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26th CONFERENCE OF EUROPEAN MINISTERS OF JUSTICE

Helsinki (7-8 April 2005)

Report presented by the Minister of Justice of

ALBANIA

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“SOCIAL ASPECTS OF JUSTICE”

- Measures taken against terrorism and its financing

Albania has consistently and regularly declared and has taken concrete and steady steps to fight terrorism, by employing all of potential resources to prevent its further proliferation in the Albanian territory. At the same time, the state structures, the judiciary and the law enforcement agencies, without any hesitation and within all their capacities, are offering the most extensive cooperation to the other states and the international organizations, taking active part and being leaders of the European and international civilization in the fight against terrorism.

This clear and firm position of Albania is in line with and responds to the mobilization of the international community, to take effective and consistent measures for the prevention and fight against terrorism and phenomenon that induce or facilitate it.

In terms of the plan of recognition and enforcement of the international law, we may declare that Albania is a party to 12 international conventions against terrorism and has placed a special focus on the activities directed to drafting of new international instruments for preventing and fighting it.

Additionally, in response to the Resolution No. 1 on the fight against terrorism of the 24-th Conference of Moscow of the year 2001 and the Resolution of the 25- th Conference of Sofia of the year 2000, Albania performed an intensive activity during 2004 with the aim of improving its internal legislation and the capabilities and skills for international cooperation.

Hence, the following documents have been *ratified* during 2004:

- 1. The Amending Protocol of the European Convention for suppression of terrorism.*
- 2. The Additional Protocol of the Convention on cyber crime.*
- 3. The European Convention On the compensation of the Victims of violent crimes.*
- 4. The Convention on the protection of individuals with regard to the automatic processing of personal data “ and its additional Protocol.*

Also, the Albanian Parliament, aiming to fight terrorism and the phenomenon that induce it, including trafficking and organized crime, enhancing the security of the citizens and respecting the rule of law, human rights and the democratic system, has adopted some important laws, of which we may cite:

- 1. The law “On measures against financing of terrorism” (also, in implementation of the resolution 1373(2001) and following ones of the Security Council of the United Nations) No. Date*
- 2. The law “On the prevention and fight against organized crime”, whose main goal is the identification, seizure and confiscation of properties and funds of the organized crime, including the terrorist assets and its financing sources.*
- 3. The law “On the protection of witnesses and collaborators of justice”.*

4. *The complex laws on amendments and additions of the Criminal Code and the Code of the Criminal Procedure of the Republic of Albania, through which it is given a detailed view of definitions and severe sanctions against terrorism and its financing, the organized crime, all forms of trafficking, corruption, as well as cases of procedures of application of special investigation means of interception, infiltration of police agents, simulations etc and modern in distance procedural methods (video-audio conferences) etc.*

- Legal remedies on issues of liabilities in a credit society

Following the collapse of the regime at early 90, Albania stepped into the way of radical reforms toward the establishment and consolidation of the democratic system, rule of law and market economy.

The new market economy in Albania has paved the way for the continuous growth and progress of the Albanian economy and the welfare of the Albanian citizens. In the frame of these efforts to alleviate poverty and prepare the ground for a safer and more prosperous future, *Albania is in the way of deep reforms, aiming at the modernization of market mechanisms. Among these, the crediting of free initiative and private activity is playing an increasingly decisive role, including the crediting of individuals for the creation of their good living conditions.*

Along the uncontestable achievements and its rapid growth, the new Albanian economy, like in other countries sharing the same experience and development stage, is facing difficulties and problems inflicted by the lack of experience and still restricted capabilities, not only to provide crediting resources, but also to design and implement these crediting schemes, in order to guarantee the fulfillment of the objective of loan-taking and its settlement under normal and affordable conditions and deadlines for their beneficiaries. *In addition to the gradual development of the crediting capacities, the state policies have already been focused on the development of legal mechanisms that not only guarantee their settlement, but also the education of the loan-takers, particularly of young people, in the meaning of uncontestable relations and advantages and the prevention of risks generated by the crediting process in the economic and social aspects.*

Alternatively, *the Civil Code and the Code of Civil Procedure, adopted several years ago, with the assistance of the Council of Europe, provide for a number of provisions related to the safeguard of income and property of the debtor and his family that are vital to them, even when the debtor is not able to settle his debts and loan.* The civil procedural provisions also offer voluntary and obligatory remedies in terms of the issue of debts and relations between the creditor and the debtor. *These provisions attempt to guarantee to the debtor the rights to object the execution of the obligation and to refer to the court to protect his vital interests and promoting a potential consensual programming of deadlines and terms of paying off the debts between the creditor and the debtor.*

The obligatory execution of debts is carried out only upon the order of the court and is effected by *the Bailiff Service, reorganized according to the modern experience in the year 2001, in conformity with the procedures provided for by law and aiming to establish one of the elements of the fair legal process, which is the execution of the decision as well*

as to guarantee the rights and interests of the debtor and of his family. In this respect, an essential legal element is the new law on bankruptcy of the year 2003.

This law, among other things, has in its essence and provides for detailed procedures on the mechanisms of the plan of the reorganization of the settlement of debt obligations, offering protection and guarantee even for debtors, in facing difficulties or inability to pay them off.

The education and counseling of the debtors and citizens in general to the benefits of recognition and enforcement of these new legal mechanisms constitute one of the most important challenges in the future for the Albanian state and society.

- The social mission of the criminal justice system

The criminal legislation of the Republic of Albania fully complies with the principles sanctioned in the European Convention of Human Rights and Fundamental Freedoms. The Criminal Code and the Code of Criminal Procedure, drafted in 1995 and 1996, through the regular amendments and improvements made so far, have in their essence, **among other things**, the mission to protect the human dignity, the human rights and freedoms, the constitutional order etc from the criminal offenses, as well as their prevention in the future. These Codes sanction the constitutional principles of rule of law, of equality before law, of justice in fining guilt and imposing sentence and also humanism.

The enforcement and continuous improvements of the criminal legislation are targeted to providing for clear and adequate definitions concerning criminal offenses and sanctions against guilty persons. However, their sentence does not constitute a sole purpose per se. The law directs the Albanian courts to make the individualization of the sentence, as case may be, in order to impose an appropriate sentence to the guilty person not only in relation to the committed offense, but also to a certain extent that may induce to the society and the victim and his relatives the perception of the existence and functioning of justice, the biggest possible compensation of the moral and economic damage inflicted to them, as to serve the rehabilitation and education of the guilty person, the future and gradual reintegration in society, including his rehabilitation and potential peaceful relations with the victim and his relatives.

That is certainly quite a complex and difficult challenge to be faced in all of its aspects. The success and the effectiveness of the enforcement of criminal justice, its penalizing and social mission depend on a wide range of traditional or modern factors. Even under the conditions of Albania, the fulfillment of the missions of criminal justice has a number of problems and implications related to the economic situation, the culture and the historical traditions of the society, considering the scarce experience and the still limited capacities of human and financial resources available to the state, legal bodies, law enforcement agencies and organizations of civil society.

However, The Criminal Code provides for the implementation of mitigating circumstances, alternatives of sentence to imprisonment up to exclusion from sentence in cases when the person that has committed the offense expresses deep repentance, when he has compensated the damage inflicted by the criminal offense or has actively helped to abolish or reduce the consequences of the criminal offense when the relations between the person that has committed the offense and the victim have become normal.

Simultaneously, the Albanian criminal legislation provides for, in relation to a certain category of criminal offenses, *the potential respective procedures, through which the court proposes and makes efforts to reconcile the defendant with the victim and his relatives and serving the sentence through public labor, as an alternative measure for deprivation of liberty in certain cases.*

Referring to article 35 of the Code of Criminal Procedure, the minors, as a special category, are administered special legal and psychological assistance, at each level of proceeding, in the presence of the parent or the persons requested by the minor. The Code of Criminal Procedure stipulates that when the defendant is under the age of 18, the assistance of a counsel is obligatory.

Alternatively, new modern elements of the area of the prevention of criminality are being promoted in the Albanian legislation and tradition, attaching special importance to the social aspects related to causes and consequences due to the commission of a criminal offense. Starting from the year 1993, Albania has initiated the application of a new practice such as mediation, as a method of resolving disputes during the criminal and civil judicial process and out of it and as an extra judicial activity in criminal and civil cases. **According to the Code of Criminal Procedure (article 338), the mediation in the criminal process is performed in the case of offenses that are followed upon the request of the accuser victim.** On the other hand, the Albanian parliament has adopted the law “*On mediation*” of the year 2003, annulling the existing ones of the year 1999, providing for some new mechanisms on the mediation of the resolution and mitigation of the consequences of the criminal offense in relations between the victim and the defendant or the guilty person. The parties in conflict, in cases provided for by law, may request on a voluntary basis or be induced by the prosecutor or the court to identify the way of reconciliation and alleviation of social consequences and damages inflicted by the criminal offense.

A legislative measure that is expected to contribute to the compensation of damages suffered by the victims from the commission of the criminal offenses is also the law “*On the prevention and fight of organized crime*”, which among other things provides for detailed rules and procedures regarding the destination of assets of the criminal offense for the compensation of damages that victims of crime suffer, in order to support and treat them so as to survive their psycho- social and economic trauma. Simultaneously, this law provides for detailed rules regarding the destination of criminal assets of the criminal offense for the per education and rehabilitation of the convicted persons, for the rehabilitation of those social classes, particularly of young people that are exposed or victims of the action of crime, for the rehabilitation of these social classes and areas exposed to crime due to poverty, lack of education and legal background. The adoption of Laws No. 8331, dated 21.04.1998 “*On the execution of criminal decisions*”, Nr.8328, dated 16.04.1998 “*On rights and treatment of persons sentenced to imprisonment*” and the General Regulation of Prisons, by Decision of Council of Ministers No. 63, dated. 09.03.2000, has provided for and introduced some novelties in treating this age group, as well as rules on the method of the execution of the decisions taken for them. Their treatment other than that for the adults, including individual and group programs, the use of training manuals for staffs working with these minors, the provision of facilities in implementation of the provisions of these laws, such as library, classrooms, recreation centers etc are the outcomes of the enforcement of legal amendments.

These constitute only some of the regular steps taken by the Albanian state, in order to punish the crime effectively, to make justice, to support and compensate the damage suffered by the victims and to enable the people guilty of criminal offenses, social and economic rehabilitation.

As having done so far, Albania will play an active role and place special focus on the promotion and effective implementation of the bilateral and multilateral international cooperation with Member States of the Council of Europe and beyond. The exchange of experience, drafting, recognition and application of international instruments, the provision of effective economic support and the exchange of cultures and traditions will certainly ensure a better future for the European countries and nationals, in terms of their approximation and integration.