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## **Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)**

### **Honouring of obligations and commitments by Albania**

#### **Comments by the Albanian delegation to the Parliamentary Assembly on the preliminary draft report [AS/Mon(2009)03rev]<sup>1</sup>**

Co-rapporteurs: Mr Jaakko LAAKSO, Finland, Group of the United European Left, and Mr David WILSHIRE, United Kingdom, European Democratic Group

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<sup>1</sup> These comments have been made public by decision of the Monitoring Committee dated 5 June 2009.

**Comments on the preliminary draft report on the honouring of obligations and commitments by Albania dated 29 April 2009 and sent by Mr Ilir Rusmajli, Chairman of the Albanian Delegation, to Mr Serhiy Holovaty, Chair of the Monitoring Committee, in answer to his letter dated 30 January 2009**

*I. Introduction*

**With regard to paragraph 6, we would like to underline that:** “The presence of a representative of the Council of Europe with a monitoring role does not rely on any legal document, since upon the signature of the Memorandum of Understanding in 2003, the Representation Office of the Council of Europe, which had a political nature was closed and replaced by the Information Office of the Council of Europe, run by Albanian staff and under the authority of the hosting country. The legal basis of this decision lays on the Resolution 99(9) of the Committee of Ministers” *On the status of the Information Offices of the Council of Europe*. The staff of the CoE Office in Tirana, also involved in the visit by arranging the rapporteur’s meetings with civil society organizations, performed its responsibilities in a correct and professional manner.

*2.1.3. The constitutional reform*

As concerns paragraph 18, there exists now a common opinion of the Venice Commission and OSCE/ODHIR regarding the Electoral Code. Consequently this paragraph must be omitted.

*2.2 The Gërdec incident*

In **paragraph 21**, there were presented presumptions concerning some “possible bribery cases”, regarding unfair assessment for the reconstruction of the damaged buildings in Gërdec.

*2.4. International relations*

*2.4.1. European Union*

**In paragraph 29**, after the sentence “Albania signed the SAA with the EU on 12 June 2006” the part “has completed the ratification process by 26<sup>th</sup> of February 2009” should be added, too.

**In paragraph 30**, the first sentence should be substituted with “the SAA with Albania entered into force on 1<sup>st</sup> of April 2009”. The part of the paragraph focusing on Interim Agreement should read “the implementation of Interim Agreement ceased to exist as such, as it is an integral part of SAA, now into force”.

**In paragraph 31**, the European Partnership for Albania adopted in January 2006 was repealed and the last European Partnership for Albania was adopted in November 2007.

**In paragraph 32**, in relation to the first sentence we note that from July 2006 the “National Plan for the Implementation of SAA 2007-2012” is into power. In the second sentence “Progress on these reform priorities is encouraged and monitored by the SAA Council, SAA Committees and Sub/ Committees”.

**In paragraph 33**, the following update could be made: “Since 2007, pre-accession financial assistance to Albania is provided under the Instrument for Pre-Accession Assistance (IPA). The EC allocated a total of € 70.7 million in 2008. The Multi-Annual Indicative Planning Document (MIPD) for 2008-2010 for Albania under IPA was adopted in September 2008 and Albania will receive a total amount of 245.1 million euros. Main focus areas continue to be justice and home affairs, administrative capacity-building, economic and social development and democratic stabilization.

**In paragraph 34, one more sentence should be added:** “The dialogue on visa liberalization between the EU and Albania was launched on the 7<sup>th</sup> of march 2008 and the roadmap was officially introduced to the Albanian party in June 2008. Albania completed the two stages of the process, reporting and field missions, by the end of March 2009.

**In paragraph 35**, the second sentence should be substituted with: “Overall, a more constructive dialogue between the major political parties has allowed for progress in addressing key European Partnership priorities. More remains to be done to enhance the constructive dialogue between political parties and with stakeholders on implementation of reforms, which are key European Partnership priorities. Further efforts have been undertaken in the fight against corruption. Perception of corruption has improved, nonetheless the Commission called for additional measures to reinforce the rule of law, the independence of state institutions and the fight against organized crime and corruption”.

In **paragraph 37**, the definition that “Albania will present the application for membership to the EU during the Czech Presidency” must be added.

#### 2.4.2. NATO

**Paragraph 39** should be altered: “In April 2008, Albania was invited to start accession talks with the Alliance. The NATO Allies signed accession protocols with Albania on 9 July 2008. These protocols were ratified by the national parliaments of the Member States and deposited in the US State Department. On 26 March 2009 the Albanian Parliament passed the law which makes Albania a party to the North Atlantic Treaty. On 30 March 2009, the NATO Secretary General informed Albania that the ratification process was complete and extended Albania the invitation to become a party of the North Atlantic Treaty. On 1 April 2009 Albania deposited its instruments of ratification to the US State Department, thus becoming a Member of the North Atlantic Treaty Organization”.

#### 3.1. Council of Europe Conventions

In **paragraph 49**, it is said that Albania has ratified the Rome Statute of the International Criminal Court, and that it has also signed Article 98 of the Agreement with the USA. Regarding this issue it must be clarified that; “In the agreement that Albania has signed with the United States of America “On the consignment of persons to the International Criminal Court” the principles mentioned in the report have been taken into consideration. Concretely, the parties in the agreement confirm the importance of bringing to justice the individuals who commit genocide, crimes against humanity, and war crimes and express the intention to investigate and prosecute, where appropriate acts within the jurisdiction of the International Criminal Court alleged to have been committed by its officials, employees, military personnel, or other nationals. These clauses are in compliance with the principle of “avoiding impunity”, as defined in EU’s “Guiding Principles”. Moreover, the agreement with the USA is not reciprocal, providing only the non extradition of American citizens only and not that of the Albanian ones, thus, being in accordance with the other principle which provides that: any solution should extend only to those people who are not citizens of the another party state into the International Criminal Code (the USA are not).

##### 3.2.1. Elections and electoral reform

**Paragraph 56** must be completed with more detailed information concerning the measures taken for the successful progress of the electoral process, including the monitoring process by means of security cameras, as well as the bigger number of international monitors.

With regard to **paragraph 58** we inform you about the following:

**I.** The first step in the realization of this project was transferring the data from the Basic Registers into the electronic format. The realization of this transference was carried out mainly by the operators of the civil status office. The data were entered twice (through Double Data Entry software); afterwards they were checked by the operators for the correction of any possible mistakes, and in the end they were checked by the employees of the civil status office themselves.

After this phase, and while waiting for the installation of the final online system (the Austrian Model) a computer application was compiled with the assistance of Statistics Norway, which enabled the daily updating of the data with the changes reported at the Civil Status Service. It also made possible the issuing of printed certificates.

**II.** The second step in the realization of this project was the establishment of the system and infrastructure for the functional central and local network of the National Register. In order to achieve this, work started in July and was concluded in October 2008, realizing in this way a communication network which includes 354 Offices of Civil Registry.

**III.** The third step in the realization of this project was the creation of the online system of National Register of the Civil Status Office.

After the agreement with the Austrian Ministry of Interior for the construction of this system was signed, work started in July 2008 and the system was handed over in December 2008.

This system is totally based on the Austrian system of civil registry and constitutes a full, online, functional and operational system of the Civil Register. The system was adapted by the experts provided by the Austrian Ministry of Interior in order to realize the Albanian System of Civil Registry. The system takes into consideration and ensures functions that satisfy the Albanian and European legislation concerning the data

of the civil state office for each citizen, the online functioning of the civil state offices, and also the provision of the possibility to offer data to the state or private institutions in accordance with the existing legislation.

The 11 Offices of the Civil Status in Tirana started operating with the online system since December 2008. After the National Register of the Civil State Office (NRC SO) has been created work started for its cleansing by the manifold records, otherwise called duplications.

For this purpose, in co-operation with the Austrian party were compiled the necessary computer procedures for their identification in the national basis. After the duplications were identified, the Minister's Guidelines were compiled for cleansing them from the Civil Status Offices (CSO) and NRC SO. The Guidelines together with the list of duplications were distributed to every Civil Status Office in January 2009, and the process of cleansing started. In the end of this process 50, 000 duplications were cleansed, ensuring in this way the first Electronic Register of Citizens without manifold records. At this point, it is worth pointing out that the previous attempts focused only on the electoral lists, which were every time cleansed off the duplications, but the main source the Basic Registers were not cleansed. This time the cleansing was made to the only official source of citizens' data, namely the NRC SO and its by-products, as for e.g. the electoral lists, are automatically free of duplications.

Also, for the first time, the lists of electors have been generated by NRC SO and each unit of the local government is working for the formulation of the Preliminary Lists of Electors. Any change made to the electors' data is automatically reflected in NRC SO and also automatically reflected in the list of electors, for as long as the latter is a by-product of the Register.

On the other hand, being the only official source of information, the NRC SO can offer information to third parties, too. The first successful example in this direction is the link created by the NRC SO and the System of Identity Documents. In this way, the System of Identity Documents is connected online to NRC SO, and the applicant's data are obtained directly by NRC SO through a safe online connection.

As regards **Paragraph 59**, we inform you that 2009 the application process for ID cards started on 12 January. On 25 March 2009, in the city of Tirana, has started the process of applications for biometric passport. Up until now the number of applications for biometric passports amounts to 2,512. It results that until 13 April 2009 the number of installed application stations reaches 410, and the final phase of application offices opening, foreseen to end by the end of April 2009, consists in the opening of 58 application stations.

The minimal application per station is 50 applications a day, for the period left for the application, that is 57 days of work, it results that the capacity of each station is 2, 850 applications, consequently this is a sufficient capacity to cover the application of the voters who do not have a passport.

Considering the 410 application stations that operate and multiplying it with the capacity of 2, 850 applications each of them has, it results that the capacity of applications until 20 June 2009 is 1,168,500. This figure is even bigger if we consider the other 58 application stations planned to be established.

**Paragraph 60**, which is concerned with the adoption of the Law on the Protection of Personal Data, must be completed with the information that the independent institution of the Commissioner for the Protection of Personal Data was established, which consists of a staff of 30 people and ensures the well functioning of the law.

As concerns **Paragraph 61**, we would like to point out that on 15 August 2008 began the issuing of printed electronic certificates at the 11 civil status offices in Tirana, and on 15 September 2008 this process began in all the civil status offices of Albania, namely 345 offices. Starting from this date the hand written certificates were considered not valid and only the printed ones became valid.

#### *3.2.4. Local Self – Government*

With regard to **paragraph 80** we would like to point out that intensive work has been carried out to strengthen the first level local government via the increase of the financial autonomy of local government. The legal frame on local taxes has been improved, as have the Guidelines on the administration of local taxes and tariffs. The State Budget has tripled the grants for Municipalities and Communes, and each year the formula for the details of the unconditioned transfers has been improved. Investment grants have more than quadrupled.

Law nr. 9869, dated 4.2.2008, "On Local Government Borrowing" has been adopted, and the Guidelines for its implementations have been presented.

The draft of the bill on "Local finances" is being prepared.

With regard to **paragraph 84** we would like to explain that: Based on Government's Programme 2005-2009 for the deepening of the decentralization process aiming at the enhancement of local government autonomy in the decision-making processes by increasing the services to the community and the acceleration of reforms in the sectors affected by the decentralization process, the Ministry of Interior in 2005 re-established two institutions that for years did not function:

- The Inter-Ministry Committee on Decentralization (IMCD)
- The Group of Decentralization Experts (GDE)

In this framework, one of the duties of these two institutions, in co-operation with other local and international actors, was the revision of the Inter-Sector Strategy of Decentralization. This document has been subject to several local, regional, and national phases of consultation and has been adopted by the Committee of Strategic Planning. It represents a qualitative, and all-embracing document. It is a strong and active document in order to allow the process of decentralization and to attach to this strategic document the spirit, the ideas, and the development perspectives of the new administrators of Local Government Units.

In contrast with the previous strategy it is open to changes and re-definition of priorities. The revised strategy of decentralization includes priorities of the 2005-2009 Programme of Government, fundamental principles of the European Charter of Local Self-Government, the Declarations of Warsaw, Budapest, and lately the Declaration of Valencia. On this document have been defined the following main priorities as the foundation of the decentralization reform in the country

### **Priority 1**

The increase of efficiency in local government operation by extending the term of the local authorities' mandate, the extension of the relations among the local government institutions, the improvement of the local administration status, and the increase of transparency and citizens' participation.

#### **Result:**

- The parliament approved with consensus a new constitutional provision which extends the mandate of the local authority from 3 to 4 years.
- In order to manage better the human resources, and to strengthen the capacities of the communes, work is being carried out to include them, besides the Municipalities and Districts, in the law "Civil Servant Status".

### **Priority 2**

The determination, via sectional legislation, of the local authorities responsibilities in the field of urban planning; the managing and the completion of the transfer of these new responsibilities.

#### **Result:**

The Ministry of Interior has been a key actor in this process. The Ministry of Public Works, Transport and Telecommunications was the leading ministry in the creation of the law which would enable urban planning. This law was approved by the Council of Ministers and has been submitted to be approved in Parliament.

- The law "On Constructional Inspectorate" has been adopted. This Inspectorate is established at every commune and municipality.
- The amendments to the law on city planning have been adopted. This law gives more competences to the communes and the municipalities with regard to city planning.

### **Priority 3**

*The acceleration of the process of inventory making and the transfer of properties to the local government units.*

- The completion of the inventory process and the process of property transferring to the local government units has rapidly progressed, and it is expected to end within this year.
  - There have been approved the inventory lists for 330 local government units (from 60 to 2005)
  - There have been approved the preliminary lists and the all three phases of the process were concluded for 33 local government units, among which we could mention the main municipalities such as: Durrës, Elbasan, Korçë, Lezhë, Burrel, Pogradec, Peshkopi, Gramsh, Përrenjas. Whereas for the municipalities of Shkoder, Vlore and Fier the process is expected to end soon.

- The administration of the high school dormitories has already been transferred to the municipalities and communes.
- The process of property legalization has started with giving property titles to the citizens who have applied.
- The law for the verification of property titles of agricultural land, and site work is being carried out for the process of verification.

#### **Priority 4**

##### *The Transfer of the function of potable water supply to the local government*

- The transference of the function of potable water supply to the local government has been accompanied with a re-composition, of the Monitoring Council of Water Supply and Canals Associations in favour of the local government.
- 5 Council of Ministers Decisions, which have made possible the actual transfer of the water supply and canalization services to the local government units, have been approved. This package of decisions on the decentralization and transfer of the water supply systems and their companies is being accompanied by government financing. This is done through the formula of competing grants in order to continue the investments through local government units concerning water supply projects, and also the establishment of standards until the citizens' needs throughout the country are completely fulfilled.

#### **Priority 5**

##### *The Consolidation of local finances*

- The tax on small business has passed under the administration of the local government bodies, which is to say, it is these bodies that license this business and collect the income, since they themselves are responsible for its whole administration. Out of 3% taxes, at present the businesses pay only 1,5%. This factor has brought about the bigger number of small businesses identification and registration, consequently, more income for the local units. Now the challenge the local units have to face is that of improving their performance in the direction of the services they offer for this business, and also the in the direction of their capacities to collect and manage the increasing income.
- The law "On Local Government Borrowing" has been approved and it provides the rules and the procedures for borrowing; the access of the local government to the loan market and the inner as well as international financial capital; the access to the regulations and procedures concerning the public debt and the management of financial difficulties.
- The draft-law "On local finances" is being almost complete. By means of this law the following issues will eventually be solved: the part of unconditioned transfer belonging to the local government according to its functions and competences; the regulations and procedures for drafting and implementing the local budget; the principles and criteria for the distribution by formula of the unconditioned transfers, the coefficients for levelling the disparity between different regions down.
- The law on local taxes has been adopted. To assist the Local Government Units the "Guideline for the administration of local taxes" has been prepared in January 2009.
- The State Budget has tripled the grants for municipalities and communes. The grants for investments in 2009 are 10-12 times higher than those of 2005.
  - In 2005 were financed 110 projects reached the value of 495 million leke.
  - In 2006 were financed 209 projects at the value of 2, 2 milliard leke.
  - In 2007 were financed 321 projects at the value of 2, 7 milliard leke.
  - In 2008 were financed 496 projects at the value of 3, 7 milliard leke.
  - In 2009 there have been planned and are being projected projects which reach the value of 5, 5 milliard leke.
- There have been drafted legal acts for the consolidation of the transparency process and the fight against corruption. From January 2009 on the procurements are carried out electronically from the local government units.

**In the field of business registration,** with the establishment of the National Centre for Business Registration the administrative and legal procedures have been avoided. The ministry of Interior has been active during all the stages and together with the locally elected people has followed the process until the

Centre was established. Albania ranks among the first countries in the world for the quick business registration.

### **Priority 6**

*Consultation with the locally elected people and strengthening their capacities*

The sanction that the participation of the locally elected people in KND **and** GDE (the Group of Decentralization Experts) is mandatory is very meaningful.

- The associations of the locally elected people are represented by two people in GDE.
- The representation of the locally elected in GDE has respected the same standards as the representation in the European Congress of Local and Regional Authorities in order to achieve political, geographic, and gender balance in GDE.

This experience has already been institutionalized in the involvement of the locally elected and their associations in the practices of everyday-work through continuous consulting on budget issues, counselling of the law on the transfer of small business tax, the revision of the provisions on borrowing, the improvement of the law on "Civil Servant Status etc.

### **Priority 7**

*The improvement and modernization of the sivil state service*

(The information for this priority is provided in the comments for paragraph 58, 59, and 61).

### **Priority 8**

*The new law on the Prefect*

#### **The result:**

The better co-ordination of state services. More correct relationships between the government and the local government units. The opinions and comments of the Council of Europe experts .

#### *3.3.1 Fight against corruption and organised crime*

**In paragraph 87 should be added:** "The Albanian government has adopted the Cross-cutting strategy for Prevention, fight on corruption and transparent governance (2008-2013), with a Council of Ministers decision<sup>2</sup> on October 3rd, 2008. This decision gives to a inter-ministerial working group (IWG) legal responsibility to act as the authority for monitoring the implementation, approval of annual working plans, as well reviewing the entire strategy. The Integrated Action Plan 2009 was approved by the IWG in the meeting of 30<sup>th</sup> of January 2009".

As concerns **paragraph 88**, the draft-report should take into consideration the conclusions of other reports too, so the following information should be included: "The Government has intensified its efforts on fight against corruption. Though, as fight against corruption requires time and efforts, corruption remains a great challenge for the Albanian government. Referring to the Transparency International report « significant improvements has been identified in Albania<sup>3</sup> » concerning the Corruption Perception Index.<sup>4</sup> Since 2005 Albanian has made sustainable progress in the fight against corruption. From 2.4 on the year 2005, the index moved to 3.4 on 2008 with an increase of 0.5 percent only during 2008, which constitutes one of the best advancement rates in the region. The positive change of CPI has ameliorated Albania's position in the general ranking. For the year 2008 Albania is ranked 85 out of 181 countries, while in 2005 it ranked 126-th out of 158 countries.

Surveys and other reports suggest serious decrease of corruption incidences and practices in some very important areas such as tax administration, education and police.

**Paragraph 89** should be completed with: "According to the latest assessment report by the group of states against corruption (GRECO) in October 2007, Albania has implemented satisfactorily or dealt with satisfactory manner over half of the 13 recommendations contained in the second round evaluation report. Four recommendations have been partly implemented and two recommendations have not been. In order to be in compliance with European standards, all state responsible institutions have taken the appropriate measures in order to meet the remaining recommendations. For that purpose we can mention: the

<sup>2</sup> Decision of the Council of Ministers no 1561 date 3.10.2008.

<sup>3</sup> [http://www.transparency.org/news\\_room/in\\_focus/2008/cpi2008](http://www.transparency.org/news_room/in_focus/2008/cpi2008)

<sup>4</sup> [http://www.transparency.org/news\\_room/in\\_focus/2008/cpi2008/cpi\\_2008\\_table](http://www.transparency.org/news_room/in_focus/2008/cpi2008/cpi_2008_table)

regulations of Criminal Code and including corruption as a crime in all its forms of expression<sup>5</sup>; provisions about the specific facilities of investigation into the criminal offences provided for as corruption, the Law on liability of the legal persons<sup>6</sup> adopted in 2007, the law “On prevention of money laundering and financing of terrorism<sup>7</sup>” approved in 2008, and several sub legal acts<sup>8</sup> that have been elaborated for the purpose of its implementation. The ordinance of the Minister of Finance on “The ways and the proceedings of liberal professions reporting”, applicable to the private accountants, auditors, lawyers, clerks, financial consulting offices. Moreover, Ministry of Justice has drafted different pieces of legislations proposing legal amendments<sup>9</sup> which aimed at adjusting national legislation to the requirement of Civil and criminal law Conventions on corruption.

Paragraph 90 must be completed: “According to the TI the current government has been vocal about anti-corruption reforms it has championed over the past years and which are showing their results. An official task force created to fight corruption and economic crime has increased the number of officials prosecuted and sentenced for corruption, also building confidence among the public that corruption can be punished in Albania. Accordingly to joint investigation unit for the investigation of economic crime and corruption In 2008 there were 84 proceedings carried over with 83 persons investigated, of which 56 were remanded in custody (the majority of custodies were given in 2008). In 2008 there were 249 criminal proceedings with 197 persons investigated of which 68 were held in custody.

With regard to paragraph 96 required updated data should be added: “According to the General Prosecutor Office, during 2008, prosecutors has opened 683 cases for abuses of government offices for abuses of government office, arbitrary action, and distortion of equality in public procurement tenders and 295 persons have been accused. Of these, 81 cases covered specifically corruption charges. 45 officials were prosecuted for criminal offences related to corruption. 58 persons have been trailed and 40 of them have been convicted”.

**Paragraph 106** should be updated: investigation of corruption in the police structures has been significantly improved by the steps undertaken on that purpose (legal amendments, establishment of new structures or internal reorganisations and strengthen of the police capacities).

In order to strengthen the capacities of Interior Audit Unit in the Ministry of Interior a new law “For the Service of Interior Audit in the Ministry of Interior is approved in 2008<sup>10</sup>.

During 2008, the Directory of Service and Interior Audit has received and referred 75 penal denunciations on corruptive acts for 101 police **structures**, 2 high level, 44 medium level and 55 lower level; 29 have been arrested

Moreover, with the implementation of the new Law “For the State Police<sup>11</sup>”, the institutional and structural capacities have been reinforced in order to strike financial crime, corruption and money laundering.

During 2008, the state police has evidenced and referred the initiation of penal prosecution for 339 cases of penal acts for corruption and crimes; employees holding public functions, with 610 suspected authors, 109 are arrested or detained.

Throughout this year, the Directorate against Financial Crime has increased the use of special investigative techniques and has undertaken operational actions, resulting in 40 criminal groups hit, with 198 authors, of which 158 arrested and detained. There have been detected and sequestered a considerable number of facilities used for forging of documents and illegal products. There were successfully organized and executed 26 police operations.

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<sup>5</sup> Law no 9275 date 16.09.2004 On some addenda and changes to the law no 7895 date 27.01.1995 “Criminal Code of the Republic of Albania” as amended

<sup>6</sup> Law no.9754, date 14.6.2007 “On the liability of the legal persons”

<sup>7</sup> Law no 9917 date 19.05.2008 « On prevention of money laundering and financing of terrorism”

<sup>8</sup> Order of the Minister of Finance no 11 date 05.02.09 on “The ways and the proceedings of liberal professions reporting”

Order of the Minister of Finance no 12 date 05.02.09

Order of the Minister of Finance no 15 date 16.02.09

Order of the Minister of Finance no 16 date 16.02.09

<sup>9</sup> Law no 10053, date 29.12.2008 “On some addenda and changes to the Law no 7961, date 12.07.1995 « Labor Code of the Republic of Albania »

Law no 10005, date 23.10.2008 “On some addenda and changes to the Law no 8510, date 15.07.1999 « For the extra-contractual responsibility of the public administration »

<sup>10</sup> Law no.10002, date 06.10.2008, “For the Service of Interior Audit in the Ministry of Interior

<sup>11</sup> Law no. 9749, date 04.06.2007 “For the State Police”



### 3.3.2 Functioning of the judiciary

With regard to paragraph 116 we make clear that the total number of cases against Albania is 78. out of these 56 cases are being examined by in front of the European Court of Human Rights, and it is expected for the verdict to be taken (pending cases). The object of these cases is mainly the right to have a regular legal process and the right of property. The cases are mainly civil, penal, and administrative. Meanwhile, the Court has taken its decision for 22 cases, which are now in the stage of the general and individual measures implementation

With regard to paragraph 120 we make clear that “The organic law on the judiciary does not include, and because of its nature could not include, the clarification of the competences of the inspectorates of the Ministry of Justice and the High Council of Justice (HCJ). This is provided by another law the one “On the organization and functioning of the High Council of Justice” in the end of 2008 a twinning project between HCJ and its homologous bodies in Spain and Italy proposed a solution for the inspectorates’ issue in these two institutions and their respective responsibilities. The results reached by this project have been supported by the Ministry of Interior and HCJ, and a common work team has been established to make the necessary amendments to the organic law “On the organization and functioning of the High Council of Justice” specifically for this issue.

Regarding **paragraph 125** that lack of space and assistance of other state authorities delayed the enforcement of judgments by the bailiffs, thus being a negative indicator for the respect of the deadlines, we would like to explain that:

“Code of Civil Procedure” in itself makes the main legal basis regarding the execution form of the executive titles. It is not the lack of space or the assistance of the other state authorities the reason for the prolongation of the procedural deadlines, but in the course of the dispositions implementation for the execution of the executive titles were noticed some misunderstandings, which in the context of the improvement of the bailiff service work were eliminated due to amendments of the Code of Civil Procedure, enabling even the effective execution of the executive titles within the procedural deadlines.

These amendments will constantly improve the work of the bailiff service to the benefit of the enhancement of its efficiency and quality towards the citizens and the juridical persons, in the execution of the executive titles, through the setting of final deadlines and clear procedures, for the courts and the bailiff service, as well. We would also like to highlight the fact that the adopted amendments, by the end of last year, in the execution procedure of the court decisions were welcomed by all the groups of interest and were also considered as necessary. They were also welcomed by EURALIUS, which is also the co-author of this important legislative packet regarding the court decision execution.

Another reform that was accomplished for the enhancement of the execution efficiency is also the privatization of the Court Bailiff Service. Based on experience, the specific circumstances and our country’s judicial tradition this service is thought to be a two track system, being executed by the Public Bailiff Service and the Private Bailiff Service. The advantages of this system consist in a better quality of the Bailiff Service, by providing a better motivated service in a free competitive climate.

**Paragraph 126;** the adoption in Parliament of the legal packet: Law 10052 dated 29.12.2008 “On some amendments and addenda to law no. 8116 dated 29.03.1996 “Code of Civil Procedure of Republic of Albania”, amended, and also the law no. 10031 dated 11.12.2008 “On the service of the Private Court Bailiff” will provide a positive impact to the court involved subjects and even during the execution process, or else in the materialization of their rights.

The legal packet was adopted with a broad consensus in Parliament and was welcomed by different groups of interest and the EU assistance, mentioning: Bank of Albania, SPI Albania Project, Ministry of Integration, Ministry of Interiors, State Advocate, Ministry of Finances and also the assistance of the European Delegation, EURALIUS, the twining project on “Improvement of the Justice System on Trade Affairs”.

Likewise, a series of other laws are being consulted beforehand with the participation of many representatives of various national and international institutions, which have submitted their opinions and suggestions even in the written form. A few weeks ago, mission EURALIUS appraised the very good and intensive cooperation with the Ministry of Justice and other legal actors. It also highlighted the actual achievements, like the new law on the establishment of the execution system with private bailiff and also the introduction of probation service in Albania, thus enabling a broad implementation of the alternative measures to imprisonment. Thus, the last sentence of **paragraph 126** should be removed as incorrect.

Regarding **paragraphs 128-129**, it should be stressed that the law “On some amendments and addenda to law “On the organization and functioning of the Prosecution in the Republic of Albania” was adopted with a broad consensus in Parliament and it was the outcome of a joint work of prosecutors, legal advisers, academics, foreign missions, etc for almost a year. The law was supported in every sentence and word by EURALIUS and OPDAT, which submitted their approval in writing. Therefore, there is no risk for the violation of the independence of the prosecution institution by this law; on the contrary its amended articles enhance greatly the independence of this institution in Albania, in compliance with the Council of Europe standards.

#### *3.4.1. Police conduct, pre-trial detention and prison conditions*

**Paragraph 135** informs that the process for the full transferring of the pre-trial detention service from the Ministry of Interiors to the Ministry of Justice was completed in June 2007 and actually the pre-trial system is fully administrated by the Ministry of Justice. The new prisons in Vlore, Fushe Kruje and Korce also have pre-trial detention sections and the conditions for the treatment and protection of human rights of the pre-trial detainees have improved greatly.

#### *Ill-treatment of prisoners*

During the visits of the European Committee for the Prevention of Torture in 2005 and 2008 was noticed a more positive situation in the visited prisons. Drawing a special attention to this issue, Ministry of Justice aimed at the prevention of ill-treatment and when there have been cases of human rights violations, were taken administrative measures against those persons according to the level of violation. The latest case to prove this, are the measures against the director, the doctor and the police officers of the Institution of the Criminal Decisions Execution in Korce.

#### *Overcrowded prisons*

For the reduction of the overcrowding in prisons, in the legislative level, it was adopted the law no. 10023, dated 27.11.2008 “On some amendments and addenda to law no. 7895 dated 27.01.1995, “Criminal Code of Republic of Albania” and also the law no. 10024, dated 27.11.2008, “On some amendments and addenda to law nr. 8331 dated 21.04.1998 “On the execution of the criminal judgments”, which have regulated the issues that have to do with the execution of the alternative detentions to imprisonment. They also foresee the establishment of a special structure, depending on the Ministry of Justice for the control and execution of the alternative punishments.

Regarding infrastructure: with the support of CARDS program three new and contemporary prisons were built in Vloora, Fushe Kruje and Korca, which began to function in 2008. They facilitated a good deal the overcrowding and also improved the respect of prisoners’ rights. In November 2008, with the Budget of the Albanian Government it was finished the construction of the pre-trial detention center in the district of Durres, which together with the reconstruction of the psychiatric facility for the treatment of the persons needing “necessary treatment in a medical institution” reached the value of 157 621 000 leks.

#### *Minors’ treatment*

Ministry of Justice adopted certain rules for minors’ treatment in separate sections in prisons, so that they did not have possibilities to communicate and to contact with the adults. Likewise, it is being cooperated closely with various associations for the organization of activities and qualification of the staff that deals with the juveniles.

Paying a special attention the opening of a special institution for the treatment of the detained juveniles, Ministry of Justice is committed seriously to establish it with the financial support of CARDS program 2004. This institution is expected to operate soon after the approval of its organization structure.

#### *Treatment of “legally irresponsible persons” in special institution*

Regarding the treatment of the persons, medically prescribed with “necessary treatment in a medical institution” (legally irresponsible persons), actually at the Prisons’ Hospital, with the adopted budget of the Ministry of Justice in November 2008, has already finished the reconstruction of a pre-trial detention center with a psychiatric facility in the district of Durres.

#### *Medical Service*

At entering the institution, every prisoner undergoes a medical check up by the doctor of the institution. The General Directorate of Prisons has arranged that every prisoner has a personal medical file. The medical

data are written in it. Only the medical staff has access to it and they are considered as confidential. The meetings between the doctor and the patient are held without the presence of the other employees of the prison administration.

#### *Right to education*

In October 2008, Ministry of Justice and Ministry of Education and Science adopted an agreement on the right to education of the pre-detained and detained persons according to the curricula adopted by the Ministry of Education and Science. This agreement is being implemented in different prisons and met with the interest of the detained persons who are participating in the process offered by the teaching staff of the Ministry of Education and Science

#### *Training of prisons staff*

The Committee for the Prevention of Torture recommended the initial training of the prison police officers recently employed in the prisons system and also the continuation of training for the prisons staff that are actually part of the prisons' system. In this context, the Sector for Preparation and Training of Prison Police Officers at the General Directorate of Prisons has prepared special topics for the training of the main and average employees. The issues on the treatment of the detained and pre-trial detained persons are of great importance.

In the framework of the implementation of the Master Plan for the pre-trial system, with the financial support of the EU, there are also prepared projects for the construction of new pre-trial detention centers for the districts of Shkodra, Fieri, Berat, Elbasan, Gjirokaster and Kukes. There are also granted the necessary funds for the construction of some new prisons. The improvement of infrastructure will influence even the change of the conditions and also the better respect of the rights of the detainees.

Regarding **paragraph 136**, we would like to explain that: the procedures for the treatment of the arrested persons by the State Police, while accompanied, kept in police stations and commissariats, detained, arrested and interrogated are defined in the Constitution of the Republic of Albania, in law nr. 9749 dated 04.06.2007 "On the State Police" and the Criminal Procedure Code and other sub-legal acts related to it.

Likewise, in 2007 and by the beginning of 2008, it was re-organized the entire local police structure, aiming to improve the service quality and to draw it closer to the community. In this context, it was also established and is operating a new Police Training Department and it is also set a new police training and education system in cooperation with PAMECA III and ICITAP Program.

Furthermore, it was established the Sector for Complaints and Discipline at the Professional Standards Directorate. This sector, in addition to the Directorate for internal Control Service at the Ministry of Interiors deals with the complaints and discipline violations by the staff, which might be submitted by:

- a) every Albanian citizen, (foreign or without citizenship),
- b) police staff,
- c) representatives of juridical persons (not public)
- d) public administration institutions.

As the result of the enhancement of the training capacities of the police staff in practice, it is noticed the reduction of the ill-treatment, physical punishments or other violations of the rights of the persons accompanied to the police stations.

Thus, in 2008 there are evidenced 67 cases of citizens' complaints for the exercise of different forms of violation (verbal or physical), 25 cases less than in 2007. After their verification by the Internal Control, the files are sent for legal proceedings, in 22 cases for 29 police officers, or 13 cases less than in 2007.

There are no cases that the accompanied or arrested persons were not informed of the reasons of their arrest. These persons since at the very first moment of their arrestment by the judicial police officers are informed on the rights granted by law, to ask for legal defense, to inform someone from the family members or any other person, not to make any comments or speak without the presence of their attorney.

Lately, aiming to further improve the procedures and physical conditions for the respect and guarantee of the rights of the arrested or detained persons, it was also adopted the Rule of General Director of the State Police, no. 139 dated 25.02.2009 "On the security and guarantee of the accompanied or arrested persons in the police stations". It defines the concrete tasks for the local police structures, the implementation of which will improve the guarantee and respect of the rights of this category.

All the national or international NGOs and associations focusing on protection of human rights and freedoms are provided the conditions and facilities to enter and inspect at any time the conditions of the pre-trialed detainees, and even to interview them on their complaints or different kinds of violations. Every time they have submitted their requests, they were issued with an authorization or a special permission (for 6- months) by the Department of Public Security.

Trying to prevent the ill-treatment of the detainees and in particular of the minors, upon the proposal of the Ministry of Interiors, the Parliament of Republic of Albania passed the law nr. 9859, dated 21.01.2008 "On some addenda and amendments to law nr. 7895, dated 27.1.1995 "Criminal Code of the Republic of Albania" amended:

Article 124/b of the above-mentioned law "Ill-treatment of minors" states:

- The physical or mental ill-treatment of the minor by the person, who is obliged to take care of him, is condemned from 3 months – two years imprisonment.
- Obliging the minor to work to provide money, to beg or commit actions that harm his health are punished up to 4 years plus a fine from 50 thousand to one million leks.
- When serious harm to the health or death of the child has resulted, it is punishable by ten-twenty years of imprisonment."

Aiming at the frequent qualification of the police structures, there are organized several training courses and are also studied the topics of the manual: The police officers interview the minors- the children's rights, procedural guarantees and interview techniques."

#### 3.4.5. Minorities

**Paragraph 181** is incorrect because the Albanian government is a member of Decade of Roma Inclusion, the initiative of the Central and Southeastern European countries, assisted also by the World Bank, UNDP and the Institute of Open Society, to improve the social conditions of the Roma minority in education, employment, health and housing.

Albania applied for membership in February 2008 and received the member status in July 2008. With the membership in Decade of Roma Inclusion in July 2008, the Ministry of Labor, Social Affairs and Equal Chances was assigned by the Prime Minister to prepare the National Action Plan for the implementation of the Decade of Roma Inclusion. The above – mentioned ministry (the Technical Secretariat for the Roma minority with the support of UNDP) launched a broad consulting process with all the main involved institutions. (ministries of line, Department for Strategies and Coordination of Donators at the Prime Ministry, State Minorities Committee) local units, Roma organizations, etc. The outcome of these consultations was that the National Action Plan needed updating of the Action Plan of 2003 Strategy (6 main fields), out of which 4 action fields would make the Decade of Roma Inclusion National Plan.

The process began with the mobilization of the Task Force of the Technical Secretariat for Roma Minority contact persons from the ministries of line, Department of Strategies and Coordination of Donators in Prime Ministry, State Committee for Minorities, under the assistance of the UNDP. They gathered and analyzed all the sector strategies according to the priority fields and also organized two consultative workshops with the contact persons dealing with Roma issue at the line ministries also with the presence of local representatives in Fieri, Elbasan and Tirana.

Likewise, the Prime Minister institutionalized the responsible Inter-ministerial Group for the implementation and follow up of this strategy. This group also focuses on the updating of the National Action Plan. There were held three consultative meetings with the Roma organizations and it was prepared the first draft which is being distributed for comments and suggestions to the ministries, local government with a high Roma population, Roma and non-Roma organizations involved and also to the donator organizations. The final draft will also be submitted for approval to the Council of Ministers.

It is important to appraise the contribution of the Roma organizations starting with the collection of data, identification of needs, their reasons, and proposed measures. Likewise, there are submitted recommendations on behalf of a group of Roma organizations on the proposed measures in all the fields and the institutional structure for the implementation and monitoring of the Roma Minority National Action Plan. These suggestions together with those of other partners will be included by the working group in the final draft. The National Action Plan of the Decade for Roma Inclusion includes six fields: education, culture heritage, integration into the job market, better access to health services, improvement of housing conditions, and infrastructure and prevention and reduction of social and institutional discrimination against Roma minority.

The final draft is expected to be ready by the end of April and it will include a guide for its implementation and monitoring at the central and local level together with a map of the potential donators in every field.

The Technical Secretariat for Roma Minority at Ministry of Labor and Social Affairs, as the monitoring structure for the implementation of Roma Minority National Strategy required that the responsible institutions for this strategy's implementation should take concrete steps to promote its implementation at local level, allocating funds for specific objectives at the respective institutions or the units of local government (municipality, communes, districts) and also to involve experts and organizations to address the needs of the Roma community in these regions.

The local authorities are also requested to begin to draft local plans for the implementation of the strategy objectives in compliance with the national plan, by working closely with the central institutions and the donators to support the development of the capacities and the financing of the developing projects for this community.

Aiming at the strengthening of the monitoring structure of the Strategy on Roma Minority, it was also established an Inter-Ministerial Group at the level of Deputy Ministers, and the Ministry of Labor and Social Affairs was assigned to lead this group, which will focus on the implementation of the Roma Minority National Strategy and the Action Plan of "Decade of Roma Inclusion" 2005-2015.

The Technical Secretariat for Roma Minority has tried through several initiatives and projects to encourage the cooperation between the Roma NGO's and the Local Government, aiming to draft the local projects in compliance with the needs of Roma community.

Furthermore, local authorities are requested to develop informing programs in cooperation with central institutions on the objectives of the strategy and their role in its implementation; to develop informing programs in cooperation with Roma NGO's on the content of the strategy goals and also on the way they may profit from the undertaken measures and accomplished reforms in various fields.

**Paragraph 182** – The lack of the civil registry is a wide-spread phenomenon to the Roma community in Albania. The problem comes up in several forms, dominated generally by the lack of birth registry, housing documentations, marriages and divorces (including children's custody) and death certificates. The lack of the civil document prevents these individuals to have access to public and social services. Thus, they do not profit any kind of economic assistance, social housing, education at schools, free health services, etc.

The lack of the civil registry hinders these persons to be issued with the identity cards and therefore it generates further obstacles in the exercise of their legal rights, such as to own or sell their property.

In the course of these years, the Government has demonstrated a great commitment and undertaken several efforts to address the birth registry problem for this community.

The new law on registry adopted in June 2008, which avoids the 45 day- limit for the birth registry and the legal procedure for the cases of breaching it, means a great help to the persons who need to register their children.

Likewise, the Ministry of Education and Science has issued a recommendation to allow the Roma unregistered children attend school. For this category of children, the usual school program is not practiced, anyway. "The Second Chance curricula" is applicable for them. It is applied to those children who have abandoned school.

Even many international organizations report to have supported the civil registry (particularly the birth registry) of the Roma communities, like UNICEF, TERRE DES HOMMES, TLAS, which offer legal assistance for free to the communities in need. UNDP joined also this group of organizations with its project "Empowering the Vulnerable Minority Communities in Albania".

The main goal of this project is to support the civil registry of the vulnerable communities (Roma and Egyptians) and to facilitate their access to public and social services. This project also supports TLAS with the identification of the cases which need the civil registry, by covering even the financial costs, of around 300 cases in two years. This project also is financing several activities and training courses together with the legal activities organized by TLAS in tin the operating regions of this project.

Nevertheless, the results of such interventions are limited in certain geographical regions and do not always guarantee their continuation, due to the lack of constant financing by the donation organizations. They can also be used by the Ministry of Interiors in the framework of the project: "Registration of birth deliveries of Roma community in Albania" to draft a general intervention plan.

Regarding **paragraph 202**, stating that: "... a transit country for trafficking in human beings" we would like to explain that: referring to the analysis and statistics for several years in succession, Albania is not considered anymore as a transit country for the trafficked victims. The number of trafficked victims is minimized, drawing Albania out of the map of the countries sourcing this phenomenon. (Annual Report for Human Beings Trafficking – 2008; the American State Department)

As a fact, in 2007 12 women and 4 minors (all identified as victims of trafficking) have cooperated with the justice system.

2008 marked a great improvement in the identification of the trafficked victims by the police forces, also in the unification of the number of the reported victims among all the signatories in the National Mechanism of Reference, explained in point 210.

The examination of all the cases in 2008, proves that the trafficking phenomenon has decreased greatly taking also in account the fact that nearly 80 per cent of the identified cases in 2008 had been trafficked years ago, but identified and being assisted during this year. In 2008, there is also an increase of the number of the registered legal proceedings, which testifies the improvement of the identification, reference and protection of the trafficked victims and possible trafficking victims.

Albania is even actually considered as the source country for the illegal emigration and there are almost no considerable cases for the use of the Albanian territory as a transit country for the illegal trespass of the state border.

Regarding **Paragraph 203**, the Albanian legislation has foreseen the trafficking of human beings, women and children since 2001, when the Albanian Parliament adopted the law "On some amendments and addenda to the Criminal Code of the Republic of Albania" and not as it is stated in the report, since 2004. 2004 marked improvements in the Albanian legislation referring to the trends of the criminal offences, mentioning also the establishment of Heavy Crimes Prosecutor.

Trafficking of human beings with the purpose of material profit or any other profit is punished by five to fifteen years of imprisonment plus a fine of 2-5 million leks, as foreseen by article 110.a.

If it is carried out in collusion, then the punishment is burdened with no less than 15 years and a fine of 6-8 million leks. When the outcome of this criminal offence is the death of the victim, then it becomes no less than 20 years or life imprisonment and also a fine of 7-10 million leks. When it is carried out by taking advantage of an official rapport or any public service, the punishment with imprisonment and also the fine are added with ¼ of the punishment.

Trafficking Women for prostitution, foreseen by article 114/b of the Criminal Code, is punished by 7-15 years of imprisonment and a fine of 3-6 million leks.

Organizing, leading or financing women's trafficking is punished by 10-15 years of imprisonment and a fine of 5-7 million leks. If this criminal offence is committed in collusion or repeatedly, it is punished by no less than 15 years of imprisonment and a fine of 6-8 million leks. When the criminal offence has caused the death of the victim, it is punished by no less than 20 years or life imprisonment and also with a fine of 7-10 million leks. When it is carried out by taking advantage of an official rapport or any public service, the punishment with imprisonment and also the fine are added with ¼ of the punishment.

Trafficking of minors, foreseen by article 128.b of the Criminal Code is punished by 7-15 years of imprisonment and a fine of 4-6 million leks. Organizing, leading or financing children's trafficking is punished by 10-20 years of imprisonment and a fine of 6-8 million leks. The same offense, if committed in collusion with others, or repeatedly, is punished by not less than fifteen years of imprisonment and a fine of 6-8 million leks.

When the criminal offence has caused the death of the victim, is punished by no less than 20 years or life imprisonment and also with a fine of 8-10 million leks. When it is carried out by taking advantage of an official rapport or any public service, the punishment with imprisonment and the fine are also added with ¼ of the punishment.

Regarding **Paragraph 210**, we would like to emphasize that taking into consideration the efforts of government in the fight against trafficking of human beings cannot be considered as modest.

On 18 July 2005 it was signed the agreement *“On the establishment of a national reference mechanism for the identification and the improved assistance for the victims of human beings trafficking” among the Ministry of Social Affairs, Ministry of Interiors, Ministry of Foreign Affairs, NGO “Vatra” in Vlora, NGO “Another Vision” in Elbasan and IOM in Tirana.*

The purpose of this agreement was the improvement of the institutional coordination for the initial protection, medical and social assistance for the actual or potential victims of human beings trafficking, in Albania and abroad, through the establishment of a Reference National Mechanism that would regulate the obligations and guide the coordination among all the parties involved in the identification, reference, accommodation and assistance, joining with the families, the long term re-integration of the trafficked victims, etc.

The responsible structure to coordinate, elaborate and report the necessary actions of all the involved structures in the agreement, which accomplish several tasks and offer services to the victims or possible victims of trafficking, is “The Responsible Authority” established through the joint rule of the Minister of Interiors, Minister of Labour and Social Affairs, and Minister of Foreign Affairs dated 19.05.2006. It is the group of persons by the three agencies involved with a direct function in the identification, investigation, reference, protection and assistance for the trafficked victims.

To support this Authority, it is also created a database to register the data of the identified persons as victims or potential victims of trafficking. The recording of the personal data, is done according to a Rule of the Director of the State Police, nr. 865 dated 26.12.2007 “On the record of the data in the trafficking victims’ database”. It defines the procedures, the assignment of the respective operators/persons, time limit, reports, etc.

It should be emphasized, that the operation of the database for the victims of trafficking has enabled the improvement of the victims of trafficking identification process. During the year 2008 and on, the number of identifications is five times more than last year.

The database for victims of trafficking is based on the standardized interview with the Agreement on National Mechanism of Victims of Trafficking Reference. Furthermore, the centers that provide direct services for the victims of trafficking have continuously improved the programs for the victims of trafficking and the cooperation between the centers and state authorities is strengthened. The National Strategy on the Fight against Human Beings Trafficking for 2008-2010 foresees a great number of activities, referring to the identification and assistance to the victims of trafficking, activities which are being implemented.

Furthermore, in the framework of the reintegration of victims of trafficking, the Albanian government is studying the possibilities and ways to provide financial support for shelters which are not financed from the state budget, by improving the main phase of the involvement in social life.

Moreover, to improve the interview methods of the potential victims and victims of trafficking, and also to improve the identification of these victims by the cross border police and the anti-trafficking units of the police directorates in districts, the General Director of State Police issued a service-order, nr. 871, dated 27.12.2007 “On the procedures for the interview of foreign and Albanian citizens returning from other countries”. It defines clear guidelines for the police officers while interviewing them, the participation of the anti-trafficking specialists, the inclusion of the social agents, etc.

With the initiative of the State Police and the constant international organizations assistance, there have been organized trainings for the anti-trafficking police officers, border police, etc, in order to identify the victims of trafficking according to the guide of national reference mechanism, protection of the children victims of trafficking rights, techniques of investigation of this criminal offense etc. These trainings have become part of the Center for Police Education curricula.