;
- (g) Personal file of the convicts;
- (h) Health status file;
- (i) The psychosocial file (for transfers from a IECJ to another IECJ).

172. In addition, the following registers are opened: personal file of detained person; psychosocial file; health file; registry of requests/complaints; register of disciplinary measures; register of disciplinary measures; Register of detainees permits; register of serious events; register of sentence reductions; register of medical visits; register on activity during the day; register of employment; register of the Admission Commission; register documenting cases of violence; register of food control; register of alphabetical index.

Article 18

Information on persons deprived of liberty

173. The Constitution guarantees the right to information even in the cases of deprivation of liberty, the right to inform the family, communication with counsel, etc. In accordance with law, everyone has the right, to have information about the activity of institutions and on persons in charge with functions.

174. Law No. 119/2014 “On the right to information” regulates the right to know the information produced or held by public authorities. The rules provided for in this law intend to guarantee the public understanding of information, even within the exercise of individual’s rights and freedoms in practice. “Public authority” means any administrative body provided for by legislation on the administrative procedures, legislative, judicial and prosecuting bodies, of each level, the bodies of local government at any level, state bodies and public entities, established by Constitution or by law.

175. Legislation on the rights of pre-detainees and detainees provides that immediately after admission, the personnel of the detention facilities guarantees the right to inform the family, legal counsel, consular representatives, competent organization that operates in the field of protection of rights human, about the place.

176. General Regulation of Prisons stipulates that:

(a) Personal data of pre-detainees and detainees, should be administered in accordance with legal requirements. Minister of Justice, Director General of Prisons, Police Director, Director of Detention place, Head of Security Guarding and any other authority in accordance with the legislation in force or by persons authorized by them can be acquainted with them;

(b) Persons who, during the exercise of their functions, have information on personal data, are obliged to preserve and not disclose these data after completing the duty. These data can be disclosed only in cases provided by the law;

(c) Personal data for each prisoner are managed in certified records;

(d) A detained person or a person authorized by him, may require from the director of detention place to become acquainted with his personal data, after declaring to the director the cause and type of information he needs. Director of the Institution shall ensure that the information given is not related to another detainee;

(e) If information is requested by a third person, in order to grant should be obtain the written consent of the detainees or, except as otherwise provided by legal provisions applicable.

177. Regulation on Prisons stipulates provisions on the notification of deaths, illnesses of the detainees. In cases of serious illness, serious injury of detainees, Director of Detention Place (Prison) shall immediately notify the family members or relative, and other person previously designated by the detainee. The detainee shall be promptly informed of the death and illness of family members and close relatives. In case of death of the detainee the institution shall take measures for carrying out legal procedures on verification of the case, the cause of death, carrying out investigative procedural actions and other actions to clarify and document the fact of death. As well should be notifying the General Directorate of Prisons, the prosecutor, the family and civil registry authorities in case of absence of family members.

178. Law No. 4572015 “On the right to information on the documents of the former State Security of the People’s Socialist Republic of Albania”, aims to establish rules and procedures to enable the exercise of the right of every person concerned to information on documents of the former State Security, through a democratic and transparent process, protection of the individual’s personality, as well as of the national unity and reconciliation.⁴⁶ This law provides, inter alia, that every person has the right to demand

⁴⁶ This law applies to documents of the former State Security of the Ministry of Internal Affairs for the period 29 November 1944 to 2 July 1991, which are available to all archives of the archive network of Republic of Albania, and associated with political offenses provided the law “On innocence,

information on these documents, to be informed if in the administered information documents there is information on his person and to receive such information, if any, according to this law. Publication of these documents is allowed for the purposes for which it was requested, pursuant to this law.

Article 19

Personal data

179. The Constitution provides that the collection, use and availability of information about a person are made with his consent, except in cases provided by law. Everyone has the right to become acquainted with the data collected about him, except in cases provided by law. Law “On Protection of Personal Data”⁴⁷ establishes rules for the legal protection and processing of personal data, guaranteeing human rights, fundamental freedoms and the right of privacy. The law provides that “personal data” imply any information about a natural person, directly or indirectly identified or identifiable, particularly referring to an identification number or one or more specific factors to his physical, physiological, mental, economic, cultural, social identity. Under this law “the processing of personal data as defined in the framework of the prevention activities and criminal prosecution, for committing an offense against the public order and other offenses in the field of criminal law, as well as in the field of national defence and national security, is carried out by the authorities specified by law”.

180. The right of access to personal data is exercised in accordance with the constitutional principles of the freedom of expression and information, freedom of press and professional secrecy and may be restricted, if it infringes the interests of national security, foreign policy, economic and financial interests of the state, prevention, and prosecution of criminal offenses. According to the legislation, if access is denied, due to national security, foreign policy, economic, financial interests of the state, prevention and prosecution of criminal offenses, freedom of expression and information or freedom of the press, the data subject may demand from the Commissioner to verify exemption in this case. The Commissioner shall inform the data subject of the measures adopted.

181. Law on protection of personal data determines that “judicial data” implies any data related to the decisions in the field of criminal, civil, administrative proceeding or documentations in the criminal, civil, administrative records. “Sensitive Information” implies any information on ethnic origin, political opinions, trade union membership, faith, religious or philosophical beliefs, criminal prosecution, as well as information on his health, sexual life. “Processing of personal data” are actions performed on personal data, such as collection, recording, organization, storage, adaptation, alteration, retrieval, consultation, use, transmission, distribution, extent or combination, photographing, reflection, casting, completion, selection, blocking, erasure, destruction, even if they are not registered in a database. “Controller” implies any natural or legal person, public authority, agency or any other institution, who determines the purposes and means of processing personal data, in accordance with laws and bylaws. “The subject of personal data” implies any natural person, whose personal data are processed. “Processor” implies any natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller.

182. The law guarantees the protection of “sensitive data”; processing of data revealing racial or ethnic origin, political opinions, union membership, religious or philosophical

amnesty and rehabilitation of ex-convicted and persecuted for political motives”.

⁴⁷ Law No. 9887, dated 10.03.2008, amended by Law No. 48/2012, amended by Law No. 120/2014.

beliefs, criminal convictions, health, and sexual life is specifically prohibited. The law establishes legal criteria on the processing of sensitive data. The transmission of sensitive data for scientific research is done only when it constitutes an important public interest. Personal data are used only by persons who are bound by confidentiality. Protection of personal data is based inter alia on fair and lawful processing, collection for specific, clearly defined, and legitimate purposes.

183. This law provides provisions regarding the obligation of the authority for the personal data processing to inform the data subject on the scope and purpose, method of processing, the measures to secure the personal data, etc. The controller is not obliged to provide information and inform of cases where personal data are not obtained from the data subject, inter alia, whether: it processes personal data exclusively for historical, statistical purposes, scientific research and whether the granting of this information is impossible; it processes personal data, obtained with the consent of the data subject.

184. The law “On the State Police” determines that the collection and processing of personal data from the police is limited only to those data that are necessary for stopping a real risk to public order and security, and the prevention, detection, prosecution and investigation of offenses. Personal data collected for police purposes are stored in relevant folders, separate from the administrative files, which are subject to the legal provisions on personal data protection and are used, without infringing the provisions in force for the protection of personal data. Every person has the right to request information on personal data processed by the police. Likewise, bylaws are adopted: “On creation of central bank electronic recording and management of data about the escorted and detained/arrested”; Instruction No. 17, dated 11.05.2012 on “Determining the time of retention of personal data processed in electronic systems, used by the state police authorities for purposes of prevention, investigation, detection and prosecution of criminal offenses”.

Article 20

Restrictions to the right to information

185. Referring criminal procedural legislation, law on the rights of detainees, and Law “On the State Police “any person authorized by the person deprived of liberty can receive information about the detainees, under Article 18 of the Convention, after declaring the cause and type of information needed. If information is requested by a third person, should be obtain written consent of the person deprived of liberty in order to receive this information, except cases provided by the legislation. Given the fact that national legislation provides for the right of information, the counsel or relatives of the person deprived of liberty have the right of recourse to the court, in order to receive information provided by the relevant legislation.

186. Law on Execution of Criminal Judgments stipulates that the defense counsel, on request of the convicted or when he deems it proper, has the right to meet with the detained person, to demand explanations, to obtain the necessary information, to request from the competent authorities adoption of measures, to request the intervention of the prosecutor when there are obstacles, and submit requests to the court for matters of its competence.

187. Law “On the Right to Information” stipulates that the right to information may be restricted if is necessary, proportionate and if the provision of information causes a clearly serious harm with regard to prevention, investigation, prosecution of criminal offenses.

Article 21

Release of persons

188. Law “On the execution of criminal judgments” envisages that the execution of criminal judgment implies the implementation of commandments contained in the final criminal decision, and the decisions with immediate execution according to Criminal Procedure Code, aims rehabilitation of persons deprived of their liberty, restitution of the rights of persons unjustly prosecuted, and rights of legal entities affected by the offense. This law contains provisions on the person’s release. The sentence of imprisonment is considered completed and the inmate is released when he:

- (a) Finishes serving his sentence;
- (b) Is pardoned for the remaining sentence;
- (c) The offenses or remaining sentence is amnestied;
- (d) Fully benefits from the repeal or amendments of a criminal provision for which he was sentenced;
- (e) Is released by the court. When a convicted person is released, the release procedure is performed by the institution of execution of criminal judgments.

189. Law “On the rights and treatment of detainees” provides that release of detained person is effectuated at the end of execution of the sentence or decision. The administration carries out the written order of the director of the institution. For the detainees, who do not have the financial means and clothes, by order of the director of the institution, is granted an aid according to the criteria of the prison regulation. In all cases where it appears that the released person will encounter difficulties in his return to free life, the director of the institution shall notify the local authorities of its place of residence. For juvenile offenders is mandatory the prior notification of the parents or legal guardian. On the release of the detainees are notified immediately or in advance in exceptional cases the court who judged the case, local police authorities and the Ministry of Interior. As for the foreign citizens, the Ministry of Foreign Affairs is notified through the Ministry of Justice. The freedman will be given A release certificate is delivered to released person, specifying duration of detention, reductions and benefits according to the law, the duration, type of work performed at detention facility. At his request, released person can be granted a certification with the data of professional training acquired, as well as reports of his behavior.

Article 22

Prevention of obstruction of the recourse, failure to fulfill the obligation of registration of any person deprived of liberty and to provide information on the deprivation of liberty

190. According the law “On the execution of criminal judgments” the prosecutor is obliged to take all necessary measures in order to execute the decision in accordance with the commandments of the court and provisions of this law, to control the regularity of execution, to intervene with the competent authorities or to submit request to the court to reinstate the law and the infringed right and hold the perpetrators responsible, under the law. Upon becoming aware of the new facts and circumstances, after necessary verification, as appropriate, the prosecutor intervenes under this law and submits a request to the competent court. When facts or circumstances affect the merits or legality of the decision, the relevant provisions of the Code of Criminal Procedure apply.

191. The Albanian legislation guarantees the right of every persons deprived of liberty, as well as of any person who has a legitimate interest, to submit complaint/appeal to a court on the legitimacy of detention, and his release if the deprivation of liberty is illegal. Domestic legislation also guarantees the right to recourse/appeal for obtaining information on the deprivation of liberty of a person.

192. As evidenced above, the law provides for a series of provisions on the enforcement of criminal judgments, the documentation of registration of the deprivation of liberty in the respective registers. Likewise, it provides provisions regarding the relevant sanctions and measures to employees, in cases of breach of the registration of the decisions on the deprivation of liberty or non-registration of relevant information, as provided by the law.

Article 23

Training of competent authorities

193. Trainings on the international conventions on human rights and domestic legislation on the rights and fundamental freedoms of persons deprived of liberty are provided for law enforcement personnel (police officers and prison system employees, prosecutors, judges), General Police Directorate based on the law “On the State Police”, and in accordance with international conventions and legislation organizes continuous training on the rights of detained persons. Legislation on the rights of detainees attaches importance the improvement of professional training, the training of prison and detention service employees, In order to establish a training system for prison staff, for ensuring security, humane treatment, respect for human rights and reintegration of prisoners into the society is established the Prison Training Centre within General Directorate of Prisons. As well prosecutors and judges undergo continuous professional training, where part of the training programs are the international conventions on human rights and domestic legislation according to the fields on the rights of persons deprived of liberty.

Article 24

The rights of the “victim”

194. Under the Constitution, any person who is injured due to an act, action or failure to act of state authorities has the right to rehabilitation and compensation in accordance with the law. The legal framework provides that a person injured by any act or omission which brings about the violation of his integrity can be defined as a victim. The Criminal Code does not provide a precise definition for the term “victim”, but different qualifications are made case by case by jurisprudence describing the persons affected by a crime as “victims”.

195. Code of Criminal Procedure states that “a person aggrieved by the criminal offense or his successors have the right to seek prosecution of the perpetrator and compensation for the damage. An aggrieved person who has no legal capacity to act shall exercise the rights recognized by law through his legal representative. The injured party has the right to file claims with the proceeding body and request the taking of evidence. When his request is not accepted by the prosecutor, he has the right to appeal to the court. A person aggrieved by the criminal offenses provided in the Criminal Code, has the right to apply to the court and to participate in the trial as a party to prove the charges and to demand compensation”. This Code sets out the procedures associated with the compensation for unjust imprisonment, as well as the Civil Code provides for compensation for the damage caused illegally and by fault.

196. Law No. 9381 dated 28.04.2005 “On compensation for unjust detention” is subject to the regulation of cases of benefit and compensation for unfair imprisonment, including

house arrest and the extent and manner of its calculation, and procedures for claiming, payment, compensation for unjust imprisonment. The right to compensation for the suffered imprisonment pertains to the person who is acquitted or for whom the court or prosecutor have dismissed the case by a final decision, or who has been kept in prison beyond the time specified in the sentence.

197. Law “On the rights of detainees” aims rehabilitation for their reintegration into the family, and social, economic life. The preparation for reintegration begins in detention, it continues during the serving of the sentence and after release from prison. Institutions for the execution of criminal judgments, in cooperation with the probation service, social welfare services, local authorities and non-profit organizations develop reintegration programs. The treatment of detainees and convicts is done according to the criteria of individualization in accordance with the state and the individual characteristics of each inmate. For each of the detainees and convicts, a reintegration plan is drafted, and for specific categories of detainees and convicts, an individual treatment program is developed taking into account their specific needs.

198. The Constitution provides for the right of every individual to be organized collectively for any lawful purpose and in this context the right of establishment and participation in associations is guaranteed with the purpose of clarifying the circumstances of the enforced disappearance, in virtue of article 24 of the Convention.

199. Law “On the compensation of former political prisoners of the communist regime”⁴⁸ has as its object the determination of beneficiaries, amount, criteria, procedure of obtaining financial compensation for former political convicts, who have suffered direct persecution under the communist regime, by conducting unjust criminal penalties, like imprisonment or compulsory medical measures as a result of one or more final criminal decisions by the ordinary courts, special courts or investigative body orders during the period 30.11.1944 until 01.10.1991.

200. This law provide the compensation of families of the victims unjustly executed or killed for political motives, by final penal decisions, by the ordinary or special courts, or the orders of investigative bodies (during the period 30.11.1944 until 1.10.1991), as well as financial compensation for persons formerly interned or deported. The purpose of this law is the provision of financial compensation by the Albanian government for former political prisoners of the communist regime, who remained alive, for the family members of the victims executed or deported to internment camps, as a commitment of the democratic state to condemn the crimes of the totalitarian communist regime and assuring them a better life. Financial compensation does not preclude the adoption of other legal or administrative measures, currently or in progress, in terms of the persecuted political prisoners, serving the restoration of justice, social dignity of this stratum, creating favorable conditions for their social reintegration. Under this law, and bylaws, the political convicts, who are alive will be compensated first and each year’s fund will be divided 70% for the former political convicts, who are alive and 30% for the successor of former prisoners, who are not alive.⁴⁹

⁴⁸ Law No. 9831, dated 12.11.2007, as amended.

⁴⁹ From 2009-2013 have been paid about 13,000 files of former persecuted, with a sum of 92 million dollars. During period 2014-2015 have been paid around 4,000 files or 7,134 persons, in total 18 million (year 2014) and for 2015 have been paid 2,443 persons approximately 9 million USD, when allocated budget is 20 million USD.

Article 25

Child Protection

201. Albanian Constitution and domestic legislation guarantee special protection from the state for children, young people, pregnant women and new mothers, as well as protection from violence, abuse, and any kind of exploitation. Law No. 10347 dated 04.11.2010 “For the protection of the rights of the child” aims protection of their rights, based on the principle of best interest of the child. This law provides: the right of life, the right of development; the right to a name, nationality, identity, the right to know and stay with their parents; the right to family reunification; the right to ensure the return; the right of expression, education, health care, the right to a decent standard of living; social protection; protection from all forms of violence and abuse; protection from economic exploitation; protection from trafficking and protection from all forms of exploitation and sexual abuse; prohibition of torture, punishment, cruel, inhuman or degrading; protection of the child deprived of liberty; parental care; alternative care (adoption, placement in an alternative family or in a care institution for children).

202. Regarding the prevention and criminal punishment of unlawful removal of children, subjected to enforced disappearance, unlawful removal of children, whose father, mother or legal guardian is subjected to an enforced disappearance or children born during the captivity of a mother subjected to enforced disappearance, the Criminal Code expressly provides: “unlawful removal of children who are subjected to enforced disappearance or of children, whose father, mother or legal guardian is subjected to an enforced disappearance, or children born during the captivity of a mother subjected to enforced disappearance constitutes a criminal offense and is punishable from 5-10 years”.

203. Criminal Code provides as offence “abduction of a person”, namely: “abduction of a child under 14 years old, his hiding or substitution with another, is sentenced to no less than 20 years or with life imprisonment or death”. This Code provides as criminal offenses: “Unlawful removal of the child” by removing him from the person exercising parental authority or legal guardian.

204. Under the Family Code with regard to the adoption of minors the consent of both parents is required. If for any reason one of the parents is dead, is not able to express his will or is deprived of parental responsibility, the consent of the other parent of the child is sufficient. When both parents are dead, when they are deprived of the ability to act or are unknown, the court decides whether the child should be adopted. Biological parents give their consent for adoption before the competent court. Biological parents have the right to withdraw their consent for adoption within 3 months from the moment of issuing it. Likewise, they may withdraw their consent even after the expiry of that period, until the moment the adoption decision is made by the competent court, when they see that the adoptive parent-child relationship has not worked. If the child’s family members in the adoption process have a legitimate interest to seek the cancellation or revocation of the adoption procedure, by referring to the provisions of the Family Code, they address the court, which is considering the case of adoption and simultaneously inform the Adoption Committee.

205. This Code provides that during the declaration of abandonment of a minor, the competent court, asks the respondent who has filed for child abandonment, explanations whether all efforts have been made to find the biological parents and to return the child to them. Any person having a legitimate interest, for the protection of minors as well as the prosecutor may intervene in the adoption process, and have the right to appeal against the court decision. If during the procedure for adoption of a child, it turns out that a petition for affiliation has been presented to the court, the procedure is suspended until the conclusion of the trial for paternity recognition. The Family Code contains provisions on the

declaration as abandoned of a minor who, is placed at an institution, at the request of the director, when there is not obvious interest for this child by the biological parents.

206. The Law “On adoption procedures and Albanian Adoption Committee” provides the criteria and procedures for domestic and transnational adoption, relying on the principle of “the best interests of the child”. Albanian Adoption Committee, related the cases of adoption, in accordance with this law, and provisions of the Family Code, submits before the court the following information:

(a) The confirmation that the child could not be adopted in Albania for a period of 6 months;

(b) Proof that in the applicants country the child shall enjoy equal rights as in Albania, and that adoption is irrevocable.

207. Criminal Code provides for a number of criminal offenses against the child with appropriate sanctions as following: “abandoning a child”; “failure to notify change of residence”; “unlawfully taking the child”; “switching and concealment of children”; “domestic violence”. Likewise are provided as criminal offenses: “trafficking of children”, criminalizing recruitment, concealing, reception, and children selling; “maltreatment of minors”, which means recruitment, sales, transportation, transfer, receipt of children for the purpose of prostitution or other forms of sexual exploitation, forced labour or other services, slavery or forms similar to slavery, organ trafficking and transplantation of organs, and other forms of exploitation.
