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**REPORT BY  
THE COMMISSIONER FOR HUMAN RIGHTS  
MR THOMAS HAMMARBERG  
  
ON HIS VISIT TO ALBANIA  
27 October – 2 November 2007**

For the attention of the Committee of Ministers  
and the Parliamentary Assembly

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## I. INTRODUCTION

1. The Council of Europe Commissioner for Human Rights, Mr. Thomas Hammarberg conducted an official visit to Albania from 27 October to 2 November 2007 upon invitation by Mr. Lulzim Basha, Minister of Foreign Affairs of Albania. The visit was part of a continuous process of regular country missions by the Commissioner to all member states of the Council of Europe to assess their effective respect for human rights. The Commissioner was accompanied by Mr. Berry Krajl, Mr. Alp Ay and Mr. Andrew Forde, members of his Office.
2. In the course of his visit, the Commissioner met with the President of Albania Mr. Bamir Topi, Speaker of Parliament Ms. Josephina Topalli, Prime Minister Mr. Sali Berisha, Minister of Foreign Affairs Mr. Lulzim Basha, Minister of Justice Mr. Ilir Rusmali, Minister of Interior Mr. Bujar Nishani, Minister of Labour, Social Affairs and Equal opportunities Mr. Koco Barka, Minister of Education and Science Mr. Genc Pollo and Mayor of Tirana Mr. Edi Rama. He also met with the Ombudsman, parliamentarians, high representatives of judiciary as well as civil society representatives. The Commissioner and his team also visited the cities of Shkodra, Vloara and Elbasan for meetings with the local authorities. He also made several institutional visits to facilities and sites in these cities and in Tirana, such as detention centres, prisons, psychiatric hospitals, orphanages, schools.
3. The Commissioner expresses his great appreciation for the generous cooperation of the Albanian authorities at all levels in facilitating the visit and wishes to thank to the Minister of Foreign Affairs and his Ministry for their support. The Commissioner extends his gratitude to all people he met during his visit including the representatives of civil society for their open attitude and constructive approach.
4. The main purpose of the visit and this report is to take stock of the current human rights situation in Albania, to identify difficulties and to explore the appropriate ways and means for improving the protection and promotion of human rights. The Commissioner hopes that this report will serve as a tool for continued dialogue and cooperation with all stakeholders in Albania.
5. This report is based on information obtained during the visit along with the statements and reports provided by the authorities and civil society organizations. Relevant reports prepared by the monitoring mechanisms of the Council of Europe and other international organisations are also referred to. The report does not provide an exhaustive analysis of the human rights situation in Albania but rather reflects what the Commissioner considers to be the priorities for improving the protection of human rights in Albania.
6. The report does not elaborate on the current political and economic situation of Albania. Nevertheless, the Commissioner would like to share at the outset his impression that the polarised political climate prevailing in the country may in some situations affect the standing of institutions, which should be – and be perceived to be – impartial. Party politics seem to often clash with the requirements of the rule of law, leading to ad hoc solutions. In the recent discussion on the performance of the General Prosecutor, for instance, statements were made that risked jeopardising the non-political nature of that office. Another example of the same phenomenon may be found in the far-reaching changes to staff in the public administration after elections reported to the Commissioner, which could indeed harm the perception of an independent civil service. Clarity of rules regarding mandate periods, appointment procedures and terms of reference is essential to avoid divisive debates on such issues and to protect the independence of institution which should have such status.

7. Another general impression, which may be worth recording here, is that privatisation of state-owned land which had earlier been confiscated from private owners has raised difficult problems for the authorities and the judiciary which are made even more complicated because of the risk of corruption. Property disputes are thus another area in which clear regulations would be particularly helpful.

## II. THE STRUCTURAL PROTECTION OF HUMAN RIGHTS

### *2.1 Membership of the Council of Europe and General Status of Ratification*

8. Albania became a member of the Council of Europe on 13 July 1995 and ratified the European Convention on Human Rights, recognising the right to individual petition on 2 October 1996. The Constitution of Albania, adopted by referendum in 1998, in its Article 122 provides that every international agreement ratified by the Parliament, is a constituting part of the internal judicial system. An international agreement ratified by law is superior to a national law.
9. Albania has ratified the Council of Europe revised European Social Charter and the Council of Europe Convention on Action against Trafficking in Human Beings. She has also ratified the UN Optional Protocol to the Convention against Torture and Cruel Inhuman or Degrading Treatment or Punishment (OPCAT) foreseeing the introduction of independent monitoring schemes over places of detention. Among important instruments that the country has not yet ratified, UN Convention on the Rights of Persons with Disabilities and its optional protocol deserve particular attention. Albania has not yet ratified the European Charter for Regional and Minority Languages.
10. Albania ratified the Rome Statute of the International Criminal Court on 31 January 2003 but has signed Article 98 agreements with the United States of America which excludes the extradition of US citizens and military personnel from Albania. The Commissioner strongly supports the principle that individuals suspected of crimes against humanity, genocide and war crimes should be brought to justice irrespective of their nationality.

### *2.2. People's Advocate (Ombudsman)*

11. The Institution of the People's Advocate is set forth in the Constitution from November 1998. Adopted by parliament in February 1999, the Law on the People's Advocate was drafted in consultation with national stakeholders and international organizations taking into consideration the experience and legislation of other European countries disposing of such an institution. The Ombudsman is elected by parliament with a qualified majority of three fifth of MPs for a five year period, with the possibility of re-election. He submits a yearly report to the parliament. The Ombudsman may also request to address the parliament on all matters he deems important. In 2000, the first (and current) Ombudsman was elected by parliament for a five-year term and was subsequently re-elected in 2005.
12. The Ombudsman has the authority to monitor judicial proceedings and inspect detention and prison facilities. He can also initiate cases and start investigations on the initiative of injured parties or on his own initiative, in cases where a potential victim can not or does not want to come forward with a complaint. The institution does not have power to enforce decisions, but acts as a watchdog and issues recommendations to state institutions and actors, including the parliament.
13. Following a cooperation agreement with "Save the Children", a subsection on children's rights was established in 2004 reflecting the Ombudsman's intention to give enhanced attention to the protection of children's rights.

14. In his meeting with the Commissioner's delegation, the Ombudsman referred to the increasingly high number of petitions and claims that reach his office annually. Out of the yearly approximately 3'000 to 4'000 applications, ca. 60% have been within the jurisdiction of the Ombudsman, out of which ca. 20% were resolved in favour of the applicants. A great number of complaints have addressed police abuse of power, non-enforcement of judgments in civil cases, wrongful dismissal, and land disputes. According to the Ombudsman, the Government response is improving as in the course of the past two years the government in an increasing number of cases has taken concrete steps to correct problems in response to the recommendations of the Ombudsman. The cooperation with prosecutors improved in the course of 2007. With reference to the persistent problem of police brutality, the Ombudsman referred to the dismissal from office of some 200 police officers during the past two years resulting from the Ombudsman's investigations.
15. The Ombudsman stated that the single-biggest number of complaints (374) in 2006 regarded the judiciary, most of which addressed undue length of proceedings. In his latest report to the Parliament, the Ombudsman called for a continuation of the reform process to improve the legal framework and made proposals to remedy this situation as a matter of priority.
16. According to the Ombudsman. Albania has a good legal framework for the protection of human rights, much of it drafted in consultation with international experts and organisations. The main problem remains the lack of efficient and effective implementation of the legislation. The Ombudsman specified that more efforts were needed to protect and promote social and economic rights. He referred to a series of conventions the state had ratified in the justice sector requiring "tremendous efforts for proper implementation".
17. The Optional Protocol to the UN Convention against Torture (OPCAT) foresees the establishment of a National Preventive Mechanisms (NPM) i.e. independent mechanisms empowered under national law to prevent torture through unannounced visits to any place of detention. The Protocol expressly requires that States party to the Protocol establish such a mechanism, or decide to allocate this function to an already existing body. Provided a mandate expansion and additional human and financial resources to secure coherent implementation of tasks stemming from the OPCAT/NPM obligation, the NPM could be incorporated under the roof of the Ombudsinstitution. Currently, the authorities in cooperation with the Ombudsman and other stakeholders are exploring ways to establish the mechanism taking into account the comparative experiences of other states party to the Protocol that have already set up the NPM, or are in the process of doing so.

### *2.3. National Action Plan for Human Rights*

18. The Commissioner welcomes the national strategies of Albania on gender equality, people with disabilities, Roma, child protection and mental health development. He notes that some of these strategies have not been accompanied by implementation plans and budgetary resources. During his mission, the Commissioner discussed the idea of a comprehensive national plan of action for the implementation of human rights throughout the country with the authorities including the Prime Minister and the Speaker of the Parliament. Such comprehensive planning would improve coordination of policies and the allocation of resources.
19. The Commissioner appreciates the positive interest of the Albanian authorities he met towards this idea and encourages them to work on a National Plan of Action for Human Rights in Albania through active consultation with all the stakeholders including civil society representatives. The Commissioner would like to express his readiness to share information and experiences with the Albanian authorities on this issue.

#### *2.4. Civil society and NGOs*

20. Albania has a vibrant civil society and numerous NGOs are working to promote and protect human rights in various fields. With their accumulated practical knowledge, expertise and experience in advocacy and cooperation with international actors, they have the potential of being a resourceful partner for the state in the reform process.
21. In his meeting with a number of NGOs, the Commissioner gained the impression that there is a widespread feeling in the NGO community of being sidelined by the government in the reform process. This was reflected in discussions with NGOs where it was stated that “practitioners are not consulted and the reform process implemented, or imposed, top-down without proper consultation with and inclusion of the civil society and NGO sector”. Others referred to the fact that even when NGOs are consulted – often conditioned by the international community calling for consultation processes in legislative reform initiatives – their recommendations are generally not taken into account.

### **III. RULE OF LAW**

#### *3.1 Judiciary*

22. Albania has undertaken serious efforts to reform its justice system during the past decade. The manifold reforms have substantially changed the judicial system almost from scratch and brought about significant improvements. However, the judicial reform process is not completed and must be further pursued with determination, the emphasis being on the effective implementation of fair trial principles in every day practice of both law enforcement and judiciary (including prosecutorial agencies). An OSCE in-depth analysis in 2006 of the country’s criminal justice system, based on comprehensive data and unique insight from a long-standing trial monitoring project, concludes that further improvement was necessary “to create a stable and transparent justice system based on the rule of law”.
23. Problems remain with regard to access to justice for everyone. Despite the procedural laws guaranteeing access to justice for all in theory, the system of legal aid is not adequate in practice and individuals without financial resources face difficulties in accessing the court system. NGOs like the “Office for the Protection of Citizens” (ZMQ) fill in the existing gaps by providing legal advice and financial support securing access to justice for the indigent.
24. Throughout the past years, the legislative framework has been constantly and considerably upgraded to improve judicial procedures as well as the organisation, the career, and the general working conditions of the judiciary. Sometimes the fast pace of legal reform has been counterproductive, insofar as lack of consultation with interest groups, legal experts and civil society in the drafting process resulted in weak and ineffective legislation, and some of the laws were ruled unconstitutional by the Constitutional Court. The greatest concern, however, remains ineffective implementation: well-intended and -drafted legislative reform runs the danger of remaining without effect if clear legal rules are either not respected or abused.
25. The politicized climate in which the judiciary is operating appears to have impacted negatively on the system of justice. The Commissioner heard complaints that political pressure prevented the judiciary from functioning independently and efficiently. Citizens’ trust in state institutions is an important element of any functioning judicial system. This trust is undermined by widespread perceptions of a justice system giving in to political pressure, intimidation and corruption.

26. The government is demonstrating commitment to fight corruption and has adopted a new anti-corruption strategy for 2007–2013 showing a positive shift from casuistic, short-term solutions to more strategic approaches with sustainable measures. The steps taken to fight corruption more determinately resulted in improved operations of tax and customs services and the notable increase in the number of mid- and higher-level officials prosecuted on corruption charges. However, corruption remains widespread, including in the judiciary, and constitutes a serious problem. Both international and national studies indicate a high perception level of corruption in the justice system, seriously impeding its proper functioning and undermining public trust in institutions. More effective and efficient measures addressing corruption in the justice system need to be taken in order to restore public confidence and to enable fair trials and due process. The Commission of European Communities 2007 Progress Report indicates that measures to strengthen the judiciary against corruption were delayed and much work was necessary to address all aspects of the problem, and in particular judicial accountability. The government's anti-corruption policy contributed to a conflict with the prosecutor general, who ultimately was dismissed following the visit in November 2007.
27. The independence of the judiciary is formally guaranteed in and protected by the constitution. The judicial system is organised in first instance district courts, the court for serious crimes and second instance appellate courts. The country's High Court hears both cases from the appellate courts (as last instance) and direct appeals from the district court, if applicable and as defined by the relevant procedure laws. The Constitutional Court primarily decides on the compatibility of laws and international agreements as well as of "other normative acts" with the constitution. After the exhaustion of all other legal means, it also acts as final instance in the adjudication of individual cases alleging denial of due process.
28. In its meeting with the chairman of the Constitutional Court, the Commissioner's delegation was informed that 52 out of 160 claims during 2006 concerned fair trial violations, the majority of which related to the right to a lawyer and access to justice. In eleven cases, the Constitutional Court ruled in favour of the applicants. The increasing number of individual complaints reaching the Court is an indicator for both the lack of public trust in the lower courts as well as a proof of the people's confidence in the Constitutional Court.
29. Judicial procedures remain slow in contradiction of article 42 of the Constitution which guarantees the "right to a fair and public trial, within a reasonable time (...)". A series of factors such as limited resources, bad infrastructure and shortcomings in court management infringed upon citizens' right to have cases adjudicated in a timely fashion. Besides negatively impacting on public opinion and confidence in the justice system, lengthy proceedings cause unnecessary costs for both the parties and the justice system. It also created opportunities for corruptive agreements. In the Commissioner's meeting with the Minister of Justice, the Minister pointed out that it is among the government program's priority objectives to improve this situation and he confirmed that a series of measures have been taken in this regard.
30. The enforcement of domestic court decisions remains slow or, in some cases, non-existent. In two cases, the European Court of Human Rights has found a violation of the right to fair trial because of the non-enforcement of domestic judgements delivered against State authorities. In *Beshiri and others* (judgement of 22/08/2006), the domestic judgment granting the applicants a compensation for the nationalization of their property has not been enforced by the administrative authorities, nor has the domestic judgement of the *Qufaj case* (judgment of 18/11/2004) case, ordering the municipality to compensate the applicant for the unlawful refusal of a building permit, been executed.
31. The Minister of Justice acknowledged the state's responsibility but referred to the underlying causes for these omissions: lack of financial resources (not sufficient funds allocated in budgets of relevant central and local authorities as well as an unclear division between the respective budgets), the non-efficiency of bailiffs, the lack of

effective domestic remedy against non-execution of domestic decisions, as well as the lack of an efficient compensation system for nationalized properties (in the *Beshiri and others*). Both cases are presently under the implementation monitoring mechanism of the Committee of Ministers (CM). Draft changes to legislation stemming from the CM monitoring of the Qufaj-case have been presented to parliament for adoption. The government has submitted its action plan on the execution of the decision in the Beshiri-case to the Execution Department of the Council of Europe. Moreover, a draft law on the execution of court decisions was said to be adopted within the current year.

32. The Minister informed the Commissioner's delegation about the measures the ministry is undertaking to improve the enforcement of judicial decisions. The budget has been increased and the capacity of bailiff offices improved, which, according to the Minister, led to a reduction in the backlog of sentences awaiting enforcement involving state institutions. The government in cooperation with EURALIUS is currently drafting new legislation aiming to improve the legislative framework in the field of execution of court decisions. The Minister confirmed that he will remain seized of the matter and continue to implement measures to improve the execution of judgments.

### 3.2 Police conduct and places of detention

33. Police conduct remains a problem. The legal and organisational measures taken so far to prevent torture and ill-treatment were not sufficient to significantly reduce the number of allegations of excessive use of force by the police at the moment of apprehension and ill-treatment or abuse during arrest or questioning; those remain frequent and continue to feature prominently in reports by both international and national human rights organisations. The failure to investigate and prosecute allegations of ill-treatment effectively and efficiently continues to contribute to a climate of impunity.
34. Torture and other cruel, inhuman, or degrading treatment or punishment is prohibited by the constitution and law. The legal definition of torture in the Criminal Code was amended to comply with Art. 1 of the UN Convention against Torture in 2006, but the amendments to the law on the rights and treatment of inmates have not yet been adopted. The Prosecutor General issued formal instructions to prosecutors and the police to observe human rights in criminal proceedings. Due to lack of funding and infrastructure, the transfer of responsibility for pre-trial detention centres from the Ministry of Interior to the Ministry of Justice, *de iure* due already in 2003, has been very slow and was completed only in the course of 2007. There has been some progress in the implementation of European Committee for the Prevention of Torture (CPT) recommendations, yet many still remain unaddressed. An inter-ministerial supervisory commission was established in 2006 and charged with the coordination of institutions responsible for the implementation of CPT recommendations. Besides representatives from various ministries and institutions, the commission also includes civil society representatives, the Albanian CPT expert as well as experts of the Ombuds institution. It is tasked to report its findings on implementation progress to the government and may suggest immediate and mid-term measures. The commission's composition and working methods add value to the overall prison reform process. Every effort should be made to yet increase the commission's operability and effective functioning.
35. Procedural rights and fair trial standards set forth in and guaranteed by the Constitution and the law are not implemented properly in practice. Persons deprived of their liberty are often not informed about the reasons for arrest or about their rights. Police abuse during suspect interrogations is still frequently reported, though following the completion of the transfer of pre-trial detention facilities under the authority of the Ministry of Justice in 2007, police maltreatment of detainees has decreased compared to reports in 2006. However, basic safeguards against ill-treatment during pre-trial detention are still not applied in a consistent and effective manner: detainees do not get timely access to a lawyer and are often not brought before a judge within the constitutional time periods. Human rights NGOs complained about difficulties to verify allegations of abusive behaviour by law enforcement personnel and guards because detainees were not allowed to communicate in due time with legal representatives and/or the NGO



investigating the allegations. The lack of (timely) access to a doctor following the alleged exposure to violence and of respective medical records further complicated the verification of alleged abuses.

36. In all places of detention (arrest, pre- and post-trial) living conditions and infrastructure remain very poor and, in general, sub-standard. According to both the Prime Minister and the Minister of Justice, the government is investing in refurbishing old buildings or construction of new prison facilities across the country, but sufficient results yet remain to be seen. The Directorate General for Prisons has drafted "Standing Rules" for a series of prisons aiming to improve living conditions, to promote humane treatment, and to prevent degrading treatment, use of violence and torture.
37. The Commissioner's delegation visited the pre-trial detention centres in Tirana (Jordann Misja Street) and Vlora as well as Police Commissariats in Tirana (*Drejtoria e Tiranës*, Myslym Shyri Street) and Shkodra. In his meeting with the Minister of Justice, the Commissioner voiced his concerns with regard to overcrowding in the pre-trial detention centres visited as well as with regard to the allegations of detainees according to which basic healthcare services were only provided for against payment. Moreover, in the pre-trial detention centre in Vlora minors were still not sufficiently separated from adults and had substandard access to education or vocational training and exercise facilities. According to the Minister, overcrowding has been identified as a priority problem and is being addressed with new prisons and pre-trial detention sections being built across the country. As a rule, the government was investigating every corruption allegation through internal control mechanisms, which is also applicable to the allegation regarding detainees' payments for legally guaranteed healthcare services. Efforts were ongoing to improve the juvenile justice system in the country with the pilot project introduction of distinct and separated juvenile justice sections at six district courts; moreover, the government was working with UNICEF to draft a special law on juvenile justice. Another initiative of the Ministry of Justice aimed at improving legislation and practice with regard to alternative sentencing and probation services, which in the words of the Minister are seen as important tools for the improvement of the present situation.
38. Some positive effects resulting from the transfer of responsibility for pre-trial detention from the Ministry of Interior to Justice were tangible in the two police commissariats which the delegation visited in Tirana and Shkodra. The physical transfer of arrestees and detainees to separate pre-trial detention facilities resulted in the normalisation of occupancy and the elimination of overcrowding in police stations. As a matter of fact, only two out of nine cells were occupied with a total number of three detainees at the time of visit to the Shkodra Police Commissariat, whereas only four persons were occupying arrest cells of Tirana Police Directorate, the other cells were empty. In both institutions, a new management has been appointed in early 2007 with the apparent task to remedy the situation described in the CPT's most recent reports. The delegation could assert itself of tangible improvements with regard to the infrastructure and, as described above, the reduction of overcrowding. It remains a point of concern that in both institutions the delegation met persons detained beyond the constitutionally guaranteed time limits without having been presented before a judge.
39. In his meeting with the Prime Minister, the Commissioner was reassured of the government's awareness of the serious situation in prisons and places of detention as well as its full commitment to improve conditions and treatment and to implement CPT recommendations. The Prime Minister pointed to the manifold of steps taken thus far to improve the situation: overcrowding in arrest places was reduced thanks to the completion of transfer of pre-trial detention from the Ministry of Interior to the Ministry of Justice; in every district nation-wide, the government is building new prisons or adapting existing ones; the government had issued a decree addressing both quantity and quality of food in detention places; the 1996 Mental Health Act was finally being implemented and a new institution for the mentally disabled was being constructed; the government also planned to increase the use of alternatives to imprisonment, thus tackling overcrowding from this perspective as well. Due to severe overcrowding in prisons, especially following the transfer of the responsibility of the untried prisoners

from the Ministry of Interior to the Ministry of Justice and following Council of Europe expert support to draft legislation regarding alternative sentences, the Ministry of Justice should consider establishing the new Probation Service.

40. Following the Commissioner's visit in February 2008, the Ombudsman issued a report on conditions in detention facilities and presented it to the new Director General of the Directorate for Prisons. The report states that the main problems remain overcrowding, poor hygiene, and the detention of minors and mentally ill together cells with other detainees. The report stated that, by the end of 2007, there were 4,554 people in pre-trial detention centres and prisons when capacity allows for a maximum of 3,616.

#### **IV. NATIONAL AND OTHER MINORITIES/ ROMA**

41. Albania is a state party to the Framework Convention for the Protection of National Minorities (hereinafter "the Framework Convention") since 2000. The Government submitted its second report to the Advisory Committee of the Framework Convention. On 18 May 2007 and the committee is expected to adopt its Opinion during the first half of 2008 following a visit to the country.
42. Albania has not yet signed the European Charter for Regional or Minority Languages. Some seminars aiming to share information and expertise on the said Charter are being organized in cooperation between the Albanian authorities and the Council of Europe.
43. Albania has made impressive efforts in the protection of minorities. Establishment of the State Committee on Minorities, formulation of a "National Strategy for the Improvement of Living Conditions of the Roma" and various improvements in the relevant legislation are positive examples of steps taken to protect the rights of its minorities.
44. The Framework Convention leaves the definition of the scope of the term "national minority" to the State Parties. Albania recognizes the Greek, Macedonian and Montenegrin minorities as "national" minorities while the Roma and Aromanians/Vlachs are recognized as "ethno-linguistic" ones. It is understood that for recognition as a national minority in Albania, a group of individuals should have a kinship state, share a common language other than Albanian, a national identity, distinct culture and traditions.
45. Persons belonging to the Egyptian community consider themselves as a minority different from both the Roma and Albanian communities. The Albanian authorities, however, state that the Egyptian community does not meet the criteria for a recognised minority, like distinct language and traditions. Nevertheless, the Commissioner considers that the issue should be re-examined by the Government of Albania in consultation with the representatives of this community.
46. The Government of Albania established in March 2004 the State Committee for Minorities (hereinafter "the Committee"), under the authority of the Prime Minister, to "further urge the participation of persons belonging to minorities in the public life as well as to suggest measures for the exercise and the protection of the rights and freedoms of these minorities." The Committee is composed of the representatives of five recognized minorities with a Chairperson selected by the Prime Minister. Currently the Chairperson is a representative of the Greek minority.
47. In view of the importance of the Committee as a central body for minority protection, the Commissioner suggests that its status and mandate should be reviewed and adequate financial and human resources should be provided for its work. This need was mentioned during the Commissioner's meetings with both the Committee and other representatives of minorities.

48. Other means of ensuring constructive communication between the minorities and the authorities are needed as well. During his meetings with the representatives of Roma communities in Elbasan, Vlora and Shkodra, the Commissioner and his delegation observed that there is a clear information gap at the grassroots level concerning the policies and decisions that have direct effect on them. The Commissioner believes that lack of consultation and participation at this level has detrimental effects on the implementation of national plans to secure minority rights.
49. There is a lack of accurate and updated statistical data on minorities in Albania. The last census in Albania was done in 2001 without including questions on national, ethnic and religious belonging. This has had a negative effect on the ability of the Albanian Government to formulate, implement and monitor measures and policies with regard to the persons belonging national minorities. Therefore, the Commissioner urges the Albanian Government to search for the appropriate ways and means for acquiring reliable statistical data on minorities including on age, gender and location.
50. The Greek minority in Albania constitutes the largest minority group in the country. After the last elections, the Human Rights Party which primarily represents the ethnic Greeks in the country won two seats in the Parliament and participated the current governing Coalition with the Minister of Labour, Social Affairs and Equal Opportunities. Their social and economic situation in the country is comparatively positive as is their level of participation in the legislative and executive bodies. However, the Commissioner has received complaints from the Greek minority representatives especially on the issues of education and property restitution. The Commissioner underlines the importance of continues dialogue on these issues.
51. The situation of the Roma community deserves special attention. Estimates on the size of the Roma population in Albania differ from 80.000 to 150.000. A great majority of them are living in deplorable conditions and faced with extreme poverty and social marginalization. A regional study of the UNDP<sup>1</sup> published in 2006 reported that the rates of poverty and extreme poverty rates Roma in Albania are particularly high (78% and 39%). The fact that a Roma woman in Albania earns 36% of the average wage of an Albanian female is another example of the socio-economic situation of the Roma minority in Albania.
52. The Commissioner notes with appreciation the adoption of the "National Strategy for Improving the Living Conditions of the Roma Minority" (hereinafter "the Strategy") in 2003 by the Government of Albania. It was drafted by the representatives of all relevant Ministries of the Albanian Government in consultation with the representatives of the Roma NGOs. The Strategy covers 15 years and comprises five important and broad fields: special education and training; cultural heritage and family; economy, employment, decrease of poverty and social protection; health and infrastructure; and, public order, justice and civil administration. The Ministry of Labour, Social Affairs and Equal Opportunities is monitoring the implementation of the Strategy and has established a special section to this end. An agreement was signed in November 2007 between the Ministry and the United Nations Development Programme (UNDP) for the support of the Strategy.
53. However, the implementation of the Strategy has not been supported by sufficient resources and has also been criticized as being slow and ineffective by various national and international stakeholders. For this kind of strategies, periodic evaluations are vital to ensure that they are updated and really address the acute problems. The Commissioner believes that the monitoring mechanism of this Strategy should be strengthened and clear evaluation mechanisms should be established, with deadlines when appropriate. This should also ensure an effective use of limited financial resources. An active involvement of the Roma community should be assured in all phases of the process.

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<sup>1</sup> UNDP study (2006): "At Risk: Roma and the Displaced in Southeast Europe"

54. Of special importance is the Roma children's access to education. The Commissioner and his delegation had meetings with the representatives of the Roma communities in Shkodra, Vlora and Elbasan and visited schools in Shkodra and Vlora. One conclusion was that there is a need for direct contacts among the local authorities, the educational institutions and the Roma communities in order to formulate initiatives aiming at the decrease of Roma drop-out rates and the increase of Roma children inclusion in pre-school education.
55. During his meetings with the local authorities, the Commissioner recognized ambiguity with regard to the responsibility for the concrete programs and their funding between the local and central authorities. Such ambiguity should not be allowed to prevent the actual implementation of the policies and planning of new initiatives for improving the conditions of minorities in general and the Roma minority in particular. The Commissioner stresses the importance of effective coordination between the central and local authorities with regard to their policies towards the minorities.

## V. PREVENTION OF DISCRIMINATION

### 5.1 General points

56. Albania has ratified Protocol No. 12 to the European Convention on Human Rights providing for a General prohibition of Discrimination. Article 18 of Albanian Constitution states that, "all are equal before the law" and that "no one may be unjustly discriminated against for reasons such as gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic condition, education, social status, or ancestry". The Constitution provides for the enjoyment of civil, political, economic, social and cultural rights by all, however it stops short of defining the term discrimination.
57. Discrimination is not clearly defined in Albanian legislation but a draft Anti-Discrimination law is currently pending consideration by the Parliament. It aims to ensure the equality before the law, protection and equal opportunities for every individual in Albania, irrespective of *inter alia* origin, colour, gender, religion, sexual identity and disability. The draft-law presents an opportunity to facilitate a swift integration of European human rights norms into domestic law. However, it is not yet clear when the Anti-Discrimination law will appear on the Parliament's agenda. The Commissioner encourages every effort to ensure a comprehensive, anti-discrimination law in accordance with European and international standards and thus would urge the authorities to set a date for it to be brought before Parliament as a matter of priority.
58. The existing mechanisms for prevention, protection and prosecution against various forms of discrimination remain weak in Albania. In order to improve compliance with national and international obligations there is a need for further improvements in terms of the competence, activities and overall effectiveness of Anti-Discrimination bodies. Though the People's Advocate is authorised to consider complaints in relation to public administration, his mandate does not include cases of discrimination in employment, private life, or against particular vulnerable groups outside of the public spectrum.
59. Several Council of Europe member states are establishing a fully-independent body to promote equality of treatment and provide independent assistance to victims of discrimination on a wider range of grounds. Experience has demonstrated the advantages of doing so; not least in order to coordinate efforts and improve effectiveness.

## 5.2 Rights of the Child

### a) Legal Protection Framework

60. Albania has ratified the relevant international Conventions relating to Children's rights, including the United Nations Convention on the Rights of the Child which it ratified in 1992.
61. Efforts have indeed been made to ensure that the provisions of international obligations have been transposed into national legislation. The Commissioner is aware that an inter-ministerial committee on the rights of the child has been appointed. A Child Rights Secretariat has been set up at the Ministry of Labour, Social Affairs and Equal Opportunities. However, under the Directorate for Equal Opportunities, there is currently no single independent body authorised and resourced to monitor the implementation of legal obligations to children. The National Agency for Child Protection which is foreseen in the National Strategy for Children has not yet materialised. However, child protection centres have been set up in Elbasan, Pogradec, Korca, Fier and Gjirokastra.
62. The Commissioner, recalling inter alia the *Concluding Observations* of the UN Committee on the Rights of the Child (31 March 2005) reiterates the need for adequate financial and human resources to be made available as a matter of priority, so as to ensure that a mechanism such as a Children's Ombudsman for monitoring the implementation of children's rights and accepting individual and collective complaints is effective.

### b) Right to Education

63. Education in Albania is free and compulsory between the ages of 6 -14 years, and is free up to the age of 18. However according to most recent statistics, although there appears to be a trend of increasing enrolment throughout all levels of education, attendance rates remain low, particularly for children living in poverty. According to UNICEF, the net primary school enrolment ratio from 2000-2005 was 96% for males and 95% for females whereas the net primary school attendance ratio from period 1996-2005 was 54% for males and 50% for females. Many children leave school early and engage in child labour. Domestic and agricultural labour is common.
64. Persistent physical and economic obstacles exist, hindering access to education for vulnerable groups, particularly Roma. The Commissioner was informed of cases of denial of access to schooling on the basis of being HIV positive or on cause of belonging to a minority group. The Commissioner considers it absolutely unacceptable that any child would be denied schooling on such grounds. There is a need to ensure all children complete a full cycle of compulsory primary education, and that vulnerable groups be integrated into mainstream schooling as far as possible.

### c) Juvenile Justice

65. Distinct improvements have been made in recent times to address shortfalls which have been highlighted by the Council of Europe, UN and NGOs in relation to the system of juvenile justice. The Government has established juvenile sections within six district courts to deal especially with juveniles, which is a welcome development as the treatment of juveniles in criminal proceedings should be entirely separate from that of adults. The primary aim must be rehabilitation of the young person and every effort to offer young detainees facilities appropriate to support their continued physical, intellectual and emotional development should be followed.
66. During visits to pre-trial detention centres and prisons the Commissioner was encouraged that improvements have been made since the previous visits of European Committee for the Prevention of Torture (CPT) and welcomes the genuine efforts of management to ensure the highest level of care within their capacity. However, these

recent improvements do not yet assure appropriate access to education, health and mental health care, and sanitary facilities to all young persons. Indeed during his visit to detention facilities in Tirana and Vlora the Commissioner found minors in completely unsuitable conditions. In a pre-trial detention centre visited in Vlora for example, the Commissioner noted that despite genuine efforts by management to separate children from adults, children were still detained in cells adjacent to adults' cells sharing the same small wing and the same exercise area. Being in an environment, in direct contact with adult offenders allows potential for young persons to be influenced by them thus reducing the possibility for those young persons to rehabilitate. Furthermore, these detained children had little access to educational stimuli or play and exercise facilities. The exercise facility was entirely inadequate.

67. In principle, pre-trial detention centres should be for short periods of time – however, although the duration may be short, minimum standards must be adhered to. The Commissioner reiterates that in all cases children in conflict with the law - in accordance with article 37 of the UN Convention on the Rights of the Child - should be detained only as a last resort, for the shortest appropriate period of time, separated from adults and with access to appropriate physical conditions, care, and facilities which support their continued educational and personal development.
68. To ensure the provision of these conditions a strong domestic legal base is essential, and the Commissioner acknowledges and welcomes recent positive developments in this area, including the setting-up in 2007 of juvenile sections in six Qarku (provinces), to deal specifically with juvenile justice. However, this is an area which currently requires much further strengthening in Albania. There is as of yet no Children's Code in place which covers areas such as Child Protection and Juvenile Justice. The Commissioner urges the Albanian authorities to take action to develop a comprehensive legal framework for the protection of children's rights.

#### d) Birth Registration

69. Registration of all children immediately after birth, in accordance with Article 7 of the Convention on the Rights of the Child, is *de facto* not yet fully ensured in Albania, particularly among those living in poverty, not least Roma.
70. Within 45 days of birth in Albania, a new-born must be officially registered, during which period the cost to do so is nil. After this point however, procedural and punitive costs may incur as registration at this stage requires a judicial process. In practice, this is an inhibitive and dissuasive factor for many parents. There are also practical inadequacies in the system of registration whereby hospitals do not immediately provide the necessary documents in order for parents to register their child and further complications arise if a child is born outside of the municipality within which his/her parents are registered. The current legislation does not effectively regulate and address these concerns.
71. Access to other rights may be hindered from the instant a child is not formally registered by their parents on the systems of their municipality and Government – for example access to schooling may be restricted for children without birth certificates. Basic services such as healthcare and education must not be restricted as a consequence of not having a birth certificate – and any instance of such obstacles must be rooted out as a matter of priority. The Commissioner therefore welcomes ongoing efforts being made by the authorities in conjunction with international partners to address the incompleteness of birth registration. He was informed by the Minister for Education that a Ministerial order has been passed in the last year whereby Roma without birth certificates should be admitted to schools on the basis of the rationale that completion of primary schooling for all children is of fundamental importance.
72. The Commissioner reiterates that it is of crucial importance to ensure that a clear register of *all* children exists in order to ensure appropriate access to basic services, such as health and education and allow for forward-planning of services provision for

children and their caregivers. The process of birth registration must be accurate yet as simple, accessible and inexpensive as possible for *all* persons regardless of their financial means.

e) Child Labour

73. Albania has ratified ILO Convention No. 138 on minimum working age and ILO Convention No. 182 on the worst forms of child labour. Article 54 of the Albanian Constitution enshrines the right of every child to protection against violence, ill-treatment, exploitation and work that can impair his or her health or morality and endanger their life or development. Juxtaposed with this and provisions of the European Social Charter which requires Albania to ensure special protection to children protection against dangers particularly in relation to their work, child labour is a phenomenon which appears to remain widespread in Albania. Furthermore, owing to the very nature of the activity, there is a lack of reliable official data regarding its extent.
74. Albanian legislation reflects international norms in defining age limits from which a child is allowed to work. However, in practice these laws seem to have little practical impact in the minds of those employing minors in Albania - particularly in relation to informal work such as agricultural work but also in relation to street labour and begging.
75. The Commissioner is concerned about the situation of children involved in forced labour, in particular victims of sexual exploitation. This phenomenon is notably under-documented yet its perceived scope was highlighted widely to the Commissioner by civil society. Concerns of trafficking for such purposes were acknowledged by the National Coordinator on Trafficking and the Ministry of the Interior. The Commissioner was informed by the Ministry a specific law regarding forced labour is currently going through Parliament; however at the time of the visit it was not yet passed.
76. The Commissioner underlines that every legislative, systematic and procedural effort must be made in order to ensure that *all* children without any discrimination receive at the very least a full cycle of obligatory education - very often those who drop-out of formal education are the very children who become engaged in various forms of illegal or exploitative employment.

f) Violence against Children

77. Children continue to suffer from violence at home and in institutions in Albania. The practice of corporal punishment and violence is not yet generally seen to be malpractice, let alone illegal in the minds of those who perpetrate such violence. Abuse by teachers in schools appears to be widespread. Professional training, to the highest standard for those who work or interact on a professional level with children is absolutely crucial; both initial and continuous. It seems that the incidence of violence by parents, which is much less documented, continues. Albania has ratified the UN Convention on the Rights of the Child, article 19 of which requires measures to prevent and stop corporal punishment. As the Council of Europe Parliamentary Assembly asserted in Recommendation 1666/2004, calling for Europe to become a corporal punishment free zone for children: "Striking a human being is prohibited in European society and children are human beings."
78. The government is addressing the issue with specialised trainings for police officers and the reorganisation of regional police directorates establishing separate units for protection of minors and dealing with domestic violence. Moreover, regional police directorates have been provided with psychologists supporting the work of these units.
79. To address a wider issue of attitude towards the rights of children not to be subjected to such violence requires both a legal base and a firm message from both political and educational institution leadership. Indeed, recognising the crucial role of leadership, the Commissioner further outlined his concerns on this issue in a letter to Prime Minister Berisha in July 2007.

### 5.3 Rights of Persons with Disabilities

80. Statistics presented in the National Strategy on Persons with Disabilities suggest that about 95,000 Albanians are recognized as disabled. The actual number may be significantly higher. Specific provisions to protect the rights of persons with disabilities appear in the Albanian constitution in the context of Social Objectives and prevention of cruel, inhuman or degrading treatment. However, Albania has not yet ratified the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol. According to government interlocutors, the Convention has been disseminated to all institutions with a view to feedback on the present situation and make suggestions for improvements to an expert working group set up as a link to the government. The Commissioner would encourage Albania to instigate a process of consultation with its national and international partners to move towards ratifying this Convention within the shortest possible time.

#### a) Mental Health

81. Progressive steps have been taken by Albania in recent years to improve the psychiatric healthcare. In 1996 the Mental Health Act was passed which places a positive obligation on the state to provide for structures, systems and services for the examination, treatment, rehabilitation, care and assistance to persons in need of psychiatric care. Resources are gradually directed toward these priorities inline with the National Policy and Action Plan for Mental Health Service Development. A Mental Health Officer has recently been appointed by the Ministry of Health. All of these measures indicate recognition of the importance of effectively addressing mental health.

82. Based on his visits to institutional healthcare facilities, the Commissioner was impressed by the evident commitment of management and staff to improve conditions and services offered to patients therein, and would encourage support for their endeavours. The Commissioner, however, recognises that further action is needed in order to improve conditions. In the Psychiatric Hospital in Elbasan - with 330 resident patients at the time – though physical conditions appeared to remain basic though improving. Access to external stimuli to promote continued psychological development was limited and patient's possibility for rehabilitation thus significantly diminished. Furthermore, access to educational facilities was minimal and appeared to be a lack of specially trained staff. As a result, the hospital remains a basic shelter for its residents, rather than functioning as a quality health facility with a clear mandate for appropriate care and treatment of patients and with planned and measured objectives for improving the health of individual patients.

83. The distinction between the profiles of mental and intellectual disabilities appeared not to be adequately defined. The rights of the patients and appropriate treatment for their condition may not be fulfilled as a result.

84. The process of deinstitutionalisation initiated in recent years has had very satisfactory results. The Commissioner considers the practical and rehabilitative effects of deinstitutionalisation and the development of community-based care homes as very positive and would encourage this process to be continued and broadened to the greatest extent possible. In lieu of wide deinstitutionalisation while people remain in institutions their human rights must be respected including through having access to adequate care and contact with the outside world. Such institutions should also be subject to an independent and efficient monitoring system.

85. There is an apparent lack of appropriate regulation of admittance practices to psychiatric facilities. Patients have entered mental health institutions without documentation or court decisions as the law demands. This was particularly noted in Elbasan Psychiatric Hospital. Furthermore, it has been noted that the right of individual patients to information about treatments and procedures is often neglected, a short-coming which seems to reflect a lack of application of the principle of informed consent.



86. Access to services and care is particularly limited for children with disabilities. Although there are little up-to-date data in this regard, Save the Children estimates that 70 to 80 thousand Albanian children have moderate to severe disabilities. In order to have the best possible chance of treatment and/or recovery children with disabilities must have access to appropriate education, health and other social services. The Minister for Labour, Social Affairs and Equal Opportunities informed the Commissioner that efforts will continue to transfer responsibility for institutions and the provision of services to local authorities.

#### 5.4 Rights of Women

87. The equal rights of all citizens are guaranteed by the Albanian Constitution – however, direct and indirect discrimination against women remains a consistent problem. This discrimination has been perpetuated over time in what is predominantly a patriarchal society with a tendency of silence regarding violence against women and societal acceptance of inequality.
88. Albania acceded to CEDAW in 1994, and submitted its initial and second periodic reports in 2002. Yet implementation of its provisions remains weak particularly in relation to equal opportunities and violence against women. Albania has, however, taken several important steps in developing policies and laws that promote gender equality including through adopting a National Strategy and Plan of Action against Gender-based Violence and the Strategy Promoting Gender Equality. However further work is still needed on the implementation of both. Existing law from 2004 covering gender equality does not ensure full protection against discrimination as it covers discrimination only in relation to public life.

##### a) Violence against Women

89. Violence against women, particularly domestic violence is a widespread human rights violation which is under-reported, under-investigated, under-prosecuted and under-sentenced in Albania. There is an un-quantified number of offenders enjoying impunity as the crime is still seen as a private issue and therefore seldom reported.
90. The Commissioner therefore welcomes the current initiative by the National Institute of Statistics (INSTAT) and the United Nations in conducting a comprehensive household survey to track domestic violence in Albania, and hopes the results will be considered closely by the authorities. State efforts to combat the occurrence of this crime and support victims have so far been too weak, but there seems to be momentum for improvement with the government adopting the “National Strategy on Gender Equality and Domestic Violence 2007 – 2010” in December 2007. It is hoped that the adoption of the strategy will contribute to move from a more ad hoc approach in awareness-raising and capacity-building efforts to addressing this crime strategically and more systematically. Shelters for victims of violence are scarce and under resourced, and until very recently, domestic violence against women in particular has never formed part of political discourse.
91. The Commissioner was however encouraged to see that on 1 June 2007 the Law on Measures against Violence in Family Relations entered into force. This law provides the first firm protection mechanism for victims of spousal or domestic violence. Features of it include protection measures and provisions regarding criminalization of the violation of a protection order. This law provides further opportunity for authorities to address the trend of impunity and offers victims reason to report perpetrators. However it does *not* make domestic violence a specific offence.
92. The Commissioner urges the Albanian authorities to ensure the effective implementation of the new law. He welcomes Prime Minister Berisha’s public comments denouncing domestic abuse on 11 December 2007 and a series of statements by the speaker of the Parliament Josephina Topalli. Further measures which the Albanian authorities may consider and which have had positive effects in other Council of Europe

countries include expanding the network and quality of both physical and emotional support and protection for victims, launching national information campaigns, and ensuring an accurate system of data. The Commissioner would draw specific attention to the Council of Europe Committee of Ministers' Recommendation Rec(2002)5 on "The protection of women against violence".

b) Political Representation

93. Women are insufficiently represented in the parliament, lead politics and in other fora for political and public decision-making. This is not only unfair but also a sad waste of potential competence. The Commissioner hopes that the discussion on electoral reform would include an ambition to improve the rate of women in politics.
94. Amendments to the 2004 Gender Equality Act gave the Ministry of Labour, Social Affairs and Equal Opportunities exclusive responsibility for gender equality. Under this Ministry a section on Equal Opportunities has been set up. If this section is empowered and well resourced it may have real and concrete impact.

5.5 Rights of Lesbian, Gay, Bisexual, Transgender Persons

95. Same-sex consensual relations have been decriminalised by the Albanian Parliament but an open discussion regarding homosexuality remains taboo in Albania. Since 2004 the age of consent for heterosexual and homosexuals is 14. Albania does not recognise marriages or civil unions of any kind between same sex partners. A draft antidiscrimination law has been submitted to the parliament; among its provisions it addresses equal opportunities for all irrespective of sexual orientation.
96. LGBT persons are routinely subject to intolerance, physical and psychological violence and seen by many as persons suffering from an "illness". There were reports from the OSCE Mission, human rights NGO's and LGBT groups whom the Commissioner met that the LGBT community suffers abuses not only from the general public, but that there have also been cases of mistreatment by the police. The recent *Naser Muhed Saidik Almalak case* (relating to the arrest of five individuals in Tirana) highlighted shortcomings in police arrest and detention procedures when dealing with LGBT persons, but also discrimination, arbitrariness, maltreatment and the public disclosure of the health status of some of the arrested persons.
97. The People's Advocate holds the mandate to receive complaints from individuals on cases such as discrimination or mistreatment by state authorities including the police. However, there is no single competent body that may accept complaints on the grounds of discrimination on the basis of sexual orientation in Albania in the context of employment. This lacuna, results in victims being dissuaded or discouraged entirely from seeking just satisfaction. The Commissioner would welcome efforts by the Albanian authorities to ensure that any victims of discrimination are firstly made aware of their rights, and have access to a fully independent competent authority to receive their complaint.
98. Although for the past decade same sex acts have been legal, attitudes have not changed much. This lacking public acceptance of LGBT may be attributable to the Communist heritage and patriarchal attitudes which have perpetuated a discriminatory and repressive attitude towards certain groups within society. To sensitise people on diversity of sexuality requires education. This could take the form of a combination of public campaigns, integration of further sexual education within school curricula and further training of state professionals including law enforcement, judicial and medical personnel.

## VI. TRAFFICKING IN HUMAN BEINGS

99. Once a major source and transit country for trafficking in human beings, the country has undertaken significant efforts in recent years to fight this crime more efficiently and effectively created a legislative and organisational-operational framework covering the areas of investigation and prosecution, protection and prevention. Cross-boarder cooperation with neighbouring countries has improved with the signing of a number of bilateral agreements mainly in the fields of law enforcement and boarder control. First results of the country's overall efforts indicate continued vigorous efforts mainly in investigation and prosecution, whereas the government's efforts to protect and reintegrate victims of trafficking remained modest.
100. Since 2004, trafficking in human beings is a distinct criminal offence set forth in the criminal code: trafficking for the purposes of labour and sexual exploitation is a criminal offence providing for penalties from five to 15 years of imprisonment. Trafficking in children and women have been made distinct criminal offences with penalties of up to 20 and 15 years of imprisonment respectively. Albania has ratified the Council of Europe Convention on Action against Trafficking in Human Beings on 6 February 2007. It had ratified the UN Convention against Transnational Organized Crime (UN TOC) and its attached protocols in August 2002 already, subsequently introducing the comprehensive definition of trafficking in human beings as set forth in the Palermo protocol for the legal definition in the country's criminal code. Moreover, a law on witness protection and secondary legislation for the implementation of the law was adopted in 2004, and a series of further legislative reform initiatives were undertaken or are in the process of being drafted.
101. In addition to improving the legislative framework, Albania has created the institutional framework to tackle trafficking in human beings more resolutely. The Office of the National Coordinator for the Fight against Trafficking in Human Beings was established in October 2005 within the Ministry of Interior as main coordinating body and focal point for anti-trafficking activities. The Coordinator was given the rank of Deputy Minister of Interior. Further, a 3-year renewable and adaptable national strategy for the fight against trafficking in human beings was adopted and introduced a comprehensive and ambitious action plan to implement the goals set forth in the strategy. Moreover, a National Referral Mechanism (NRM) was established for the referral of potential victims to assistance and protection services as well as long-term rehabilitation in cooperation with state institutions and NGOs. The National Reception Centre for Victims of Trafficking (NRCVT) was established for reception and initial assistance services for victims including (legal and other) counselling, health services, education and delivers professional skills trainings. In the implementation of its many programs and efforts, the government is cooperating widely with both international organisations and local NGOs.
102. The Commissioner's delegation was informed about plans to create a harmonised and unified information network for the central collection of reliable and verifiable data on trafficking in human beings for analysis and timely detection of trends and dynamics with a view to enable fast and efficient response by relevant organs and pre-empt the detected trends. Moreover, a victim case-tracking database is being developed with the support of the OSCE, but is not fully operational yet. Once implemented, the database will help to record all cases of victims of trafficking returned, referred, handled and protected in Albania.
103. The positive steps taken to fight trafficking more effectively have been contradicted by the reduction of the capacity of the police anti-trafficking unit, allegedly due to cost considerations. On the other hand, a number of bilateral agreements facilitating cooperation with neighbouring police forces from Italy, Montenegro, "the former Yugoslav republic of Macedonia", Greece and the United Kingdom have been signed, resulting in improved cross-boarder cooperation in law enforcement. The positive momentum and results in investigating and prosecuting traffickers should enable the country to further expand operational cooperation agreements with regional and

international partners on trafficking in human beings. There are still reports of cases of corruption in law enforcement agencies as well as judges facilitating trafficking by taking bribes and tipping off traffickers. The government has responded with arresting and prosecuting several law enforcement officers for corruption and abuse of office.

104. Against the background of these efforts, the fight against trafficking has started showing results in the recent years: governmental and non-governmental interlocutors as well as international organisations concurred that there was a declining trend in trafficking in human beings in recent years. Today, the country may still be considered a country of origin for women and girls trafficked for purposes of sexual exploitation, albeit to a lesser extent than in previous years.
105. Whereas trans-national trafficking was reported to be on the decline, all interlocutors concurred in the assessment that internal trafficking was on the rise. The identified victims all stem from the country's poorer regions and disadvantaged backgrounds, with no or only rudimentary education. Poverty, lack of access to education, family circumstances and organised criminal networks continue to be socio-economic root causes perpetuating trafficking for sexual exploitation, begging and cheap labour, with children and Roma particularly concerned. The National Coordinator stated to address internal trafficking as one of her office's top priorities for the period from 2008 – 2010. The Ministry of Labour, Social Affairs and Equal Opportunities has implemented a pilot project establishing specialised Child Protection Units in six municipalities as foreseen in the National Strategy. Decentralised local committees chaired by the respective prefect and operating in multidisciplinary and multifunctional teams have been formed with the goal to identify vulnerable families and prevent potential victims from being drawn into the cycle of trafficking. According to the government, future endeavours will be increasingly concentrated on addressing the socio-economic root causes of trafficking.
106. The Ministry of Education and Science is tasked to include classes on trafficking in human beings in the school curriculum. Special classes have also been set up for children who have dropped out or do not attend school.
107. Although the numbers of trafficked Albanian women and children appears to be decreasing, credible reports indicate that many still are faced with the danger of simply being recycled into trafficking. Owing to the illicit nature of the act, the extent to which re-trafficking exists is undocumented and unclear. However, it is widely assumed that trafficking networks continue to operate and have not yet been broken down. The courts' practice to seize and forfeit illicit assets from trafficking is seen as a step in the right direction to effectively break trafficking networks from operating by cutting off their blood vein.
108. Tackling the widespread problem of victim identification, the government has stepped up its efforts in the course of last year to secure effective identification of victims through initiating interviewing procedures in the presence of not only border, migration and/or anti-trafficking police officers, but reinforced with representatives from the social services and specialised NGO's. However, representatives of specialised anti-trafficking NGOs told the Commissioner that the inclusion of NGOs does not happen on an institutionalised and regular basis and needs to be improved.
109. The Ministry of Interior reported that a pre-screening procedure was established and reception centres set up at main border checkpoints for returnees and potential victims of trafficking. The pre-screening procedures are being carried out by border and anti-trafficking police for returned, inadmissible and deported people from third countries to Albania. It is hoped that these procedures at border crossing points will help to improve shortcomings in victim identification; potential victims of trafficking are referred to the police and social services for further assistance.

110. The bilateral agreement which the Greek and Albanian governments have signed aimed at preventing, protecting and assisting Albanian children being trafficked between the two countries, serves as an example of how neighbouring countries should collaborate to tackle human rights issues of mutual concern. However, for such an agreement to be effective, ratification is necessary by both parties. Albania has ratified the agreement in May 2006 and the Commissioner understands that ratification by the other state party is delayed pending the adoption of a number of amendments to relevant legislation.
111. The Commissioner is encouraged to see responsible businesses have begun the process of endeavouring to address the problem within their field: shortly after the Commissioner's visit on 19 November twenty-two tour and hotel operators signed a Code of Conduct for Protection of Children from Sexual Exploitation.
112. The Commissioner visited the Vatra Shelter for victims of trafficking in Vlora, where he spoke with a number of victims trafficked from rural parts of Albania for sexual exploitation in EU member states. He was also informed of the health, safety and personal security implications this experience has on those victims, whereby not only were they exposed to physical and psychological abuse initially, but often they were faced with marginalisation, stigmatisation, and serious threats against their safety if they attempted to return to their home. Taking into consideration their circumstances and vulnerabilities, the Commissioner highly commends the work of Vatra and similar shelters and their staff in providing a temporary safe-haven for such victims.
113. According to international and national sources working on combating trafficking in human beings, the efforts made are not sustainable yet, despite of a series of recent legal and organisational measures taken, and hampered by four factors: lack of determined implementation of the National Action Plan and the national referral mechanism, shortcomings in the identification of potential trafficking victims, lack of resources and police attitudes not conducive to children's and other victims' protection. With regard to the latter point, the Commissioner calls on the authorities to secure interrogation of potential child victims of trafficking only in the presence of social workers, psychologists and NGOs specialising in child rights.

## **VII. FREEDOM OF EXPRESSION / MEDIA**

114. Freedom of expression and the press is constitutionally guaranteed in Albania. During the last decade Albanian media has experienced an important evolution in becoming pluralistic. At present the total number of media outlets is more than 250, covering printed media, radio and television stations.
115. Defamation is still criminalized in Albania. While the Albanian Criminal Code contains provisions that penalize defamatory expressions and "insults", the Civil Code also has problems and is far from constituting a proper civil defamation framework. The Commissioner appreciates the fact that, for more than two years, there were no criminal defamation cases against journalists. The commitment of the Albanian Government, as confirmed by the Prime Minister during his meeting with the Commissioner, in preventing the use of defamation laws as a tool of pressuring the journalists by the public authorities and politicians is welcomed by the Commissioner.
116. Nevertheless, the Commissioner believes that the existence of criminal defamation laws has still the potential to intimidate journalists and cause self-censorship with negative effects both on the freedom of expression and press but also on the important role of the media for the protection and promotion of democracy and human rights. Therefore, the Commissioner calls for decriminalization of defamation together with the necessary reforms on the relevant provisions of the Albanian Civil Code.

117. One of the issues concerning Albanian media is transparency of media ownership and financing. Welcoming the fact that the Prime Minister and the other relevant authorities of Albania recognize the need for a legislative action on this issue, the Commissioner would like to refer to international guidelines that could be taken as a basis on this issue like the relevant Recommendations of the Committee of Ministers and the Principles for Guaranteeing Editorial Independence formulated by the OSCE Representative on Freedom of the Media in 2003.
118. Self-regulatory mechanisms within the media are of great importance as they could formulate their own criteria, monitoring and procedures aiming to promote and develop professional standards. From this perspective, the Commissioner welcomes the adoption of the Code of Ethics for journalists and the establishment of the Council on Media Ethics and calls for its effective functioning. In parallel to this, the Commissioner would also like to draw the attention of Albanian authorities to the fact that the existing legislation, and its proper implementation, is rather weak on defining the rights of journalists' vis-à-vis owners. The overwhelming majority of journalists are still working without contracts. Albanian Labour Code which also covers the media outlets is not respected in practice at the media sector.
119. To guarantee an independent and autonomous media in the broadcasting sector there should be an adequate and independent regulatory mechanism in place. When composition of the National Council of Radio and Television (NCRT) and the Steering Council of the Public Radio and Television (SCART) was discussed in the parliament, the political parties reached a consensus. Important is also that these regulatory bodies can strengthen their independence.
120. In light of the above, the overall picture of the Albanian media reflects the need for not only a comprehensive and coordinated legislative reform but also effective implementation. The Commissioner welcomes the initiative of the Speaker of the Albanian Parliament who officially requested, with the consent of both the Government and the opposition in Albanian parliament, the assistance of the Council of Europe and European Commission expertise on legislative reforms in this field. The Commissioner underlines that this process should also include active consultations with the relevant NGOs and associations of media professionals in Albania.

## **VIII. RELIGION**

121. According to the Constitution of Albania there is no official state religion. On the other hand, rights and freedoms of the religious communities are constitutionally guaranteed. The main religious communities, namely Muslim (Sunni and Bektashi), Orthodox and Catholic communities are generally living in harmony.
122. Problem of restitution of properties that were confiscated during the communist regime also affects the religious communities. The Commissioner underscores the difficulty of this problem in general and encourages the steps of the Albanian Government through the National Agency for Property Compensation and Restitution that treats the restitution of religious properties as one of the priorities.
123. Appreciating the harmonious religious coexistence in Albania as an important example for the region, the Commissioner would like to call on the leaders of the religious communities in Albania to explore the possibility of joint initiatives on, inter alia, rights of children, domestic violence and trafficking of human beings.

## IX. SUMMARY OF RECOMMENDATIONS

1. Develop a process of comprehensive governmental planning in the field of human rights, incorporating the existing specific plans and ensuring partnership with civil society actors.
2. Consider the possibility of establishing a governmental focal point tasked with responsibility for promoting equal treatment and the implementation of the new Anti-discrimination laws and incorporating as many grounds of discrimination as is feasible.
3. Provide further resources to the Office of the People's Advocate (Ombudsman).

### Rule of Law

4. Take further action to put an end to any tendency of impunity in relation to police brutality. Ensure that allegations of ill-treatment in police custody are properly investigated and offending law enforcement personnel be held to account.
5. Strengthen efforts to eradicate tendencies of corruption in the court system.
6. Review the system of legal aid to ensure that all persons (irrespective of their material wealth) have the opportunity to obtain justice in courts.
7. Give higher priority to programmes to rectify the unacceptable human and material conditions in places of detention.
8. Increase efforts to ensure adequate implementation of fair trial principles as established in the constitution and national legislation.
9. Increase efforts to ensure that court decisions are properly executed.

### Rights of the Child

10. Apply in all cases of children in conflict with the law, the principle of detaining children only as a last resort and for the shortest appropriate period of time, entirely separated from adult inmates, with access to appropriate physical conditions, care, and facilities which support their continued educational and personal development.
11. Develop a comprehensive Children's Code to address weaknesses in the system of Juvenile Justice.
12. Strengthen the system of monitoring the implementation of the rights of the child, including the receipt of complaints and conduct of investigations.
13. Develop a target-driven and results-orientated policy to tackle child poverty and to improve educational opportunities for children living in poverty.
14. Ensure and enforce an outright ban on corporal punishment in domestic settings as well as in all institutions for children including schools, hospitals, and detention centres, and denounce such violence against children from the highest authority.
15. Increase human rights education as part of the curriculum. Ensure that schools offer basic information on general health, including information on HIV/AIDS.
16. Take all legislative and procedural steps to regulate the system of birth registration to ensure all children are registered at birth. Authorities may consider, *inter alia*, adjusting or abolishing associated late-registration fees, extending the time limit for initial registration and developing information and contact points particular for isolated or impoverished families.

### **Rights of Persons with Disabilities**

17. Ensure the effective implementation of the National Strategy on People with Disabilities, and the National Policy and Action Plan for Mental Health Services Development.
18. Invest in means to empower persons with disabilities to realise their rights with particular attention to developing an appropriate independent complaints mechanism and facilitating means for persons to access such a mechanism.
19. Ensure that adequate disaggregated data on the nature and extent of disabilities within society is gathered methodically as a basis for actions and forward planning.
20. Improve procedures of admittance to psychiatric care in accordance with established human rights standards.
21. Continue to invest resources in order into delivering non-institutional care homes for persons with mental disabilities. In the interim, continue to improve the quality of service and care in existing facilities, including the human resources for developmental and educational stimuli.
22. Take action steps to ensure training, guidance and employment opportunities for people with disabilities in Albania in the context of minimising discrimination.
23. Initiate discussion with relevant stakeholders, as preparation for the ratification of the UN Convention on Persons with Disabilities.

### **Rights of Women**

24. Enhance legal and policy safeguards to ensure that the ban on domestic violence is enforced.
25. Continue to denounce domestic violence and discrimination against women from the highest political level in order to promote awareness.
26. Expand the quality and network of support services for the victims of domestic violence to ensure that victims have effective access to physical, medical, and psycho-social support. The government may consider appointing a focal point agency to handle cases of domestic violence and to promote women's rights.
27. Develop the training of professionals who deal with women victims of violence, including police, medical professionals, and judiciary, to handle the particularities of cases of violence in a discrete, efficient and sensitive manner.

### **Rights of Lesbian, Gay, Bisexual and Transgender Persons**

28. Review the status of the proposed Anti-Discrimination law drafted in 2005 and set a date as a matter of priority for its presentation to Parliament.
29. Investigate cases of arbitrary arrest or malpractice by police, and take measures to prevent any discrimination by the law enforcement against LGBT persons.
30. Take steps to develop awareness, promote a culture of tolerance and sensitisation of the public towards LGBT in order to put an end to homophobia and discrimination.

### **Trafficking in Human Beings**

31. Continue to gather and consolidate data on trafficking in Albania; speed up efforts to ensure effective and efficient operation of the new victim case-tracking database.
32. Provide coordinated medical and social services to victims of trafficking.



33. Raise public awareness in order to prevent trafficking in persons.
34. Strengthen the child protection structure in order to prevent the rise of resurgence of large-scale child trafficking.
35. Strengthen the linkages and institutionalise cooperation between government and NGOs to ensure effective work to combat trafficking.
36. Ensure efficient implementation of the new 2008 – 2010 National Action Plan to Combat Trafficking in Human Beings.

#### **National and other Minorities, including Roma**

37. Sign and ratify the European Charter for Regional and Minority Languages.
38. Re-examine the possibility of recognizing the Egyptian community as a separate minority in line with the Opinion of the Advisory Committee and in consultation with the representatives of the said community itself.
39. Review the status and mandate of the State Committee for Minorities in order to strengthen its role and affectivity.
40. Find appropriate ways and means for obtaining updated and reliable statistical data on national minorities, without excluding the option of a nation wide census.
41. Revise the National Strategy for Improving the Living Conditions of the Roma Minority by setting concrete targets and defining effective evaluation process in consultation with the Roma community.
42. Ensure the establishment of mechanisms at the local level to provide continuous and direct contacts among the local authorities, educational institutions and the Roma communities.
43. Ensure effective and clear coordination and cooperation between the central and local authorities with regard to their policies towards the minorities.

#### **Freedom of Expression and of the Media**

44. Decriminalise defamation and reform the relevant provisions of Albanian Civil Code to ensure, *inter alia*, proportionate sanctions.
45. Improve the legislation and regulations on the ownership and financing of media outlets with a view to ensure transparency.
46. Encourage and support the functioning of Council on Media Ethics.
47. Strengthen the political independence of the National Council of Radio and Television.
48. Improve the standards of the public broadcasting service in line with the Council of Europe standards.

#### **Religion**

49. Continue to work on the restitution of religious properties.



# APPENDIX

## COMMENTS OF THE ALBANIAN AUTHORITIES on legal and constitutional changes in the Republic of Albania November 2007 – June 2008

### IX. Summary of recommendations

Approval has been given to law no 9888 of 13.03.2008, amending and extending law no 8328 of 16.04.1998 on the rights and treatment of inmates, establishing the post of People's Advocate (ombudsman), who is now also responsible for the national mechanism for the prevention of torture and inhuman or degrading treatment or punishment.

#### Rule of law

Approval has also been given to law no 9877 of 18.02.2008 on the organisation and functioning of the judiciary in the Republic of Albania, which amends the disciplinary procedure for judges to bring the disciplinary measures which may be imposed into line with European standards.

This law establishes criteria for the appointment of court presidents and their term of office and, for the first time, extends their powers to give them the right to institute disciplinary proceedings against judges. At the same time, it has made it explicit that judges can only be recruited from the school of magistrates. This will avoid interference from the other branches of government in order to secure appointments from outside the system, thus boosting judicial professionalism and independence, which in turn will lead to a higher quality and more impartial system of justice.

Approval has been given, based on broad consensus, to law no 9904 of 21.04.2008, which introduces the following changes to law no 8417 of 21.10.1998 approving the Constitution of the Republic of Albania:

- Article 64, providing for the Assembly to consist of 140 MPs elected through a proportional system based on multi-member constituencies. (Under the previous Article, the Assembly consisted of 140 MPs, 100 of whom were elected directly in single-member constituencies with approximately the same number of voters and 40 were elected from the multi-nominal lists of parties and/or coalitions of parties, according to their position on the list).
- Article 149 (Point 1) restricts the mandate of the Prosecutor General, who shall be appointed by the President of Republic, with the consent of the Assembly, for a mandate of 5 years with a right of re-appointment. (The previous Article made no reference to any restriction of the mandate of the Prosecutor General). Point 2 provides for the Prosecutor General to report to the Assembly on the crime situation.

The approval of the above mentioned constitutional changes, based on a broad consensus between ruling and opposition parties (115 MPs were in favour), indicates that the current political trend is towards institutional dialogue among the political parties about the key problems of concern to the country, such as the elections and Euro-Atlantic integration, constitutional reform and electoral reform, thus superseding the report's assessment that the period prior to the drafting of the report was characterised by "a polarised political climate".

### **Rights of children**

Approval has been given to law no 9833 of 22.11.2007 on the accession of the Republic of Albania to the Optional Protocol to the UN Convention on the rights of the child, on the involvement of children in armed conflicts.

Approval has been given to law no 9834 of 22.11.2007 on the accession of the Republic of Albania to the Optional Protocol to the UN Convention on the rights of the child, on the sale of children, child prostitution and child pornography.

Approval has been given to law no 9888 of 10.03.2008, amending the previous law on the rights and treatment of inmates, in favour of minor offenders.

Approval has been given to Council of Ministers Decision no 715 of 07.05.2008 and new draft legislation on the control of HIV/AIDS, which, in comparison with the 2000 legislation, strengthens and clarifies the means of preventing infectious diseases of HIV/AIDS in Albania, through political involvement, public programmes and detailed legal arrangements.

Approval has been given to Council of Ministers Decision no 80 of 28.01.2008, providing for a sector strategy for social protection and an action plan for its implementation. The strategy reassesses the policies of the Ministry of Labour for children and sets out objectives for new policies.

### **Rights of disabled persons**

Approval has been given to the Council of Ministers Decision of 16.01.2008 on entitlement to and criteria for benefiting from the programme to encourage the employment of unemployed jobseekers, or those in difficulty, aimed at integrating disabled persons, members of the Roma community and so on into the labour market.

### **Rights of women**

Council of Ministers Decision no 913 of 19.12.2007 approved the National Strategy on Gender Equality and Domestic Violence 2007–2010. In accordance with the objectives of its Action Plan, the Police Directorate General has identified the priorities and obligations stemming from it and is monitoring their implementation by regional and local police departments.

### **Trafficking of human beings**

**The Criminal Code was amended in January 2008** by the addition of Article 124/b on maltreatment of minors, which, among other things, makes the exploitation of children through forced labour, begging and other enforced services a criminal offence. A new paragraph has been added to Article 117 on "Pornography", concerning pornography with minors, and Article 128/b on "Trafficking of minors" has been amended to make the recruitment, concealment and reception of minors, as well as their sale, a criminal offence. Current efforts are focussed on drafting an assistance package, which will offer other forms of social support (pertaining to education, vocational education, employment, etc) for such children and their families.

### **National minorities and others, including Roma**

Council of Ministers Decision no 437 of 08.04.2008 committed the Council of Ministers of Albania to the "Decade of Roma 2005–2015" declaration. Following its recent accession to this initiative, the Albanian government is committed to achieving its objectives in the fields of employment, education, housing and health, and to encouraging and supporting the participation and involvement of the Roma minority in this process.

*In the meantime, the following are pending:*

- Approval of the draft law to introduce certain changes to the enforcement chapter of law no 8116 of 29.03.1996 on the Civil Procedure Code of the Republic of Albania, as amended, which is currently being reviewed by the judicial enforcement service.
- Completion of the draft law on "Liberalisation of the Judicial Bailiff Service" is scheduled for July 2008. Work on the preliminary draft legislation on the "classification of enforceable final decisions/judgments" is also well underway. One of the main reasons for initiating this legislative measure is that in a free market, private initiatives are presumed to achieve better results than state ones. Once the draft legislation is approved, it will be distributed among all concerned, including the parties involved in the execution process. In other words, all the protagonists will be informed of the administrative changes arising from the reorganisation and any amendments to the law and subordinate legislation, such as the law on expenses, the law on organisation and functioning of the bailiff service and so on, and the operational legal framework will be established.

Some amendments and changes to the "Ethical Code of Judicial Bailiffs", approved by order no 200 of 17.01.2005 of the Minister of Justice.

- The draft amendment of law no 8730 of 18.01.2001 on the organisation and functioning of the judicial enforcement service, which is being considered in co-operation with the Department of Codification of the Ministry of Justice.
- Work has started, with a European Union investment of € 1.7 million, on the construction of a 40-place centre for the re-integration of minors in Kavaja. Under the contract, work is scheduled for completion by November 2008.

**Amendment of the aliens legislation**

The new draft aliens law has been approved by the Council of Ministers and is currently being considered by the Albanian Assembly. One new feature of the draft law is that it also provides for programmes for the social integration of foreigners into Albanian life and society. The draft aliens law is concerned with such major aspects as who should fall within the scope of the draft legislation, which state authorities exercise powers in this field, the treatment of foreigners, entry and residence documents in the Republic of Albania, etc. The draft law completely regulates the powers of the border police and immigration officials to collect, preserve and process personal data, and requires the maintenance of a register on the monitoring of foreigners, in accordance with EU standards and the legislation on personal data protection. The draft legislation also introduces regulations on unaccompanied minors who might have been subject to trafficking or are considered to be victims of trafficking. When the new law comes into effect, subordinate legislation will be enacted to implement it in practice.

**National Strategy for Combating the Trafficking of Human Beings 2008 – 2010**

The final draft of the 2008-2010 strategy and its action plan was introduced at a national conference on 30 May 2008 and it was approved in principle by the State Committee for Combating the Trafficking of Human Beings at its meeting on 6 June 2008. The document will very shortly be approved by the Council of Ministers. It also enjoys the support and full commitment of all the stakeholders involved in the fight against the trafficking of human beings. The strategy provides for a high level of commitment on the part of state enforcement agencies at central and local level.