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**PROJECT AGAINST CORRUPTION IN ALBANIA (PACA)**

**TECHNICAL PAPER**

# REVIEW OF THE CONSISTENCY OF THE ALBANIAN LEGISLATION IN RESPECT OF THE CONFISCATION OF CRIMINALLY DERIVED ASSETS IN THE LIGHT OF ALBANIA'S INTERNATIONAL AND HUMAN RIGHTS OBLIGATIONS

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## 1 Methodology

1 Prepare a Technical Paper comprising a review of the consistency of the Anti-Money Laundering and Terrorist Financing Law ('AML'), Anti-Mafia Law and provisions of Criminal Procedure Code relevant to seizure and confiscation in light of Albania's relevant international obligations including those derived from Council of Europe's Anti-Money Laundering Convention, United Nations Convention against Corruption, the relevant ECHR case law and the September 2009 MONEYVAL report.

## 2 Introduction

2 The confiscation of assets, following in the wake of certain specified criminal activity, is not new to Albania. It has been possible under Albanian law to seize property as part of a criminal sanction for the offence which the property was used to commit or was somehow intrinsically connected to, see the commentary blow on the Criminal provisions in the Criminal Code, for some time now.

3 However, faced with seemingly little activity by the international law enforcement community and the judiciary in bringing the spirit of these provisions to life and also considering the modern wide ranging confiscation system, less grounded in domestic legal traditions, but rather deriving its impetus from the ratification of international instruments, such as those discussed in more detail below, it is no surprise to see Albania also attempting to pass more effective legislation in this area.

4 The agenda in Albania appears now to be in full swing with the pace being largely set by a whole raft of international Conventions such as the UNTOC and, in particular Chapter 5 of UNCAC, along with the many numerous international organisations, such MONEYVAL, GRECO, the EU and others, whose mandate touches upon or is dedicated to issues pertinent to asset recovery of the proceeds of criminal activity.

5 Any new legislation attempting to bring together a comprehensive package of provisions designed to strengthen and enhance the existing legislation, or indeed is a first attempt at creating legislative norms, on the confiscation of the proceeds of crime must adhere to some basic principles if it is to be effective and if it is to comply with the new international norms that are quickly evolving.

6 Many of the examples across the international arena have led to legislation that is in broad terms an attempt to achieve the following key

provisions.

- Enhance the powers of criminal confiscation following conviction

- Align any existing separate schemes for serious offences such as terrorism, drug trafficking and for other serious crimes

- Create a regime that strengthens the investigation and enforcement powers of the relevant agencies [sets out powers for use in criminal and civil investigations.

- Attempt to introduce new powers of civil recovery to claim for the state the proceeds of criminal activity in cases where it is not possible to prosecute or secure a criminal conviction

- Introduce procedures for the seizure of cash which is reasonably suspected of having been obtained through unlawful conduct or of being intended for use in such conduct, and for the forfeiture of such cash in proceedings before appropriate judicial figures,

- Where possible enhance any existing money laundering powers for example by removing any distinction that exists between the grouping of serious offences

- Imposing tougher disclosure requirements on third parties such as financial institutions

- Introduce new taxation arrangements to enable assets for which there is no proof of income to be taxed.

7 All legislative provisions should attempt to be compatible with any international obligations that exist for the state and also be compatible with international human rights provisions.

8 One interesting aspect of this report's evaluation is the recognition of the concerted attempt by the Albanian state to tackle some of the considerable problems and challenges that it faces in the fight against organised crime. In this respect one points immediately to the introduction of the recent Anti-Mafia Law which introduces a new scheme for the civil recovery of assets by prosecutors in the civil courts. The aim of this civil recovery process is to recover the proceeds of crime from individuals who cannot be prosecuted or convicted, for example as a result of witness intimidation or because they

remain remote from the criminal activity itself but benefit, often very considerably, from its profits.

9 The law also contains a number of procedural provisions designed to align the civil recovery procedure as closely as possible with existing Albanian civil law and normal procedure. Although placing criminal prosecutors with their ability to generate evidence through compulsive measures in a civil procedure will represent challenges.

## 3 An overview of the Albanian Law taking into account the following Statutes: the AML/CTF Law, the Anti-Mafia Law and the Criminal Procedure Code.

### 3.1 The AML/CTF Law

10 Law Nr.9917 (date May 19, 2008) "On the Prevention of Money Laundering and Financing of Terrorism" (the 'AML Law') is described in Article 1 as having the following purpose

*'to prevent laundering of money and proceeds, derived from criminal offences, as well as, the financing of terrorism'.*

11 It appears that the AML Law, supplemented by what appear to have been a number of revisions to incorporate for example the requirements of the European Union AML/CFT Directive 2005/60/EC (the 3rd Directive), is now well established in Albania. Indeed a perusal of the 2009 MONEYVAL Progress Report pays particular testimony to the significant changes that have taken place in Albania in relation to efforts to fight money laundering and terrorist financing since the Third Round evaluation in 2006 when there was very little legislation in place.

12 However, the AML is centered on creating a regime relevant to the fight against money laundering, terrorist financing and to the monitoring and the creation of reporting obligations to the responsible authority rather than a general regime to freeze and confiscate assets. In this sense the AML Law has very few direct provisions relating to the recovery of assets or criminal proceeds. At Article 27 there is a comprehensive list of administrative sanctions but these relate to fines imposed on a wide range of administrative issues such as failure to failure to apply monitoring and identification procedures in the opening of accounts through to failures in respect of reporting obligations.

13 The principal provisions that relate to the criminalisation of the money laundering offences and their asset recovery impact are contained at Article 36 within the Criminal Code.

14 However, it is important to acknowledge that the provisions in the AML Law in relation to reporting obligations, to information sharing amongst the various government agencies and in the creation of specialised organisations such as the General Directorate for the prevention of Money Laundering (GDPML) have contributed to atmosphere where the difficult work of locating the assets and using AML and Penal Code powers to freeze and confiscate such assets is providing results. To illustrate the point the 2009 MONEYVAL Progress Report cites an increased number of referrals to the Prosecutor's Office and, more impressively, the freezing of 1,192,721 Euros (in 2008) whilst for the first half of 2009 the total amounts frozen stood at 2,250,000 Euros with the amount seized standing at 2 million Euros. Impressive by any standard.

15 One can easily see that the absence of direct asset recovery provisions within the AML Law has not hindered the referrals to the Prosecutors who have undoubtedly been utilising their penal code powers to secure freezing orders on those assets and proceeds identified. The relationship between the various agencies involved in this fight seems to have played a prominent role, particularly the GDPML and the Joint Investigation Team against economic crime and corruption attached to the Prosecutors Office (which has representatives of the numerous law enforcement agencies including the tax authorities), in securing the necessary resources and evidence to take forward significant asset recovery gains.

### 3.2 The Anti-Mafia Law

16 The Law on Preventing and Striking at Organised Crime and Trafficking through Preventative Measures against Assets, Nr. 10 192 which came into force on 3.12.2009, or the 'Anti-Mafia Law', as it is widely referred to, seeks to establish a regime of civil forfeiture, or non conviction based asset recovery, in the context of organised crime and other serious offences. It appears that Albania has previously attempted to legislate in this controversial field, in 2004 (no. 9284 dated 30.09.2004), however the legislation and the powers conferred therein were underused and indeed when the provisions were invoked there was a legal challenge which led to the provision being declared as unconstitutional by the Albanian High Court.

17 The Anti-Mafia law, as many other countries in the World have done, tries to address the modern evils of organised crime through a modern regime of confiscating the proceeds of the related criminal activity. To put the problem in context according to Albanian economic reviews since 2003, legitimate investments average some 200 million Euros a year, while illegally invested funds account for in excess of 1 billion Euros , a ratio of one to five. According to Transparency International, 80 percent of the Albanian economy is a "parallel one"; for every 100 Euros of documented capital, another 80 Euros are never accounted for, most of it from organized crime activities.[1] Albanian organized crime is involved in, amongst other matters, trafficking in women and enforced prostitution, human trafficking of children, illegal workers and others, luxury car trafficking, arms smuggling and money laundering on a large scale by the organised crime groups.

18 One of the key challenges of such modern and potentially draconian legislation is the need to strike a careful balance between the powers of the State and the need to ensure that the rule of law is respected and that a fair trial is guaranteed to all parties involved.

19 The fair trial provisions are adequately covered for in Albania by the Constitution which states as follows;

Article 30 – Presumption of Innocence

*Everyone is considered innocent so long as his guilt is not proven by a final judicial decision.*

Article 31 – Right to a Fair Trial

During a criminal proceeding, everyone has the right:

> *a. -- to be notified immediately and in detail of the accusation made against him, of his rights, as well as to have the possibility created to notify his family or those close to him;*
> *b. -- to have the time and sufficient facilities to prepare his defense;*
> *c. -- to have the assistance without payment of a translator, when he does not speak or understand the Albanian language;*
> *d. -- to be defended by himself or with the assistance of a legal defender chosen by him; to communicate freely and privately with him, as well as to be assured of free defense when he does not have sufficient means;*

[1] http://www.worldpress.org/Europe/2705.cfm, Article by the Worldpress.org , on the EU-Albanian security cooperation.

*e. -- to question witnesses who are present and to seek the presentation of witnesses, experts and other persons who can clarify the facts.*

20 So far as the right to enjoy one's possession is concerned this is also covered by the Albanian Constitution at Article 42.

Article 42

1. *The freedom, property, and rights recognized in the Constitution and by law may not be infringed without due process.*

2. *Everyone, to protect his constitutional and legal rights, freedoms, and interests, or in the case of an accusation raised against him, has the right to a fair and public trial, within a reasonable time, by an independent and impartial court specified by law.*

21 So the essential checks and balances appear to be in place. But what about within the Anti-Mafia Law itself.

22 The Anti-Mafia Law is certainly broad in the scope of offences that it applies to, under Article 3, with its coverage extending from those suspected reasonably to be involved in;

*a) participation in criminal organisations or structured criminal groups, according to the provisions of articles 333 and 333/a of the Criminal Code and of the commission of crimes by them;*

*b) participation in terrorist organisations or armed bands, according to the provisions of articles 234/a and 234/b of the Criminal Code, and of the commission of crimes by them;*

*c) the commission of other actions for terrorist purposes, provided in the special part of the Criminal Code, chapter VII;*

*ç) the commission of the crimes provided in articles 109, 109/b, 110/a, 114/b, 128/b, 278/a, 282/a, 283, 283/a, 284/a of the Criminal Code;*

*d) the commission of the crimes for purposes of earning unlawful assets provided in articles 114/a and 287 of the Criminal Code.*

23 The scope of persons also covered is also wide, under Article 3 (2), extending from close family members through to relatives in law and even step members of family (and event those who may inherit with five years of the death of the person subject of the confiscation orders). Legal persons are also covered. Similar to other similar statutes there is a retrospective provision that covers the assets of persons created before the entry of this law into force,

provided that the assets shall have been obtained during the suspectsinvolvement in criminal activity cpatured by this law.

24 Under Article 5 (*Relation to the Criminal Proceeding)* the potential for parallel procedures in the criminal courts is resolved with Article 5 providing for a level of autonomy for the civil forfeiture process under the Law. What is also clear is that the procedural rules of this statute will follow the Civil Procedural route. However, under Article 5 (3) where there is an ongoing criminal process and the proceeds are the subject of a freezing or confiscation order in both the criminal and the civil forfeiture processes then the court must provide priority to the criminal process. The criminal procedure will therefore always assume primacy.

25 Another interesting feature of the procedures under the statute which require some explanation, and may indeed cause some challenges in potential challenges, is that although proclaiming the procedures to be subject to the civil procedure (Article 5 (2) and more notable Article 7 (4) for example, Article 7 *(Competence and Composition of the Court)* proclaims that the measures are to be carried out in the court of first instance for serious crimes and, in the case of further proceedings, in the court of appeal for serious crimes. Given the frequent challenges in the courts on the principle of whether such proceedings are civil or punitive under the criminal law this may cause some genuine confusion. Why not provide for the proceedings to take place in the civil courts? And is there sufficient legal basis to permit what are clelary criminal courts to adopt civil proceedings?

26 Articles 6 to 11 appear to provide for prosecutors and the judicial police (and even the courts) to act against the assets of those suspected of offences under Article 3 on the basis of reasonable suspicions and through the use of compulsive powers, under Article 9 to hand over information and documents, and also to perform special actions that are <u>not</u> regulated by the law! There is no explanation as to what these special powers might be or why it is felt that it is appropriate to cite that the court may in these cases use special powers but only if;

*'…if they have value for the resolution of the case and do not affect the essence of the fundamental human rights and freedoms'.*

27 It is unlikely, particularly when one considers some of the human rights jurisprudence below, that the ECHR in Strasbourg would be happy to cede such legitimacy away on the whim of the courts when the actions are not regulated by the laws of the land.

28 Articles 12 and 13 provide the staple diet of how to sequestrate or freeze the assets and what the relevant time frames are for these measures. It is interesting to note at Article 13 that in the event of a revocation of the freezing order the court can involve the Tax Authorities who can then consider those assets over a certain amount and for a 5 year period.

29 Chapter III contains important provisions for the Administration of the Sequestered Assets which permits the court to designate administrators from the list of experts held b the Agency for the Administration of Sequestered and Confiscated Assets. The creation of such as office is an important step in realising that asset recovery is more than then just the mere freezing and subsequent confiscation of the proceeds of criminal activity. It is the sensible realisation that there are likely to be a number of difficult decisions to be made in relation to how such assets are managed in a fair and transparent manner.

30 It is at the point of the execution of the sequestration order, see Article 14, and confiscation, see Article 22, that the civil procedures are applied by the courts (one assumes still sitting as the serous crimes court) possibly suggesting that the criminal procedures have applied up to that point.

31 At Chapter IV (Confiscation of Sequestered Assets) Article 21 (Request for the Confiscation of Assets and Burden of Proof) there are a number of challenging questions which shall arise again during the consideration of the human rights jursiprudence below. Article 21 reads as follows;

*1. The measure of confiscation is ordered at the request of the prosecutor, who submits to the court the reasons on which he bases the request.*

*2. The confiscation of assets is also sought and ordered in cases when a sequestration measure has not been sought and ordered against the assets.*

*3. The burden of proof to prove that the assets were gained in a lawful manner belongs to the person against whose assets confiscation is sought.*

32 Upon what basis is the prosecutor making his application, the civil or the criminal. One has to assume the civil standard of proof ( a preponderance of evidence or on a balance of probabilities)is now in play given the wording of Article 22. And what is meant by the 'reasons on which he bases the request'? Does this mean that the prosecutor still has to lay evidence, albeit on the civil standard, before the court that the assets are the proceeds of one of

the crimes stipulated in Article 3? Does the prosecutor merely have to allege a connection between the assets and the criminal activity. Or does the prosecutor simply raise the suspicion and then, as Article 21 (3) suggests, leave the person laying lawful claim to the assets to prove the case before the judge? Such considerations touch directly upon the rights to a fair trial and the presumption of innocence under the human rights standards.

33 In Article 25 on Procedural Expenses it is not clear if the expenses paid out are purley relate just for the State action in seeking sequestration and or confiscation or whether they might also apply to those either suspected or who may be a party to the proceedings. Article 25 (2) states;

*2. The expenses for sequestration according to this law are prepaid by the state and paid by the person against whose assets the sequestration of assets is ordered.*

34 It is furthemore not clear what hppens to those who want to challenge the process but do not have the money to do, can they take reaosnable expenses out of the assets (particualarly if they are of a liquid nature).

35 There are a number of notable absence from the Anti-Mafia Law when taking into account the international experiences. One such absence from the Albanian provision is the lack of any power to order cash seizures of cash suspected of being the proceeds of crime or intended for use in criminal activity provisions in the Act which would be of value in the fight against organized crime. Such provisions usually also cover cash found anywhere in the country and not just on import or export (which is often the case). This may even extend to powers to lawfully search any premises on the basis that there are reasonable grounds for suspecting that there is suspect cash on the premises.

36 Another apparent gap in the Anti-Mafia Law is that there are no provisions for increased powers for investigations to tackle the often sophisticated methods used by criminals to hide the proceeds of their crimes. This might extend to strengthen existing powers of seeking production orders and search warrants and the ability to seek compulsory disclosure orders, customer information orders and monitoring orders of bank accounts, for example, for both criminal confiscation and civil recovery investigations.

37 Another absence is that there is no provision for assistance to any

foreign jurisdictions that are seeking the enforcement in Albania of their own orders be they criminal or of a civil forfeiture nature. It may be that such provisions are housed in a different Code but it is not clear to the author. This is potentially a serious omission and will probably not comply with the demands of Chapter V of UNCAC amongst other international obligations.

38 Furthermore there is very little evidence of any provisions designed to establish information sharing with other agencies that exist overseas. There is the curiously worded Article 10 (Performance of Special Functions) that establishes the importance of international legal assistance however there is nothing to encourage cooperation across borders by the law enforcement agencies as it is clear that many criminals will have assets on both sides of the border and it is essential that there is the closest possible co-operation between the various agencies to ensure that proceeds of criminal conduct are effectively pursued and recovered.

39 One way of alleviating the public concerns of such a draconian piece of legislation and also easily made accusation of the Executive simply wanting to take the easier option of perusing just assets rather than a proper criminal process is to require some statutory guidance, issued by the leading agencies, with the intention of creating policy intended to make it clear that in Albania priority will always be given to criminal investigation and prosecution of those suspected of committing a criminal offence. For example the guidance could confirm that whenever an accused has been convicted of an offence, confiscation under the Criminal or Penal Code will be the route to the recovery of the proceeds of his criminal activity. Prosecutors will on consider civil forfeiture in circumstances where a successful criminal prosecution has not proved possible, but where there is nonetheless sufficient evidence to pursue a civil action for the recovery of property which may represent the proceeds of crime. Such a public declaration would reassure some of the doubting voices who have raised legitimate concerns in relation to the powers contained within the Anti-Mafia Law.

### 3.3 The Criminal Code

40 The principal enabling legal provision in the Albanian law on criminal forfeiture of assets is established under Article 36 of the Criminal or Penal Code. The law itself dates back to 2003. And we are informed has remained has remained unchanged despite numerous changes to the Code. Article 36 reads as follows;

Article 36 - Confiscation of means for committing the criminal crime and criminal crime proceeds

*1. Confiscation is given necessarily by the court and has to do with reception and transfer in the state's favor:*

*a) of the objects that have served or are specified as means for committing the criminal act;*

*b) of criminal act proceeds, where it is included any kind of asset, as well as legal documents or instruments verifying other titles or interests in the asset waiting upon or gained directly or indirectly form the criminal act committal;*

*c) of the promised or given remuneration for committing the criminal act;*

*ç) of any other asset, whose value corresponds to the criminal act proceeds;*

*d) of objects, whose production, use, holding or their alienation make a criminal act crime, and when the sentence decision is not given;*

*2. If the criminal act's proceeds are transformed or partly or fully converted into other assets, the latter is subject to confiscation;*

*3. If criminal act's proceeds are merged with assets gained legally, the latter are confiscated up to the value of the criminal act proceeds;*

*4. Subject to confiscation are also other incomes or profits from the criminal act proceeds, from assets that are transformed or altered to criminal act proceeds, or from assets with which these proceeds are involved, in the same amount and manner as the criminal act proceeds.*

41 Article 36 is therefore a broad based criminal conviction based power that provides for the following:

- the confiscation of criminal instrumentalities (tools) of the offending criminal behaviour;
- the proceeds of the criminal activity (which extends t both monies but also to anything that corresponds to that value – so a value based approach),
- the proceeds that are the product of the illicit monies (for example any properties or assets acquired through purchase) and,
- mixed or merged assets.

42 We are informed that the Article has been largely underused by prosecutors in Albania who now may look to more recent provisions in the Anti-Mafia Law.

43 Furthermore, it has no provision which covers the assets being placed into the hands of third parties who are then beyond the reach of the confiscation provisions.

## 4 Human Rights Considerations and Challenges

44 The key human rights challenges for Albania, under the European Convention on Human Rights (ECHR), are likely to come in relation to the ground breaking attempt to introduce non conviction based or civil forfeiture (as principally determined by the new Anti-Mafia Law discussed above). Normally when a government talks about "confiscation orders" this usually relates to the confiscation of criminal assets, after a person has been convicted of a qualifying criminal offence. However, what the government of Albania now also talks about in terms of confiscation is the "recovery of the proceeds of unlawful conduct" which is a relatively new form of civil confiscation that will take place before and regardless of whether any criminal conviction is obtained.

45 It is accepted now that for those countries choosing to pass such legislation, and there are few in the EU that have done so, the government's purpose in proposing such legislation has usually been to attempt to disable the criminal economy or disrupt the activities of serious organised crime. In this context the policy arguments are pretty compelling. However, the risk in such measures is that they are drafted in a manner that is deemed to be an excessively draconian means of achieving those aims and in that respect would not comply with international obligations under the ECHR.

46 The overriding concerns are in broad terms as follows;

(i) In relation to criminal confiscation orders, it is wrong to place a burden of proof on a defendant to show on the balance of probabilities that his assets are not derived from criminal conduct. Some provisions not only destroy the essence of the presumption of innocence, but also have the capacity to lead to arbitrary and irrational results.

(ii) In relation to civil confiscation it is wrong to give the state a power to opt for extensive confiscation of defendants assets in circumstances where it does not have sufficient evidence to prosecute them in the criminal courts and where the sums involved do not constitute significant revenue from criminal conduct.

(iii) Conversely, assuming that there is sufficient evidence to prosecute them, it would be wrong to allow the state to opt for an easier path of pursuing someone in the civil courts.

(iv) There are often few safeguards for defendants and third parties who may have a legitimate claim to the assets.

47 In focusing upon the main issues for Albania in its attempts to tackle organised and serious crime through an innovative manner of seizing and confiscating the proceeds of such activity we have attempted to focus on some of the more relevant issues that might arise form a reading of the legislation.

### 4.1 The Threshold Test

48 In relation to the criminal forfeiture provisions in Albania, as largely found in Article 36 of the Penal Code, there is no explicit mention of what the threshold is for the prosecutors in terms of proof or indeed if there is even a reversal of the burden so far as the suspect is concerned. One is tempted in the silence around the Article to assume that the prosecutors are put to proving the full criminal burden of the allegations and also, for example, that under Article 36 1 a) which refers to the instrumentalities of the crime, or Article 36 1 b) to the proceeds of the criminal activity whether gained directly or indirectly from the crime that they are the proceeds of such criminal activity.

49 But as there is no explanation of the threshold, in terms of which category of offences it might apply to or the financial level at which it applies, it is difficult to examine in any detail how wide ranging the provision may apply. For example, it may mean that Article 36 might be relevant following a conviction for a serious fraud but also it might apply to a relatively minor road traffic accident. In the later case could the State confiscate the vehicle which is used in the incident as an instrumentality of the criminal offence? If so then a pertinent question arises as to the proportionality of the Article. This may of course be addressed in some form of guidance to the prosecutors but this level of information is not available to the author. The issue of the threshold is important then in establishing a form of criteria for the proportionality arguments.

50 In Finland a court cannot exercise its discretion to confiscate proceeds beyond the trigger offences unless the particular offence is habitual or professional (no further definition given). Whereas in Denmark where legislation exists that empowers the Courts to order partial or total confiscation of property where a person is convicted of offences with a 6 year maximum or of *"a particularly aggravated nature"*.

51 In Australian law, automatic forfeiture, which can take place in cases where a person has been convicted of drug crimes, money laundering, terrorism, people smuggling, and some fraud schemes, creates a rebutable

presumption that any property subjected to a restraining order—any property the person owns or controls—is the proceeds of crime. Upon conviction, to exclude such property from forfeiture, the defense is required to demonstrate the lawful origin of the property. If no evidence is given that tends to show that the property was not used in, or in connection with, the commission of the offense, the court must presume that the property was used in, or in connection with, the commission of the offense and forfeiture occurs.

52 Although in the use of such powers in Albania in connection with either the AML Law or the Anti-Mafia Law should in many senses be easier as the list of 'qualifying offences' are set out in the relevant Articles of the Penal Code. In any event, anecdotally at least, there is very little recorded use of the powers under Article 36 by Albanian prosecutors since the law came into force.

53 It is also important to note that Article 36 makes no mention of the rights of potential third parties who may have a legitimate claim to the assets is a serious omission.

### 4.2 Confiscation and Reverse Burdens

54 The use of the reverse burden in the Albanian legislation is not prolific but it exists particularly in the Anti-Mafia Law in Article 21 which states the following:

Article 21 -Request for the confiscation of assets and burden of proof

*1. The measure of confiscation is ordered at the request of the prosecutor, who submits to the court the reasons on which he bases the request.*

*2. The confiscation of assets is also sought and ordered in cases when a sequestration measure has not been sought and ordered against the assets.*

*3. The burden of proof to prove that the assets were gained in a lawful manner belongs to the person against whose assets confiscation is sought.*

55 It is subsecion (3) that raises concerns as on reading this translation it appears that the prosecutor merely has to put reasons before the court on which his request for confiscation is made. The burden of proving that the assets are legitimate then fall to the person laying lawful claim to them. Of

course it may be that in laying out his information to the court the prosecutor has to provide more compelling evidence than Article 21 suggests otherwise there will be sustained challenges to this provision.

56 The use of reverse burdens in legislation is always likely to be prone to a challenge on the basis that such a legislative construction is incompatible with either Article 6(2) of the ECHR Convention and/or Article 1 of the First Protocol to the ECHR Convention.

**Article 6 - The Right to a Fair Trial**

*(2) Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.*

**Article 1 - Protection of property**

*Every natural or legal person is entitled to the peaceful enjoyment of his possessions.*

*No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*

*The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.*

57 In looking at the reality of confiscation proceedings, a defendant is effectively tried for completely unspecified allegations of criminal conduct that are made against his entire estate once the trigger convictions are obtained.

58 The objection to the use of reverse burdens, particularly in criminal proceedings, is the long honoured expectation that the burden of proof should fall on the prosecutor. In English law this is a fundamental principle described by Lord Sankey in *Woolmington v DPP* [1935] AC 462, 481-482 as a "golden thread". Accordingly, reverse burdens, must be narrowly constrained to be compatible with that principle and only used in exceptional circumstances where there is a real danger to the public. In terms of what might be deemed to be exceptional one could easily argue that the possession of dangerous drugs, weapons, explosives and/or terrorist paraphernalia albeit in a context where a narrow contemporary question was being asked about the otherwise unlawful possession of dangerous items. But even in such cases the

prosecutor will still have to produce evidence to the court that will amount to a minimum of a reasonable suspicion that the suspect was in possession of such items. There is no real difference in the proof of some connection between the suspect and the proceeds of crime that are the subject of the freezing or confiscation attempt.

59 A similar approach has been taken by Switzerland with respect to the proceeds of criminal organizations. Article 59(3) of the Penal Code established a presumption according to which all assets belonging to a person convicted under an organized crime offense are presumed to be under the control of the criminal organization. The prosecution then does not have to prove the origin of the assets. The fact that the property is assumed to be under the control of a criminal organization is sufficient for it to be tainted by association, even if it has been obtained legally. The owner can rebut the presumption, but he/she bears the burden of proof.

60 However there are still many who point to the fact that reverse burdens endorse potentially irrational assumptions about an individual and in some societies that they run the risk of generalising human conduct and in some countries to invoke a reverse burden against a poor defendant with no likelihood of him keeping records of any variety of what may be informal transactions may run into significant problems. The South African Constitutional Court has focused upon this issue in *State v Manamela* [2000] 5 LRC 65 paragraph 44 which considered a reverse burden in a case where a person was found in possession of stolen goods and had to prove that they had no reasonable cause to suspect that they were stolen. In this sense then the reverse burdens must be used in circumstances where the legislation is a reasonable and a proportionate device for achieving the legitimate aim of combating serious crime.

61 But of course what is even more pressing is at what point is the reverse burden invoked against the defendant in a manner that does not destroy the nature of the presumption of innocence under Article 6 (2) ECHR.

62 Various jurisdictions have considered what test should be applied to determine when it is appropriate for reverse burden assumptions to be permitted. This has been expressed in different terms, albeit amounting to a similar requirement that the initial application of the assumptions by a Court is devoid of arbitrariness or irrational foundation. In the USA there has to be a "rational connection" (see *Tot v United States (1943) 319 US 463*) or that "substantial assurance that the presumed fact is more likely than not to flow from the proved fact on which it is made to depend" (*Leary v United States* (1969) 395 US 463 cited by Lord Woolf in *AG General of Hong Kong v Lee*

*Kwong-Kut* [1993] AC 951, 969G-970A as a minimal safeguard without which it would be "difficult to justify" any reverse burden provision). In the ECHR in Strasbourg in the case of *Pipitone v Italy [Judgement 4th January 1985* approved in *M v Italy 70 DR 1991, 91* the appropriate test was considered to be - "sufficient circumstantial evidence concerning the unlawful origin of the property"

63 There is a good argument to say that the confiscation system should only apply to people convicted of serious offences. And that in the context of the human rights criteria discussed above that the confiscation regime under the criminal codes in Albania call for a discrete consideration of the principle of proportionality. At present there is a good basis to argue that the current provisions lack sufficient protection for defendants and third parties.

### 4.3 Human Rights Challenges to the Confiscation Regime including Civil Forfeiture

64 There is an argument that there should be no place for criminal prosecutors in the civil process where there is the potential for a potent mix of compulsive powers in a system where the civil standard of proof is significantly lower. The fact that the prosecutor bears only the civil standard of proof in relation to the issue of whether the accused has benefited from relevant criminal conduct and the amount, already has the potential to diminish the protection enjoyed by an defendant in normal criminal proceedings.

65 In terms of the challenges under the human rights criteria, and the right to a fair trial and the preservation of the presumption of innocence under Article ECHR in particular, there is a feeling that has been cited time and again in such challenges that such a focused confiscation regime cannot fulfill the need for a high level of necessity by the State given the intrusions into Article 6 that follow – see the test discussed in Strasbourg of "strict necessity" in *Van Mechelen v Netherlands* 25 EHRR 647 paragraph 58.

66 It is undoubtedly true that in jurisdictions where there have been attempts to introduce civil forfeiture regimes there has followed controversy and substantial legal challenges. One advantage for Albania in coming to this agenda now (or rather revisiting it given a previous attempt to legislate in this area) is that there is a considerable amount of domestic and international jurisprudence providing guidance. What is clear is that the policy objective is well defined in Albania. The State in serious cases and in the absence of a prosecution will focus on whether the property or the assets can be shown to

have been obtained through some person's unlawful conduct. In such a regime where the focus is upon the assets and not necessarily the individual there is a well established need to ensure that adequate safeguards exist for the owners of the assets and any potential owners (or third parties) not identified in the initial investigations. Of course this process of using he modern law enforcement community to chase after the assets, a process of forfeiture *in rem* is not new. It has existed in the US for many years now but even further back existed in England as far back as the 17th Century! It disappeared due to the absurd notion that property in its own right could be sued in the English civil courts. But this simply enhances the need for there to be modern safeguards in place to ensure that substantial protection exists for the owner of the assets in order to provide modern protections to their rights[2].

67 The danger for the State remains that it cannot permit individuals to be found criminally 'accountable' in civil courts when it was not possible to convict them in a criminal process. The safeguards that exist in the criminal process cannot be conveniently dispensed with for the convenience of a civil process where the standard of proof is automatically lower and where even reverse burdens of proof (or rebuttable presumptions) may have been introduced to assist the State. The fundamental rights of an individual cannot be trumped by the State for ease of convenience and cost.

68 However, the jurisprudence from Strasbourg, and the ECtHR, and jurisdictions such as the UK, where there have been substantial legal challenges, suggests that, so far, civil forfeiture is winning the battle.

69 The first legal success was to persuade the courts to interpret such regimes as not a criminal process but a civil one. Maybe an easy argument to win but not necessarily so and yet a fundamentally important one given the consequences that flow, or rather do not flow, form such a ruling.

70 In the criminal trials the arguments are now well established as the confiscation process usually follows the conviction and usually on a separate date but in the context of a civil hearing. In the UK the point was established early on with a ruling in the Court of Appeal in *The Commissioners of HM Customs and Excise* [2004] EWCA Crim 2374 which held that the proceedings in the Crown Court (the main criminal trial court in the UK) for a Restraint Order were clearly civil in nature and cited in aid the ECHR case of *Raimondo –v- Italy* (1994) 18 EHRR 237, with the consequence being that the

[2] See Dennis R Hewitt *Civil Forfeiture and Innocent Third Parties* 3 N. Ill U.L.Rev. 323 at 325 (1983) "civil forfeiture statutes that treat property itself as a wrongdoer are extensions of archaic concepts"

requirements for legal representation in criminal proceedings under Article 6 (2) and (3) did not apply. This is decisive as the civil proceedings do not attract the same level of Article 6 safeguards as does a criminal process. In developing the jurisprudence further there remained the question as to whether confiscation should itself be considered a sanction and if it is a sanction of a punitive nature.

71 This position, after a raft of legal challenges across Europe, is now settled. The case in 2001 of *Arcuri v Italy no. 52024/99, 5 July 2001* held that forfeiture of property obtained by unlawful conduct does not constitute a penalty. There are, broadly, two bases for this conclusion. Firstly the forfeiture applies to the specific recoverable property, rather than requiring payment of a fine and secondly, the purpose of such orders is to restrict the funding of criminal activity rather than to punish or condemn.

72 In the Scottish courts the position was spelt out even more explicitly, in the case of criminal conviction forfeiture, in the decision by the Privy Council *McIntosh v Lord Advocate*, where Lord Bingham proffered the following reasons for the approach:

*"(1) The application is not initiated by complaint or indictment and is not governed by the ordinary rules of criminal procedure.*
*(2) The application may only be made if the accused is convicted, and cannot be pursued if he is acquitted.*
*(3) The application forms part of the sentencing procedure.*
*(4) The accused is at no time accused of committing any crime other than that which permits the application to be made.*
*(5) When, as is standard procedure in anything other than the simplest case, the prosecutor lodges a statement under section 9, that statement (usually supported by detailed schedules) is an accounting record and not an accusation.*
*(6) The sum ordered to be confiscated need not be the profit made from the drug trafficking offence of which the accused has been convicted, or any other drug trafficking offence.*
*(7) If the accused fails to pay the sum he is ordered to pay under the order, the term of imprisonment which he will be ordered to serve in default is imposed not for the commission of any drug trafficking offence but on his failure to pay the sum ordered and to procure compliance.*
*(8) The transactions of which account is taken in the confiscation proceedings may be the subject of a later prosecution, which would be repugnant to the rule against double jeopardy if the accused were charged with a criminal offence in the confiscation proceedings.*

*(9) The proceedings do not culminate in a verdict, which would (in proceedings on indictment) be a matter for the jury if the accused were charged with a criminal offence."*

73 The stance was confirmed by the European Court of Human Rights in *Phillips v. UK (2001) 11 BHRC 280.* So we now have a settled position where the commencement of confiscation proceedings is not "a charge with a criminal offence" within the meaning of article 6(2) and therefore the article is not engaged, let alone contravened.

74 In the case of the civil forfeiture proceedings under the Anti-Mafia Law the challenges and arguments have been broadly similar to the challenges to the conviction based forfeiture regimes. In the leading case in the UK, *Walsh v. Director of the Assets Recovery Agency [2005] NICA 6,* the court considered claims that the proceedings were criminal, not civil, and therefore required the criminal standard of proof to convince a court of the nature of the assets under dispute. This argument was rejected by the Court, which distinguished civil recovery proceedings from the criminal process and stated as follows:

*"The essence of article 6 [of the ECHR] in its criminal dimension is the charging of a person with a criminal offence for the purpose of securing a conviction with a view to exposing that person to criminal sanction. These proceedings are obviously and significantly different from that type of application. They are not directed towards him in the sense that they seek to inflict punishment beyond the recovery of assets that do not lawfully belong to him. As such, while they will obviously have an impact on the appellant, these are predominantly proceedings in rem. They are designed to recover the proceeds of crime, rather than to establish, in the context of criminal proceedings, guilt of specific offences. The cumulative effect of the application of the tests in Engel v. Netherlands [(1976), 1 EHRR 647 (ECHR)] is to identify these clearly as civil proceedings".*

75 The courts of the US, Ireland and other jurisdictions, which have a civil forfeiture regimes in place, have also addressed this issue and have reached the same conclusion with similar reasoning, see, for example, the US Supreme Court's ruling in the case of *US v Ursery 518 US 276 (1996)* and the Supreme Court of Ireland's own deductive reasoning on the same lines in the case of *Murphy v GM, PB, PC Ltd and GH [1999] IEHC 5.*

76 However, it is important to appreciate that in such circumstances where the international courts have now consistently ruled that the rationale of civil forfeiture proceedings are to be deemed to be civil in nature and thus not criminal does not mean that the State can dispense with its obligations under the ECHR. Quiet the contrary the defendant in this case still has a level

of protection and he will continue to be afforded all the protection that arises from Article 6 ECHR. Therefore in making any confiscation orders the courts will have to remain alive to the need to be fair and to ensure that neither the defendant or any third parties to the proceedings suffer any level of injustice.

77 The courts in Albania will therefore have to be cognizant of the need to be fair in this entire process and to consider the wide range of obligations that follow from Article 6 such as an entitlement to a 'fair and public hearing within a reasonable time by an independent and impartial tribunal established by law'. A number of recommendations may follow from the proposed workshop to make this system more viable in the context of human rights issues and in a manner which should facilitate the entire process to make it as streamlined as possible.

## 5 International Obligations

78 International conventions are often non-prescriptive treaties, each permitting its parties to "take necessary measures in conformity with the fundamental provisions of their domestic legislative systems". The view is generally taken that these non-prescriptive treaties are predicated upon the supposition that neither Parliament nor the Court will act incompatibly with fundamental domestic legal values. In the context of the HRA, the non-prescriptive dimension of the treaties must now be balanced with fundamental rights contained in the ECHR, in particular Articles 6, 8 and Article 1 of the First Protocol.

79 It is not clear from a reading of the various Albanian acts and its Constitution whether Albania requires enabling domestic legislation to incorporate the principal international obligations, the dualist system, or indeed whether the monist applies which reflects a unitary nature between international and domestic law, whereby both sources of law are considered to belong to the same legal family therefore when a State ratifies a treaty, the treaty is given the domestic force of law without the need to enact subsequent, implementing legislation.

80 In any event it appears that the key obligations certainly those arising out of the European Convention on Human Rights are well enshrined across many Articles in the Constitution. The key features of the international conventions on anti money laundering, organized crime and asset recovery are all largely present in the various Codes and acts also.

81 In terms of the European Convention on Human Rights (ECHR)

Albania became a signatory to it when it became a member of the Council of Europe in July 1995.

82 In relation to other key international conventions Albania has signed and ratified the following:

83 United Nations Convention Against Transnational and Organised Crime Convention (UNTOC), 12 Dec 2000 signed and 21 Aug 2002 ratified.

84 United Nations Convention Against Corruption (UNCAC), 18 Dec 2003 signed and 25 May 2006 ratified

## 5.1 UNTOC

85 In broad terms Albania has complied with the specific demands of the key features of UNTOC in particular Article 5 Criminalization of participation in an organized criminal group; Article 6 Criminalization of the laundering of proceeds of crime; and in relation to Article 7 (Measures to combat money-laundering) UNTOC also requires the criminalisation of money laundering and the establishment of a domestic regulatory and supervisory regime for banks and other financial institutions to combat money laundering.

86 The asset recovery provisions in UNTOC are quite narrow and relate to confiscation and seizure addressed in Article 12 (Confiscation and seizure), Article 13 (International cooperation for purposes of confiscation) and Article 14 (Disposal of confiscated proceeds of crime or property).

87 The scope of this paper is restricted to the asset recovery provisions but of course they go hand in hand with those that relate to, for example, international cooperation (Articles 15 to 28) with a particular emphasis on the need for law enforcement cooperation, the collection exchange and analysis of information and the use of special investigative techniques which are all critical to success in fighting organised crime but also in being able to trace, freeze and repatriate assets. In this respect there is a sense that there is much that remains to be done in Albania.

## 5.2 UNCAC

88 In its eight Chapters and 71 Articles, the UNCAC obliges the States Parties to implement a wide and detailed range of anti-corruption measures affecting their laws, institutions and practices. These measures aim to promote the prevention, detection and sanctioning of corruption, as well as

the cooperation between State Parties on these matters. The UNCAC is unique as compared to other conventions, not only in its global coverage but also in the extensiveness and detail of its provisions.

89 However more specifically on asset recovery, and sharing many similarities with the nature of UNTOC, the provisions in Chapter V of UNCAC are a very different proposition altogether. The range of issues covered in much wider and therefore challenging. The return of proceeds from corruption to its country of origin is one of the purposes of the UNCAC (Art 1, b) as well as one of its fundamental principles (Art 51). Chapter V, integrally devoted to asset recovery, has been recognized as the most innovative chapter of the Convention.

90 Chapter V of the Convention requires legislative, practical and cultural changes not only to so called victim countries –whose public officials have exported the proceeds of corruption- but also to what may be called "recipient countries" where, regardless of its domestic level of corruption, the assets have been hidden or laundered.

91 Nevertheless efforts to recover the proceeds of crime in a domestic but even more so in an international setting are fraught with obstacles and problems. The legal proceedings that follow in an effort to win legal title to the assets located after usually follows what can be complex and lengthy investigations. It is the fact that the proceedings can take place in many different jurisdictions and in many different forms (including by way of example, (a) criminal proceedings in the State of origin with enforcement of the sentence in the State where the funds are located, (b) civil proceedings in the requesting State followed by international enforcement of the judgment; (c) criminal or civil proceedings initiated by the requested State leading to forfeiture of the property either to the requesting State directly or to the requested State (which may then share the assets); (d) civil proceedings initiated by the requesting State in the courts of the requested State; or even a combination of the above.

92 Obstacles are also created by the diversity of approaches taken by different legal systems.

93 Albania is certainly looking to commit to the international agenda on asset recovery. In the context of the significant demands of Chapter V UNCAC Albania is making progress in complying with Article 52, for example, which requires States Parties to compel their financial institutions to verify the identity of their customers, to take reasonable steps to determine the beneficial owner of highly valued accounts and to conduct enhanced

scrutiny of accounts maintained by so-called politically exposed persons under the provisions contained with in the AML Law.

94 More progressive even is Albania's commitment to tackle the difficult issue of civil forfeiture under the provisions of the Anti-Mafia Law. Article 54(1)(c) of the UNCAC recommends that states parties establish non-criminal systems of confiscation, which have several advantages for recovery actions not least that the standard of evidence is lower ("preponderance of the evidence" rather than "beyond a reasonable doubt This is already the practice in some jurisdictions such as the US, Ireland, the UK, Italy, Colombia, Slovenia, and South Africa, as well as some Australian and Canadian States.

95 However there are a few areas of the asset recovery agenda which may require more scrutiny in Albania as there is no evidence that the international requirements have been met. For example, the return of assets is covered by Article 57 which mandates that confiscated property shall be returned to its prior legitimate owners, subsection 5 of that article permits state parties to enter into mutually acceptable arrangements for the disposal of confiscated property. There is no evidence that Albania is complaint in this respect.

96 Furthermore in the provision of access to courts in requested States, under Article 53, UNCAC attempts to facilitate international cooperation by allowing the initiation by the requesting State of legal actions in the courts of the requested State relating to the proceeds of corruption that are located in its territory. That access could be provided when the requesting party can either establish an ownership interest in the assets or upon the presentation of a final, valid judgment.

97 In terms of the enforcement of foreign judgments, under Article 55, UNCAC asks States Parties to ensure that its domestic legal measures should be organized so as to permit courts to enforce a valid final judgment from a foreign jurisdiction ordering the confiscation of the proceeds of corruption. Again there is no evidence that Albania has such domestic provisions in place. The value of such measures would be relevant not just to the fight against corruption abut also in the fight against money laundering and organized crime.

98 Finally Articles 54 and 55 UNCAC set forth procedures for international cooperation in confiscation matters. These are important powers, as criminals frequently seek to hide proceeds, instrumentalities and evidence of crime in more than one jurisdiction, in order to thwart law enforcement efforts to locate and seize them. In the absence of further information it is not known to what extent Albania can comply wit such

requests or indeed if there is any evidence of such requests having been made by the Albanian authorities to other jurisdictions.

### 5.3 Council of Europe Anti-Money Laundering Convention

99 The Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism was drawn up by the Council of Europe and opened for signature on 8 November 1990. Intended to facilitate international co-operation as regards investigative assistance, search, seizure and confiscation of the proceeds from all types of criminality, especially serious crimes) and other offences which generate large profits it also sought to address some of the failings of some of the other Conventions that did not make incorporate references to the confiscation of proceeds of crime[3].

100 The definition of "confiscation" is widely drafted in order to make it clear that the Convention only deals with criminal activities (or, importantly in the context of this report, acts connected therewith, such as acts related to civil *in rem* actions but also that differences in the organisation of the judicial systems and the rules of procedure do not exclude the application of the Convention. In this sense the Convention is a solid barometer in which States can gauge early efforts to create effective asset recovery regimes.

101 There is also a recognition that there are differences across the judicial landscape of Europe and so there is a recognition that confiscation in some States is not considered a penal sanction but as a security or other measure and that this should be irrelevant to the extent that the confiscation is related to criminal activity. Although now rather old the Convention does also address some very practical matters that are of tremendous assistance in any efforts to trace, freeze and seize assets and seeks to provide a comprehensive rules base for all stages of the investigation and final confiscation of the assets. It also seeks to provide for flexible but effective mechanisms of international co-operation, Section 1 of Chapter III, thus ensuring that as great an opportunity is given to those agencies that are involved in the tracing and recovery of the assets. Chapter III also provides for broad law enforcement cooperation in the early stages in order to secure evidence and also prevent the assets from being dissipated.

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[3] European Convention on Mutual Assistance in Criminal Matters that Article 3, paragraph 1, of that convention, which concerns the execution of letters rogatory "relating to a criminal matter. for the purpose of procuring evidence or transmitting articles to be produced in evidence", does not apply to search and seizure of property with a view to its subsequent confiscation.

102 In furtherance of this objective Section 4 of Chapter III provides for two forms of international co-operation, namely the execution by the requested State of a confiscation order made abroad and, secondly, the institution, under its own law, of national proceedings leading to a confiscation by the requested State at the request of another State. Furthermore, there is a requirement that parties to the Convention shall adopt corporate liability provisions so that such entities can be held liable for the offences of money laundering covered by the Convention.

103 Although the Anti-Mafia Law states that its provisions are applicable to assets of both the natural and legal persons the applicability of the Law to legal persons remains questionable as there is no mention of criminal liability of legal persons in the Criminal Code, despite the assertions made at Article 3.2.b of the Law.

104 There are also some very important provisions on FIUs (Article 12), measures to prevent money laundering (Article 13), banking details, transactions and monitoring for foreign investigators (Articles 17-19) and measures relating to provisional measures (in relation to freezing freezing or seizing, to prevent any dealing in, transfer or disposal of property which, at a later stage, may be the subject of a request for confiscation or which might be such as to satisfy the request) and confiscation (Articles 22-26).

105 Across the board it is easy to see that Albania is certainly complying with the spirit and indeed the detail of much of the Convention. There are clear attempts such as with the creation of an effective FIU and in the money laundering field to comply. There are a number of queries that remain however in terms of the practical reality of international assistance in Albania and how it could responds or indeed has responded to previous requests for assistance in either a money laundering context or in the field of asset recovery.

106 The general provisions relating to international mutual legal assistance are contained within Articles 505 to 508 of the Criminal Procedure Code but they are brief. Furthermore, Articles 512 to 518 provide for the enforcement of foreign court decisions but they seem on reading the Articles to centre upon criminal findings of guilt and there is no clear legal obligation that leads one to the conclusion that the enforcement of a foreign confiscation order, for example, would be easily achieved in Albania.

107 In the Convention the need for such is clear, for example, under Section 4 – Confiscation, Article 23 – Obligation to confiscate, it states that:

*1 A Party, which has received a request made by another Party for confiscation concerning instrumentalities or proceeds, situated in its territory, shall:*
*a enforce a confiscation order made by a court of a requesting Party in relation to such instrumentalities or proceeds; or*
*b submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such order is granted, enforce it.*

108 There is no clear legal basis under which this request can be administered on behalf of the requesting state. The AML Law and the Anti-Mafia Law are largely silent on such provisions. Under Article 32 there is also a further requirement to recognize foreign judgments that relate to the claims of third parties:

*1 When dealing with a request for co-operation under Sections 3 and 4, the requested Party shall recognise any judicial decision taken in the requesting Party regarding rights claimed by third parties.*

109 The rights of third parties in proceedings, in particular under Article 36 of the Penal Code and under the Anti-Mafia Law require further exploration as those rights do not seem to be adequately represented.

110 Finally under the terms of Article 25 - Confiscated property – paragraph 3 asks that when *"acting on the request made by another Party in accordance with Articles 23 and 24 of this Convention, a Party may give special consideration to concluding agreements or arrangements on sharing with other Parties, on a regular or case-by-case basis, such property, in accordance with its domestic law or administrative procedures".* There is no evidence of any legal provisions that permit such a sharing of confiscated assets with a requesting state.

### 5.4 MONEYVAL Progress Report on Albania 2009

111 The MONEYVAL Progress report testifies to the considerable steps achieved by Albania since efforts began in 2006 following the signing of the Stabilisation and Association Agreement (SAA) requiring the consolidation of the rule of law, the strengthening of institutions in all levels and in particular that of the law enforcement and the administration of justice system are of a particular importance. The reforms in the anti-money laundering and asset

recovery fields have been particularly impressive.

112 The AML Law in particular stands out for merited comment as it has addressed many of the demands imposed by far reaching EU Conventions and EU Directives in this complicated field. This is also true of the manner on which many disparate entities such as banks, notaries, attorneys and other financial organizations have been brought into the system. The GDPML, despite limited human resources, stands out in the report as meriting special attention. As the FIU and a member of the Egmont Group it is encouraging to see how it has established good relations with a number of other FIUs and even begun the process of exchanging information on a 'continuous basis' with other local FIUs. All this is a solid basis upon which to take forward the future fight against organized crime, money laundering and terrorist financing.

113 However, despite this positive overview it would be beneficial to see what progress has been made since the report was published in September 2009 and in respect of the various legislative changes sought to the Penal Code and the AML Law amongst others. At a practical level it will be essential to establish what progress is being made in exchanging information with other law enforcement agencies, not just the FIUs, but also other investigative agencies, what requests are being made to Albania form overseas agencies and indeed what requests Albania is making to other overseas agencies for cooperation in the above fields?