



**International covenant  
on civil and  
political rights**

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HUMAN RIGHTS COMMITTEE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER  
ARTICLE 40 OF THE COVENANT**

**Initial report**

**ALBANIA\***

[2 February 2004]

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\* This report is issued unedited, in compliance with the wish expressed by the Human Rights Committee at its sixty-sixth session in July 1999.

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## **Introduction**

1. The Republic of Albania presents to the United Nations Human Rights Committee its initial report on the measures adopted by the Republic of Albania on the rights defined by the International Covenant on Civil and Political Rights, in compliance with its article 40.
2. The state report was drafted by a permanent group of experts from Albanian Government and NGO-s, after discussions on the relevant issues and information based on the articles of the Covenant.
3. The Republic of Albania adhered to the International Covenant on Civil and Political Rights with law no. 7510, dated 8 August 1991, proclaimed by the President of the Republic by Decree No. 19 of August 13, 1991. The Covenant was ratified on October 4, 1991 and entered into force with respect to Albania on 4<sup>th</sup> January 1992.

## **I. GENERAL PART OF THE REPORT**

4. The general legal framework within which civil and political rights are ensured in the Republic of Albania has been described in the amended and revised CORE document that Albania presented to the United Nations in 2003.

## **II. IMPLEMENTATION OF SPECIFIC ARTICLES OF THE COVENANT**

### **Article 1**

#### **The right to self-determination of peoples**

5. Pursuant to the principle of the United Nations Charter of the right of peoples right to self-determination, the Republic of Albania respects the sovereignty, inviolability of borders, non-interference in internal affairs of other states, the right of peoples to self-determination and the respecting of fundamental human rights.
6. The Republic of Albania observes the accepted international provisions concerning the inter-state relations and the principle of fostering the relations and mutual understanding among nations.
7. Albania proclaimed its independence on 28 November 1912, which was recognized by the London Treaty on 30 May 1913 and the Decision of the Ambassador's Conference on 29 July 1913. Albania was accepted as member of the League of Nations on 17 December 1920 and became member of the United Nations on 14 December 1955.
8. The new Constitution was approved by the Parliament on 21 October 1998, after peoples referenda. The preamble and the following articles of the Constitutions are directly linked with the peoples right to self-determination:

“We, the people of Albania, proud and aware of our history, with responsibility for the future, and with faith in God and/or other universal values,

with determination to build a social and democratic state based on the rule of law, and to guarantee the fundamental human rights and freedoms,

with a spirit of tolerance and religious coexistence,

with the pledge for the protection of human dignity and personhood, as well as for the prosperity of the whole nation, for peace, well-being, culture and social solidarity, with the centuries-old aspiration of the Albanian people for national identity and unity,

with a deep conviction that justice, peace, harmony and cooperation among nations are among the highest values of humanity,

We establish this Constitution.”

9. According to article 1 Albania is a parliamentary Republic. The Republic of Albania is a unitary and indivisible state. Governance is based on a system of elections that are free, equal, general and periodic.
10. Sovereignty in the Republic of Albania belongs to the people. The people exercise sovereignty through their representatives or directly. For the maintenance of peace and national interests, the Republic of Albania may take part in a system of collective security, on the basis of a law approved by a majority of all the members of the Assembly (article 2).
11. Article 3 stipulates that independence of the state and the integrity of its territory, dignity of the individual, human rights and freedoms, social justice, constitutional order, pluralism, national identity and inheritance, religious coexistence, as well as coexistence with, and understanding of Albanians for, minorities are the bases of this state, which has the duty of respecting and protecting them.
12. The law constitutes the basis and the boundaries of the activity of the state. The Constitution is the highest law in the Republic of Albania. The provisions of the Constitution are directly applicable, except when the Constitution provides otherwise (article 4).
13. The Republic of Albania applies international law that is binding upon it (article 5). Article 7 stipulates that the system of government in the Republic of Albania is based on the separation and balancing of legislative, executive and judicial powers.
14. The fundamental human rights and freedoms are indivisible, inalienable, and inviolable and stand at the basis of the entire juridical order. The organs of public power, in fulfilment of their duties, shall respect the fundamental rights and freedoms, as well as contribute to their realization (article 15).
15. According to article 122, any international agreement that has been ratified constitutes part of the internal juridical system after it is published in the Official Journal of the Republic of Albania. It is implemented directly, except for cases when it is not self-executing and its implementation requires issuance of a law. The amendment, supplementing and repeal of laws approved by the majority of all members of the Assembly, for the effect of ratifying an international agreement, is done with the same majority.

16. An international agreement that has been ratified by law has superiority over laws of the country that are not compatible with it. The norms issued by an international organization have superiority, in case of conflict, over the laws of the country if the agreement ratified by the Republic of Albania for its participation in the organization expressly contemplates their direct applicability.

17. The people, through 50 thousand citizens who enjoy the right to vote, have the right to a referendum for the abrogation of a law, as well as to request the President of the Republic to hold a referendum about issues of special importance. The Assembly, upon the proposal of not less than one fifth of the deputies or the Council of Ministers, can decide that an issue or a draft law of special importance be presented for referendum. Law provides principles and procedures for holding a referendum, as well as its validity (article 150).

18. Albania is party to the International Covenant on Economic, Social and Cultural Rights, which entered into force in the Republic of Albania on October 4, 1991.

19. According to article 56, everyone has the right to be informed for the status of the environment and its protection. Furthermore, the state, within its constitutional powers and the means at its disposal, aims to create a sound and ecologically suitable environment for present and future and rational exploitation of forestry, waters, pastures and other natural resources on the basis of the principle of sustainable development (article 59).

20. In the framework of environmental protection and implementation of constitutional provisions, after 1998 a number of laws and by-laws have been adopted in this regard.

## **Article 2**

### **Human rights and their protection**

21. A fundamental element of the constitutional democracy in Albania is the establishment of specific limitations of state's rights over the individual. The Second Part of the Constitution, which refers to the "Fundamental human rights and freedoms", lists the rights and guarantees of every individual, either Albanian or foreigner, enjoys towards states intervention in his private life.

22. Article 18 of the Constitution guarantees that all are equal before the law. 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. No one may be discriminated against for reasons mentioned above if reasonable and objective legal grounds do not exist.

23. Nevertheless this provision does not prevent the positive discrimination. It allows the particular treatment and support for special categories of individuals. For instance it allows educational incentives for talented students coming from families with low incomes, disabled persons, etc.

24. The fundamental rights and freedoms and the duties contemplated in this Constitution for Albanian citizens are also valid for foreigners and stateless persons in the territory of the Republic of Albania, except for cases when the Constitution specifically attaches the exercise of

particular rights and freedoms with Albanian citizenship. The fundamental rights and freedoms and the duties contemplated in this Constitution are valid also for juridical persons so long as they comport with the general purposes of these persons and with the core of these rights, freedoms and duties (article 16).

25. Pursuant to article 17, the limitation of the rights and freedoms provided for in this Constitution may be established only by law for a public interest or for the protection of the rights of others. A limitation shall be in proportion with the situation that has dictated it. These limitations may not infringe the essence of the rights and freedoms and in no case may exceed the limitations provided for in the European Convention on Human Rights.

26. The second Part of the Constitution is entirely devoted to human rights and freedoms starting with the guaranteeing of individual's rights, political, economic, social and cultural rights. This part provides in a particular chapter social objectives of Albania and general provisions on the institution of Peoples' Advocate.

27. According to the Constitution, the life of a person is protected by law (article 21).

28. Freedom of expression is guaranteed. The freedom of the press, radio and television are guaranteed. Prior censorship of a means of communication is prohibited (article 22).

29. The right to information is guaranteed. Everyone has the right, in compliance with law, to get information about the activity of state organs, as well as of persons who exercise state functions (article 23).

30. According to article 24, freedom of conscience and of religion is guaranteed.

31. No one may be subjected to cruel, inhuman or degrading torture, punishment or treatment (article 25).

32. No one may be required to perform forced labour, except in cases of the execution of a judicial decision, the performance of military service, or for a service that results from a state of emergency, war or natural disaster that threatens human life or health (article 26).

33. No one's liberty may be taken away except in the cases and according to the procedures provided by law (article 27).

34. Everyone whose liberty has been taken away has the right to be notified immediately, in a language that he understands, of the reasons for this measure, as well as the accusation made against him (article 28).

35. Article 35 of the Constitution stipulates, "no one may be obliged, except when the law requires it, to make public data connected with his person. The collection, use and making public of data about a person is done with his consent, except for the cases provided by law. Everyone has the right to become acquainted with data collected about him, except for the cases provided by law. Everyone has the right to request the correction or expunging of untrue or incomplete data or data collected in violation of law".

36. The freedom and secrecy of correspondence or any other means of communication are guaranteed (article 36).
37. According to article 37, the inviolability of the residence is guaranteed.
38. Everyone has the right to choose his place of residence and to move freely to any part of the territory of the state (article 38).
39. Article 39 paragraph 9 guarantees the prohibition of collective expulsion of foreigners. The expulsion of individuals is permitted under the conditions specified by law.
40. Article 40 of the Constitution stipulates that foreigners have the right of refuge in the Republic of Albania according to law.
41. The right of private property is guaranteed (article 41).
42. According to the article 42, the freedom, property, and rights recognized in the Constitution and by law may not be infringed without due process.
43. Everyone has the right to appeal a judicial decision to a higher court, except when the Constitution provides otherwise (article 43).
44. Everyone has the right to be rehabilitated and/or indemnified in compliance with law if he is damaged because of an unlawful act, action or failure to act of the state organs (article 44).
45. Additionally, human rights and freedoms are protected, developed and exercised through the adoption of other laws and by-laws by the Parliament and the Government, according to the constitutional provisions.
46. According to article 31 of the Constitution 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 defence;
  - (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 defence when he does not have sufficient means;
  - (e) to question witnesses who are present and to seek the presentation of witnesses, experts and other persons who can clarify the facts.
47. Article 20 guarantees that persons who belong to national minorities exercise in full equality before the law the human rights and freedoms. They have the right to freely express,



without prohibition or compulsion, their ethnic, cultural, religious and linguistic belonging. They have the right to preserve and develop it, to study and to be taught in their mother tongue, as well as unite in organizations and societies for the protection of their interests and identity.

48. The Government considers the principle of non-discrimination as an obligation deriving from the basic orientations of the Republic of Albania concerning the respect and protection of fundamental human rights and freedoms. These right and freedoms are guaranteed by the Constitution and the legislation in force, drafted in compliance with international standards.

49. Apart from the process of drafting the legislation and its practical implementation in order to prevent discrimination and intolerance, Albanian institutions have undertaken a number of measures aiming at fostering the mutual respect, understanding among all citizens living in Albania.

50. One of the main concerns of the non-discrimination policy of the Albanian government is the protection of different minorities living in Albania, which is a fundamental element serving to the establishment of friendship bridges among neighbouring countries. In this context, the Albanian policy is based on two main pillars, as defined by the international instruments relating to the protection of minorities rights.

51. Legal guarantees and practical exercise of the right for a non-discriminative treatment of citizens belonging to national and linguistic minorities, dealing with respecting of human rights, civil rights and political freedoms as foreseen by the Constitution and the legislation for all Albanian citizens.

52. The legislation into force guarantees undertaking of concrete measures for the protection of minorities' rights, such as the right to freely express their belonging, maintenance and development of their identity through free and unhindered exercise of those particular elements characterizing their life as a minority, learning of their mother language, cultural activities, religion etc.

53. The right of the people belonging to national minorities to participate in activities of non-governmental national or international organizations is not particularly contemplated in any legal act. However, the Albanian legislation does not restrain or prohibit persons belonging to national minorities or their associations or organizations from the right to participate in the activities of non-governmental organizations at national or international level.

54. Like for all Albanian citizens, for the national minority people as well, the Albanian legislation contemplates the right to the freedom of movement without any obstacle to other states, the freedom of expression and organization, the freedom and secrecy of the correspondence, etc.

55. All these create the necessary span for the establishment and extension of their contacts and free participation in the activities of non-governmental national or international organizations. The numerous joint activities held in Albania by non-governmental organizations in mutual cooperation, with analogous organizations of different countries, with international organizations, and with the broad participation of the representatives of these organizations, is a clear testimony to this.

56. On the other hand, the participation of the people belonging to different national minorities in conferences, seminars or various activities in other states, up to conferences and seminars organized by the Council of Europe, or the participation and expression of their opinions on a variety of issues in forums such as the European Parliament, etc, are a clear proof of the fact that the members of the national minority in Albania are enjoying and exercising this right.

57. The article 19 of the Constitution provides that, everyone born of at least one parent with Albanian citizenship gains automatically Albanian citizenship. Albanian citizenship is gained also for other reasons provided by law. An Albanian citizen may not lose his citizenship, except when he gives it up.

58. According to article 1 of the Law "On citizenship", No. 8389, dated on 5 August 1998, Albanian citizenship is a stable legal bond, expressed in the mutual rights and duties of an individual and the Albanian State. Albanian citizenship is acquired, reacquired, lost or relinquished in accordance with the provisions of this law, which respects the recognized rules and principles of international law in the area of citizenship accepted by the Republic of Albania.

59. Article 5 of this law stipulates that minors acquire and reacquire Albanian citizenship, and relinquish it with the approval of their parents. Any change in the citizenship of minors 14-18 years old shall be made with the child's consent.

According to this Law, Albanian citizenship is acquired by:

- birth;
- naturalization; and
- adoption.

60. The acquisition of Albanian citizenship by birth changed by law no. 8442, dated 21 January 1999, according to which everyone who was borne, having at least as one his parents an Albanian citizen, acquires automatically the Albanian citizenship. The Law on Citizenship provides even the cases when minors risk becoming stateless.

61. A child born or found within the territory of the Republic of Albania acquires Albanian citizenship if he is born from unknown parents and would consequently become stateless. If the child's parents become known before the child reaches the age of 14, and they hold foreign citizenship, Albanian citizenship can be relinquished at the request of his lawful parents, if the child does not become stateless because of this action (article 8).

62. This law has foreseen even the cases when a child is born by foreign parents (holding another citizenship). In this case the child can acquire the Albanian citizenship with the consent of both parents if are met two conditions:

- First, the child was born within the territory of the Republic of Albania; and
- Second, the parents are legally resident in the Republic of Albania.

63. According to article 9 of the Law on Citizenship, a foreigner who has submitted an application for acquisition of the Albanian citizenship by naturalization shall acquire it if he fulfils the following requirements:

- he has reached the age of 18;
- he has lawfully resided in the territory of the Republic of Albania for not less than five consequent years;
- he has a dwelling and sufficient income;
- he has never been sentenced in his state or in the Republic of Albania or in any third state for a criminal offence for which the law provides for a prison sentence of not less than five years.

64. If both parents acquire Albanian citizenship by naturalization, their children who have not reached the age of 18 and live with their parents become Albanian citizens at the request of the parents and with the consent of the child, if he is 14-18 years old (article 11).

65. According to the same law article 17, applications for the acquisition, reacquisition or relinquishment of Albanian citizenship, together with documents required by this law, shall be filed with the organs of the Ministry of Public Order of the person's place of residence or, if the person resides abroad, with the diplomatic or consular missions of the Republic of Albania.

66. The Ministry of Public Order, within six months from the filing date of the individual's application, and in accordance with the requirements provided for in this law for the acquisition, reacquisition or loss of Albanian citizenship, shall decide whether to forward the application for acquiring, reacquiring or relinquishing the citizenship to the President of the Republic, who issues the relevant decree.

67. In the Republic of Albania there is no official religion. The state is neutral in questions of belief and conscience and guarantees the freedom of their expression in public life. The state and the religious communities mutually respect the independence of one another and work together for the good of each and all.

68. Religious communities are legal entities. They have independence in the administration of their properties according to their principles, rules and canons, to the extent that interests of third parties are not infringed.

69. Article 24 of the Constitution, guarantees that everyone is free to choose or to change his religion or beliefs, as well as to express them individually or collectively, in public or private life, through cult, education, practices or the performance of rituals. No one may be compelled or prohibited to take part in a religious community or its practices or to make his beliefs or faith public.

70. According to article 265 of the Criminal Code of the Republic of Albania, inciting national, racial and religious hatred or conflict as well as preparing, propagating, or preserving with the intent of propagating, of writings with that content, is sentenced to a fine or to up ten years of imprisonment.

71. Obstructing the activities of religious organizations, ruining or damaging places of worship, obstructing religious ceremonies constitutes criminal contravention and is sentenced to a fine or up to one to three years of imprisonment (Criminal Code, articles 131, 132 and 133).

72. The provisions of the Criminal Code also provide that, the prohibition of the activities of the persons that desire to participate in the religious ceremonies or to express freely the religious belief, provides penal infringement and is sentenced to a fine or up to one year of imprisonment. The Law for Education does not permit the religious propaganda of every kind of faith.

73. With decision of the Council of Ministers no. 459, on 23 September 1999 was established a National Committee for Cults, which presents to the Ministry of education and science its opinions over the curricula, programs of subjects and the texts of the non-laic part.

74. The Family Code provides the rights and obligations of parents and tutors concerning the child's education. This Code does not inhibit the child to freely choose his religion.

75. It must be mentioned that religious communities, including religious representatives of minorities, have always been characterised by a strong and sincere feeling of harmony that is reflected in the relations among persons belonging to different religions and among religious persons and atheists.

76. The principle of non-discrimination is also included in the provisions the Code of Administrative Procedures. Article 11 of this Code provides that:

(a) In relations with private persons, public administration is guided by the principle of equality, which means that no one will be privileged or discriminated because of his gender, race, religion, ethnicity, political, religious or philosophical opinions, economic, educational or social situation or paternal belonging.

(b) The actions of public administration, which by reason of protecting public interests or the rights of the others restrict the fundamental rights of the individuals guaranteed by the Constitution, international agreements, laws and by-laws, should respect the principle of proportionality and should not infringe the substance of rights and freedoms. This means that the actions of the public administration should be done in such a manner that:

- Require the realisation of legitimate public interests;
- Always use appropriate means and in proportionality with the aims to be achieved.

At any case, the organs of public administration are obliged to estimate, when appropriate, that the aim is to be achieved by less repressive means, without compromising their effectiveness.

77. In order to guarantee the protection of citizens, one of the principles of public administration is the principle of internal administrative control external (judicial) control, according to the provisions of the Civil Procedural Code. Thus, article 324 of the Code and the following articles, foresee the right of presenting a lawsuit in case that an administrative act is claimed to be unlawful as well as when the rights and interests of individuals are infringed either directly or indirectly, collectively or individually.

78. Persons belonging to national minorities are also protected from discrimination even in the field of labour and social insurances. Article 9 of the Labour Code, which regulates the public and private labour relations, prohibits any kind of discrimination in employment and professional life.

79. Additionally, the legislation related to social insurances, such as health insurances, or insurances for every kind of pensions (invalidity or retirement), offers equal rights for all, regardless of race or nationality. An Appealing Commission is established in order to examine the disputes in this field, and its decisions are binding.

80. According to article 5 of law no. 8328, dated on 16 April 1998, "On the rights and treatment of the prisoners", the prisoners are treated impartially or indiscriminately on account of their sex, nationality, race, economic and social conditions, political opinions and religious beliefs.

81. The Regulation of Prisons of the Republic of Albania, approved by the Council of Ministers with Decision no. 96 of 9 March 2000, in its articles 13, 45, and 63, provides for the communication in the language of the convicted persons, the way of serving the sentence, the rights and the obligations of prisoners, etc.

82. The Chapter VI of the Constitution provides for the creation of the institution of People's Advocate, which defends the rights, freedoms and lawful interests of individuals from unlawful or improper actions or failures to act of the organs of public administration. The People's Advocate is independent in the exercise of his duties (article 60).

83. According to article 63 of the Constitution, the People's Advocate has the right to make recommendations and to propose measures when he observes violations of human rights and freedoms by the public administration. Public organs and officials are obliged to present to the People's Advocate all documents and information requested by him.

84. Pursuant to law no. 8454, dated 4 February 1999 "On People's Advocate" the role of this institution is to safeguard the rights, freedoms and lawful interests of individuals from unlawful or improper actions or failures to act of the organs of public administration or third parties acting on their behalf.

85. The People's Advocate exercises his activity for the protection of human rights and freedoms as defined by the constitutional provisions and by the laws. The provisions of this law shall also apply to protect the rights of foreigners, whether they are residing lawfully in Albania or not, refugees, as well as stateless persons within the territory of the Republic of Albania, pursuant to the terms set forth by law.

86. Article 12 of law “On People’s Advocate” provides that: “Every individual, group of individuals or non-governmental organization that claims that his/their rights, freedoms or lawful interests have been violated by the unlawful or improper actions or failures to act of the organs of the public administration shall have the right to complain or notify the People’s Advocate and to request his intervention to remedy the violation of the right or freedom.

87. The People’s Advocate shall maintain confidentiality if he deems it reasonable as well as when the person submitting the complaint, request or notification so requests” According to article 29, the People’s Advocate may assist, give opinions and make recommendations in the drafting of reports and other documents by the Albanian State on human rights and freedoms in the Republic of Albania”.

88. By monitoring the functioning the public administration the institution of People’s Advocate guarantees the equal treatment of citizens by the administration. This is realized mainly through negotiations, impartiality and broadest standards of justice. The most distinct features of the People’s Advocate are its independence from the Government and from any political interference, easiness in contacts, rapidity, flexibility, effectiveness and the power of its recommendations.

89. The existence of the institution of the People’s Advocate has a positive impact in the activity of the public administration, for the mere reason that this institution is a third party that observes the relations of individuals with the administration. On the other hand, the People’s Advocate works to raise the awareness of the public to be better informed about the law “On People’s Advocate”, especially concerning the possibility of presenting claims to it by means of an easy procedure and without costs.

90. According to article 73 of Criminal Code of the Republic of Albania “the execution of a premeditated plan aiming at the total or partial destruction of a national, ethnic, racial or religious group directed towards its members, and combined with the following acts, such as: intentionally killing a group’s members, serious physical and psychological harm, placement in difficult living conditions which cause physical destruction, applying birth preventing measures, as well as the obligatory transfer of children from one group to another, is sentenced with no less than ten years of imprisonment, or with life imprisonment”.

91. Article 74 of Criminal Code stipulates that killing, massacres, slavery, internal exile and deportation, as well as every act of torture or other inhuman violence committed, pursuant to a intentional concrete plan, against a group of civilians for political, ideological, racial, ethnic and religious reasons, are sentenced with no less than fifteen years of imprisonment, or with life imprisonment.

92. Article 253 of the Criminal Code provides that, discrimination by a worker holding a state function or public service conducted because of his capacity or during its exercise, when the discrimination is based upon origin, sex, health situation, religious or political beliefs, trade-union activity or because of belonging to a particular ethnic group, nation, race or religion, which consists in creating unfair privileges or in refusing a right or benefit deriving by law, is sentenced to a fine or up to five years of imprisonment.

93. According to article 265, inciting national, racial and religious hatred or conflict as well as preparing, propagating, or preserving with the intent of propagating, of writings with that content, is sentenced to a fine or to up ten years of imprisonment. Endangering public peace by calling for national hatred against other parts of the population, by insulting or defaming them, or by requesting the use of force or arbitrary actions against them, is sentenced to a fine or up to five years of imprisonment (article 266).
94. Article 46 of the Constitution provides that everyone has the right to organize collectively for any lawful purpose. The registration of organizations or associations with the court is done according to the procedure provided by law. Organizations or societies that pursue unconstitutional purposes are prohibited pursuant to law.
95. Articles 7/d and 8 of the law no. 8580 of 17 February 2000 "On Political Parties" provide that it is prohibited the registration of a party when its founding documents explicitly express incitement and support for racial, religious, regional or ethnic hatred. The anti-constitutional activities of political parties are prohibited. The Constitutional Court decides the finding of an anti-constitutional activity of a political party and its prohibition. This law does not inhibit the foundation of political parties on entirely ethnic basis.
96. Article 30 of the Civil Code of the Republic of Albania provides that a legal person may conduct any juridical action allowed by law, in the document of the establishment or in the statute, whereas according to article 39 associations are social organizations that pursue political, scientific, cultural, religious, charitable, or any other non-profit goals. The competent authority for the registration of the association is Court of the First Instance in whose territory the association will conduct its activities.
97. According to the article 52/ç of Civil Code, an association may be dissolved, *inter alia*, by a competent court decides that the association does not intend to fulfil the purposes specified in the statute or the association has started an illegal activity.
98. Freedom of peaceful meetings and without arms, as well the participation in them is guaranteed by the Constitution, article 47. In addition, the law "On the Right of Meeting", No. 8145 of 11 September 1996, provides that in the Republic of Albania, the right of public meeting is guaranteed to all citizens, regardless of their sex, race, colour, language, religion, ethnicity, economic, financial, educational and social conditions, political opinions, paternal belonging or any kind of personal circumstances.
99. Article 224 of Criminal Code provides that founding of or participating in parties, organizations or associations which intent to violently overturn the constitutional order is sentenced to a fine or up to three years of imprisonment. Re-founding a party, organization or association which was previously banned as anti-constitutional or the continuation of their activity in an open or covert way, is sentenced from one to five years of imprisonment.
100. Furthermore, article 269 of Criminal Code provides that forced obstruction of the lawful activity of political parties, organizations or associations constitutes criminal contravention and is sentenced to a fine or up to two years of imprisonment.

101. According to the Criminal Code, committing of crimes by an armed gang or criminal organization shall be sentenced according to respective criminal provisions adding five more years to the sentence given for the crime committed, when the referring provision contains imprisonment and another lighter punishment, but without exceeding the maximum term of imprisonment.

102. When the respective criminal provision contains imprisonment or life imprisonment or the death penalty, it is sentenced to twenty-five years of imprisonment or to life imprisonment. When the respective criminal provision contains only life imprisonment, it is sentenced to life imprisonment. Therefore, if a crime is committed against a particular ethnic, racial, religious group, etc, by an armed gang or criminal organization, it is sentenced by harder punishments.

103. The right of individuals to choose their place of residence and to move freely to any part of the territory of the state is foreseen in article 38 of the Constitution. This right is guaranteed either to Albanian nationals or to persons belonging to national minorities or different racial groups.

104. Pursuant to law no. 7652, dated on 23 December 1992, "On the privatisation of State dwellings" the Government must provide housing for a particular category of homeless individuals. In addition, the Government applies a special housing policy towards orphans, blind persons, invalids, etc.

105. The provisions of the law no. 8030, dated on 15 November 1995 "On state contribution towards homeless families" define the ways by which the Government provides a special treatment for homeless families. Every Albanian citizen is entitled to profit the facilities foreseen by this law in case he fulfils the requirements, regardless of his racial or ethnic belonging and so on.

106. The Constitution, in its article 57, foresees the right of everyone to education and law determining mandatory school education. It also provides the open character of general high school public education for all and the conditioning of professional high school education and higher education only on criteria of abilities.

107. As was mentioned above, the Constitution guarantees the rights of individuals belonging to national minorities and the principle of non-discrimination and particularly, their right to be taught in their mother tongue.

108. Albanian Constitution and legislation, especially law no. 7952, dated on 21.06.1995 "On pre-university education system" sanctions the observance of international standards and norms concerning the protection of human rights and elimination of discrimination cases, by stating that education in the Republic of Albania is a national priority, it is conducted in conformity with international agreements and treaties ratified by the Republic of Albania" and "...respects the rights of the child and adults sanctioned in these documents (article 1).

109. This law offers a broad and multidimensional overview of the integrity of the principle of non-discrimination, protection of individuals from discrimination, treating them in the context of accomplishing the obligations, principles and standards of international agreements on fundamental human rights and freedoms in the field of education.



110. In addition, this Law guarantees:

- the equal right of Albanian citizens to be educated in all levels of pre-university education, regardless of their social state, nationality, mother tongue, sex, religion, race, political opinions, health state and economic level (article 3);
- the right of national minorities to education in their mother tongue, to study their national history and culture, (article 10);
- the right of children of age 3-6 years to pre-school public education (articles 17-19);
- the right of citizens to study in public high schools, either general or professional, after the termination of obligatory education (articles 26-28 and 33-37);
- the right of public education framework for qualification (articles 14, 41);
- the right of Albanian and foreign citizens to private, laic or religious education (articles 43-48) and right of transferring from private to public schools (article 45).

111. The above-mentioned aspects of the law “On pre-university education system” reflect the obligations deriving from a number of international agreements ratified by Albania, including the provisions of the International Convention on the Elimination of all Forms of Racial Discrimination (article 7); the provisions of the Convention against the Discrimination in the Field of Education (articles 2-5) as well as the Convention on the Elimination of all Forms of Discrimination against Women (article 10), etc.

112. Law “On higher education in the Republic of Albania”, no. 8461, dated 25 February 1999 sanctions the right of Albanian and foreign citizens to higher education, either public or private, in Albania (articles 1 and 31); the right to graduation in more than one field of study (article 42); the right of recognition and to equivalent diplomas, certificates and grades obtained in higher foreign schools (article 43); the right to pre-university specialised education and to scientific qualification (articles 37-39); the right to be admitted in higher public schools through exams (article 31); the right of academic institutions to be autonomous (article 7).

113. In these articles are included the basic requirements for respecting human rights in the field of higher education and other specialisations, which exclude any form of discrimination in this respect.

114. With regard to foreign or stateless citizens, they equally enjoy in the territory of the Republic of Albania the fundamental rights and freedoms granted in the Constitution for Albanian citizens, except for cases when the Constitution specifically attaches the exercise of particular rights and freedoms with Albanian citizenship.

115. Foreigners have the right of refuge in the Republic of Albania according to law, (article 40 of the Constitution). The collective expulsion of foreigners is prohibited. The expulsion of individuals is permitted under the conditions specified by law, (article 39/3).

116. The entry, residence and treatment of foreigners in the Republic of Albania is regulated by law no. 7939, dated 25 May 1995 “On migration”, law no. 8492, dated on 27 May 1999, “On foreigners” and the Decision of the Council of Ministers, No. 439, dated on 4 August 2000 “On Entry, Residence and Treatment of Foreigners in the Republic of Albania”.

117. Articles 3 and 4 of the Law “On migration” provide that this law recognizes and observes the general principles of international acts. Albanian civil servants in the public administration, who are engaged in the implementation of this law, or other related by-laws, exercise their duties in accordance with the general principles of international acts and other international obligations of Albania, regardless of gender, race, colour or religion of persons, who seek to enter, leave or reside in the Republic of Albania.

118. According to articles 26, 27 and 28 of the law “On Migration”, it is prohibited the expulsion, return, deportation out of the territory of the Republic of Albania of those persons who have a well-founded fear that their life or freedom is at risk because of their race, gender, religion, nationality, political opinions, or belonging to a particular social group, to the territory where this risk exists.

119. The principle of non-discrimination is also included in the provisions of the Law on Asylum, no. 8432, dated on 14 December 1998. According to this law, the Republic of Albania recognizes and observes the right of individuals, who have acquired the right of asylum “not to be expelled out of the Albanian territory” to a state where their life and freedom are endangered because of their race, religion, nationality, belonging to a particular social group or political opinions.

120. After the collapse of communist regime and ratification of the International Covenant on Civil and Political Rights the Albanian Parliament has enacted a number of laws in order to enable practical implementation of the Covenant. The most important of them are the Criminal Code, Civil Code, Codes of Criminal and Civil Procedure, Family Code, Labour Code, Law on Political Parties, Law on People’s Advocate, Law on Advocacy, etc.

121. According to article 122 of the Constitution, any international agreement that has been ratified constitutes part of the internal juridical system after it is published in the Official Journal of the Republic of Albania. It is implemented directly, except for cases when it is not self-executing and its implementation requires issuance of a law. An international agreement that has been ratified by law has superiority over laws of the country that are not compatible with it.

122. The norms adopted by international organizations prevail, in case of conflict, over domestic laws, when the ratified agreement by the Republic of Albania concerning its participation in that organization provides for direct application of norms adopted by it.

123. With a view to make effective the rights embodied in CCPR, the Albanian Government has included in the curricula of eight years education, high schools and academic institutions particularly in the curricula of Law Faculties information on the provisions of this covenant.

## **The right to petition**

124. According to article 60 of the Constitution and article 2 of Law on People's Advocate, this institution defends the rights, freedoms and lawful interests of individuals from unlawful or improper actions or failures to act of the organs of public administration or third parties acting on its behalf.

125. As a consequence, under the jurisdiction of the People's Advocate fall the Government, ministries, other central institutions such as national committees for recession of property, intelligence services, National Bank and banks with state capitals, organs of local government where are included prefectures, districts, municipalities and communes as well as those public institutions or authorities acting on behalf of the organs of public administration and the institutions depending on them either central or local.

126. Similarly to other countries where the Ombudsman institution operates, in Albania the institution of People's Advocate has not decision-making competences in relation to the organs of public administration, but only the right to make recommendations. This does not imply that the People's Advocate has not the proper means to defend he rights and freedoms of individuals. The right of this institution to follow the cases step by step, according to the hierarchy of the administration, until the submission of he case to the Parliament, as well as its transparency, close cooperation with NGO-s and media, guarantee the success of the task it is in charge of.

127. Each person, group of individuals, or non-governmental organisation that pretend their legitimate rights and interests are violated by an act, activities or inactions of the central and local administration or other public authority, may submit complaints, requests or other notification to the People's Advocate concerning the particular case. He may also, for particular cases, which are made public, initiate the procedure of investigation with his own initiative, but taking afterwards the approval of the interested or the offended person.

128. The People's Advocate is entitled to request from organs of administration any information or document pertaining to the case he is investigating, or to conduct independent investigations on the ground, to be provided with any dossier or other material related to his investigation, to interrogate any person, who, according to him, is related to the case under investigation or to conduct himself or ask for expertise.

129. He is entitled to be provided with information or documents classified as confidential. Under these circumstances he is obliged to respect the restrictions for the protection of state secret. The People's Advocate may not be prohibited to enter any offices of above-mentioned administration organs, as well as prisons, detaining centres or other institutes where the rights of individuals are restricted. He also would not be prohibited to talk privately to detained persons in these institutes. All these rights arise from the interpretation of the Constitution and the law "On People's Advocate" as well as from the international precedents in the activities of Ombudsman institutions.

130. According to article 22 of the law, the organs to which the People's Advocate has submitted a recommendation, request or proposal for dismissal shall review the recommendation, request or proposal for dismissal and shall reply within 30 days from the date the

recommendation, request or proposal for dismissal is delivered. The reply shall include reasoned explanations on the specific case as well as the actions, omissions or measures undertaken by that organ.

131. If the People's Advocate does not consider sufficient the reply or measures an organ has undertaken, he shall have the right to refer the case to the higher organ in hierarchy. If [the violations] are repetitive or the respective organ does not respond to the recommendations of the People's Advocate, the latter may present to the Assembly a report, which shall include proposals for specific measures to remedy the violations.

132. The right of People's Advocate to make legislative recommendations is a very important and effective tool to prevent violation of human rights. If the People's Advocate finds that it is the content of a statute or other legal act and not its application that leads to violation of human rights recognized by the Constitution or other laws, he shall have the right to:

- (a) recommend to the organs vested with legislative initiative to propose amendments and improvement to the statute;
- (b) propose to the Administration to amend and improve by-laws acts; or
- (c) recommend to the Constitutional Court to invalidate those acts.

133. The institution of People's Advocate pays a special attention to contacts with the petitioners, because its role is to assist the resolution of people's needs. Its duty is to prevent or to detect the violations of human rights and freedoms, with a view to resolve the consequences resulting from that violation.

134. It is very important that this institution be open and disposed for anyone who needs its assistance. Every Albanian or foreign citizen may contact at any time during working hours from 8.00 a.m. until 4.00 p.m. the officials of People's Advocate. The People's Advocate and Commissioners organize meetings with the interested persons. There is installed a phone line free of charge at the disposal of individuals and particularly to the prisoners, detained or persons kept in custody, who may present their complaints, requests, explanations and information regarding the case.

135. Citizens may address themselves to the People's Advocate in different ways. According to the procedure, the complaints may be submitted to the People's Advocate in a written form. In urgent cases, the complaint may be presented by phone as well, but soon it should be submitted in a written form, otherwise the procedure examining case is interrupted. Anonymous complaints or requests are not accepted.

136. In cases when the complaint submitted is not complete, because the relevant documents are lacking, the People's Advocate may ask for its completion or he makes direct inquiries at the institution to which the complaint is addressed, if such a thing is evident in the complaint. In many cases, the conversation with the complainant is necessary to demonstrate properly the case under investigation, especially where it is complicated and needs many explanations. The institution of People's Advocate realizes many meetings also out of its premises in various districts of country.

137. Some of the submitted complaints may not be under the People's Advocate jurisdiction, or do not meet the conditions to be dealt by this institution. In such cases, the petitioner will get feedback by the People's Advocate as soon as possible, within one month at the latest, advising the petitioner about the steps to be taken, which are the possibilities left, or which are the legal means to be used before the complaint is examined by the People's Advocate.

138. As a rule, at first, the People's Advocate sends to concerned institutions a short concentrate description of the case submitted, and asks for detailed explanations about it. At the same time, he settles the deadline, within which he expects the response by the institution to which the complaint is addressed. This deadline depends on the emergency of the case and the range of its complication, but it should not exceed 30 days. Sometimes, when the difficulty of the case is so that deadline cannot exceed a certain time, the People's Advocate might do his verifications by phone or fax.

139. After conducting his investigations for a certain case, the People's Advocate compiles a report related to the case and which contains his conclusions, and may submit it to the concerned parties to the case. The report contains the assessment of the People's Advocate on facts and circumstances of each case, indicating which of the human rights are impinged and who are the responsible persons that have caused those impingements.

140. At the same time, he may propose the remedies for the impinged right. He may also propose relevant compensations for the harm caused against the individual as result of impingement of his right. The People's Advocate may require that the institution, which has caused the impingement of individual's right, should address to him its excuses for that.

141. The People's Advocate submits every year to the Assembly an annual report for the conducted work. A copy of it should be sent to the President of the Republic and to the Council of Ministers.

142. Annual reports and special reports are made public and they have to be published no later than one month from the date of debate for it/them in the Parliament. A copy thereof in English language must be published and issued by Office of the People's Advocate homologue institutions of other countries as well as international institutions related to this institution.

### **Article 3**

#### **Equality between the sexes**

143. The principle of equality between men and women is an integral part of the Albanian legal system drawn in the Constitution and domestic legislation. As mentioned above, article 18 of the Constitution provides that all are equal before the law. 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.

144. The Constitution, in its articles 15 to 58 guarantees the civil, political, economic and cultural rights for all citizens, but it does not define the notion of discrimination. While, as regards international acts, article 122 provides that an international agreement that has been ratified by law has superiority over laws of the country that are not compatible with it.

145. According to these principles asserted by the Constitution, which are also in conformity with the classic provisions of international law, other human rights are developed. Apart from the Constitution, civil rights are sanctioned in particular laws and codes.

### **Civil Code**

146. According to article 1 every physical person enjoys full and equal capacity in order to have civil rights and obligations, within the limits defined by law.

147. Article 2 provides that juridical capacity is acquired at the time the person is born alive and ends with his death. When the child is born alive, it enjoys judicial capacity from the time of the pregnancy. Meanwhile, the person who reaches eighteen years old acquires the full right to act so that by his acts he gains rights and holds civil obligations. According to the article 4, civil rights of a physical person cannot be limited, except exclusions provided by law. The juridical action that places limits to the legal capacity of a physical person is invalid.

148. With regard to females, the Code provides that when they get married before 18 years old, acquire full legal capacity and capacity to act even before this age and they do not lose this capacity even when the marriage is declared invalid or divorced before reaching the age of eighteen years old.

### **Right to marriage**

149. The new Family Code (law no. 9062, date 08.05.2003) constitutes a significant step towards the protection of woman with regard to the elimination of the discrimination in terms of marriage age, because the Code of year 1982 provided the 16 years age for females and 18 years for males to be joined by marriage, while article 7 of current Family Code provides that a man and a woman may be joined by marriage if they are over 18 years.

150. The district court where the marriage is concluded for appropriate reasons would allow the marriage before that age as well. Thus, article 7 does not make any difference between two genders with regard to the age of marriage.

151. Albanian Constitution, Family Code and Civil Code guarantee equality in family. According to article 53 of Constitution any individuals have, the right to get married and to have family, as well as the marriage and family are under a special protection by the state.

152. Marriage and its dissolution are regulated by the provisions the Family Code (law no. 9062 of 08.05.2003) and of Civil Code. New Family Code established many insights, which regulate relations that emerged during the transition period. More than ever before in this Code the right of equality between husband and wife are set forth. Chapter II provides the rights and obligations arising from marriage. Article 50 stipulates that under marriage, the husband and wife have the equal rights and the same obligations.

153. According to article 8, the marriage is concluded in the presence of a registrar, with the free consent of both spouses. The new Code has foreseen a special form for joining in marriage, by means of announcement, which consists of putting up the relevant poster at appropriate places by City Hall or Municipality. A new subject to the Code is also the representative with special power of attorney who is authorized by spouses for carrying out various procedures with regard to the conclusion of marriage.

154. Article 51 of the Family Code provides that husband and wife have the right to choose since the conclusion of marriage as family name either of their both previous surnames or not to change them. Actually there have been rare cases where after conclusion of marriage, the spouses have not changed their previous surnames or furthermore to own as family name the previous wife's surname. This results from the patriarchal tradition and considering husband as the head of the family.

155. The New Family Code abrogates articles 86 and 87 of Civil Code consisting of property of spouses. Chapter III of New Family Code provides general and special provisions in terms of conjugal wealth rule. To that aim, the conclusion by signature of a contract before marriage in order to be provided the rule they have decided, which would not be in contradiction to the provisions of this Code and respective legislation. Article 74 provides also the elements of the set of legal rules, whereas article 77 sets out the items of personal property.

156. Number of marriages is greater in rural districts comparing big cities (10 to 1). The trend of young people, especially in urban districts, is to get married at an advanced age. Marriage with foreign nationals began to be concluded in 1990, after being prohibited for 30 years.

157. Before '90s extramarital relations of unmarried young couple, recognized in developed societies, was uncommon in Albania. In the past extramarital relations out of legal civil marriage was condemnable by administrative procedures, whereas now it is recognized and accepted by the majority of young people living in urban areas.

158. Under these circumstances was acknowledged as indispensable its providence in Family Code. In two articles, concretely in articles 163 and 164 is set forth the meaning of extramarital relations as a factual join between a man and a woman who live as couple, characterized by a joint living, which is stable and continual, as well as conclusion at a notary of a contract where are provided the consequences in respect of children and property during cohabitation.

### **Termination of marriage**

159. Article 123 provides clauses of terminating a marriage:

- When one of spouses dies;
- When one of spouses is declared dead;
- In case of dissolution of marriage.

## Divorce

- **By mutual consent.** In this case, both spouses are addressed to court by means of a request followed by a draft-agreement that regulates the consequences of marriage dissolution. Court, after obtaining evidences that there is a mutual consent, which is real and unimpeded, gives its approval for the dissolution of marriage.
- **By request of one spouse.** In this case, article 132 sets out the reasons grounds for the dissolution of marriage.

160. Article 137 provides the case of pending trial by pregnant wife's request up to one year since her pregnancy. There were an increasing number of divorces in Albania during '80s. Total number of divorces was 2024 in 1980, while 2597 in 1988. In year 1989, from 100 married women, 9.5 were divorced. In two first years of transition, there were a significant increasing number of divorcements. In 1991, it was maximum figure having one divorcement every 10 marriages.

161. In the big cities this percentage was even higher. This culmination (not confirmed by the subsequent data) is possible because of the fact that in these years failed marriages for along time have been officially dissolved. In the recent years the number of divorces has dropped in proportion with the number of new marriages (from 7.5 divorces out of 100 marriages to 5.9 divorces in 1997). After 1997 there is an increasing tendency of the number of divorces.

### Marriages and divorces (1990-1999)

Year	Marriages		Divorces	
	Total	Per 1 000 inhabitants	Total	Per 100 marriages
1990	28 992	8.9	2 675	9.2
1991	24 853	7.6	2 236	9.0
1992	26 405	8.3	2 480	9.4
1993	25 963	8.2	2 251	8.7
1994	27 895	8.7	2 108	7.6
1995	26 989	8.3	2 331	8.6
1996	27 690	8.4	1 901	6.9
1997	24 122	7.3	1 430	5.9
1998	27 871	8.3	2 005	7.2
1999	27 254	8.1	2 114	7.8

162. The difference by previous percentages of divorces is the ratio between sexes who have submitted a lawsuit for divorce. In 1993, 1,304 men and 1,589 women submitted a lawsuit for divorce, in 1994, 1,297 were men and 1,454 were women, and in 1996, 1,114 were men and 1,151 were women. The level of their unemployment has most probably affected the dropping of percentages of the lawsuits for divorce by women, which is higher than that of men, which makes women economically dependent on their husbands.



163. Chapter III “effects of marriage dissolution”, article 147, provides that the court may oblige one of the ex spouses to shell out in the account of the other spouse a financial contribute destined to compensate as much as possible inequalities that may cause in the life of the other spouse division of property after the dissolution of marriage, apart from the obligation for nutrition. The court decides this contribution, which may be provided immediately or periodically. Article 149 foresees also the circumstances when this compensation should be given.

164. With regard to obligation for nutrition of one the spouses towards the other one; article 199 of new Family Code determines a time limit no more than six years. One of the spouses is entitled to claim the financial contribution of the other spouse, in case he or she is incapable to work or has no sufficient means for living.

165. Concerning the use of house that is property of one of the spouses, article 153 foresees the cases when ex spouse who is not the owner of the house may live even after the dissolution of the marriage. Children are under the responsibility of one of the ex spouses who is not the owner of the house, until the children become mature.

166. When the spouse who owns the house claims the dissolution of the marriage, his/her right can be exercised for 7 years. When ex-spouse who is not the owner of the house has installed a professional cabinet in the house with a great value, whose removal needs a lot of expenses, the right of use the house until 3 years. In these cases the court determines the amount of rent to be paid, taking into consideration the incomes of the ex-spouse who is not the owner of the house.

### **Family rights**

167. Family is the most durable institution of the Albanian society. Nevertheless, economic changes have caused a reduction of family members. In the early ‘80s, rural families were composed of 6.2 members, whereas in 1989 the number was reduced in 5.3 members. Furthermore, the number of family members in urban areas was reduced from 4.6 members to 3.9.

168. Changes in the family structure as a result of the communist and transition period have distinctly affected gender relations. In the past, the strong patriarchal orientation of Albanian families gave the men the possibility to dominate in local politics and economic decision-making. Instead, at present, the market economy has created an unclear situation of the roles of men and women. The majority families are still composed of the husband, wife, unmarried children and spouses and the children of the married sons.

169. Another effect of the transition period is the decrease of age for marriage of rural women, since the majority of young people emigrate. This affects the education of young women who often are engaged and married before they terminate their schooling.

170. Young married couples live normally with the parents of husband or wife (in rare cases), as long as their revenues allow them to have their own house. In a house composed of the husband and wife, the later may enjoy the same status with her husband if they contribute to the family revenues and give birth to a male.

171. The number of families with one parent is increasing. Even though there is a lack of precise data, families with one parent are mainly because of natural death. Partial observations indicate that women run 80% of the housework as a single parent.

### **Family and child policy**

172. Concerning the policies towards children the Government has approved the national strategy on children. There are no particular policies concerning families. The Ministry of Labour and Social Affairs offers financial assistance only to families in need by making a categorization according to certain conditions.

### **Ownership**

173. Article 41 of the Constitution guarantees the right of private property, by defining also the ways of gaining the property (by gift, inheritance, purchase, or any other classical means provided by the Civil Code). This principle is dealt also by article 153 of the Civil Code, which prevents full or partial loss of property gained legally (excluding the cases of expropriation for public necessities).

174. Civil Code provides the loss of property (article 191) when it is acquired by another person, or when renounced and it is recognised when done through a notary act and is registered. Furthermore, the registration of immovable properties must be done according to the provisions of article 192 of Civil Code.

175. Title III of the Code deals with co-ownership of two or more individuals (which is assumed to be equal for all unless the contrary is verified). Every co-owner has rights and obligations deriving from their property, but they cannot sell their part of property without giving the possibility to the other co-owners to buy it (article 204).

176. Inheritance by law is applied when the person leaving the inheritance has not made a will or has made it only for a part of his property or when the will is entirely or partially invalid, (article 317 of the Civil Code). A person has capacity to inherit when at the time of the opening of the inheritance, is alive or has been conceived before the death of the person leaving the inheritance and is born alive (art. 320). In the first row are called in inheritance the children and the spouse able or unable to work, each inheriting in equal parts (article 361);

177. When besides the spouse there are no other heirs of the first row, those of the succeeding row as set forth in article 362 of this Code are called in inheritance and, when there are no such, heirs of the next succeeding row as set forth in article 363 of this Code are called. In any event the spouse receives 1/2 of the inheritance.

178. Inheritance by will. Referring to the article 373 any person who has completed eighteen years as well as a woman under that age, when she is married, may make a will (it should be mentioned that in case of co-ownership one of the spouses may include in his/her will only 50% of the property created during the marriage).

179. At any case, according to article 379, the person leaving an inheritance can neither exclude from legal inheritance his minor children or other minor heirs who inherit but who are not in the first row, ore those who inherit according to legal provisions. Practically speaking, a

property gained during the marriage belongs equally to the spouses, as long as the contrary is proved in the court. None of the spouses may decide by law the share of property of the other spouse.

### **Access to judiciary**

180. While legal provisions are consistent with the protection of fundamental human rights, practical access of women to judicial system to obtain redress is restricted by a number of difficulties:

- First of all women are not always aware of full extent of their rights and therefore rarely act upon it. Legal literacy activities and legal awareness campaigns have been carried out by non-governmental organizations, but they efforts are limited mainly due to lack of funding. No specific governmental programme exists to improve legal literacy of women.
- Secondly, especially in civil cases, legal proceedings are often very long and therefore expensive for the plaintiffs, in practice limiting access of poorer groups to legal redress. In fact even though persons may start a civil action of their own motion, procedures are fairly complex and require the assistance of a legal representative, not provided by public means.

### **Access to free legal services**

181. Article 6 of the Criminal Procedure Code guarantees legal aid. A defendant is entitled to self-defence or to defence by a defence lawyer. In case of insufficient means, he shall be provided legal aid. In civil cases, the parties may defend themselves, except for the cases when representation is mandatory, (article 22 of the Civil Procedural Code).

182. According to article 85 these cases are related to the condition and capacity to act of persons; interests of minors when they are under guardianship, the cases considered by the Supreme Court, the instances when it is set forth by the law.

183. Even though in theory legal aid is possible (there is no legal provision against it), in practice, remunerated attorneys of their choice assist plaintiffs and defendants in civil cases. Free legal assistance to vulnerable group in civil cases is at present provided by governmental associations (both national and international). In particularly the Women's Advocacy Centre provides women with legal aid in cases of divorce, separation, alimony, child custody, paternity etc.

184. The right of name - Every physical person has the right and obligation to have his/her name and surname. After being married, the wife usually takes the surname of her husband, regardless that she is entitled by the legislation to keep also her surname. After being divorced women retakes her maiden name but she can also keep the surname of her ex-spouse only for reasonable grounds.

185. The right of residence - according to the Civil Code and article 55 of Family Code, everyone may chose freely his residence and after the marriage the question of residence is resolved in agreement between the two spouses taking into account the interests of their children and better fulfilment of the interests of their family. In reality, being affected by the tradition and customs, woman after her marriage goes in her husband's house, who becomes head of the family and by the law and customs it is up to him to decide the residence of their family.

186. Inheritance - The legislation provides equality between men and women who, by means of legal acts, may gain civil rights and undertake obligations by concluding contracts, different agreements, or by legal inheritance.

187. Albanian legislation provides equal rights for the daughter and son in the family with regard to gaining inheritance by law. But, in practical terms, in most of the cases, is the husband who inherits the family's land.

188. Citizenship - As was mentioned previously, the Constitution and the Law on Albanian Citizenship (law no. 8389 of 05.08.1998) provide the legal bases for Albanian citizenship. According to article 19 of the Constitution every child born of at least one parent (be it the father or the mother) with Albanian nationality gains automatically Albanian nationality.

189. Article 6 of the Law on Citizenship provides that Albanian citizenship is acquired by birth, naturalization and adoption, while article 10 foresees that a foreigner married to an Albanian citizen for not less than three years may acquire, if he/she so wishes, Albanian citizenship. Therefore marriage is not a criterion for acquiring or losing Albanian citizenship. Being that Albania is party to the Convention of 1954 on the marital status of women, Albanian legislation on Albanian Citizenship follows the guidelines and is in compliance with the convention.

### **Participation in political and public affairs**

190. The participation of women in political and public life includes particularly their right to participate in all elections and public and political referendums, to be elected in all political elected bodies, to participate in designing and implementing governmental policies, to work in public and political institutions at all levels, to participate in non-governmental bodies dealing with the public and political life of the country.

191. All these basic rights are guaranteed by the Constitution (arts. 45, 46 and 48), but statistical data prove that in Albania management and political posts, in government and public decision-making structures are mostly taken by men despite the fact that women's education level is equal, and often higher, than men's.

**Statistical data**

**Composition of the Government, January 2000**

Post	Number		%	
	Male	Female	Male	Female
Prime Minister	1	0		
Vice/Prime Minister	0	1		
Ministers	14	2	87.5	12.5
Vice Ministers	16	4	80	20
Directors	82	23	78.1	21.9

**Head and member of courts by sex - year 2000**

Post	Number		%	
	Male	Female	Male	Female
Head of Supreme Court	1	0	100	0
Head of Constitutional Court	1	0	100	0
Head of Appeal Court	4	2	66.7	33.3
Members of Supreme Council of Justice	13	2	86.7	13.3
Member of Supreme Court	12	5	70.6	29.4
Member of Constitutional Court	8	1	88.9	11.1
Member of Appeal Court	30	13	69.8	30.2

**Universities staff by sex - January 2000**

Post	Number		%	
	Male	Female	Male	Female
Rector	8	1	89	11
Vice/Rector	7	2	78	22
Dean	30	6	83	17
Vice/Dean	10	3	77	23
Member of Senate	151	40	79	21
Members of Faculty Councils	344	150	70	30
Chief of Departments	101	31	76.5	23.5

**Participation in media (newspapers) by sex - January 2000**

Post	Number		%	
	Male	Female	Male	Female
Director	6	0	100	0
Chief Publisher	9	0	100	0
Vice/Chief Publisher	9	3	75	25
Chief of Departments	26	12	68	32
Journalist	92	72	56	44

192. Women's highest political presentation in the history of the Albanian Parliament was reached in the 1974 with 33% of total MP-s and in 1989 where 1/3 of the Members of Parliament were women. In the first multi-party political elections of March, 1991, the representation of women in elected bodies decreased to 51 against 199 men, while in 1997 only 11 women were elected against 144 male deputies. In the Parliamentary elections of 2001, 9 women were elected as MP-s out of 140.

193. The situation does not differ substantially for the participation of women to local government. In rural areas it is more difficult rather than in urban areas for women to take decision making positions. For example in 1996 out of 309 Heads of Commune only one was a woman. 61 out of 947 members of Municipal Council were women (6.4%), 64 out of 930 members of District Councils were women (6.8) and only 105 women were elected as members of Commune Council out of 3548 (2.9%). An improvement was in the Local Election of 1st October 2000, where 8 out of 65 majors were women and 3 out of 11 were elected as heads of mini-municipalities.

194. According to article 3 of the Electoral Code (Law No. 8609 of 08.05.2000), every Albanian citizen, of 18 years of age, without distinction of race, ethnicity, sex, language, political conviction, religious belief or economic conditions has the right to vote and to be elected. Certain categories of citizens are not allowed to run as candidates nor be elected deputies, without resigning their office (judges and prosecutors, military servicemen in active duty, staff of police and National Security, diplomatic representatives, or members of the local government).

195. This principle is also foreseen also in the article 3/3 of the new Electoral Code, adopted by the Parliament with the Law No. 9087, dated on 19 June 2003.

#### Composition of Parliament 1920-1997

Years	Number		%	
	Male	Female	Male	Female
1920	37	0	100	0
1921	78	0	100	0
1925	75	0	100	0
1928	57	0	100	0
1945	76	6	93	7
1950	104	17	86	14
1958	171	17	93	9
1970	192	72	73	27
1974	167	83	67	33
1982	174	76	70	30
1990	169	81	68	32
1991	199	51	79.6	20.4
1997	144	11	93	7

**Posts in Parliament by sex**

Position	1997		%
	Male	Female	Female
Head of Parliament	1	0	0
Vice Head of Parliament	1	1	50
Head of Parliament Commissions	13	1	7.1
Head of Sub-Commissions	1	1	50
Head of Parliamentary Groups	6	0	0

**Composition of Parliament by political parties, June 1997**

	Number		In %	
	Male	Female	Male	Female
Socialist Party	97	9	92	8
Democratic Party	22	1	96	4
Social-democratic Party	9	1	90	10
Others	16	0	100	0

**Composition of Parliament commissions by sex, June 1997**

Commissions	Number		%	
	Male	Female	Male	Female
Justice	12	1	92.4	7.6
Foreign Affairs	11	0	100	0
Economy, Finance, Privatisations	13	2	87	13
Agriculture and food	10	0	100	0
Industry, Transport, Trade	11	0	100	0
Education, Culture, Science and Sport	9	1	90	10
Public Information	10	0	100	0
Human Rights and Minorities	6	1	85.8	14.2
Health and Environment	8	1	89	11
Labour and social Affairs	11	2	84.7	15.3
Defence	9	0	100	0
Public order	9	0	100	0
Immunity, Mandates	11	0	100	0

196. The low participation of women is partially an outcome of their opinion about politics as a complicated business, but mainly it is a result of the opinion that women are not suitable for decision-making positions.

197. Recently approved Election Code failed to provide a quota provision for women. As a result the decision to candidate women representatives is left very much in the hands of political parties (notwithstanding the right of a person to run as an independent).

**Local government election, October 1996**

Post	Number		%	
	Male	Female	Male	Female
Prefect	12	0	100	0
Majors	62	3	95.4	4.6
Head of District Council	34	2	94.5	5.5
Head of Commune	308	1	99.68	0.32
Member of Municipal Council	886	61	93.6	6.4
Member of District Council	866	64	93.2	6.8
Member of Commune Council	3 443	105	97.1	2.9
Secretary of District Council	33	3	91.7	8.3
Secretary of Municipal Council	56	9	86.2	13.8
Secretary of Commune Council	295	14	95.5	4.5

198. In local elections of 1st October 2000, the Albanian Socialist Party, stimulated by the Social Women Forum, decided to establish as a target a 30% quota of women candidates. The same is true for the opposition party, The Albanian Democratic Party, also providing for a voluntary quota of 30% women candidates. But, despite these promises, for the candidacy of the Mayor of Tirana none of these two parties proposed a woman and statistics available on women's presence within political parties are still showing a substantial gender gap.

**International representation and participation**

199. According to the law each Albanian citizen has the opportunity to represent his/her Government at international level (either in the Foreign Service or as a member of an international organization). Statistical data show that the number of women working for the Albanian Foreign Service is increasing year by year.

**Percentage of women in diplomatic missions - January 2002**

Position	Total	Female	% Female	Position
Ambassador	43	2	4.6	Ambassador
Minister Counsellor	4	1	25	Minister Counsellor
Counsellor	15	2	13	Counsellor
Secretary, First	36	6	16.7	Secretary, First
Secretary, Second	30	9	30	Secretary, Second
Secretary, Third	7	1	14.3	Secretary, Third
Attaché	2	1	50	Attaché

**Women holding senior posts in Ministry of Foreign Affairs - January 2002**

Position	Male	Female	% Female	Position
Minister	1			Minister
Vice Minister	1			Vice Minister
Director	9	3	25	Director
Chief	3	0	0	Chief
Specialist	34	29	46	Specialist



### **National mechanisms for women development**

200. The national mechanism for the protection and promotion of women's rights underwent substantial changes since its birth in 1992. From 1992 till 1994 woman's development was under the competences of Ministry of Labour and Social Affairs. In 1996 was created the State's Secretariat for Woman's Affairs in the Ministry of Culture, Youth and Sports, which, in 1997, were transformed in the Department for Woman and Family in the Ministry of Labour and Social Affairs. In July 1998 the Council of Ministers upgraded the Department Women and Family to the Council of Ministers level; the Chairperson of the Committee report directly to the Deputy-Prime Minister and the Committee's budget is part of the budget of the Council of Ministers.

201. The responsibilities of the Committee Woman and Family/Committee for Equal Opportunities are provided in the Council of Ministers Decision no 415, of 01 July 1998:

- the implementation of governmental policies for women and family issues,
- the co-ordination of programs for the promotion of equality between men and women in the central and local level,
- the implementation and evaluation of governmental programs on women and family,
- the proposal of new legislation and/or amendments to existing legislation on children's and women's rights in compliance with international standards,
- the support and co-ordination of NGOs activities in the field of women's and family's rights.

202. The objective of Committee is the implementation of the National Platform for Women (Council of Minister Decision N.267/03.06.1999). Furthermore, the Committee is working on the setting up of an effective information system to monitor progress countrywide, through the network of focal points appointed in the local government and on the promotion of affirmative actions to be decided by relevant organizations (Parliament, ministries, Local Government).

203. The strategy of the Committee is based on CEDAW, on the Beijing Platform for Action and on the National Platform for Women (Council of Minister Decision no.267 of 03.06.1999).

204. The latter instrument provides for, among other:

- Increasing women's participation in governmental institutions, in the judiciary and in the public administration;
- Processing information and encouraging gender related research;
- Increasing women's awareness on their social, economic and cultural rights;

- Improving existing legislation regarding women's advancement;
- Improving the networking between non-governmental and governmental institutions on gender issues.

### **Projects of cooperation with the international and domestic institutions in this area**

205. With the intention of increasing the number of women at the decision-making levels, the institutional Albanian institution Committee for Equal Opportunities has been cooperating closely with the civil society and foreign organisations since 1999.

206. Within the framework of the Stability Pact for South-eastern Europe, the Committee has organised several important projects for the abovementioned purpose. These projects consist firstly in local and national trainings for women that want to participate to the decision-making institutions, foregoing to the local and parliamentary elections.

207. Another financial support on this purpose has been provided through the NPA (Norwegian Peoples' Assistance) in cooperation with the Committee for Equal Opportunities, Women Millennium Network and the Independent Forum of the Albanian Women. Trainings such as "Women can achieve it" have been elaborated in fazes, having as main objective the increase of women self-confidence and awareness in order to strengthen the women's position at the political and public decision-making.

208. In this framework have been implemented local trainings entitled "Women in leadership", with women that wanted to present their candidature for the local elections 2003. The project has been implemented in consortium of the Committee of Equal Opportunities, Women Millennium Network, Women forums of political parties, representatives from the media with the financial support of UNDP.

209. The State Committee for Equal Opportunities has conducted two studies on the position of women in political parties and public decision-making, in implementation of the State Platform on Women (grounded on the Beijing Platform for Action) and the CEDAW convention. The state Committee for Equal Opportunities is currently working on reporting for one of the MDG-s, promote gender equality and empower women.

### **Equality of men and women in labour market**

210. The right to work is stipulated in the Constitution, article 49 (1); everyone has the right to earn the means of living by lawful work that he has chosen or accepted himself. He is free to choose his profession, place of work, as well as his own system of professional qualification.

211. This principle is implemented equally for all the citizens, men and women. The Criminal Code prohibits the discrimination grounded on sex, which influences the right of the individual for equal chances in employment and training, procedures of hiring and working conditions, in remuneration, social assistance and termination of working contract, as well as participation in trade unions.

212. Article 253 of the Criminal Code provides that, discrimination by a worker holding a state function or public service conducted because of his capacity or during its exercise, when the discrimination is based upon origin, sex, health situation, religious or political beliefs, trade-union activity or because of belonging to a particular ethnic group, nation, race or religion, which consists in creating unfair privileges or in refusing a right or benefit deriving by law, is sentenced to a fine or up to five years of imprisonment.

213. Article 1 of the Civil Code of the Republic provides full and equal possibilities for every person; the later provisions refer to words as “everyone”, “No one”, and “person” without any distinction of sex.

214. In particular, the Labour Code provides:

- Article 9(1): Prevention of discrimination;
- Article 9(2): Definition of discrimination;
- Article 10: Participation in trade unions;
- Article 32(1): Obligation of employers to respect and protect the personality of the employee;
- Article 32(2): Prohibition of sexual harassment;
- Chapter 8, articles 39-75: Health and job insurance;
- Chapter 9, articles 76-97: Working hours and paid vacations;
- Chapter 10, articles 98-108: Special protective measures for women and children;
- Chapter 11, articles 109-134: Reward and Compensation

Violation of above-mentioned provisions is penalized in with fine, which is 20-50 folder of minimum salary set out by law.

215. In the Labour Code are provided special arrangements for the protection of female employees. Thus, article 54(3) provides that pregnant woman that works upstanding, should have time-break at least 20 minutes every 4 hours. Article 55 provides the weight that could be raised for job purpose is no more than 20 kilos for woman, whereas 55 kilos for man.

216. According to article 72 the employer, in the jobs where there are female employees, is obliged to provide special compartments for them in spite of other hygienic conditions.

217. The Labour Code is drafted based upon international labour standards, ratified by Albanian Parliament and its article 9 reflects the provisions of Convention 111 of ILO.

218. Apart from modern and non-discriminatory legislation towards women, the implementation and application of equal rights, needs to be improved, especially with respect to free choice of residence, inheritance and ownership.

219. Albania is a UN member since 14 December 1955 and has ratified almost all the main conventions of this Organization on human rights. As regards discrimination, the Republic of Albania is a party to following conventions:

- Convention Against Discrimination in Education (UNESCO), 1960 (1963);
- International Convention on the Elimination of All Types of Racial Discrimination 1969 (adhered on 1994);
- ILO's conventions on the discrimination, ratified by Republic of Albania;
- 1958 Convention 111 on Discrimination in Employing, ratified on 27 February 1997.

220. In addition, Albania is a member of European Council since July 13th, 1995. Albania is a party to a great number of important acts adopted by Council of Europe, such as European Convention for Human Rights and protocols 1, 2, 3, 4, 5, 6, 7, 8, 11 (protocols 12 and 13 had been signed). Because Albania is a Party to Protocol 11, its nationals have the right to address to European Court for Human Rights after they have use all remedies available from domestic legislation.

### **Labour market**

221. First years of transition were characterized by a sudden increase in the number of unemployed as result of closure of state enterprises. This negative tendency began improving so as during 1993-1996 unemployment was reduced as result of improvements in economy and increasing number of small and medium businesses. However, a precise evaluation of job market in Albania currently is difficult because the majority of population is in rural areas (they are not registered as unemployed) and the high level of unemployed in undeclared work.

222. Increase of the unemployment figures after 1997 resulted because most of potential workers were not declared and registered as unemployed, since they earned monthly payment from their investments in pyramidal games.

223. Albanian labour market offers limited opportunities for the unemployed with low qualification. 48% of the unemployed have 8-year education and 49% of them have medium school education. For that reason they need professional training for specific jobs. Professional training opportunities are lacking, either in quantity or in quality. The present level of unemployment is 21% for females and 16% for males.

**Balance of labour forces**

In thousands

	1992	1994	1999
Total population	3 190	3 202	3 373
Male	1 580	1 616	1 662
Female	1 600	1 586	1 711
Working age population	1 849	1 786	1 911
Male	912	900	957
Female	937	886	954
Labour Forces	1 489	1 423	1 305
Male	782	609	791
Female	707	814	514
Total employment	1 095	1 161	1 065
Male	588	673	661
Female	507	488	404
Total registered unemployment	394	262	240
Male	194	141	130
Female	200	121	110

**Registered unemployment, long-term unemployment and unemployment rate**

		1994	1996	1997	1998	1999
Total number of unemployed people	In thousands	262	158	194	235	240
Female	In thousands	121	70	85	108	110
Male	In thousands	141	88	109	127	130
Long-term unemployed	In thousands	124.3	120.2	162.6	209	216
Unemployment rate	In %	18	12.3	15	18	18
Female		20		17	21	21
Male		17		14	16	16

**Employment in public sector by main groups of occupations and sex in %**

	1993		1994		1997		1998		1999	
	F	M	F	M	F	M	F	M	F	M
Total employment	35.1	64.9	36.3	63.7	38.2	61.8	39	61	41.8	58.2
Managers	20.9	79.1	19.8	80.2	24.2	75.8	24.5	75.5	24.4	75.6
Specialist with university degree	43.3	56.7	46.2	53.8	46.3	53.7	46	54	45.9	54.1
Technicians	35.5	64.5	45.4	54.6	45.4	54.6	45.3	54.7	45.2	54.8
Clerks	49.5	50.5	47.1	52.9	49.9	50.1	50.4	49.6	50.3	49.7
Workers	32.3	67.7	29.9	70.1	28.4	71.6	29.9	70.1	38.3	61.7

**Number of private business managers by sex**

Year	Number		%
	Total	Female	
1994	32 968	6 868	20.8
1997	58 626	10 772	18.3
1998	56 453	9 800	17.4

**Business of women by kind**

Kind of business	1996			1998		
	Total	Female	% Female	Total	Female	% Female
Agriculture	1 466	31	2.11	1 241	32	2.57
Industry-Agribusiness	5 231	560	10.7	5 674	606	10.7
Construction	1 417	93	6.56	1 905	124	6.5
Trade	30 750	6 501	21.14	29 370	6 415	21.8
Transport	9 117	150	1.64	8 199	157	1.9
Service	9 732	2 342	24	10 042	2 564	25.5
Total	57 712	9 677	16.7	56 453	9 902	17.5

Present unemployment rate of females is 21% instead of 16% for males.

**Unemployment rate by sex**

	1989	1993	1994	1997	1998	1999
Unemployment rate by sex	7	22	18	15	18	18
Female	8	24	20	17	21	21
Male	6	21	17	14	16	16



224. Different internal and external factor have impeded the development of private businesses (excluding businesses like trade, services and construction). The main cause of unemployment in urban areas, apart from the low level of professional capacities, is also the massive flows of population from rural to urban areas.

225. According to the Albanian Institute of Statistics (INSTAT), in 1989 the employment rate was 85% for females and 94% for males, while after 1990 it was dropped to 50-60% for both sexes.

### **Equal remuneration**

226. With regard to equal remuneration between men and women, article 115 of the Labour Code in its paragraph (3), provides that employers must give man and women an equal wage for equal work, the principle of equal pay for work of equal value. The border of proof on the employer to prove that there is no discrimination. This formulation is in conformity with international instruments (ILO Convention N. 100 on Equal remuneration, 1951) to which Albania is party.

227. During the last decade, wage level has changed continuously. Until the end of 1989, the wage was the only source of income for all the working population and wages were determined by the State according to a set fee system based on the quantity and quality of work undertaken.

228. Since 1991 wages increased in all the most important economic sectors. A new wage system was introduced for state employees comprising 22 categories based on a job evaluation, which considered the nature of the work, responsibilities and difficulties. This new system marked the beginning of the process of differentiation between wages for qualified and unqualified work.

### **The average monthly wage per employee in public sector by main groups of occupations**

	1993	1994	1995	1996	1997	1998	1999	2000
Average monthly wage	3 084	4 778	6 406	8 638	9 558	11 509	12 708	14 963
Manager	4 595	7 503	10 105	14 067	16 129	19 450	22 750	24 437
Specialist	3 447	5 334	7 747	10 158	11 554	13 877	15 913	18 159
Technicians	3 044	4 756	6 286	8 237	8 440	9 411	11 951	13 482
Clerks	2 905	4 674	6 116	7 645	8 483	9 603	12 829	14 415
Workers	2 833	4 215	5 701	7 242	7 974	9 119	8 605	12 394

### **Right to maternity protection**

229. A woman is entitled to maternity leave provided she has been included in the social insurance scheme for the last 12 months and has been employed with an employment contract from the initial moment of pregnancy until the beginning of maternity leave. The period of benefits of maternity leave is 365 days, including a minimum of 35 days before delivery

and 42 days after delivery (article 104, labour Code). A woman carrying more than one child during pregnancy is entitled to 390 days leave, including a minimum of 60 days before delivery and 42 days after delivery.

230. An employed woman receives during maternity leave 80% of the average daily payment for the period before delivery and 50% of the average daily payment for 150 days after delivery, based on the average of the previous year salary. Maternity leave benefits for employed women are equal to her pension benefits. A mother adopting a child is also entitled to such benefits provided she is insured and fulfils the conditions established by law (article 106, Labour Code). The employer is obliged to keep the job of a woman during the period she is benefiting from the paid maternity leave.

231. The Council of Ministers in 1996 established further rules safeguarding maternity and prohibiting the employment of pregnant women and nursing mothers in activities exposing them to dangerous agents and working conditions. Pregnant women and nursing mothers cannot be obliged to start work before 5 a.m. during summer and before 6 a.m. during winter time or work after 8 p.m. It is to be noted that the Criminal Code of the Republic of Albania considers a criminal act against pregnant women as aggravated circumstances (article 50 (e), while art. 79(b) provides life imprisonment for the murder of a pregnant woman.

232. In the field of social insurance women enjoy a number of rights, such as benefits in case of illness, old age pension, invalidity benefits, family benefits, and other benefits related to accidents in the working place, to professional diseases, to unemployment etc.

233. According to the law no. 7703 of 11 May 1993 a woman can benefit from temporary disability resulting from a disease or accident not related to the work she is performing. The disability is to be proved by a medical report, on the basis of the Regulation No. 3 of 05.10.1993, "On the Delivery of Temporary Working Disability Reports", issued by the Institute of social insurance and the Ministry of Health.

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236. According to the previous law, women got their full pension at the age of 55, provided they have been insured for 35 years and do not perform an economic activity. Mothers having 6 or more children over 8 years old are entitled to retire at the age of 50 if they have been insured for no less than 30 years.

237. The present law "On Social Insurance" provides another age for retirement pension. For females, retirement age was increased from 55 to 60 years old, while for males from 60 to 65 provided that they have been working for 35 years.



238. Unemployment benefit, regarded as social insurance, is paid to individuals for a maximum of one year. In 1998, 25 000 people benefited from this scheme. Social protection includes the social assistance program which is given to the most vulnerable families, who have no income or too little to live on. There is also a social protection scheme for the disabled. This is given to the mentally disabled since birth (unable to work).

239. Even though the country has been running a network of social protection programs for many years, a large part of the population is still unprotected or excluded from the scheme 54% of the unemployed currently receive social assistance and 9% receive unemployment benefit - but that still leaves 37% of the jobless receiving nothing at all.

### **Night work**

240. Article 108 of the Labour Code and governmental decree no. 145 of 10 August 1998 prohibits night work for pregnant women. This provision was discussed at length during the drafting of the Labour Code, since night work was considered harmful to women's health. The Council of Ministers establishes special regulation defining exceptional cases when women may be engaged in night work.

### **Emigration**

241. Women emigrants are generally more vulnerable than men. A high number of Albanian women abroad are employed in the informal market, without employment contract and consequently without health and social insurance. Most women are employed in low-skilled jobs-domestic service, agriculture, bars and restaurants-despite their academics qualifications or employment experience.

242. The emigration of married women often accompanied by school-age children, even though temporary in nature has caused problems of continuity of family and social life and has weekend and endangered the traditional family structures.

243. More often however, mothers have become single parents and it is not uncommon for emigrated husbands to stop sending remittances and lose contacts with the family. Family reunions are also difficult due to the strict emigration policies of many recipient countries.

244. Elderly women are another social category affected by the negative edge of emigration. A survey on aged people made in 1997 in the city of Tirana shows that many elderly women live alone and in precarious economic conditions due to legal difficulties entailed in reuniting with their children working abroad.

### **Part-time employment and house work**

245. Article 14 and 15 of the Labour Code deal with part-time and home work respectively. Part-time work is defined as an employment whereby the worker is engaged to work by hours, half-day or by day, for a total working week inferior to the normal full-time working week. Part-time work entails the same rights and obligations, proportionally, to full-time employment.

246. Homework as defined by article 15, is an employment contracts whereby the worker carries out his/her tasks in a place decided by him/her on provisions given by the employer. The home worker has the same rights of worker working on the employer's premises.

### **Non-remunerated work**

247. At present in Albania there is no provision for the calculation of non-remunerated work carried out by women within the household in the Gross Domestic Product of the country.

### **Self-employment**

248. The number of women included in private business is yet low (women managers of the private business were 21% in 1994, 16,8% in 1996 and 18% in 1997). The main economic activity realized by women is:

- Trade, wholesale and shops;
- Services, (notary, lawyer, hairdresser, dentist,);
- Agro-business and industry, (mainly milk products, textile, printing houses, handicraft, sewing).

#### **Number of private business managers by sex**

Year	Total	Female	%
1994	32 968	6 868	20.8
1997	58 626	10 772	18.3
1998	56 453	9 800	17.4

#### **Business of women by kind**

Kind of business	1996			1998		
	Total	Female	% Female	Total	Female	% Female
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Construction	1 417	93	6.56	1 905	124	6.5
Trade	30 750	6 501	21.14	29 370	6 415	21.8
Transport	9 117	150	1.64	8 199	157	1.9
Service	9 732	2 342	24	10 042	2 564	25.5
Total	57 712	9 677	16.7	56 453	9 902	17.5

### **The right to education**

249. According to the Constitution, article 57, everyone has the right to education. Mandatory school and general high school public education is open for all. Education is one sector where the contribution of women is very important. Throughout the country there are 58,856 teachers,

out of whom 36,939 (or 63.2%) are women, while the total number of students in the school year 1998-1999 was 694,474. In 2000, the education system comprised 1852 pre-school institutions, 1,798 mandatory schools, 375 high schools, 11 universities and higher education institutions.

250. The importance given to education has decreased as compared to the pre-transition period. During the first years of the transition schools were destroyed and looted; many experienced teachers left their position and many students abandoned high school. One worrying element of the transition is the abandonment of experienced teachers and their substitutions with unqualified staff and the increasing school drop-rates.

251. During the school year 1992-1993, 7.8 per cent of elementary schools' teachers had an insufficient level of education, whereas today the figure is 10 per cent. In the eight year schooling the number of teachers with an insufficient level of education rose from 24.2 per cent in 1992-1993 to 26 per cent, whereas in high schools the rate is between 6 to 8 per cent.

### **Mandatory education**

252. Eight year schooling in Albania comprises age groups from 6 to 14 years old and is divided into two cycles; lower cycle (first to fourth grade), which is similar to elementary school in Western countries, and the upper cycle (fifth to eighth grade). Enrolled in Albania eight year schools at present are 553,411 pupils, of whom 48 per cent are girls and 52 per cent boys.

253. For decades, Albania placed greatest importance to the development of eight-year education network, but neglect, poor maintenance and lack of funding caused an irreversible deterioration of school buildings rendering qualitative teaching impossible.

254. An important feature of mandatory schooling in recent years has been the development of private institutions. Thus, only in 1997, three new non public schools were opened raising the total number of approved non-public educational institutions to 36 in the last 5-6 years. Out of these institutions, 22 are non-religious and 14 are religious. About 3,800 pupils attended these institutions in 1998 (inclusive of pre-school attendance).

255. Statistics show that the rate boys/girls in such institutions is almost equal. Thus, for example, out of 522 students enrolled in the college: "M.Akif", 52 per cent are girls and 48 per cent are boys; in Medrese of Shkodra out of 258 enrolled students in the upper cycle and in high school, 53 per cent are girls. There are however 13 other religious schools (Muslim) where girls are not allowed to enrol.

### **High school education**

256. High schools are attended by students from 14 to 18 years old and comprise 4 years of general education or from 4 to 5 years of vocational training. The number of students attending both general and vocational schools, with and without interruption, are 102,161, out of which 48 per cent are girls and 52 per cent boys.

**Registration of pupils from primary education  
to secondary education in %**

School year	In % registration in secondary education		
	Male-Female	Male	Female
1990-1991	97	113	82
1991-1992	72	78	64
1992-1993	70	79	61
1993-1994	72	83	58
1994-1995	60	70	50
1995-1996	55	61	48
1996-1997	65	69	60
1997-1998	63	70	55
1998-1999	67	74	58

**Number of secondary schools by type**

School year	By type				In rural			
	Total	General	Profess.	United	Total	General	Profess.	United
1990-1991	827	75	575	177	568	7	438	112
1991-1992	763	89	209	465	510	20	114	376
1992-1993	650	107	95	448	428	42	17	369
1993-1994	577	161	87	329	371	86	18	267
1994-1995	472	362	69	41	288	267	8	13
1995-1996	430	352	50	24	269	262	1	6
1996-1997	408	337	51	20	259	251	2	6
1997-1998	400	337	60	3	252	247	5	0
1998-1999	394	331	54	9				
1999-2000	386	326	51	9				

**Some proportions in secondary education in %**

School year	Number of pupils in secondary education in %							
	Male	Female	General	Vocational	Full time	Part time	Urban	Rural
1990-1991	55	45	28	72	70	30	40	60
1991-1992	51	49	49	51	80	20	46	54
1992-1993	48	52	63	37	87	13	51	49
1993-1994	50	50	71	29	88	12	55	45
1994-1995	51	49	78	22	92	8	58	42
1995-1996	51	49	79	21	92	8	63	37
1996-1997	52	48	82	18	92	8	71	29
1997-1998	53	47	84	16	92	8	71	29
1998-1999	52	48	85	15				
1999-2000	51	49	86	14				

257. High schools are attended by students from 14 to 18 years old and comprise 4 years of general education or from 4 to 5 years of vocational training. The number of students attending both general and vocational schools, with and without interruption, are 102,161, out of which 48 per cent are girls and 52 per cent boys.

258. 59 per cent of students completing mandatory education continue their studies in high schools. In 1998, 50,387 students completed the mandatory education system (50 per cent girls) and only 30,350 enrolled in the first year of high school, (44 per cent girls).

259. In urban centres, 52 per cent of girls who finish mandatory school continue their studies in high schools, whereas in rural areas the figure is 28 per cent for girls and 72 per cent boys. Thus, out of 14,458 rural girls finishing mandatory schooling only 4,065 enrolled in the area's high school. Though it is expected that a number of these girls enrolled in high schools in other areas, the disparity among boys and girls is still high.

260. Another worrying phenomenon is the low enrolment of students in vocational schools (only 14 per cent of the total number of students). In vocational schools 14,423 students are enrolled, of whom 30 per cent are girls and 70 per cent are boys, whereas in rural areas this percentage is 22.6 for girls and 77.4 for boys. In agricultural, construction and mechanical schools, girls' attendance varies from 10 to 25 per cent. These low rates are caused by difficulties the profession present for girls or because of traditional attitudes as to the nature of such professions.

261. Before the 1990s, the agricultural schools had a high attendance by village girls, mainly because of the limited possibilities in enrolling in general high schools or in other vocational schools. The percentage of girls attending vocational schools for foreign languages, arts or teaching is, on the contrary, very high, in certain areas over 90 percent. Girls are strongly present also in business and technical (informatics) schools (50% and 70% respectively). The students in the high school group age are more at risk of dropout and to be involved in crime (mainly drugs, prostitution). Partial analysis shows that minors involved in crime have often prematurely dropped-out of school, but no national survey exist on the phenomenon.

#### Number of high schools 2000-01

Schools and classes	Total	In villages
High schools	375	227
General high schools	318	222
Professional high schools	50	2
3 years	16	
4 years	16	
5 years	18	2
United high schools	7	3
General and professional	7	3
Classes of general education	2 455	957
First classes	722	273
Second classes	622	245

**Table (continued)**

Schools and classes	Total	In villages
Third classes	585	233
Fourth classes	526	206
Fifth classes		
Classes of professional education	625	37
Classes of 3 year professional education	237	11
First classes	80	3
Second classes	79	4
Third classes	78	4
Classes of 4 year professional education	219	24
First classes	60	6
Second classes	58	5
Third classes	55	7
Fourth classes	46	6
Classes of 5 year professional education	169	2
First classes	51	2
Second classes	40	0
Third classes	32	0
Fourth classes		0
Fifth classes	22	0

**Enrolments in high schools 2000-01 (full time)**

Pupils enrolled	Total	Females	Villages	Females
Total enrolment (2 + 3)	95 195	48 229	27 679	12 710
Newly admitted	31 476	14 322	9 595	4 150
Pupils of the first class	32 637	14 350	9 810	4 097
Pupils of the second class	23 926	12 057	6 829	3 190
Pupils of the third class	20 974	11 705	5 994	2 842
Pupils of the fourth class	17 206	9 952	5 011	2 570
Pupils of the fifth class	452	165	35	11
General education	79 263	43 288	25 333	12 112
Newly admitted	25 924	12 939	8 703	3 915
Pupils of the first class	26 898	12 956	8 899	3 912
Pupils of the second class	19 180	10 612	6 108	3 023
Pupils of the third class	17 452	10 539	5 481	2 701
Pupils of the fourth class	15 690	9 181	4 845	2 476
Pupils of the fifth class	43	0	0	0
Professional education	15 975	4 941	2 346	598
Newly admitted	5 552	1 383	892	235

**Table (continued)**

Pupils enrolled	Total	Females	Villages	Females
Triennial professional education	6 169	533	755	22
Newly admitted	2 575	207	288	12
Pupils of the first class	2 677	207	301	12
Pupils of the second class	1 967	148	250	9
Pupils of the third class	1 525	178	204	1
Four years professional education	5 408	3 348	908	482
Newly admitted	1 420	888	278	176
Pupils of the first class	1 475	899	284	126
Pupils of the second class	1 700	1 059	301	140
Pupils of the third class	1 250	778	199	128
Pupils of the fourth class	983	612	124	88
Five years professional education	4 398	1 060	683	94
Newly admitted	1 557	288	326	47
Pupils of the first class	1 587	288	326	47
Pupils of the second class	1 079	238	170	18
Pupils of the third class	747	210	110	12
Pupils of the fourth class	533	159	42	6
Pupils of the fifth class	452	165	35	11

**Enrolments in high schools 2000-01 (part time)**

Pupils enrolled	Total	Females	Villages	Females
Total enrolment	12 240	4 798	2 477	1 004
Newly admitted	2 536	958	514	216
Pupils of the first class	2 672	1 019	513	205
Pupils of the second class	2 479	1 059	586	259
Pupils of the third class	2 350	932	496	196
Pupils of the fourth class	2 590	930	494	187
Pupils of the fifth class	2 149	858	388	157
General education	11 828	4 771	2 477	1 004
Newly admitted	2 364	948	514	216
Pupils of the first class	2 500	1 009	513	205
Pupils of the second class	2 393	1 055	586	259
Pupils of the third class	2 316	930	496	196
Pupils of the fourth class	2 501	922	494	187
Pupils of the fifth class	2 118	855	388	157

**Table (continued)**

Pupils enrolled	Total	Females	Villages	Females
Professional education	412	27		
Newly admitted	172	10		
Pupils of the first class	172	10		
Pupils of the second class	86	4		
Pupils of the third class	34	2		
Pupils of the fourth class	89	8		
Pupils of the fifth class	31	3		

**Number of teachers in high schools 2000-01**

Teachers	Total	Villages	Females
Total number of teachers	5 760	1 763	693
With high school education	267	104	55
With high academic education	5 493	1 659	638
Teachers in general education	4 396	1 742	682
With high school education	135	103	55
With high academic education	4 261	1 639	627
Teachers in profess. education	1 364	21	11
With high school education	132	1	
With high academic education	1 232	20	11
From them:			
Teachers in united schools	1 141	1 103	405
With high school education	66	60	37
With high academic education	1 075	1 043	368

**Higher education**

262. In 2001 in Albania there were 11 Universities and higher education establishments whereas until 1991 there was only one University and seven Higher Education Institutes (Teaching, Agriculture, Arts, Physical education). The increase in the number of Universities is due to the fact that some previously higher education institutes were granted the status of University.

263. At high academic level only 10 women out of 146 are professors (6.8%), 58 women out of 250 are assistant professor (23.2%). However, there is a sharp decrease in the number of students coming from rural areas (due to difficult economic conditions and to internal migration flows). Thus, out of 7,670 regular students coming from various rural areas in 1991, in 1998 there were only 3,231 of them (42 per cent), at a time when there is a 30 per cent increase in the general number of students enrolled in universities.

264. Anyhow, the rate men-women enrolled in higher education and coming from rural areas is satisfactory: 33 per cent boys and 77 per cent girls (in 1991 the rate was 54 per cent for boys and 46 per cent for girls). The percentage of women enrolled in university is increasing. Thus, during the academic year 1990-1991 girls were 53.1 per cent, whereas in 2001 they represented 65 per cent.



265. Faculties like social sciences, medicine and economy are very popular (only one out of ten is admitted), while the teaching college and agriculture barely cover the places available.

### Graduated students in full and part time education

School year	Total	Female	Full time		Part time	
			Total	Female	Total	Female
1990-1991	4 647	2 407	4 029	2 145	618	262
1991-1992	4 373	2 408	3 633	2 049	740	357
1992-1993	4 416	2 431	3 931	2 141	485	290
1993-1994	3 972	2 112	3 343	1 932	629	180
1994-1995	4 436	2 556	3 711	2 135	725	421
1995-1996	4 630	2 606	3 702	2 086	928	520
1996-1997	3 708	1 990	3 295	1 761	413	229
1997-1998	3 861	2 456	2 861	1 821	1 000	635
1998-1999	3 997	2 612	2 953	1 991	1 044	621

### Graduated students by faculties 1996-1997

Faculty	Total	Female	Female %
Faculty of Mechanical Engineering	89	18	20.2
Faculty of Electric Engineering	84	18	21.4
Faculty of Building Engineering	85	18	21.1
Faculty of Geology and Mines Engineering	1	0	0
Faculty of Economic	481	238	49.4
Faculty of History and Philology	164	115	70.1
Faculty of Foreign Languages	207	144	69.5
Faculty of Medicine	432	207	47.9
Faculty of Social Sciences	50	40	80
Faculty of Law Sciences	299	127	42.4
Faculty of Nature Sciences	708	439	62
Faculty of Agriculture	164	59	35.9
Faculty of Forest Sciences	65	10	15.3
Faculty of Veterinary	88	16	18.1
Faculty of Social Sciences	493	313	63.4
Faculty of Pedagogical	240	215	89.5
Faculty of Music	61	22	36
Faculty of Figurative Art	27	7	25.9
Faculty of Scene of Art	26	8	30.7
Institute of Gymnastics	81	14	17.2

**Registered students in the first level by faculty, school year 1999-2000**

Faculty	Total	Female	% Female
Faculty of Mechanical Enginery	145	53	36.5
Faculty of Electric Enginery	223	37	16.6
Faculty of Building Enginery	274	92	33.5
Faculty of Geology and Mines Enginery	91	22	24.17
Faculty of Economic	1 084	647	59.6
Faculty of History and Philology	332	277	83.4
Faculty of Foreign Languages	429	350	81.5
Faculty of Medicine	299	201	67.2
Faculty of Social Sciences	149	122	81.8
Faculty of Law Sciences	206	104	50.4
Faculty of Nature Sciences	776	511	65.8
Faculty of Agriculture	528	233	44.1
Faculty of Forest Sciences	73	17	23.28
Faculty of Veterinary	44	12	27.27
Faculty of Social Sciences	917	654	71.3
Faculty of Pedagogical	851	791	92.9
Faculty of Music	54	25	46.3
Faculty of Figurative Art	51	19	37.2
Faculty of Scene of Art	25	14	56
Institute of Gymnastics	82	20	24.4
Faculty of Commerce	141	93	65.9
Faculty of Navy	48	2	4.16
Institute of Nurses	337	276	81.9

Source: INSTAT 2000.

**EDUCATION INDICATORS 2001-2003****Institutions of public education**

	School year		
	2000-2001	2001-2002	2002-2003
Kindergartens	2 002	1 881	1 690
Elementary schools	1 820	1 798	1 744
High schools	375	372	366
Universities	11	11	11

**Pupils and students enrolled**

	School year		
	2000-2001	2001-2002	2002-2003
Children in Pre-primary education	80 443	78 473	76 165
Pupils and students enrolled	684 270	683 990	674 244
of which:			
Primary education	535 238	523 253	503 992
Secondary education	108 173	118 577	126 652
- general	91 786	100 082	106 361
- vocational	16 387	18 492	20 291
Higher school and universities	40 859	42 160	43 600
- full time	23 704	25 929	30 132
- correspondence	17 155	16 231	13 468

**First time registration in first year**

	School year		
	2000-2001	2001-2002	2002-2003
Primary education	64 104	63 737	60 018
Secondary education	34 058	38 173	38 228
- general	28 334	31 811	32 074
- vocational	5 724	6 362	6 154
High school and university	7 636	7 389	9 972
- full time	6 537	7 389	9 642
- correspondence	1 099	0	330

**Graduated studies and receiving diploma**

	School year		
	1999-2000	2000-2001	2001-2002
Primary education	48 395	53 774	55 935
Secondary education	15 609	18 843	20 069
- general	14 400	16 733	16 997
- vocational	1 209	2 110	3 072
High civil school	4 735	4 618	5 016
- full time	3 545	3 442	3 734
- correspondence	1 190	1 176	1 282

**Kindergarten nurses, teachers and lectors**

	School year		
	2000-2001	2001-2002	2002-2003
Pre-Primary education	3 749	3 570	3 545
Primary education	28 293	27 672	26 850
Secondary education	5 760	5 720	5 857
Higher school	1 683	1 716	1 699

**Some education indicators**

	School year		
	2000-2001	2001-2002	2002-2003
Pupils per classroom			
Primary education	28	30	29
Secondary education	35	35	38
Pupils per teacher			
Primary education	19	19	19
Secondary education	19	21	22

**Private (non-public) education in school-year 2002-2003**

Level	Schools	Pupils	Teaching staff
Total	165	18 170	1 575
of which:			
1. Pre-Primary	61	3 581	206
2. Primary Education	65	9 649	825
3. Secondary Education	38	4 830	539
a. General	33	4 207	466
b. Vocational	5	623	73
4. Tertiary Education	1	110	5

**Education in corresponding population groups  
(In percentage)**

	School year		
	2000-2001	2001-2002	2002-2003
Pre-primary education	38	45	42
Primary education	89	103	97
Secondary education	43	47	49
Higher education and universities	15	16	17

**Article 4****Derogation of rights**

266. According to article 170 of the Constitution, extraordinary measures can be taken due to a state of war, state of emergency, or natural disaster and last for as long as these states continue. Law defines the principles for actions of public organs, as well as the extent of limitations on human rights and freedoms during the existence of such situations that require extraordinary measures.

267. The law must define the principles, the areas, and the manner of compensation for losses caused as a result of the limitation of human rights and freedoms during the period in which extraordinary measures are taken. Acts taken as a result of extraordinary measures must be in proportion with the level of risk and must aim to re-establish the conditions for the normal functioning of the state, as soon as possible.

268. During the state of war or the state of emergency cannot be limited the right and freedoms provided and guaranteed by the following articles of the constitution:

- Article 15 - indivisible, inalienable, and inviolable nature of human rights;
- Article 18 - right to non-discrimination;
- Article 19 - right to citizenship;
- Article 20 - rights of minorities;
- Article 21 - right to life;
- Article 24 - right to conscience and religion and the right to change it;
- Article 25 - right not to be subjected to torture and other cruel, inhuman or degrading treatments;
- Articles 29 and 30 - prohibition of retroactive action of penal provisions right to be presumed not guilty;
- Articles 31 and 32 - rights during the penal proceeding;
- Article 34 - right to be punished only once for the same criminal offence;
- Article 39 - right of Albanian citizens not to be expelled from the territory of the country;
- Article 41 - right to private property and legal means for its protection;
- Articles 42 and 43 - right to appeal a judicial decision to a higher court;
- Article 48 - direct requests, complaints or comments to the public organs, which are obliged to answer in the time periods and conditions set by law;
- Article 54 - right to special protection by the state for children, the young, pregnant women and new mothers, as well as children born out of wedlock;
- Article 55 - right to wealth care and non-discrimination in its receiving.

269. During the duration of natural disasters can be limited the rights and freedoms provided by articles 37, 38, 41 paragraph 4, 49 and 51 of the constitution:

- Right to the inviolability of the residence;
- Right to choose freely the place of residence;
- Right to move freely to any part of the territory of the state and abroad;
- Right to fair compensation for the limitation of the right to property;
- Right to freely choose the profession, place of work, as well as the system of professional qualification;
- Right to social protection at work;
- Workers right to strike.

270. In the same manner the law, with the intention of assuring to the society the necessary services, can provide limitations for specific categories of workers. Procedural acts for the declaration of the state of war; state of emergency, or the state of natural disaster has to specify the abovementioned rights and freedoms, which are limited.

271. As for the issuing of administrative acts in the conditions of the state of emergency the law no. 8485 dated 12.05.1999 “The Code of Administrative Procedures of the Republic of Albania” article 9/2 provides that administrative acts issued in the conditions of the state of emergency contrary to the provisions of this Code are valid in view of providing the result required in the conditions of the state of emergency, which cannot be attained through other means. The parties inflicted by the abovementioned acts have the right to be compensated for the eventual losses pursuant to the legal provisions regulating the responsibility of the public administration.

272. Law no. 8194, of 2 March 1997 “On the State of Emergency in cases of heavy violations of the constitutional and public order”, defines that, the state of emergency in cases of heavy violations of the constitutional and public order (state of emergency) is considered the situation when in the Republic of Albania, or in part of it are in place violent attempts to overthrow the constitutional order or the functioning of the governmental structures is interrupted by force, as well as when the weapon depots of the Armed Forces, fabrics for the production of the same, and central and local state institutions come under attack. The state of emergency is considered also the situation when the economic life or the freedom of individuals is threatened seriously due to commission of various criminal offences against the order and the public security.

273. The state of emergency is declared with a decision of the Kuvendi (the Parliament). When the Kuvendi is not assembled, the President of the Republic declares the state of emergency.

274. The state of emergency is partial or general. It has temporary character and lasts until the re-establishment of the order and public conciliation. In cases when the termination of the state of emergency was defined by the administrative act, the prolongation of its term can be made only by a special resolution of Kuvendi.

275. When the state of emergency is declared, according to the constitutional provisions mentioned above, the resolution clearly defines the rights and freedoms, which are limited during that period. When the organs of public order exercising their normal capacities and measures are enabled to cope with, neutralize and eliminate the illegal activities threatening the constitutional and public order, the armed forces may be engaged to assist the police forces.

276. During the state of emergency the public order organs are entitled to detain within the legal terms, all the individuals against which exist enough indications of preparing outrages concerning the public order and calm, contrary to the rules set out by competent authorities intending the safeguard of the constitutional and public order for the implementation of measures during the state of emergency.

277. In case of declaration of the state of emergency all gatherings in public places, as well as the activities of political, sportive, cultural and trade union character are prohibited. With the intention of dispersing the gatherings in public places, when the same cannot be attained through other means, the public order organs are entitled to use the lachrymatory gas and firearms necessary to fulfil the duty according to legal provisions regulating this matter.

278. The activities for facing the state of emergency are managed by the Defence Council. In implementing the provisions of the abovementioned law, the Defence Council analyses and adopts all the necessary measures for the safeguard and protection of the public order. The Defence Council takes measures for the coordination of the activity of the central and local authorities, with the purpose of guaranteeing the economic activities and vital needs of the citizens.

279. For the implementation of the emergency measures in every district (prefecture) are established defence headquarters. The capacity of the chairman of the headquarter is exercised by the prefect, and members of the headquarter are nominated the mayor, the commandant of the greatest military unit operating in the area, the heads of police establishment and the State Informative Service.

280. The same day of the adoption of the abovementioned law (02.03.1997) Kuvendi, the Parliament of the Republic of Albania through the resolution no. 297, declared the state of emergency in the Republic of Albania. Pursuant to the resolution the state of emergency would continue until the restoration of the constitutional and public order in the territory of the Republic. The resolution entered into force in the 2<sup>nd</sup> of March 1997, 17:35 local time (CET).

281. In response to the crisis, The United Nations Security Council authorized the deployment in Albania of an international force led by Italy. The international military force was deployed in the country from April to August 1997.

282. The resolution of the Kuvendi, no. 319 of 5<sup>th</sup> of August 1997, set out the composition of the Defence Council of the Republic of Albania as follows:

- Chairman - The President of the Republic and members,
- The chairman of Kuvendi;
- Chairman of the Council of Ministers;
- Minister of Defence;
- Minister of Foreign Affairs;
- Minister of Public Order;
- Minister of Finances;
- Minister of Public Affairs and Transport;
- Minister of Public Economy and Privatisation;
- Chairman of the State Informative Service;
- Chief of the General Headquarters of the Army.

283. The state of emergency was formally abolished in July 1997.

## **Article 5**

### **Restriction of rights**

284. Pursuant to the provisions of the Constitution (article 17), the limitation of rights and freedoms provided for in the Constitution may be established only by law for a public interest or for the protection of the rights of others. A limitation shall be in proportion with the situation that has dictated it. These limitations may not infringe the essence of the rights and freedoms and in no case may exceed the limitations provided for in the European Convention on Human Rights.

285. According to article 11 of the Constitution, the economic system of the Republic of Albania is based on private and public property, as well as on a market economy and on freedom of economic activity. Law equally protects private and public property. Limitations on the freedom of economic activity may be established only by law and for important public reasons.

286. Article 41, the right of private property is guaranteed. The law may provide for expropriations or limitations in the exercise of a property right only for public interests. The expropriations or limitations of a property right that are equivalent to expropriation are permitted only against fair compensation. For disagreements connected with the extent of the compensation, a complaint may be filed in court.



287. Article 51, the right of an employee to strike in connection with work relations is guaranteed. Limitations on particular categories of employees may be established by law to assure essential social services.

288. Article 151/2, issues related to the territorial integrity of the Republic of Albania, limitations of fundamental human rights and freedoms, budget, taxes, financial obligations of the state, declaration and abrogation of the state of emergency, declaration of war and peace, as well as amnesty, cannot be voted upon in a referendum.

289. Article 170/2, the principles for actions of public organs, as well as the extent of limitations on human rights and freedoms during the existence of such situations that require extraordinary measures, are defined by law.

290. Pursuant to article 4 of the Civil Code of the Republic of Albania, civil rights of a physical person cannot be limited, except exclusions provided by law. The juridical action that places limits to the legal capacity of a physical person is invalid.

291. Pursuant to article 56 of the Code of Administrative Procedures, the interested parties have to be notified on the content of all administrative acts wherewith:

- Are taken decisions related to their claims;
- Are imposed obligations, punishments or caused damages;
- Are established, abolished extended or limited the legitimate interests or rights of the parties, or in other manner the conditions for their exercise are affected.

292. According to article 132 of the Code, the organs of the Public Administration cannot undertake any action that in a way or another limits the legal rights of the individuals, without issuing in advance an administrative act, which could legalize these actions. Exception of this rule can be made only during the cases of emergency.

293. Article 5/1 of the Criminal Procedural Code provides that, the liberty of an individual may be restricted by means of precautionary measures only in cases and forms provided by law.

294. Law no. 8328 of 16.04.1998 "On the rights treatment of inmates", article 6 provides that, the rights of the individuals sentenced, in conformity with this law, can be restricted or abolished in cases of violating this law or internal rules, only in instances and according to criteria prescribed by this law.

295. Article 7, the rights of prisoners could be restricted and abolished temporarily in-group, upon the order of the Minister of Justice only in cases of state of emergency imposed, force major, significant construction work being underway in the establishments as well as the prisoner's life and health are endangered to the extent and duration determined in the order. The head of the institution, his deputy in his absence, in cases of state of emergency could impose restrictions prescribed above, consequently no later than 24 hours should be provided the

respective approval issued by the Minister of justice. In the institutions of high security could be imposed restrictions to the rights of the inmates, only in instances and according to criteria prescribed by the law.

296. Article 44 of the law provides that, the regulation of prisons and the regulation of each institution set out rules related to the treatment, regime and the behaviour of the inmates, thus setting out necessary restrictions in the framework of the provisions of the law, without effecting the objective for the re-education of inmates.

297. During the acceptance in the institution and serving the sentence, the inmates are obliged to know and respect the internal regulations, provisions related to their rights and duties, their treatment and discipline. To the inmates cannot be assigned duties in the services of the institution that award them prevailing or favourable position in relation to other inmates.

298. Pursuant to article 56, of law no. 8328 of 16.04.1998 “On the rights treatment of inmates”, the special supervision contains the necessary restrictions for the maintenance of order and security for the exercise of the rights of the inmates and for the treatment rules provided by the prison regulation. In any case the restrictions do not affect the hygiene, health, clothing, nutrition, equipment, keeping, purchase and taking of food and other objects foreseeable from the regulation of the institution, as well as reading of books, religious practice, usage of permitted radio receivers, ventilation, communication with the advocate, spouse, children and children inmates with their parents.

299. Pursuant to article 15 of law no. 8092 of 21.03.1996 “On Mental Health”, the limitation or deprivation of the physical capacity of mentally disordered persons may be proposed by legal-psychiatric commission, which have to be composed by not less than 3 members. In compliance with the provisions of the Civil Procedural Code, the court is entitled to take the final decision. The decision must also provide his legal tutor.

300. Pursuant to articles 19 and 20 of the abovementioned law, the physical restriction of the mentally disordered person comprises forcible retention, compulsory usage of medicaments, immobilisation and isolation.

301. For the materialisation of the obligations under the law “On Mental Health”, the physical restriction of the mentally disordered individual may be considered for use only when this person represents risk for his health and/or his life or the health or life of other persons; when he acts against public safety; damages or destroys items in the surrounding area; and also in all the cases provided for by the regulations of psychiatric service.

302. In addition articles 25 and 27 of the law provide that the person who due to the mental disorders represents risk for his own life or health, as well as for others life and health, or is unable to fulfil its vital necessities, can be object to a psychiatric examination without its own consent, or the consent of the legal representative. The compulsory examination proceeds only by decision of the specialist physician. If deemed necessary the psychiatrist may order the immediate transfer of the examined in hospital.

303. In cases of implementation of physical limitation measures, the specialist physician or persons in charge should accompany the person concerned to the hospital. The actions of the physician and the decisions taken by him have to be recorded in the relevant documentation, explaining at the same time the reasons for undertaking limitation measures.

304. A mentally disordered person may be treated in a psychiatric institution without his or his tutor's prior consent, only if he represents an obvious menace for his life or health, or the life or health of other persons. The decision to hospitalise a person has to be taken by a specialized physician, only after he has personally conducted the examination. The mentally disordered person, his parents or his legal tutor are entitled to be informed on the grounds of taking such decision. The procedures of the hospitalisation in the institution have to be recorded in the clinic registers.

305. The physician that takes a decision to hospitalise a mentally disordered person without his or his tutor's prior consent, has to notify within 24 hours the head of the clinic, which can approve or reject the decision. Within 48 hours of the approval, the head of the clinic has to present the case to the single judge of the court of first instance, which is competent for examining these cases.

306. The single judge, who examines the case not later than 3 days from the request, interrogates the hospitalised person without his or his legal tutor's consent, the doctor that has recovered the person, the head of the clinic who approved the hospitalisation and also the relatives or any interested person for explanations on the case. The decision of the single judge to keep the disordered person hospitalised or to release him of the psychiatric institution has immediate effect.

307. The family or the legal tutors of mentally disordered person have the right to request that the hospitalised leave the hospital at any time. The request may be also informal and has to be registered in the clinic register. If the request is refused, the abovementioned individuals are entitled to appeal before the court of first instance under which competency falls the psychiatric institution, within 7 days from the date of having notice and the case is examined by the only judge whose decision is final.

### **International instruments**

308. With the intention of protecting and further improvement of the human rights and freedoms in the Republic of Albania, during the reporting period Albania became party to the following most important international instruments on human rights:

- International Convention on Elimination of all Forms of Racial Discrimination, entered into force in Republic of Albania in May 11, 1994;
- Convention against Torture Cruel, Inhuman and Degrading Treatment or Punishment, entered into force in May 11, 1994;

- Statute of the International Criminal Court, (Rome statute - 18<sup>th</sup> July 1998), ratified by Kuvendi on December 23<sup>rd</sup>, 2002;
- UN Convention against the international organized crime, ratified on 12<sup>th</sup> December 2000.

309. Besides the ratification of the European Convention “On the Protection of Human Rights and Fundamental Freedoms” and its additional protocols no. 1, 2, 3, 4, 5, 6, 7, 8, 11 of the Convention, Albania has ratified major part of the Conventions of the Council of Europe as follows:

- The European Convention On Extradition, signed and ratified in May 19, 1998, and entered into force in August 17, 1998;
- The Optional Protocol of the European Convention On Extradition, signed and ratified in May 19, 1998 and entered into force in August 17, 1998;
- The European Convention On Mutual Assistance in Criminal Matters, signed in May 19, 1998, ratified in April 4, 2000 and entered into force in July 3, 2000;
- The European Convention On the Prevention of Torture and Inhuman or Degrading Treatments or Punishment, signed in October 2, 1996, ratified in October 2, 1996 and entered into force in January 1, 1997;
- The Protocol no. 1 of the European Convention On the Prevention of Torture and Inhuman or Degrading Treatments or Punishment, signed, ratified and entered into force in October 2, 1996;
- The Protocol no. 2 of the European Convention On the Prevention of Torture and Inhuman or Degrading Treatments or Punishment, signed, ratified and entered into force in October 2, 1996;
- The Convention On the Transfer of Sentenced Persons, signed in May 19, 1998, ratified in April 4, 2000 and entered into force in August 1, 2000;
- The European Convention On Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, signed in April 4, 2000, ratified in July 20, 2000 and entered into force in February 1, 2002;
- The European Convention On the International Validity of Criminal Judgments, signed in June 8, 2000;
- The European Agreement On the Transmission of Applications for Legal Aid, signed in June 8, 2000, ratified in April 4, 2000 and entered into force in July 3, 2000;
- The Optional Protocol of the European Convention On Mutual Assistance in Criminal Matters, signed in May 19, 1998, ratified in June 10, 1999 and entered into force in July 3, 2000;

- The European Convention on Terrorism Prevention signed in April 4, 2000, ratified in September 21, 2000 and entered into force in December 22, 2000;
- The European Convention On the Transmission of Procedures in Criminal Matters signed in May 19, 1998, ratified in April 4, 2000 and entered into force in July 5, 2000;
- The European Convention On the Supervision of Conditionally Sentenced or Conditionally Released Offenders signed in June 8, 2000, ratified in May 17, 2001 and entered into force in August 18, 2001;
- The European Agreement relating to Persons participating in Proceedings of the European Court on Human Rights signed in September 21, 2000;
- The Second Additional Protocol of European Convention On Mutual Assistance in Criminal Matters, signed in November 12, 2001, ratified by the Parliament, and deposited the instrument of ratification;
- The Additional Protocol of European Convention On the Transmission of Applications for Legal Aid, signed in November 12, 2001, ratified by the Parliament, and deposited the instrument of ratification;
- Framework Agreement on the protection of national minorities (1999).

## **Article 6**

### **Right to life**

310. From the ratification of the International Covenant on Civil and Political Rights in 1991, the Republic of Albania has undertaken important steps towards the abolition of death penalty, and its transformation to life imprisonment. The right to life is provided also by some international instruments ratified by the Republic of Albania, such as the Convention of the Rights of the Child and the European Convention on the Fundamental Human Rights and Freedoms.

311. The Statute of Council of Europe was ratified and entered into force in the Republic of Albania in July 13, 1995. The Convention on Protection of Human Rights and Fundamental Freedoms signed in July 13, 1995, and ratified in October 2, 1996.

312. Albania has also ratified Optional Protocols no. 1, 2, 3, 4, 5, 7, and 8, of this Convention signed, ratified and entered into force in October 2, 1996. Protocol 11 of European Convention On the Protection of Human Rights and Fundamental Freedoms signed in July 13, 1995, ratified in October 2, 1996 and entered into force in November 1, 1998.

313. As for the sixth Optional Protocol of European Convention On the Protection of Human Rights and Fundamental Freedoms regarding the abolition of death penalty, signed in April 4, 2000, ratified in September 21, 2000 and entered into force in October 1, 2000.

314. Since 1992, when the last death penalty was executed, the death penalty was foreseen in the Criminal Code, but the implementation of the same sentence was suspended. After the ratification of the sixth Optional Protocol of European Convention on the Protection of Human Rights and Fundamental Freedoms this punishment was replaced by life imprisonment. The twelfth and thirteenth Optional Protocols of European Convention on the Protection of Human Rights and Fundamental Freedoms are in the process of ratification.

315. Article 21 of the Constitution of the Republic of Albania provides that life of a person is protected by law.

316. Due to the dangerousness of criminal actions against the person, The Albanian Criminal Code has provided severe sanctions for these actions at the beginning of its special part.

317. Viewed in that light the Criminal Code provides for as follows:

(a) Article 73, the execution of a premeditated plan aiming at the total or partial destruction of a national, ethnic, racial or religious group directed towards its members, and combined with the following acts, such as: intentionally killing a group's members, serious physical and psychological harm, placement in difficult living conditions which cause physical destruction, applying birth preventing measures, as well as the obligatory transfer of children from one group to another, is sentenced with no less than ten years of imprisonment, or with life imprisonment.

(b) Article 74, killing, massacres, slavery, internal exile and deportation, as well as every act of torture or other inhuman violence committed for political, ideological, racial, ethnic and religious reasons, are sentenced with no less than fifteen years of imprisonment, or with life imprisonment.

(c) Article 75, acts committed by different people in war time such as murder, maltreatment or deportation for slavery labour, as well as any other inhuman exploitation to the detriment of civil population or in occupied territory, the killing or maltreatment of war prisoners, the killing of hostages, destruction of private or public property, destruction of towns, commons or villages, which are not ordained from military necessity, are sentenced with no less than fifteen years of imprisonment, or life imprisonment.

(d) Article 76, the person convicted of murder shall be sentenced to a term of ten to twenty years of imprisonment.

(e) Article 77, the act of murder, which is committed before, along, or after another crime, shall be sentenced to life imprisonment.

(f) Article 78, the person convicted of premeditated homicide shall be sentenced to a term of fifteen to twenty-five years of imprisonment and, when aggravating circumstances occur, to life imprisonment.

- (g) Article 79, shall be sentenced to life imprisonment the murder committed against:
- a minor under sixteen years old;
  - a person with physical or psychiatric handicaps, gravely sick people or pregnant woman, provided that these qualities are obvious or known;
  - a deputy, judge, prosecutor, lawyer, policeman, military officer, state employee, during work period or because of the work, provided that the qualities of the victim are obvious or known;
  - the person who reported the criminal act, the witness, the damaged person or other parties in the trial;

Article 80, providing the [necessary] conditions and material means for committing the murder shall be sentenced to an imprisonment term of up to five years.

Article 81, the infanticide voluntarily committed by a mother right after birth is considered criminal contravention and shall be sentenced to a fine or up to two years of imprisonment.

Article 82, homicide committed intentionally in a sudden state of profound psychiatric distress caused by violence or serious offence to the victim is sentenced up to eight years of imprisonment.

Article 83, homicide committed through the use of excessive force for self-defence is sentenced up to seven years of imprisonment.

Article 84, serious threat to cause death or grave personal harm to someone constitutes criminal contravention and is sentenced to a fine or up to one year of imprisonment.

Article 87, torture, like any other degrading or inhuman treatment, when it has inflicted handicap, mutilation or any permanent harm to the well being of a person, or death, is sentenced from ten to twenty years of imprisonment.

Article 88, serious intentional injury inflicting handicap, mutilation or any other permanent detriment to the health, or inflicting interruption of pregnancy, or which has been dangerous to the life at the moment of its inducement, is sentenced from three to ten years of imprisonment. When the same act is committed against a group of people, or causes death, it is sentenced from five to fifteen years of imprisonment.

Article 93, interruption of pregnancy without the woman's consent, unless those cases when interruption is imposed because of a justified health-related cause, is sentenced to a fine or up to five years of imprisonment.

Article 94, interruption of pregnancy which is not conducted in public hospitals or specifically licensed private clinics, or by a person who is not doctor, or after the time allowed for the interruption unless in the case when this is imposed because of a justified health-related cause, has caused [serious] danger to the life or resulted to death, it is sentenced to a fine or up to five years of imprisonment.

Article 95, providing the utensils, which serve, for interruption of pregnancy of a woman in order to have either her or somebody else interrupt the pregnancy, constitutes criminal contravention and is sentenced to a fine or up to one year of imprisonment.

Article 96, incorrect medication of patients from the doctor or other medical staff, as well as non-implementation of the therapy or the orders of the doctor from the medical staff or pharmacist, when it has caused serious harm to the health, has endangered the life of the person or has caused his death, is sentenced to a fine or up to five years of imprisonment.

Article 97, refraining from providing help without reasonable cause by the person who either legally or because of his capacity was obliged to provide, is considered criminal contravention and is sentenced to a fine or to up to two years of imprisonment when, as its consequence, serious harm to the health, endangerment to life or death resulted.

Article 98, refraining from providing help by the captain of a ship to the people who are drawing in the sea or in other waters, when this help could have been provided without causing serious danger to the ship, crew and passengers, is sentenced to a fine or up to four years of imprisonment.

Article 99, causing suicide or a suicide attempt to a person because of the systematic maltreatment or other systematic misbehaviours which seriously affect the dignity [of the person], committed by another person under whose material dependence or any other dependence the former person is subject, is sentenced to a fine or up to five years of imprisonment.

Article 100, when sexual intercourse with a minor has resulted into death or suicide of the minor, it is sentenced to no less than twenty years of imprisonment.

Article 101, when the violent sexual intercourse with a minor between fourteen to eighteen years has lead to the death or suicide of the minor, it is sentenced no less than fifteen years of imprisonment.

Article 102, if the sexual intercourse through violence with matures women has lead to the death or suicide of the victim, is sentenced from ten to twenty years of imprisonment.

Article 103, sexual intercourse with an either physically or mentally handicapped victim who has reached the age of fourteen and is sexually mature or, when it is had while the victim has lost consciousness, is sentenced from five to twenty years of imprisonment if the act has lead to the death or suicide of the victim.

Article 110, when the unlawful detention of a person has endangered the life or is accompanied with serious physical hardship, is sentenced up to five years of imprisonment.

Article 124, when abandonment of a child under fourteen by a parent or by a person compelled to guard over him, has resulted in serious harm to the health or death of the child is sentenced to three up to ten years of imprisonment.



Article 141, theft of property, when accompanied with such actions as resulting in the death of the person, is sentenced from fifteen to twenty years of imprisonment, or to life imprisonment.

Article 151, when due to intentionally destroying or damaging property by fire has resulted in serious consequences to the life and health of people, is sentenced from five to fifteen years of imprisonment.

Article 152, when intentionally destroying or damaging property by explosives has resulted in serious consequences to the life and health of people, is sentenced from ten to twenty years of imprisonment.

Article 153, when intentionally destroying or damaging property by flooding has resulted in serious consequences to the life and health of people, is sentenced from five to fifteen years of imprisonment.

Article 154, when intentionally destroying or damaging property with other means, which constitute danger to the environment and the health of people, has resulted in serious consequences to the life and health of people, is sentenced from five to fifteen years of imprisonment.

Article 155, when intentionally destroying or damaging automobile roads, railways and works related to them has resulted in serious consequences to the life and health of people, is sentenced from five to fifteen years of imprisonment.

Article 203, when polluting the waters of the seas, rivers, lakes or the springs of water supply system with waste either toxic or radioactive or other substances, which break the ecological balance has resulted in serious consequences to the life and health of people is sentenced from five to ten years of imprisonment.

Article 204, fishing undertaken through means of public danger like explosives, poisonous substances, etc, constitutes criminal contravention and is sentenced to a fine or up to two years of imprisonment.

Article 207, breach of rules of quarantine for plants or animals, when it has led to serious consequences which are either material or which bring serious danger to the life and health of people, constitutes criminal contravention and is sentenced to a fine.

Article 219, assassination, kidnapping, torturing or other acts of violence [committed] against highest representatives of the state, with the intent of overturning constitutional order, is sentenced to no less than fifteen years of imprisonment or to life imprisonment.

Article 232, delivery in the air, land or water of substances that constitute danger to the life and health of people and animals, with the intent of seriously disturbing public order and instilling uncertainty to the public, is sentenced from ten to twenty years of imprisonment.

Article 233, creating armed gangs to oppose on the public order through violent acts against life, health, personal freedom of the individual, property, with the intent of instilling fear and uncertainty to the public, is sentenced up to ten years of imprisonment.

Article 234, producing, storing, transporting of military, chemical, biological, nuclear weapons which have poisonous or explosive base, with the intent of committing acts of terrorism, is sentenced from five to fifteen years of imprisonment.

Article 278, manufacturing military weapons and ammunition, bombs and mines, without the permission of competent state bodies, is sentenced from five to ten years of imprisonment. Holding, buying or selling weapons, bombs or mines without the authorization of state competent bodies, is sentenced to a fine or up to seven years of imprisonment. Holding bullets of light military weapons without the authorization of state competent bodies constitutes criminal contravention and is sentenced to a fine or up to one year of imprisonment.

Article 279, manufacturing, keeping, buying or selling cold weapons, such as swords, bayonets, knives and other means prepared and intended specifically for assaulting people or for self-defence, without the authorization of state competent bodies, is sentenced to a fine or up to five years of imprisonment.

Article 280, manufacturing, keeping, buying or selling hunting or sporting rifles, as well as their ammunition, without the authorization of state competent bodies, constitutes criminal contravention and is sentenced to a fine or up to two years of imprisonment.

Article 281, breaching stipulated rules for keeping, manufacturing, using, storing, transporting and selling poisonous substances with strong effect, constitutes criminal contravention and is sentenced to a fine or up to two years of imprisonment. When the criminal act has led to death, serious harm to the health of people or other serious material consequences, it is sentenced to a fine or up to ten years of imprisonment.

Article 282, breach of stipulated rules for keeping, manufacturing, use, storing, transporting and sale of explosive, firing or radioactive substances, constitutes criminal contravention and is sentenced to a fine or up to two years of imprisonment. When the criminal act has led to death or has caused serious harm to the health of people or other serious material consequences have resulted, is sentenced to a fine or up to ten years of imprisonment.

Article 289, causing death or serious harm to the health of an individual because of intentional disregard of rules related to work, production, service, provided for by laws, acts of the Council of the Ministers or in the pertinent regulations of technical safety, technical discipline, work-related protection, hygiene and fire safety by an individual designated to respect those rules and to implement them, is sentenced to a fine or up to ten years of imprisonment. When the criminal act has caused death or serious harm to the health of more than one person, it is sentenced to no less than five years of imprisonment.

Article 290, breach of traffic regulations, when it has caused the death, serious injury to a person or injuries to more than one person, is sentenced to a fine or up to ten years of imprisonment. When the criminal act has caused the death or serious injury to more than one person, it is sentenced to no less than five years of imprisonment.

Article 292, breach of working-standards in railway, water, or air transportation by their employees, which has caused death or serious harm to the health of an individual, is sentenced to a fine or up to ten years of imprisonment. When the criminal act has caused death or serious injury to more than one person, it is sentenced to no less than five years of imprisonment.

Article 334 of the Criminal Code provides more severe punishments on the following cases:

- Committing crimes by an armed gang or criminal organization shall be sentenced according to respective criminal provisions adding five more years to the sentence given for the crime committed, when the referring provision contains imprisonment and another lighter punishment, but without exceeding the maximum term of imprisonment.
- When the respective criminal provision contains imprisonment or life imprisonment or the death penalty, it is sentenced to twenty-five years of imprisonment or to life imprisonment.
- When the respective criminal provision contains life imprisonment or the death penalty, it is sentenced to life imprisonment.

318. The Criminal Code of the Republic of Albania is one of the most important laws of the Albanian legal system. Kuvendi adopted the Code on the 27<sup>th</sup> of January 1995, as part of the overall reform of the Albanian legal system. The code has been subject to important changes by law no. 8175, of 23.12.1996, law no. 8204 of 10.04.1997 and law no. 24.01.2001, with the intention of adapting its provisions with the new social challenges of life in Albania.

### **Disappearance of individuals**

319. As mentioned above, article 21 of the Constitution provides that life of a person in protected by law.

320. The Criminal Police announces the search for the persons declared disappeared, (according articles 15-23 of the Civil Code of Albania) for all kidnapped, not founded or runaway persons. In case of the runaway persons towards unknown direction, for minors, or persons with no capacity to act the police announce the search before the court takes a decision on the “disappearance of a person”. Prior to that the police conducts all the preliminary verifications for the possible location of the disappeared persons period, which cannot be longer than one month.

Articles 15-23 of the Civil Code provide also that:

321. The person who has disappeared from his residence or his last residing place and for whom there is no news for more than two years, then by the demand of any interested person he can be declared a disappeared person by the decision of the court. When the date of the last news can not be decided, the above mentioned term starts from the date of successor month during which is informed for the last time. When the month can be not decided, then the term begins from January 1 of the following year.

322. With the announcement of disappearance of a person there is appointed a tutor for the administration of the property. The decision of the court by which a person is declared disappeared is published in the Official Gazette and is sent for registration to the respective registry office.
323. The person who is declared disappeared, with the demand of every interested person can be declared a dead person by the decision of the court when four years have passed without news from the date when he is declared disappeared.
324. The person missing in military action and this missing is verified by the competent military organs, in case when there have passed two years without news from the date when the agreement of peace has entered into force or three years from the end of military actions, then he can be declared dead by the decision of the court, without declaring him disappeared in advance.
325. The person missing during a natural disaster or in circumstances which make believe he is dead can be declared dead by the decision of court when there have passed two years without news from the date of disaster, without declaring him disappeared in advance. When the date of disaster has not been decided, the two year term starts from date 1 of the month which comes after the one when disaster has taken place, and when even the month can not be decided, then the term starts from date 1 January of following year.
326. When two or more persons have died and it can be not proved as to who died first, then 9 for legal effect they are considered to have died at the same time.
327. When the death of a disappeared person is declare, there is decided the date when it happened. When this date cannot be exactly verified, the court decides it according to the rules provided by the articles of this code. Upon the demand of every interested person, the court, which has given the decision, can change the date of death when there is verified that the person has died in another date.
328. The death announced by the decision of the court is equal to all legal consequences of the real death. The decision of the court in which a person is declared dead is published in the Official Book and is sent for registration to the respective registry office.
329. When the person declared dead happens to be alive, by his or every interested person demand, the decision is renounced by the court that has issued it. The person who is alive has the right to demand his property and the property gained by its means, even from third persons to whom this property has passed because of the death announcement, within the limits and conditions provided by this code or family code.
330. Until June 2003, in the archives of the searching division, at the Ministry of Public Order 91 persons result runaways to unknown direction. This number comprises also the disappeared persons, but emphasizing that the initiative before the court for declaring a person disappeared should be taken by the relatives or other interested individuals (which is rarely the case), there is no precise figure on the number of disappeared persons.

## Children

331. Under article 21 of the Constitution of the Republic of Albania, the law protects the life of a person (including children).

332. Abortion is a debatable issue relating to the child's undeniable right to life. Until 1995, deliberate abortion was legally forbidden in Albania. On 7 December 1995, the People's Assembly passed the Law no. 8045, "For the Interruption of Pregnancy". Although article 1 of the present law states that respect for each and every human being right from the beginning of his life is guaranteed under law, it also underlines that this principle may be violated when it is indispensable and under the conditions provided for by the said law.

333. The Law "For the Interruption of Pregnancy" guarantees respect for each and every human being right from the beginning of his life, hence, after he is conceived. Interruption of pregnancy is permitted for health-related reasons only (concerning both mother and child), and for psychosocial reasons. In cases where girls below the age of sixteen years conceive pregnancy out of wedlock, the interruption of pregnancy is carried out with the consent of the parent or legal guardian. Besides the interruption of pregnancy for health-related reasons, deliberate interruption of pregnancy at the mother's request is also allowed.

334. Under Section V of the Criminal Code "Criminal Acts Endangering the Life and Health because of Interruption of Pregnancy or Refraining from Providing Help", article 93 "Interruption of pregnancy without the woman's consent, except for the cases where interruption is imposed because of a justified health-related cause, this act is punishable by fine or imprisonment up to five years.

335. The Criminal Code contains special provisions aiming at protection of the right of the child to life. Article 81, of the Criminal Code deals the infanticide voluntarily committed by a mother right after birth. In this case we have to do with a criminal contravention, and the offender - the mother, is liable to punishment by fine or imprisonment up to two years.

336. Under Chapter II "Crimes against Life" of the Criminal Code, letter a) of article 79 "Murder for reasons of special qualities of the victim", commission of murder against a minor below the age of sixteen years is punishable by life imprisonment.

337. In Albania, there is a difference in terms of the feeding of children between the urban and rural areas. Stark differences, however, exist between the mountainous and plain areas. In the mountainous areas the families live under dire economic conditions also due to the difficult terrain, so the children in those areas receive less qualitative feeding. This leads to higher mortality rates among children as compared to other areas.

## Infant mortality

Years	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Infant mortality	28.3	1.2	2.8	3.4	35.7	30	25.8	22.5	20.5	17.5	16	17.5

**Malnutrition****Prevalence of malnutrition of children from 0-3 years old (in %)**

Years	1991*	1992**	1994***	1996***	1997***
%	28	28	18.4	14.6	7.4&

\* Study of the Paediatric Institute, 1991.

\*\* Red Cross Study.

\*\*\* Italian NGO (S Eugidi) study UNICEF & Data grounded on the acute malnutrition indicator (wasting).

**Life expectancy****Expectation of life at birth  
(1950-1999)**

Year	Total	Male	Female
1950-1951	53.5	52.6	54.4
1951-1956	57.8	57.2	58.6
1960-1961	64.9	63.7	66.0
1979-1980	69.5	67.0	72.3
1980-1981	70.2	67.7	72.2
1984-1985	71.5	68.7	74.4
1985-1986	71.9	68.7	75.5
1986-1987	72.0	68.8	75.5
1987-1988	72.2	69.4	75.5
1988-1989	72.4	69.6	75.5
1989-1990	72.2	69.3	75.4
1990-1995*	71.4	68.5	74.3
1999*	74.0	71.7	76.4

\* Calculated based upon population projections by INSTAT.

**Medium longevity**

Years	1950	1955	1960	1965	1969	1975	1979	1985	1990	1995	2002-2001
Medium life duration	51.6	55.0	62.0	64.1	66.5	67.0	68.0	70.2	70.7	73.1	74.6

**Abortion****Pregnancies, births, abortions  
(1999-2001)**

Years	1990	1991	1992	1993	1994	1995
No. of pregnancies	108 237	107 769	103 562	104 520	103 471	104 349
No. of births	82 125	77 361	75 425	71 079	72 179	72 081
No. of reported abortions	26 112	30 408	27 745	33 441	31 292	32 268

Years	1996	1997	1998	1999	2000	2001
No. of pregnancies	96 092	83 872	78 355	70 969	71 081	68 616
No. of births	68 358	61 739	60 139	57 948	53 833	52 888
No. of reported abortions	27 734	22 133	18 948	16 360	17 120	15 728

**Abortion by age groups  
(1994-1997)**

Age groups	1994	1995	1996	1997
13-19	3.5	4.9	2.7	3.6
20-34	67	63.2	58	64.4
35+	27.7	19.5	26.4	32

**Abortion by education level  
(1994-1997)**

Education level	1994	1995	1996	1997
Primary	2.5	2.5	1.8	0.7
8-years	47.6	47.1	47.9	32.9
Secondary	44.3	47.1	45.1	62.7
High	4.7	3.3	3.2	3.4

**Abortion by kind and place**

Year	Total	Kind of abortion		Place	
		Provoked	Spontaneous	Urban	Rural
1994	18 361	14 456	3 905	10 455	7 906
1995	17 504	13 615	3 889	9 057	8 447
1996	10 310	8 435	1 875	5 738	4 572
1997	10 564	8 979	1 585	6 312	4 252

**BIRTHS AND ABORTIONS****Years 1994-2000**

Years	Abortions
1994	31 622
1995	31 874
1996	32 538
1997	22 103
1998	18 944
1999	19 930
2000	21 004

*Source:* INSTAT.

338. In 1990 the births in urban areas comprised 32% of total births, in rural areas 68.8%, whereas in 1999 this figure was 44.6% in urban areas and 55.4 in rural areas. The total fertility rate lowered from 7 children per women in 1960 to less than 2.6 children per women in 1995 and 2.5 in 1997. Infant mortality rate (per 1 000 births) has decreased in 1998 (20.5/1,000 live births) as compared to the period 1987- 1997. In 1996 the number of male live births was 35 thousand or 51.4% of total live births, while female live birth was 33 thousand or 48.6% of total live births. Fertility is about 25% higher in rural than in urban areas.

**Live births by sex  
(1990-1999)**

Year	Total	Male	Female	Sex ratio
1990	82 125	42 564	39 561	1.08
1991	77 361	40 748	36 613	1.11
1992	75 425	39 505	35 920	1.10
1993	67 730	35 570	32 160	1.11
1994	72 179	38 022	34 157	1.11
1995	72 081	38 085	33 996	1.12
1996	68 358	35 519	32 818	1.08
1997	61 739	32 178	29 561	1.09
1998	60 139	31 556	28 583	1.10
1999	57 948	30 308	27 640	1.10



**Live births by urban and rural residence  
(1990-1999)**

Year	Total	Urban	Rural
1990	82 125	25 642	56 483
1991	77 361	22 550	54 811
1992	75 425	22 530	52 895
1993	67 730	22 350	45 380
1994	72 179	26 809	45 370
1995	72 081	27 379	44 702
1996	68 358	29 016	39 342
1997	61 739	26 295	35 444
1998	60 139	25 758	34 381
1999	57 948	25 836	32 112

**Deaths by sex  
(1990-1999)**

Year	Total	Male	Female
1990	18 193	10 311	7 882
1991	17 743	10 296	7 447
1992	17 743	10 408	7 618
1993	18 026	10 438	7 482
1994	17 920	10 788	7 554
1995	18 060	10 447	7 613
1996	17 600	10 294	7 306
1997	18 237	11 121	7 116
1998	18 250	10 808	7 442
1999	16 720	9 695	7 025

**Deaths by urban and rural residence  
(1990-1999)**

Year	Total	Urban	Rural
1990	18 193	6 190	12 003
1991	17 743	6 546	11 197
1992	18 026	6 572	11 454
1993	17 920	6 820	11 100
1994	18 342	7 605	10 737
1995	18 060	7 312	10 748
1996	17 600	7 459	10 141
1997	18 237	8 695	9 542
1998	18 250	8 891	9 359
1999	16 720	7 837	8 883

**Live births, deaths and natural increase  
(1990-1999)**

Year	Population	Live births	Deaths	Natural increase	Crude birth rate	Crude death rate
1990	3 255 891	82 125	18 193	63 932	25.2	5.6
1991	3 259 814	77 361	17 743	59 618	23.7	5.4
1992	3 190 103	75 425	18 026	57 399	23.6	5.7
1993	3 167 478	67 730	17 920	49 810	21.4	5.7
1994	3 202 031	72 179	18 342	53 837	22.5	5.7
1995	3 248 836	72 081	18 060	54 021	22.2	5.6
1996	3 283 000	68 358	17 600	50 758	20.8	5.4
1997	3 324 317	61 739	18 237	43 502	18.6	5.5
1998	3 354 336	60 139	18 250	41 889	17.9	5.4
1999	3 373 445	57 948	16 720	41 228	17.2	5.0

**Use of firearms by the police**

339. Cases of use of firearms by police forces are provided by law no. 8290 of 24.02.1998, "On use of firearms", and regulation no. 721 of 25.06.1998 "On the use of firearms by the Public Order Police and other armed persons in compliance with law.

340. Pursuant to article 1 of law no. 8290 of 24.02.1998, "On use of firearms", the fire arms are used as an extreme final mean to stop or paralyse the contravention actions of persons, when other means has given no result, or when obviously their use will not give any effect.

341. Article 2 of law provides that, the Armed Forces of the Republic of Albania, police and other police formations established by law which are not part of Armed Forces, as well as armed guards are entitled to use the firearms to protect their or somebody else's life, health, rights or interests from an unfair, real and accidental attack, provided that the defence was proportionate to the dangerousness of the attack (in cases of necessary defence), and also in cases when they are asked to confront a real and accidental danger which threatens him, another person or property from a serious damage, provided that the danger has not been instigated by him and the damage incurred is greater than the damage avoided (in cases of extreme necessity).

342. Article 5 of law provide that the firearms cannot be used:

- Against persons who are obviously minors (children), women and elderly;
- In public places, during meetings or gatherings, thus risking somebody else's life.

343. In such cases the firearms can be used only against particular individuals, who are committing obvious violent penal offences against person or property and when the use of other coercive measures has not given any effect.

344. Articles 6 and 7 of law provide that the use of firearms should be interrupted when the attack has been interrupted, stopped, ended, or if the attacker surrenders.

345. Prior to using the firearms, persons subject to use of firearms should be warned loudly and clearly. When the person does not obey to the order, and instead tries to escape or react, the police shoot without warning, intending to paralyse its movements by shooting him at the lower parts of body. When the compliance with the above rules is impossible because of circumstances, the firearms are used without warning.

346. In compliance and implementing the provisions of law no. 8290 of 24.02.1998, "On use of firearms", the Ministry of Public Order, Ministry of Defence and the State Informative Service have adopted their own internal regulations on the use of firearms by their employees.

347. In compliance with the abovementioned law, the Public Order Police adopted the regulation no. 721, of 25.06.1998, that provides for the extent of firearms use by public order police.

348. According to the general principles of the regulation, the persons in charge and entitled to hold and use the firearms are:

- Police officers belonging to the Public Order Police, Criminal Police, Order Police, Border Police, Special Forces and Rapid Intervention, Road Police, other structures empowered by law to carry and use the firearms as the police forces;
- Physical persons defined by law no. 7996 of 07.04.1993 "On the Civil Guard Services". These persons are authorised by special commissions established in the police stations;
- Physical persons defined by law "On Arms". These persons obtain the authorisation by the Ministry of Public Order.

349. In carrying and using the firearms, the persons authorised to use them are always guided by the principles of legality, proportionality, necessity and humanism.

350. General rules in using the firearms

- In cases of using the arms with prior warning, the loud warning shall contain the words "stop", "stop the assault", "stop police";
- In cases of attempt to escape from the detention or prison premises, or from the place the detainee or the inmate is at the moment, the warning shall be considered the exit of the enwall (prisons) and the detention rooms, temporary isolation place (hall, room, etc);
- The heads of various structures of police must implement special programmes of training for the techniques and dealing with weapons, combining the training to the conditions and features of service;

- The General Directorate of Police forces, having regard to the experience and services offered, defines the basic and most effective armament for each police structure;
- Managers of Civil Guard Companies must also implement programmes of training for techniques and dealing with firearms, engaging for this purpose specialists of respective areas.

351. The regulation no. 721 of 25.06.1998 of the Public Order Police, provides the following cases when police officers can use the firearms:

- When the firearms are used for the prevention or interruption of a criminal act;
- When after committing the criminal offence, the responsible persons try to escape, or violently react to the attempts for their capture;
- To prevent the runaway of a person or persons who are or previously were under police surveillance;
- Against the person, or persons who try to free the detainees, the inmates, or try to eliminate them;
- Against persons that using firearms or other dangerous means try to damage, destroy, set on fire, steal, rob, or use objects under police protection;
- In all the cases mentioned above, the regulation in details defines when warning will precede the use of firearms;
- The regulation also defines the cases and rules for use of firearms from the border police, and cases when their use is prohibited.

352. Pursuant to the regulation the firearms are not permitted for use in the following cases:

- When illegal crossing of borderline has been forced by force major, technical defects, non-reconnaissance of the terrain and in cases when foreign citizens seek shelter in the Republic of Albania;
- Against persons who are obviously minors, women, elderly, and at the same time they are not undertaking dangerous actions against borderline police or other individuals;
- When the police forces consider that the use of firearms would hurt innocent foreign citizens in the neighbouring country, or Albanian citizens in the Republic of Albania or their use would damage the properties;
- When there are massive group crossing of the state borderline.

353. The civil guards and physical persons entitled by law to use the firearms, have the right to use them when:

- They are subjected to an armed attack, explosive or other dangerous means which threatens their life and when other means has given no result, or when obviously their use will not give any concrete result (in this case the firearms are used without prior warning - necessary defence);
- Against persons or group of persons who commit an armed assault towards the object secured with civil guards (only after prior warning);
- When themselves or persons subject to protection, come under an assault using firearms or other dangerous means for life, from individuals or groups of individuals (only after prior warning).

354. Chapter 4 of the regulation provides for the actions that have to be undertaken after the use of firearms. Pursuant to provisions contained in this chapter, after using the firearms the following actions have to take place:

- Give the necessary assistance to persons wounded by using the firearms;
- Inform the superior instances on the consequences of using the firearms (superiors, police stations, respective directories in the prefecture, Ministry of Public Order and for incidents at the border, the Ministry of Foreign Affairs);
- Inform the relatives of the victim (for incidents at the border and when the victim is foreign citizen, the Ministry of Foreign Affairs);
- Safeguard the place of the incident;
- Examination of the place of the incident by the following persons:
  - (i) The competent prosecutor, officer of the judicial police, respective criminology experts;
  - (ii) For incidents at the borderline, the group of experts is composed by members of both neighbouring states (according to the respective agreement);
- Examination group should have all the necessary assistance, both for the safeguard of the place of incident, and for the collection of used armaments and ammunition;
- Persons that have used the firearms must give all the necessary explanations for their use and must prepare the respective reports on the factual situation and circumstances that influenced the use of firearms;

- Always when a consequence has followed the use of firearms, the superior commands must analyse it and send information to the Ministry of Public Order;
- Always when a consequence has followed the use of firearms the commencement of criminal proceeding is obligatory.

## **Article 7**

### **Prohibition of torture and cruel, inhuman and degrading treatment or punishment**

355. The main provisions regarding torture are provided in article 25 of the Constitution: “No one may be subjected to torture, cruel, inhuman or degrading punishment or treatment”. In continuation article 26 of the Constitution provides that, no one may be required to perform forced labour, except in cases of the execution of a judicial decision, the performance of military service, or for a service that results from a state of emergency, war or natural disaster that threatens human life or health.

356. According to articles 28 of the Constitution, everyone whose liberty has been taken away has the right to be notified immediately, in a language that he understands, of the reasons for this measure, as well as the accusation made against him. The person whose liberty has been taken away shall be informed that he has no obligation to make a declaration and has the right to communicate immediately with a lawyer, and he shall also be given the possibility to realize his rights. The person whose liberty has been taken away, according to article 27, paragraph 2, subparagraph c), must be sent within 48 hours before a judge, who shall decide upon his pre-trial detention or release not later than 48 hours from the moment he receives the documents for review.

357. A person in pre-trial detention has the right to appeal the judge’s decision. He has the right to be tried within a reasonable period of time or to be released on bail pursuant to law. In all other cases, the person whose liberty is taken away extra judicially may address a judge at anytime, who shall decide within 48 hours regarding the legality of this action. Every person, whose liberty was taken away pursuant to article 27, has the right to humane treatment and respect for his dignity.

358. Pursuant to article 43, everyone has the right to appeal a judicial decision to a higher court, except when the Constitution provides otherwise.

359. Everyone, by himself or together with others, may direct requests, complaints or comments to the public organs, which are obliged to answer in the time periods and conditions set by law (article 48 of the Constitution).

360. The Republic of Albania adhered to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, with law no. 7727, of June 30, 1993, proclaimed by decree no. 592, of July 6, 1993 of the President of the Republic. The Convention entered into force with respect to Albania on May 11, 1994. The Republic of Albania has already presented before the Committee against Torture, its first initial and second periodic report.

361. In the framework of fight against torture, the Republic of Albania has also ratified the European Convention On the Prevention of Torture and Inhuman or Degrading Treatments or Punishment, signed in October 2, 1996, ratified in October 2, 1996 and entered into force in January 1, 1997, as well as its two optional protocols of the convention.

362. Article 50 of the Criminal Code provides also that, when the criminal act is committed savagely and ruthlessly, this circumstance aggravates the punishment. According to the article 75 of the Code, acts committed by different people in war time such as murder, maltreatment or deportation for slavery labour, as well as any other inhuman exploitation to the detriment of civil population or in occupied territory, the killing or maltreatment of war prisoners, the killing of hostages, destruction of private or public property, destruction of towns, commons or villages, which are not ordained from military necessity, are sentenced with no less than fifteen years of imprisonment, or life imprisonment.

363. Article 73 of the Criminal Code provides that, the execution of a premeditated plan aiming at the total or partial destruction of a national, ethnic, racial or religious group directed towards its members, and combined with the following acts, such as: intentionally killing a group's members, serious physical and psychological harm, placement in difficult living conditions which cause physical destruction, applying birth preventing measures, as well as the obligatory transfer of children from one group to another, is sentenced with no less than ten years of imprisonment, or with life imprisonment.

364. Killing, massacres, slavery, internal exile and deportation, as well as every act of torture or other inhuman violence committed for political, ideological, racial, ethnic and religious reasons, are sentenced with no less than fifteen years of imprisonment, or with life imprisonment (article 74 of Criminal Code).

365. Acts committed by different people in war time such as murder, maltreatment or deportation for slavery labour, as well as any other inhuman exploitation to the detriment of civil population or in occupied territory, the killing or maltreatment of war prisoners, the killing of hostages, destruction of private or public property, destruction of towns, commons or villages, which are not ordained from military necessity, are sentenced with no less than fifteen years of imprisonment, or life imprisonment, or death penalty.

366. Articles 86 and 87 of the Criminal Code provide that torture, as well as any other degrading or inhuman treatment, is sentenced from five to ten years of imprisonment. Torture, like any other degrading or inhuman treatment, when it has inflicted handicap, mutilation or any permanent harm to the well being of a person, or death, is sentenced from ten to twenty years of imprisonment.

367. Serious intentional injury inflicting handicap, mutilation or any other permanent detriment to the health, or inflicting interruption of pregnancy, or which has been dangerous to the life at the moment of its inducement, is sentenced from three to ten years of imprisonment. When the same act is committed against a group of people, or causes death, it is sentenced from five to fifteen years of imprisonment (article 88).

368. Causing suicide or a suicide attempt to a person because of the systematic maltreatment or other systematic misbehaviours which seriously affect the dignity [of the person], committed by another person under whose material dependence or any other dependence the former person is subject, is sentenced to a fine or up to five years of imprisonment (article 99).

369. Intercourse with a minor girl who has not reached the age of thirteen years, or has not reached sexual maturity, is sentenced from five to fifteen years of imprisonment. When sexual intercourse was had without consent, or serious harm to the health of the victim has been caused, it is sentenced from ten to twenty years of imprisonment. When the act has resulted into death or suicide of the girl, it is sentenced to no less than twenty years of imprisonment (article 100).

370. Violent sexual intercourse with a minor girl between fourteen to eighteen years and who has reached sexual maturity is sentenced from five to ten years of imprisonment. When serious consequences result for the minor girl's health, it is sentenced from ten to fifteen years of imprisonment. When the act leads to the death or suicide of the minor girl, it is sentenced no less than fifteen years of imprisonment (article 101).

371. Violent sexual intercourse with mature women is sentenced from three to ten years of imprisonment. When serious consequences are caused to the health of the victim, it is sentenced from five to fifteen years of imprisonment. When the act lead to the death or suicide of the victim, it is sentenced from ten to twenty years of imprisonment (article 102).

372. Article 103, sexual intercourse with an either physically or mentally handicapped victim who has reached the age of fourteen and is sexually mature or, when it is had while the victim has lost consciousness, is sentenced from five to ten years of imprisonment. When serious consequences are caused to the health of the victim, it is sentenced from five to fifteen years of imprisonment. When the act has lead to the death or suicide of the victim, it is sentenced from ten to twenty years of imprisonment.

373. Article 104, sexual intercourse that leaded to the death or suicide of the damaged person is sentenced to life imprisonment. Violent sexual intercourse, which is preceded, accompanied or followed by torture, is sentenced to twenty years of imprisonment.

374. Article 109, kidnapping with the intention of enrichment or of insuring any other kind of benefit is sentenced from ten to twenty years of imprisonment. Kidnapping a child under fourteen, the act of hiding or substituting him with another, is sentenced to no less than twenty years of imprisonment or to life imprisonment.

375. Article 109/a provides that, kidnapping and holding hostage a person is sentenced to twenty-five years of imprisonment when the victim has been subject to heavy and permanent physical premeditated injuries as result of privation from basic life necessities, or when it is committed against more persons. Kidnapping or holding hostage of person is sentenced to life imprisonment when preceded or accompanied by torture, when the victim is minor, or when the act is committed by a criminal organization. When the minor, or other persons are voluntarily freed before 7 days of their kidnapping and they are not subjected to torture, and they have not had any heavy and permanent health injuries, the punishment is 10 years of imprisonment.



376. Kidnapping or holding hostage a person or a minor under the age of 14, preceded or accompanied by physical or psychological torture, when committed against more persons or more than once, it is sentenced not less than twenty years of imprisonment and with life imprisonment if death has resulted. When the person subject to kidnapping or hostage is voluntarily freed within 7 days as from his kidnapping or holding as a hostage, without reaching the aim of the crime as well as when the person was not subject to torture or permanent health injuries, it is sentenced from three to five years of imprisonment.

377. Unlawful detention of a person constitutes criminal contravention and is sentenced to a fine or up to one year of imprisonment. When this act has endangered the life or is accompanied with serious physical hardship, it is sentenced up to five years of imprisonment (article 110).

378. Hijacking planes, ships and other means of transportation, which carry people, using violence and intimidation by arms or other means is sentenced from ten to twenty years of imprisonment (article 111).

379. Breaking and entering into someone's house without his consent constitutes criminal contravention and is sentenced to a fine or up to three months of imprisonment. Committing the act forcefully or by threat of gunpoint constitutes criminal contravention and is sentenced to a fine or up to one year of imprisonment (article 112).

380. Abandonment of a child under fourteen by a parent or by a person compelled to guard over him, is sentenced to a fine or up to three years of imprisonment. When serious harm to the health or death of the child has resulted, it is sentenced to three up to ten years of imprisonment (article 124).

381. Theft of property, when accompanied with such actions as resulting in the death of the person, is sentenced from fifteen to twenty years of imprisonment, or to life imprisonment or death (article 141).

382. Committing violent acts against the life, health of people, personal freedom through kidnapping of people or hijacking public transportation, with the intent to seriously disturb public order and instilling fear and uncertainty in the public is sentenced to no less than fifteen years of imprisonment or to life imprisonment or death (article 230).

383. Serious threat for assassination or critical injury toward an official acting in the execution of a state duty or public service, because of his state activity or service, constitutes criminal contravention and is sentenced to a fine or up to two years of imprisonment (article 238).

384. Articles 92, 93 and 94 of law no. 8003 of September 28, 1995 "Criminal Military Code" provide heavy punishments for cruel manners and carelessness towards sick or injured prisoners of war by the individuals appointed for their treatment, abandonment of war prisoners in the battlefield and their killing or injury. Furthermore, punishments are provided for those who kill or injure the surrendered enemy. Desecration of enemy's body is also considered as a contravention.

### **Right of detainees**

385. Law no. 8291 of February 25, 1998, “Code of Police Ethics” articles 6/2 provides that, during accompanying, detaining, and arresting the person involved in crimes, police employees exercise strictly the legal norms and are categorically prohibited any acts of torture or any other act that damages the personality and dignity of those persons.

386. Article 8 of the law provides that, police employees are responsible in a penal, administrative or civil form, according to the regulation of discipline for the acts, or non acts performed with initiative or against the order, or for performing the given orders not in the form given by the law or the regulation, or for performing orders given by persons or organs not competent. Police employee is responsible in case he executes orders that are clearly against the law. When the order is given formally according to the rules but it is against the law, the police employee is responsible in case that before performing the action he had the possibilities to notify the superior organs, or if after performing that order he hadn’t notified these organs.

387. Article 10 of the law provides that, police employees never use force against the law requests. They take and give clear-cut instructions for the way and circumstances when they use firearms and force.

388. In compliance to the above, articles 6 and 7 of law no. 8321, of April 2, 1998 “On Prison Police” provide that, the employees of the prison police are obliged to execute the orders conveyed by their superiors, according to the functional position, in accordance with the hierarchy of grade.

389. Orders must be given in compliance with the functional position, through its fulfilment, in respect of the law and the dignity of the individual they are designated for. In absence of direct superiors, cases of emergency, or impossibility of communication with higher superiors, the person bearer of the highest grade is entitled to give orders to other employees with the same grade, or lower-grade police officers.

390. Pursuant to article 9 of law no. 8328 of April 16, 1998 “On the Rights and Treatment of the Prisoners” the prisoners should be subjects to treatment intending re-education for their integration in social life.

391. The treatment of the inmates should be done according to the criterion of individualisation and the state and individual characteristics of each inmate. The individualisation is done through verifying individual needs and taking into account the circumstances and the environment where the inmate has previously lived, education and social reasons that have moved him away from a normal life. The observation is done at the beginning of the treatment and its results are continuously verified during the execution, making the right adjustments.

392. The prison administration personnel, in collaboration with the relevant organs and state institutions, conduct the observation, programming and realization of the treatment. The contribution of NGO-s and special individuals is encouraged and supported by the prisons administration fulfilling of the treatment program. Pursuant to article 48 of Prisons General

Regulation and the provisions foreseen in the regulations of the special institutions, “The prison staffs is forbidden to perform actions against inmates, cruel or degrading punishment or treatment, as well as any kind of torture, that are not based on law”.

393. The legal provisions of the Republic of Albania provide protection from torture and other cruel or degrading punishment or treatment, not only for Albanian citizens but also for persons (foreigners or stateless persons) persecuted because of their race, religion, nationality or membership to a political or social group, are not at the country of their nationality and have no possibility of protection in this country, or those who have no nationality out of their formal and regular residence and have no possibility of returning there.

394. Pursuant to article 27 of law no. 7939 of 25.05.1995 “On Migration”, it is prohibited the return and expulsion of aliens to the frontiers of territories where there is a grounded fear that they may be subjected to torture, inhuman and degrading treatment or the death penalty.

### **Education and information regarding the prohibition of torture**

- Within the education system in Albania measures for education, information and training of specialized personnel regarding the prohibition of torture, aim at:
- Acquaintance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the respective penal and administrative legislation;
- Prevention of the use of any forms of torture through implementation of provisions of the Convention and the respective legislation;
- Evidence and control of different phenomenon and manifestation, containing direct or indirect elements of torture;
- Use of suitable forms and ways of awareness of different social categories regarding the prohibition of torture, etc.

#### *The extent of measures for education, information and training of specialized personnel regarding the prohibition of torture*

395. The overall knowledge of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the respective penal and administrative legislation is realized in the Universities, in those faculties, branches and profiles that prepare personnel in which future activity exist circumstances of manifestation of different forms of torture.

Those institutions or branches are:

- Faculty of Law (University of Tirana and Shkodra);
- Post-university studies for prosecutor and judge in the High School of Magistrate in Tirana;
- Master degree for jurists and psychiatric physicians in Tirana University;

- Higher Military Schools, such as Police Academy “Arben Zylyftari” in Tirana;
- Military Academy “Skenderbej” in Tirana;
- Marine and Aviation Academy in Vlora;
- Higher Academy of Defence attached to the Army General Staff in Tirana;
- Different training courses for police, law, officers, etc.

396. Parts or elements of the Convention and the respective penal and administrative legislation regarding the prohibition of torture have been transmitted to the students of obligatory school, high school, through programs of different subjects, such as civil and moral education, sociologic and philosophic knowledge, history, literature, etc.

397. Teachers and parents of children of obligatory and high school are also informed and trained systematically about the problems regarding prohibition of torture. Their information and training are performed through forms of qualification, short socio-pedagogical courses, pedagogical propaganda and press, etc.

398. In many cases a good cooperation exists between school structures and civil society, dealing with human rights, such as the Albanian Centre for Human Rights and Albanian Helsinki Committee.

*Evidence and control of different phenomenon and manifestation, containing direct or indirect elements of torture*

399. In order to realize effectively the forms of education, information and training of specialized personnel regarding prohibition of torture, examples of evidence and control of phenomenon and manifestation, containing direct or indirect elements of torture are used.

400. In this context elements of torture of psychological nature, such as specific cases of insult or pressure by teachers towards students through marks, insult and beating among children, manifestation of violence and maltreatment in family of husband and wife, parents or adults towards children and minors, etc have been evidenced.

401. More problematic cases are those of violent compulsion of children to go to the street to earn money, and especially bolted children for blood feud in some areas of Northern Albania.

*Forms and ways of information and training for the awareness of different social categories regarding the prohibition of torture*

402. Different forms and ways of information and training for the awareness of the specialized personnel and different social categories regarding the prohibition of torture are used, such as:

- Lectures and conversation to clarify and specify the Convention and the respective penal and administrative legislation regarding the prohibition of torture;

- Special activities in school about human rights, emphasizing the right of children not to be forced to heavy and harmful labour, not to be disparaged because of race, colour, sex, language, etc;
- Discussions about concrete cases of violence in public or family environment, directly observed or evidenced by interviews or surveys by the written and electronic media, etc;
- Comments and discussions about historic, fiction and artistic performances (films, pictures, etc.) themes connected with different forms of torture;
- Initiatives and actions to save children from situation of torture suffering, such as measures and programmers of returning to school of those children violently forced to go to the street or to traffic light and especially bolted children because of blood feud. Activists of local government, NGO-s, religious communities, teachers and students of some areas of Northern Albania have undertaken an important awareness campaign of blood feud reconciliation and taking the children out of closing and returning them to school. The drop out rate is reduced from 6.4% in 1992 to 3.1% in 1997 and 2% in 2002;
- Criminal punishment of flagrant cases of behaviour, causing manifestations of elements of torture. In 2002 a school director in the district of Fieri was sentenced with imprisonment because of children sexual abuse.

### **Situation in prisons**

403. Along with the recruitment of the professional staff, the School of Prison Police has played an important role in the formation of the prison personnel, which is foreseen by the law "On Prison Police". The aims of the school are:

- Basic training of new recruited prison personnel;
- Carrier motivation of existing personnel;
- Training of senior staff of prisons.

404. This school is functioning since three years and it is training all the basic personnel through 15 days to 3 months courses. The school also organizes training courses for medium level personnel. During 2002, 358 basic personnel and 11 medium level personnel were trained. One to two days' courses are organized for prison senior staff. There are also training seminars for prison civilian staff, including the education sector.

405. Article 8 of the law "On Prison Police" provides that, "it is forbidden to keep the ammunition inside the prison, which is only intended for prisoners. The ammunition can be only kept outside, or in the escort service out of the institution. Law "On Public Order Police" foresees types, norms, cases and ways of the use of personal ammunition. The other means of force are used only by order of the Police Director in the General Prison Directorate or in emergency cases by order of the Head of Police of the institution".

406. In the educational plan of the Police Academy “Arben Zylyftari” the program on human rights is not treated as a separate subject, but it is included in the programs of many subjects, alternating their theoretical with the applicable aspect.

407. The subjects “Constitutional Law”, “Criminal Code”, “Professional Etiquette” and “Penal Procedure Law” deal with the theoretical aspect of respecting of individual rights in the criminal proceedings, as well as the meaning and the elements of the criminal offence of torture.

408. A separate chapter of the subject “The Police Law” is dealing with respecting of human rights and freedoms during police escorting, and in particular the rights and restrictions of use of force by the police are specified.

409. The subject “Techniques of Public Security” deals with applying aspect of the human rights by the police, focusing on prohibition of maltreatment and torture in the police actions.

410. The respect of human rights and personal freedoms, including the prohibition of torture are given priority in different training programs of the police staff of the Academy of Public Order “Arben Zylyftari”.

411. As mentioned above, the prison administration encourages and supports the contribution of NGOs and individuals during the implementation of training programmes.

#### **Prohibition of scientific experimentation without the consent of the individual**

412. Law no. 8092 of March 21, 1996 “On Mental Health” provides the procedure on the conditions for allocation of psychiatric care and at the same time lays down the obligations of central and local authorities in organising the care with respect to mentally disordered persons.

413. Article 3 of the law provides that the preventive policies for the protection of mental health are based on:

- The application of principles on the protection the mental health in the educational and health institutions, working centres and military units.
- The establishment of preventive and consultative institutions.
- Supporting the organizations and initiatives that operate in the area of mental health care.
- Participation of elements of health care in the formation programs for employees of the educational sectors, social care, health, administration, organization of leisure activities.
- Conducting of searches for the improvement of health care and the prevention of mental disordered illnesses.
- Mental health recuperation of mentally disordered persons.

414. The late mental-developed persons and mentally disordered are treated free of charge in the public institutions, which provide them care, rehabilitation and education. When treated in private institutions, the state covers the expenses up to the cost of treatment in public institutions, for individuals less than 18 years of age.

415. Furthermore, article 8 of law provides that the Ministry of Labour and Social Affairs has to appoint social assistants in all public psychiatric and rehabilitation institutions, which task comprises care for the patients and the protection of their human and social rights.

416. The limitation or deprivation of the physical capacity of mentally disordered persons may be proposed by legal-psychiatric commission, which have to be composed by not less than 3 members. In compliance with the provisions of the Civil Procedural Code, the court is entitled to take the final decision. The decision must also provide his legal tutor.

417. The head of the psychiatric and rehabilitation institution, where the mentally disordered person is situated, has to notify the court of first instance, if there is any verified evidence that the legal tutor of this person doesn't comply his duties. In such circumstances, the court may take the decision to revoke the tutor and to assign a new one.

418. The mentally disordered person, his legal tutor and his relatives have the right to be informed about his health situation and the examination and care methods that are going to be utilized with respect to the mentally disordered person. His medical or social employee, according to the patient's health situation and the principles of medical ethics, provides the relevant information.

419. Carrying out the obligations of the law, the physical restriction of mentally disordered persons may be considered for use only when this person represents risk for his health and/or his life or the health or life of other persons; when he acts against public safety; damages or destroys items in the surrounding area; and also in all the cases provided for by the regulations of psychiatric service.

420. The physician is entitled to take the decision on the physical restriction of the person and to define the manners of the restriction. He is also personally engaged for carrying out these restrictions. In those psychiatric and rehabilitation institutions when it's impossible to have the immediate decision of the doctor, the nurse who informs immediately the doctor can take the decision on the application of the physical restrictions. When the decision is inaccurate, the physician may revoke the decision of the nurse. The actions of the physician and the decisions taken by him have to be recorded in the relevant documentation.

421. Before applying the physical restrictions, the interested person has to be notified. During the application of physical restrictions, the person has to be treated in a very careful manner, which is the most convenient for him and his welfare.

422. The decision on the physical restriction has to be legitimated within 24 hours from the moment of its deliberation by the permanent commission established within the rehabilitation and psychiatric institution. The composition of the commission, its rights, duties, and the manner of its work has to be defined by a regulation issued by the Ministry of Health and the Ministry of Environment.

423. A mentally disordered person may be treated in a psychiatric institution without his or his tutor's prior consent, only if he represents an obvious risk for his life or health, or the life or health of other persons. The decision to hospitalise a person has to be taken by a specialized physician, only after he has personally conducted the examination. The mentally disordered person, his parents or his legal tutor are entitled to be informed on the grounds of taking such decision. The procedures of the hospitalisation in the institution have to be recorded in the clinic registers.

424. The physician that takes a decision to hospitalise a mentally disordered person without his or his tutor's prior consent, has to notify within 24 hours the head of the clinic, which can approve or reject the decision. Within 48 hours of the approval, the head of the clinic has to present the case to the single judge of the court of first instance, which is competent for examining these cases.

425. The single judge, who examines the case not later than 3 days from the request, interrogates the hospitalised person without his or his legal tutor's consent, the doctor that has recovered the person, the head of the clinic who approved the hospitalisation and also the relatives or any interested person for explanations on the case. The decision of the single judge to keep the disordered person hospitalised or to release him of the psychiatric institution has immediate effect.

426. The family or the legal tutors of mentally disordered person have the right to request that the hospitalised leave the hospital at any time. The request may be also informal and has to be registered in the clinic register. If the request is refused, the abovementioned individuals are entitled to appeal before the court of first instance under which competency falls the psychiatric institution, within 7 days from the date of having notice and the case is examined by the only judge whose decision is final.

427. The psychiatric institutions are required to examine all the requests, complaints and proposals made by the associations or other voluntary groups of patients, their family members or interested persons intended for the protection of the interests of mentally disordered persons.

428. Pursuant to article 46 of the Criminal Procedural Code, in any case that the mental condition of the defendant indicates that he must be treated, the court decides, even ex-officio, the hospitalisation of the defendant in a psychiatric institution. When it is decided or it must be decided the compulsory medical measure for the defendant, the court orders that the defendant is preserved in the psychiatric institution. During the preliminary investigation the prosecutor asks from the court to decide the hospitalisation of the defendant in a psychiatric institution and, when the delay brings danger, orders the temporary hospitalisation until the court renders the decision.

429. Intending to provide sanctions on crimes that for a long time were unknown for the Albanian society, by the law no. 8204 of 10 April 1997, Kuvendi adopted some additions to the Criminal Code of the Republic as follows:

Transplants transactions, as well as any activity related to the illegal removal or implantation of organs is sentenced from 3 to 5 years of imprisonment. When the same act is committed for lucrative purposes, it is sentenced from 10 to 20 years of imprisonment.



### **Interrogation rules**

430. Article 28 of the Constitution of the Republic of Albania provides that, everyone whose liberty has been taken away has the right to be notified immediately, in a language that he understands, of the reasons for this measure, as well as the accusation made against him. The person whose liberty has been taken away shall be informed that he has no obligation to make a declaration and has the right to communicate immediately with a lawyer, and he shall also be given the possibility to realize his rights.

431. The person whose liberty has been taken away must be sent within 48 hours before a judge, who shall decide upon his pre-trial detention or release not later than 48 hours from the moment he receives the documents for review. A person in pre-trial detention has the right to appeal the judge's decision. He has the right to be tried within a reasonable period of time or to be released on bail pursuant to law. In all other cases, the person whose liberty is taken away extra judicially may address a judge at anytime, who shall decide within 48 hours regarding the legality of this action. Every person whose liberty was taken away pursuant to article 27 has the right to human treatment and respect for his dignity.

432. Article 148 of the Constitution provides that, the office of the prosecutor exercises criminal prosecution and represents the accusation in court in the name of the state. The office of the prosecutor also performs other duties set by law. Prosecutors are organized and operate beside the judicial system as a centralized organ. In the exercise of their powers, the prosecutors are subject to the Constitution and the laws. While article 149/4 provides that: "The General Prosecutor informs the Assembly from time to time on the status of criminality".

433. Article 4 of law no. 8737 of February 12, 2001 "On the Organization and Functioning of Prosecution Offices in the Republic of Albania" provides that, in carrying out their offices, prosecutors are bound by the Constitution and laws. Prosecutors exercise their competences by respecting the principles that assure fair, equal and regular legal proceedings and the protection of human legitimate freedoms, rights and interests.

434. The orders and instructions of a superior prosecutor are compulsory for the inferior prosecutor. Prosecutors undertake measures in conducting the proceedings and implementing the guidelines issued in conformity with the legal provisions, penal decisions and court's orders, as well as give their assistance in well administration of Justice.

435. According to article 56 of this law, the Minister of Justice controls the legitimacy of the prosecutors' activity on regular basis or based on the information given by interested bodies, institutions or individuals. This control is focused on the following issues:

- Dealing with the continuity of issues included in the annual recommendations given by the Council of Ministers concerning the fight against crime;
- Respecting the investigation time limits;
- Respecting the detention time limit;

- Respecting the fundamental rights and freedoms of the individuals to whom criminal proceedings are undertaken, and of those under detention and in custody in particular regularity and continuity of investigative actions and the observance by the prosecutor of its legal obligation to initiate the criminal proceedings;
- The continuity of penal policy, and of sentence policies followed by prosecutors in particular;
- Regularity of data maintenance and administration and registration of penal records;
- Observation of fairness, equality and legitimacy principles in the prosecutor's activity in his relations with other subjects of criminal proceedings.

436. At any case, control should be forewarned and it must be related with cases, to which the preliminary inquiries are closed. The President of the Republic, the General Prosecutor and the prosecutor, whose activity has been monitored, should be informed about the conclusions of the control.

437. Pursuant to article 2 of the Criminal Procedural Code, the procedural provisions define the rules of the carrying on of criminal proceedings, investigations and the trying of criminal offences as well as the execution of the criminal sentences. These rules shall be compulsory for the subjects of the criminal proceedings, state authorities and citizens.

438. The following articles 5 and 38 of the Code provide that the liberty of an individual may be restricted by means of precautionary measures only in cases and forms provided by law. No one may be subjected to torture, punishment or cruel treatment. A person sentenced to imprisonment shall be provided human treatment and moral rehabilitation.

439. Even when isolated by precautionary measures or when deprived from liberty for any other cause, the defendant shall be interrogated in a free state, except when necessary to take measures to prevent the escape or violation. It may not be used, even with the consent of the person under interrogation, methods or techniques to influence upon the free willingness or to modify the capacity of the memory related to the evaluation of the facts. Before the interrogation starts the defendant is explained his right to silence and that even if he fails to speak, and only after that the proceeding shall continue.

440. The proceeding authority explains to the defendant, clearly and in detail, the fact that has been attributed makes him familiar with the evidence against him and, when the investigations are not impaired, indicates their sources. The proceeding authority invites him to explain everything helpful for his defence and interrogates him face to face. When the defendant refuses to respond, this shall be noted in the minutes. In the minutes shall be also noted, when necessary, the physical features and eventual specific marks of defendants (article 39).

441. According to the procedure, the prosecutor verifies the personal identity of the defendant, his age, defendant juvenile's personality, and defendant's responsibility. When it results that the mental conditions of the defendant hinders his conscious participation in the proceedings, the proceeding organ decides the suspension of the proceedings, but still when it must not be decided the acquittal or cessation (article 44, paragraph 1).

442. By the decision of the suspension, the proceeding authority appoints a special tutor to the defendant, who is given the rights of a legal attorney. The decision of the suspension is subject to appeal before the Supreme Court by the prosecutor, the defendant or his defence lawyer. The suspension does not hinder the proceeding authority to acquire evidence, which may lead to the acquittal of the defendant, and, when the delay brings danger, any other evidence requested by the parties. In the actions, which must be carried on about the personality of the defendant, and in those that the defendant is entitled to be present his special tutor shall participate (article 44).

443. In any case that the mental condition of the defendant indicates that he must be treated, the court decides, even ex-officio, the hospitalisation of the defendant in a psychiatric institution. When it is decided or it must be decided the compulsory medical measure for the defendant, the court orders that the defendant is preserved in the psychiatric institution. During the preliminary investigation the prosecutor asks from the court to decide the hospitalisation of the defendant in a psychiatric institution and, when the delay brings danger, orders the temporary hospitalisation until the court renders the decision (article 46).

444. Additionally, pursuant to the provisions of the Criminal Procedural Code (article 255), the officers and the agents of the judicial police that have made an arrest or a detention or have held the arrested on delivery, shall immediately inform the prosecutor of the place where the arrest or the detention has taken place. They shall explain to the arrested or the detained that they are not obliged to declare anything and that they have the right to select a defence lawyer and immediately shall notify the selected defence lawyer or the one appointed ex-officio by the prosecutor.

445. The officers and agents of the judicial police shall, as quickly as possible, make the arrested or detained person available to the prosecutor in the custody, by sending the relevant minutes. When the arrested or the detained is sick or a juvenile, the prosecutor may order that he remains under survey in his dwelling house or in another surveyed place. The judicial police, with the consent of the arrested or the detained must, immediately, notify the family members. When the arrested or the detained is juvenile it shall compulsorily be notified the parent or the tutor.

446. The prosecutor interrogates the arrested or the detained in the presence of the selected or appointed ex-officio defence lawyer. He shall notify the arrested or the detained the fact for which he is being proceeded and the reasons of the interrogation, making known the information on his charge and, when the investigation are not impaired, even the sources (article 256).

447. The whole staffs of Central Department of Police, and the personnel dealing with detained persons in particular, has been trained through precedents, controls, and letters of application. These trainings have been basically focused on the application of domestic law, CAT and other European conventions.

448. The relevant provisions concerning the internal activity during detention provide disciplinary measures against those persons who violate the internal detention regime. Also, there have been taken strenuous efforts by the police in preventing cases of torture or other inhuman treatment, especially during the detention of persons. In this regard, evidenced cases of use of force beyond the limits set by law have been severely punished.

449. Criminal Police Department and Public Order Police are in the process of drafting a manual to be used by all police forces, which is based on existing laws and regulations and will serve to inform these forces on the rights and obligations of the persons detained by the police. Also, the manual will include also information on the legal time limits of holding in custody of persons at commissariats' premises, investigation and detention period until the arrest or release moment.

### **Compensation**

450. Article 44 of the Constitution guarantees that everyone has the right to be rehabilitated and/or indemnified in compliance with law if he is damaged because of an unlawful act, action or failure to act of the state organs.

451. According to the Chapter V of Criminal Procedural Code, "The Compensation for Unfair Imprisonment", articles 268-269 "The one who is found innocent by final sentence is entitled to compensation for the served detention, except when it is proven that the wrong sentence or failure to discover the unknown fact in due time has been caused entirely or partly by himself. The same right shall have the punished who has been detained, when it is proven by a final decision that the act by which the measure has been imposed is issued when the requirements provided by articles 228 and 229 are inexistent.

452. The above provisions shall also apply to the favour of the person for whom the court or the prosecutor has decided the dismissal of the case. When it is proven by court decision that the fact is not provided as a criminal offence by law, because of abrogation of the relevant, the right to compensation is not recognized for that part of the detention served before the abrogation.

453. The request for compensation must be presented within three years from the date the decision of acquittal or dismissal of the case has become final, otherwise it is not accepted. Special law determines the amount of the compensation and the way of its assessment, as well as cases of compensation for the house arrest.

454. Article 397 of this Code provides that: "Upon decision which accepts the request for the restitution of the object or the compensation for the damage, the court obliges jointly the defendant and the civilly sued to pay the procedural expenses to the favour of the civil plaintiff, except when evaluates that it must decide the entire or partial compensation of them.

455. When the request is rejected or the defendant is found innocent, except when he is irresponsible, the court obliges the civil plaintiff to pay the procedural expenses made by the defendant and the civilly sued in relation to the civil lawsuit, but in any case when there are no reasons for the complete or partial compensation. When it is proved the gross negligence, the court may also charge with the compensation of the damages caused to the defendant or the civilly sued".

456. The following article 459 provides that, the one who is acquitted during the review, when has not given intentional causes or gross negligence for the wrong decision, is entitled to compensation in proportion with the duration of the sentence and personal and familiar consequences deriving from the sentence. The compensation is made by payment of an amount of money or by providing means.

457. The request for compensation is made, by effect of non-acceptance within two years from the day that the decision of review has become final and or submitted to the secretary of the court that has rendered the decision. The request is communicated to the prosecutor and to the all of the interested person. The decision of compensation is subject to appeal to the court of appeal.

458. When the sentenced person dies even before the proceedings of review the right to compensation belongs to his heirs. The undeserved heirs shall not have this right (article 460).

459. According to the law "On Innocence, Amnesty and Rehabilitation of Ex-political Convicted and Persecuted", amended by law no. 7660 of January 14, 1993 and law of June 29, 1993, persons attaining innocence, amnesty and rehabilitation, are remunerated for suffered damages and also recompensed for normal living conditions, according to rules approved by special provisions, which are in conformity with international criteria. They are entitled to restore or compensate previously confiscated properties.

460. Relatives, or legal inheritors of ex-persecuted persons that are not alive, as well as relatives of persons executed without court decision, or dead persons not sentenced by court are also entitled for compensation due to suffered damages. Pursuant to provisions on retirement fund, relatives of executed persons and relatives of sentenced persons without court decision, as well as relatives of dead persons in prison or dead persons in prison without court decision, have the right to enjoy retirement allowance (article 5/d, dh, e).

461. Pursuant to article 6 and 7 of the same law, the rights provided by article 5 of this law, are obtainable also by expelled or internees for political reasons, as well as by persons accused for political offences that are still hospitalised inside psychiatric institutions for compulsory treatment. Relatives of persons deceased during the process of investigation or persons executed without court decision enjoy the rights provided by this law.

462. Persons that use to be part of the high nomenclature of the communist regime or part of its dictatorial organs, implicated directly in committing criminal offences, issuing orders for detentions, imprisonments or internments of families because of political convictions, as well as the persons that have been active in using violence against inmates in prisons, camps, detention centres etc, when these acts are judicially ascertained, cannot enjoy the rights provided by the abovementioned law.

463. According to the abovementioned law, ex-political convicted persons are entitled to recompense and pension from the moment they were entitled of, for the duration of the sentence in prisons or labour camps, pursuant to regulations provided by special provisions in conformity with the international criteria. To this rights are entitled also the children of ex-political convicted persons, which attend school, regardless of their age.

464. Relatives of ex-political convicted persons are also entitled to recompense for the entire duration of sentence in prison or in labour camps. When the ex-convicted persons are dead, their relatives are entitled to receive the rest of the pension. They enjoy the right to be compensated or to restore the confiscated properties pursuant to the relevant legal or by law provisions.

465. Pursuant to law no. 8246 of October 1, 1997, "On the Institution of Integration of Persecuted", an institution of persecuted persons was established dependent on the Council of Ministers. Pursuant to the article 1 of this law, the Institution is established as a singular state body, which objective consist of taking all necessary measures and to examination of all cases related to the integration of persecuted persons by communism regime in the social Albanian life.

466. Furthermore, this institution is responsible for meeting the continuing needs of the persecuted persons and at the same time make efforts towards reaching an extensive consensus with different associations of sentenced and persecuted persons, in order to improve the conditions and their treatment.

### **Civil Code**

467. Pursuant to the provisions of the Civil Code, article 608, the person who illegally and for his fault, causes damage to another person or to his property, is obliged to recompense the damage caused. The person who has caused the damage is not liable if he proves that he is innocent. The damage is illegal when it results from the violation of the interests and rights of the other person, which are protected by law, judicial order, or custom.

468. The person who suffers damage, different by property damage, has the right to claim compensation if he has suffered injury to his health or harm to his honour; the memory of a dead person is desecrated, and the spouse he lived with until the day of his death, or his relatives up through the second scale, seek compensation, except when the injury has been done when the dead person was alive and he was given the right of compensation for the desecration done. The right foreseen above is not hereditary.

469. The person, who has caused damage to the health of another person, is obliged to compensate for the damage, taking into consideration the loss or the reduction of working capabilities of the damaged person, the expenses of his medical treatment and other expenses that relate to the damage caused.

470. The amount of compensation for the damage might change in the future, depending on the improvement or aggravation of the health, the increase or decrease of his working capabilities, in comparison to the time when the compensation was determined and to the changes the salary of the damaged person might have had.

471. When the death of a person is caused, the damage to be compensation consists of living and nutrition expenses for his minor children, consort and parents unable to work who used to be under the responsibility of the dead person, completely or partially, and of the persons who used to live in the dead person's family and who had the right to be fed by him; the necessary expenses of funeral, according to the personal and family circumstances of the dead person.

472. The person who has caused damage may claim the same protecting means that he would claim to the dead person. The Court taking into consideration all the circumstances of the question might decide the recompense to be given in nature, or in cash, once altogether or in trances (parts).

473. When the person who has done the illegal action or illegal non action, except from causing damage, has had a significant benefit, under the request of the damaged party and taking into consideration the nature of the damage, the scale of liability and other circumstances of the question, the court may include in the calculation all or part of the profit for damage compensation.

474. When death or injury to health has been caused to a person who profits by the social insurance, the damage is compensated in the way determined by law. If a person has not been employed or has not been insured, the compensation of the damage caused by his death or health injury, is determined by the Court on the basis of the salary of a worker belonging to the same category where the job the dead person had done or could had done, would have been classified.

475. When the damaged minor turns 16 years old and has no salary from his work, he has the right to require compensation for the loss of his working capabilities with the average salary of a worker, under the criteria of article 646 of this Code, instead of his present salary. When he reaches 18 years old, he has the right to require compensation based on the average salary of a worker that belongs to the same category to which he would have belonged if his health had not been injured, instead of his present salary.

### **Extradition, expulsion and refoulement**

476. In the Republic of Albania, extradition of persons who are suspected for committing criminal acts to other countries, has been provided in following articles:

- Article 39/2 of the Constitution, “Extradition may be permitted only when it is expressly provided in international agreements, to which the Republic of Albania is a party, and only by judicial decision”.
- European Convention “On Extradition” signed and ratified on May 19, 1998 and entered in force on August 17, 1998, its additional protocols 1 and 2 ratified by the Republic of Albania, as well as the bilateral agreements signed with different states.
- Article 11 of the Criminal Code of the Republic of Albania and Title X of the Criminal Procedural Code of the Republic of Albania that define the judicial relations with other countries.

477. Pursuant to article 39 of the Constitution, no Albanian citizen may be expelled from the territory of the state. Extradition may be permitted only when it is expressly provided in international agreements, to which the Republic of Albania is a party, and only by judicial decision. The collective expulsion of foreigners is prohibited. The expulsion of individuals is permitted under the conditions specified by law.

478. Since 1992 the Republic of Albania has signed agreements of mutual legal assistance in civil an penal fields with the Republic of Greece - May 17, 1993, the Russian Federation - March 27, 1995, FYROM - January 15, 1998 and the Republic of Turkey - February 20, 1998.

479. Judicial assistance in the penal field with countries with which there are no agreements is regulated on the basis of the principles of the European Convention On Extradition, as well as on the basis of Title X (articles 408-504) of the Criminal Procedural Code, which covers the international cooperation in the field of judicial assistance.

480. The main organs of extradition, included in the process of accepting and presenting the demands of judicial assistance for and from foreign countries, are:

- Ministry of Justice - Department of International Agreements and Juridical Relations;
- Ministry of Public Order - National Central Office, Interpol Tirana;
- General Prosecution Office - Department of Foreign Relations;
- Ministry of Foreign Affairs - Consular Department.

481. The extradition procedure from Albania is foreseen by the provisions of the Criminal Procedural Code, which are fully compatible with article 12 of the European Convention On Extradition. According to the provisions of the Criminal Procedural Code, the extradition is allowed only on the basis of a request to the Ministry of Justice. This request can directly be sent to the Ministry of Justice, or by diplomatic channels through Ministry of Foreign Affairs.

482. The request for extradition should include:

- The copy of the sentenced by imprisonment or the act of proceedings;
- A report of the criminal offence in charge of the person subject to extradition indicating the time and place of the commission of the offence and its legal qualification;
- The text of legal provisions to be applied, indicating whether for the criminal offence subject to extradition the law of the foreign country provides death penalty;
- Personal data and any other possible information, which support to define the identity and the citizenship of the person subject to extradition.

483. The Albanian state has expressed no reservation regarding the language that will be used in the extradition procedure, thus the requests can be in Albanian, English or French.

484. When several requests for extradition compete the Minister of Justice sets forth the order of examination. It takes into consideration all of the circumstances of the case and, particularly the date of the reception of the request, the importance and the place where the criminal offence is committed, the citizenship and the residence of the person subject to request, as well as the possibility of a re-extradition by the requesting country. In case for a sole offence the extradition is requested simultaneously by several countries it shall be provided to the country subject to the criminal offence or to the country within which territory has been committed the criminal offence.



485. With the request of the foreign country, the Ministry of Justice decides whether it will refuse or accept the extradition. In case that it will not refuse the extradition, the documentation is sent to the General Attorney Office, which transfers it to the competent court prosecutor. Within 3 months from the date of receiving the request for extradition the prosecutor should present it to the competent court.

486. The court can decide a contemporary restrictive measure before the request for extradition. This measure can be decided when:

- The foreign country has declared that the personal freedom of the person is restricted or a decision of sentence by imprisonment is taken and that state may present a request for extradition.
- The foreign country has presented detailed data for the criminal offence and sufficient elements of identification of the person.
- When there exist risk of escaping.

487. The coercive measures are revoked if within eighteen days or maximum forty days from the above-mentioned notice, the Ministry of Justice will not receive the requested extradition and the attached documents.

488. The coercive measures are revoked if the proceeding before the court has not been finished within three months from the beginning of their execution.

489. The competence to decide about the measure belongs accordingly to the district court in the territory of which the person is living or has a house, or to the court of the district where the person resides actually. If the competence cannot be defined as above-mentioned, the competent court will be the Court of First Instance of Tirana.

490. The court can decide the confiscation of the material proofs and the objects belonging to the criminal offence. On the other hand, the Ministry of Justice informs the foreign country about the temporary implementation of the coercive measure and the eventual confiscation.

491. After receiving the request from the prosecutor, the court fixes the hearing and notifies, at least ten days in advance, the prosecutor, the person subject to request for extradition, his defence lawyer and the eventual representative of the requesting state. The court collects data, makes the necessary verifications, and hears the persons summoned to appear before the trial.

492. The court renders the decision in favour of the extradition when it possesses important data on the guilt or when there is a final decision. In this case, when there is a request of the Minister of Justice, presented through the prosecutor, the court decides the holding into custody of the person who should be extradited and who is in free state, as well as the attachment of the real evidence and objects which belong to the criminal offence.

493. The court decides against the extradition when there are foreseen cases of not accepting the request for extradition. In this case, the extradition cannot be done. Against this decision an appeal can be presented before the competent court, according to the provisions of the Criminal Procedural Code of the Republic of Albania.

494. The extradition may not be provided in the following cases:

- For an offence of a political nature or when it results that it is requested for political reasons;
- When there are grounds to believe that the person subject to extradition shall be subjected to persecution or discrimination due to race, religion, sex, citizenship, language, political belief, personal or social state or cruel, inhuman or degrading punishment or treatment or acts which constitute violation of fundamental human rights;
- When the person, subject to the request for extradition, has committed a criminal offence in Albania;
- When he is being tried or has been tried in Albania regardless of the criminal offence has been committed abroad;
- When the criminal offence is not provided as such by the Albanian legislation;
- The Albanian State has provided an amnesty for this offence;
- When the requested person is an Albanian citizen and there is no agreement otherwise providing;
- When the law of the requesting state does not provide the prosecution or the punishment for the same.

495. Although the Criminal Procedural Code does not provide as a reason for refusal the military and fiscal infringements foreseen by articles 4 and 5 of the European Convention on Extradition, Albania is obliged to implement those provisions being party in this Convention.

496. The decision against the extradition prohibits the rendering of a successive decision in the favour of extradition as a result of a new request presented for the same facts by the same state, except when the request is based on elements that are not taken into consideration by the court. The decision of the court regarding the request for extradition may be appealed to the court of appeal by the interested person, his defence lawyer, the prosecutor and the representative of the requesting state, according to the general rules of appeal.

497. The Minister of Justice decides for the extradition within thirty days from the date the decision of the court has become final. After the expiration of this deadline, even in case the Minister does not render the decision, the person subject to extradition, if imprisoned, shall be released. The person shall be released even in case the request for extradition is rejected.

498. The Minister of Justice communicates the decision to the requesting state and, when appropriate, the place of the surrender and the date by which it is expected to start. The time limit of the surrender is fifteen days from the fixed date and, upon motivated request of the requesting state, it may be also extended to other fifteen days. For reasons that do not depend on the parties it can be set another day for surrender, but always respecting the time limits defined as above. The decision of extradition shall be ineffective and the extradited shall be released if the requesting state does not act, within the fixed time period, to receive the extradited.

499. The execution of extradition is suspended when the extradited should be tried in the Albanian territory and must serve a punishment for criminal offences committed before or after that subject to extradition. But the Minister of Justice, after hearing the competent Albanian proceeding authority or the body dealing with the execution of sentence, might order the temporary surrender in the requesting state of the person subject to extradition, defining the time limits and the way of operation. The Minister may agree the rest of the sentence to be served in the requesting state (article 500 of the Criminal Procedural Code).

500. For the criminal offence of torture, foreseen by article 86 of the Criminal Code, the National Central Office - Interpol Tirana, having the necessary support of the foreign counterparts, has done 5 announcements for international investigation. There are no delays of specific cases in that regard.

501. During 2002 are executed 46 practices of extradition.

*Source:* Ministry of Justice and National Central Office - Interpol Tirana.

### **Psychiatric care**

502. The psychiatric care in the Republic of Albania is offered and allocated pursuant to law no. 8092 of 21 March 1996, "On Mental Health".

503. The developments in this area are conducted and implemented in compliance with a political document (On Mental Health), adopted during March 2003. The activity of the psychiatric institutions is based in the regulation of "The Psychiatric institutions with beds", adopted on the 18th of April 2000.

504. The National Leading Committee on mental health, established in 2000, with the approval of the Minister of Health and the support of WHO, is currently implementing the National Program on mental health.

505. One of the main objectives of the abovementioned program consists in drafting reforming policies on mental health, which will enable transformation of traditional psychiatric services towards mental services within communities.

506. Traditional psychiatric services in Albania currently consist of two mental hospitals in Vloera (280 beds), in Elbasan (400 beds), in Tirana (120 beds) and lastly in Shkodra (110 beds), as part of polyvalent structures, respectively in Tirana (Mother Teresa Hospital Centre) and in Shkodra hospital.

507. Total number of beds is 910, half of which are used by long term patients. The overall opinion is that this contingency is still present in hospitals due to the lack of alternatives for community services.

#### **Statistics on psychiatric services**

	Average utilisation of beds	Average days of residence
Mental hospital	63.5%	165.5 days
Mental clinics	66.6%	36.3 days

*Source:* Ministry of Health.

508. Traditionally offered by psychiatric consulting rooms composed of only a physician and a nurse, ambulant mental care is not present in all the territory of the country.

509. Beyond drafting reforming policies, the policy of the National Leading Committee on mental health aimed at implementing community services on mental health in some districts throughout the country. Currently there are 4 Community Centres on Mental Health (Tirana, Elbasan, Peshkopi & Gramsh). Both this processes have been performed in straight cooperation with other structures in the abovementioned districts, such as the local government organs, social services system etc.

510. During this process the WHO has technically supported the National Leading Committee on mental health in drafting mental health policies and on the establishment of local capacities for the implementation of mental health services within communities.

511. With regard to the above, besides training the staff, the WHO consultancy supported by local capacities in Elbasan has been emphasising recently the need of contemplating credible scenarios for de-hospitalising of those persons that seek hospital shelter, mainly due to the lack of alternative services in communities.

The number of physicians offering this service is:

- Psychiatrists 40; a physician for 78,000 inhabitants;
- Neurologists 40 (offering partly psychiatrist services to patients);
- Number of nurses in psychiatric services consist of 200 persons;
- Nursery staff: 62;
- Sanitarians 119.

512. Recently there has been a lot of progress for introducing new professionals, psychologists and social workers in the service, with the intention of offering multidisciplinary care for mentally disordered patients.

### **Visits of the European Committee for the Prevention of Torture, Other Cruel, Inhuman and Degrading Treatment or Punishment and the content of the reports**

513. Following the ratification of the European Convention On the Prevention of Torture and Inhuman or Degrading Treatments or Punishment, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment has organized five visits in Albania between 1997 and 2003. The texts of the reports and the relevant replies of the Albanian Government have been authorized by Albania for publication.

514. Besides other issues, the reports express concern on the congestion of the psychiatric institutions, maltreatment of patients, conditions of residence and food, clothing, hygiene, private life, power supply, heating, lack of medicines, professional formation of nurses and functioning of isolation premises.

### **Disciplinary measures in armed forces**

515. For military personnel who has committed a criminal act the following measures may be adopted:

- Imprisonment
- Dismissing from the armed forces
- Fine
- De-ranking

516. For military personnel who has committed a criminal action, together with the principal condemn, the following accessory sanctions may apply:

- Impediment to hold a public office
- Confiscation of the materials used in committing the criminal act
- Impediment to drive
- Remove medals and honorific titles
- Dismissal from the armed forces for the military personnel of the permanent active service
- Postponement of the ranking period up two three years

517. The Court, in particular cases, when the infliction of the principal measures seems inappropriate and when the law provides for the imprisonment up to three years or other measures of a lesser impact for the criminal act, may opt for the sole infliction of the accessory measure.

518. The military personnel imprisoned for life or for a determined period of time are hosted in separate facilities from the other imprisoned civilians. When the military personnel commit a criminal action non foreseen in the present Code, will be held responsible according to the provisions of the Criminal Code.

### **Children**

519. The third paragraph of article 54 of the Constitution recognizes the right of the children to be protected against the violence, mistreatment, abuse and use as labour force under the minimum age in which children may work (according to our legislation is 16 years of age), which may impair the health, moral or endanger his life or normal development.

520. According to the Family Code, when the Court evidences that the parent abuses with its janitorial rights or demonstrates evident negligence in the exertion of said rights, or with its actions influences in a negative way in the development of the child, with a court decision may be discharged from the janitorial rights (article 76).

521. The Family Code provides for the cases when the parent who has not obtained the custody of the child after the divorce, does not find appropriate the actions or measures adopted by the parent who has obtained the custody of the child. In such cases, said parent may present a petition to the Custody Council for the adoption of the necessary measures (article 68).

522. The Family Code does not specify the actions committed against the child, but from the various authors and court practice it is clear that these actions consist in mistreatment of the child, physical violence, offence and sexual abuse. The issue of the mistreatment and abuse of the children, in special cases, is foreseen also in the Criminal Code where is accompanied with the respective punishing measures.

523. According to the Criminal Code, in case the person who is obliged by a court decision to guarantee the children the necessary means for a decent life, does not comply with said decision, this later commits a criminal action and may be punished with a fine or imprisoned for a term up to one year (article 125).

524. Moreover, the Criminal Code considers a criminal action the abandonment of a child less than 14 years of age by the parent or by the person who is in charge for its custody. In such case the individual held responsible might be punished with a fine or with imprisonment up to three years. If as a consequence of such action, is determined the serious impairment of the health of the child or its death, the punishment vary from three to ten years of imprisonment (article 124).

525. Nevertheless, the Criminal Code does not provide for separate punishment measures in case of insult, disregard, psychological violence against children etc. Such cases are regulated by the provisions of the Criminal Code as per all the other cases.

526. In consideration of amendments of the Criminal Code, it is classified as a criminal actions and is punished with a fine or with imprisonment up to two years the serious threat for revenge or blood retaliation against the self-restricted individual by impeding his or his children free movement, who as a consequence of such actions are forced to self-restraint and to school abandonment.

527. Such amendment of the Criminal Code is very important considering the fact that the self-restrained child may not exercise his right of free movement, of information, right of education and in an indirect way it is exercised psychological violence with consequences for the minor.

528. The mistreatment of the children is today one of the most critical issues with which the Albanian society is dealing. Every day the reality of the mistreatment of the children in different ways, within or outside the family, is becoming more and more evident.

529. One of the critical issues of the last decade is the blood-retaliation and self-justice, which influences also the children directly or indirectly, as authors or as injured party. Many children are constrained to abandon school as a consequence of such phenomenon.

530. The children who live in the streets represent the most unprotected category, most exposed to the various risks as mistreatment, insecurity, illiteracy, non-nutrition etc.

531. Marginalizing of such social category is produced by many factors including economical, social, cultural, educational and familiar. According to some incomplete evidence, in Tirana alone are identified about 800 children who live in the streets, who "work" as beggars, ambulant dealers, shoe-cleaners etc.

532. The unprotected children, orphans and with divorced parents often are prey of abuse and mistreatment in many different ways. Such facts are presented by the media and TV news and partly have also involved some charitable organizations.

533. The children involved in child labour or other lucrative activities are children who have definitively abandoned school while others attend school and are employed in different jobs, mainly after school, being involved in familiar lucrative activities or other activities outside the family. In the recent court practice are observed cases of court decisions, which do not consider adequately the causes, which have determined the child abuse or surpass, contrary to the interest of the minor, the circumstances created within the family.

534. The Criminal Code considers a criminal act the sexual or homosexual relations with parents or custodians. Based on the above provision, the performance of sexual or homosexual relations and other sexually oriented behaviours between the parent and child, brother and sister, or other persons in custody or adoption, is punished with imprisonment up to five years.

535. With the recent project for amendments of the Criminal Code, it is foreseen that in case of homosexual relations or other sexually oriented acts the punishment is determined up to seven years. With the above amendments it is also aimed to make a more complete definition of the law provision.

536. According to article 54 of the Constitution, the children (including children over and under 14 years of age) have the right of a special protection from the state. The main issue in this concern is not the juridical protection of the children but, the effective realization of such protection especially considering the fact that very often the families are closed units which do not permit the acknowledgement of the real situation and the adoption in time of the necessary protective and preventive measures in the interest of the child.

537. Up to date in Albania there are no specific studies in order to determine the forms of child abuse and the respective statistics. In one of the studies accomplished in this direction it is reached the conclusion that a particular role in the sensibility of the entire society in general, is played by the written and electronic media, which shall assist parents and children especially when dealing with cases of psychological violence, or carelessness, which in most of the cases remain undiscovered.

538. The establishment of special centres for the support of the children who find themselves under the above circumstances would guarantee an emotional comfort and assistance and gradually would lead to the overcome of the consequences of the abuses. With the decision of the Council of Ministers no. 415, dated 01.07.1998 "On the establishment of the Women and Child Committee", it is provided for the establishment of the said committee as a separate organ depending from the Council of Ministers.

539. Albanian legislation does not have special provisions included in a special law concerning children; victims of child abuse, mistreatment, torture etc., but single provisions are provided in particular laws, depending on the single case.

540. The Albanian Criminal Code provides for the punishment of criminal acts related directly or indirectly with human trafficking. These provisions include the above mentioned criminal acts as well as the possession, exploitation, financing or lease of the premises used for prostitution, kidnapping (general) and the one of children under 14 years of age, the illegal bondage of the individual by risking the life or accompanied by inflicted physical pain, battering, sexual violence, confiscation of the identity documents, threat as well as the commitment of criminal action in collaboration with criminal organizations or armed groups.

### **Violence against women**

541. Domestic violence is still perceived in Albania as a private issue to be dealt with at family level. Thus despite a comprehensive set of rules in the Criminal Code prohibiting violence (being it domestic or non-domestic) the numbers of women subject to violence is perceived to be high and goes unreported to the police, to health authorities and specific services established for this purpose.

542. The Albanian Criminal Code does not distinguish in wording from acts committed by a stranger and acts committed by a family member. Thus serious threats to cause death or grave personal harm is sentenced with a fine or with up to one year of imprisonment (article 84 Criminal Code), while inhuman treatment of torture leading to a permanent disability is sentenced from 10 to 20 years (article 86 and 87 of the Criminal Code). Serious intentional injury is sentenced from three to ten years (article 88) while non-serious intentional injury is sentenced with a fine or with up to two years imprisonment.

543. Sexual offences are covered by the Criminal Code (article 100 to 108), and are subject to penal sanctions according to the perceived gravity of the crime and the youth of the victim. Consensual sexual intercourse with a minor girl who has not reached 13 years of age or has not reached sexual maturity is sentenced between 5 and 15 years of imprisonment (statutory rape). If intercourse is not consensual the sentence ranges from 10 to 20 years imprisonment.



544. If the act results in the death or suicide of the victim, the penalty is no less than 20 years. Non-consensual sexual intercourse with a minor girl (14 to 18 years of age) is sentenced from 5 to 10 years. In case of aggravating circumstances, the sentence is over 10 years imprisonment. Non-consensual sexual intercourse is punished from 3 to 10 years of imprisonment (aggravating circumstances shall raise the sentence to a maximum of 20 years in case of death).

545. Article 106 deals with incest, punished with a maximum sentence of five years imprisonment.

546. Domestic violence goes mainly unreported for the following reasons:

- Lack of public awareness on the fact that domestic violence represents a crime and as such it should be condemned;
- Lack of specific police and health structures to deal with domestic violence;
- Lack of awareness of the judicial system on the extent of the phenomenon and how to deal with it;
- Lack of countrywide services for domestic violence cases.

547. Criminal acts judged under articles 100-110 of the Criminal Code:

- Year 1996 is decided on 16 administrative violations 17 crimes, total 33 criminal acts
- Year 1997 is decided on 3 penal contravention 17 crimes, total 20 criminal acts
- Year 1998 is decided on 5 penal contravention 19 crimes, total 24 criminal acts
- Year 1999 is decided on 20 penal contravention 39 crimes, total 59 criminal acts
- Year 2000 is decided on 7 penal contravention 65 crimes, total 72 criminal acts
- Year 2001 is decided on 17 penal contravention 67 crimes, total 84 criminal acts
- Year 2002 is decided on 4 penal contravention 77 crimes, total 81 criminal acts

548. The State does not up to now provide assistance services for cases of domestic violence, but it has supported women's associations that have established help telephone lines and counselling services (for the capital Tirana, and Shkodra, Pogradec, Durrës, Elbasan, Berat). The only safe house for abused women is an NGO operated and it is in the capital Tirana.

549. No official statistics exists on the phenomenon of domestic violence, due also to the low official reporting, while NGO surveys indicate that 64% of the sample experienced some sort of violence, either physical or psychological, either at home or outside. About 34% of the respondents admitted that serious violence (psychological or physical) took place in their family of origin.

550. That domestic violence is a major issue in Albania is indirectly confirmed by the statistics of women's participation in crime. Women are less involved in crime than men, but out of 28 women convicted and jailed in the only female prison of Albania in 1999, 23 were convicted for murder and the victim is normally the partner or the ex-partner, or a male member of the family.

#### **People convicted by age gender for 1992-2000**

Age-group and gender	1992	1993	1994	1996	1997	1998	1999	2000
14-18 years								
Female	6	2	7	16	1	1	1	4
Male	300	242	296	465	91	386	402	413
18 years +								
Female	85	87	83	34	41	64	27	38
Male	4 051	3 423	3 609	3 951	1 065	3 130	3 568	3 699

551. The Committee Women and Family in collaboration with Advocacy Centre for Abused Women are working for the compilation of a law against violence to woman and for bringing it to the Parliament.

### **Article 8**

#### **Prohibition of slavery, servitude and compulsory work**

552. According to article 26 of the Constitution, the forced work is prohibited, exception made for the cases of the execution of a court decision, military service, service rendered in state of war, state of emergency or natural disaster which threatens the life or health of the civilians. Based on article 8 of the Labour Code, forced work is prohibited in all forms exception made for the above-mentioned cases provided in the Constitution.

553. The court, considering the low social danger deriving from the individual and the circumstances of the criminal action, in case of the infliction of a punishment up to one year of imprisonment, may decide on the suspension of the execution of the decision and its replacement with the obligation of the prisoner to perform a socially useful work. The socially useful work is determined for a period of time varying from forty to two hundred and forty hours and consists in the performance by the prisoner of a non-reattributed work in favour of the public utility or the NGO determined by the court decision. Such obligation may not be determined in case the prisoner refuses the suspension in the court hearing.

554. The socially useful work is performed within a term of six months. In its decision, the Court determines the work hours and the days of the week of its performance. After completion of such work, the penalty is considered inexistent (article 63).

555. Criminal acts committed by individuals in time of war such as murder, mistreatment or deportation for slavery work, as well as any other inhuman abuse over civilian population or in annexed territory, murder or abuse of war prisoners, murder of hostages, devastation of private or public property, devastation of towns, communes or villages, not determined by military necessity, is punished with life imprisonment (article 75).

556. With the amendments to the Criminal Code entered in to force with the law no.8175 dated 23.12.1996, are provided heavier punishments for certain crimes, in consideration of the new social conditions created in Albania.

Article 109, kidnapping or hostage condition of the person, committed for the facilitation of another crime or in order to escape from punishment, or to determine the fulfilment of certain requests and conditions, especially for amounts of money, is punished with not less than fifteen years of imprisonment. When the victim is released voluntarily within seven days from the kidnapping, the punishment is five years of imprisonment.

109/a, kidnapping and abduction of a person is punished with twenty five years of imprisonment when the victim has suffered serious and permanent impairments of its health determined by will, or as a result of the conditions of the imprisonment, or as a result of the deprivation of the basic life needs, or when it is committed against more than one person. Kidnapping or abduction of a person is sentenced to life imprisonment, when it is anticipated or accompanied with torture against the victim, when the victim is underage or when the act is committed by a criminal organization. When the minor or the other victims are voluntarily released before the expiration of seven days from the kidnapping and the victims have not suffered torture or serious permanent impairments of their health, the punishment is determined in ten years of imprisonment.

557. Article 110, the illegal restraint of freedom is punished with three years of imprisonment.

558. Article 124, the abandonment of the child less than 14 years of age by the parent or legal custodian is punished with a fine or imprisonment up to three years. When as a consequence of the abandonment is determined the serious health impairment or death of the child, the punishment is determined from three to ten years of imprisonment.

559. Article 125, the failure to provide the necessary means for the life of the children, parents or consort, by the person who is obliged to do so by a court decision, is considered a penal contravention and is punished with a fine or with imprisonment up to one year.

560. Article 127, illegal child-snatching, by taking the child away from the parent in charge of his custody or from the legal custodian appointed by the court, constitutes a penal contravention and is punished with a fine or imprisonment up to six months.

561. Article 128, the exchange of children committed by the negligence of the personnel of the institution where the children are kept for care, medical treatment or maternity hospital, constitutes a penal contravention and is punished with a fine or imprisonment up to two years.

562. Article 230, the commitment of violent actions against the life, health, personal freedom through their abduction or through means of massive transportation, aiming the serious impairment of the public order and promotion of the public fear and insecurity, is punished with imprisonment from fifteen years up to life imprisonment.

### **Work in prison**

563. According to law no. 8328 dated 16.04.1998, "On the rights and treatment of the prisoners", the work is organized by the directorate within and out the institution by resorting also to the assistance of other parties. During imprisonment, the prisoners who are eligible for age retirement, invalids of the first and second category, pregnant woman for the time period provided by law, and all other persons who do not poses the physical and health ability to perform the offered work, may not be constrained to perform the work. Prisoners with psychological disorders may be put to work in case it promotes the medical therapy. The work is not considered as punishment and is reattributed according to the criteria determined with special decision of the Council of Ministers (article 34).

564. The work conditions shall be the same as under normal conditions in the free society, in order to promote the professional education of the prisoners and their integration in the society. The prisoners, who show talent in scientific, cultural, artistic or artisan activities, may be permitted to exercise on their own expenses such activities. Work hours may not surpass the limit determined by the labour code. The work is reattributed and is included in the work age in relation with the retirement income from the social security (article 35).

565. The object of work should fit the specific personalities of each prisoner in the perspective of his reintegration with the society. When the institution may not guarantee work for the prisoners, other employment may be applied in part or totally, outside of the institution, by employing the prisoners in works that comply with their experience, professional formation and selecting first from the prisoners who have not been employed before. In any case, the prisoners getting out the institution are always accompanied by the personnel of the institution and surveyed by the penitentiary police (article 36).

566. Article 37, the education and cultural formation is realized through the establishment of a school, obligatory for the underage, and professional courses, according to the existent practice. It is stimulated the attendance of professional studies, by means of distance courses. It is supported the reading without limitation of the publications and the utilization of the other informative systems of the library of the institution. Particular concern is applied to the cultural and professional formation of the prisoners under 25 years of age.

567. In 10 penitentiaries under the competence of the Ministry of Justice, there are approximately 30 prisoners employed for each institution, in charge of maintenance and other services within the facilities.

### **Service in defence forces and alternative services**

568. During the reporting period, three different laws regulated the military service in the Republic of Albania, law no. 7527 dated 12. 11. 1991, law no.7978, dated 26.07.1995 and law no. 9047 dated 07.04.2003.

569. According to law no. 7978 dated 26.07.1995, the military service is a right and obligation for each citizen in the defence of the father nation, the Republic of Albania (article 5).

570. Article 6, the Albanian citizens, wherever they are located, are obliged to fulfil the obligatory military service actively or as reservist in the Republic of Albania, the military service is performed individually.

571. Article 7, the Albanian citizens over 16 years of age are taken in evidence by the mobilization department.

572. Article 8, the obligatory active military service is carried out by citizens of age 19 to 32. In case the citizen avoids the obligatory active military service, while is registered in the recruitment list and has not yet completed 32 years of age, above all other sanctions provided for by the law, is obliged to carry out the military service until the age of 40.

573. Article 9, the obligatory military service as reservist is carried out by citizens up to the age of 55, after the completion of the obligatory active military service. For defence reasons, the military service as reservist is rendered on a voluntary base also by females of age 19 to 40. For specific specialties up to 45 years of age. In case of a general recruitment, the age of the active obligatory military service varies according to the situation and needs of the Armed Forces with law of the Parliament or by a decree of the President of the Republic.

574. Article 10, the recruitment for the fulfilment of the obligatory active military service starts from the date the citizen becomes 19 years of age.

575. Albanian citizens, between the age from 16 to 32, wherever they are located even when they have not received notification, are obliged to personally present to the recruitment department for registration, and receive a military identification document ready to fulfil the obligatory military active service.

576. Article 15, the Albanian citizens who are eligible and within the age limit for the fulfilment of the obligatory military active service, may be exonerated from such service by personally paying a determined amount of money. The criteria and the amount of money in such cases are determined with a decision of the Council of Ministers. The Albanian citizens who are employed abroad, when are requested to fulfil the obligatory active military service, in order to postpone for a term of one year the service, are obliged to pay to the state a certain amount of money.

577. Article 16, citizens who have accomplished the obligatory active military service may enter in to an agreement with the command of the unit in order to proceed the reattributed military service. The agreement is entered for a term not inferior to three years.

578. Article 17; in case the Albanian citizens called to fulfil the obligatory active military service live in difficult economic and familiar conditions, the state provides for an economic and social aid. The conditions and criteria of such aid are determined by a decision of the Council of Ministers.

579. Article 24, citizens registered full time in institutions of higher education in Albania or abroad, are recruited for the fulfilment of the obligatory active military service immediately upon completion of the studies. The ones, who do not complete their studies within 32 years of age, interrupt their studies and are called to carry out the obligatory active military service. Citizens who have graduated from institutions of higher education (full time registration), carry out the obligatory active military service in special units in compliance with their qualification. For citizens who have graduated from institutions of higher education within 31 December 2000, the period of the obligatory active military service is 6 months.

580. Rules for the execution of the military service in the Republic of Albania, rights duties and obligations of the citizens state organs and private parties for the recruitment in the obligatory active military service are now provided by law no. 9047 dated 07.04.2003 "On the military service in the Republic of Albania".

581. Referring to the said law it is necessary to mention that:

- The law provides for the first time the obligatory active military service for citizens with dual citizenship, referring to the "European Convention on dual citizenship".
- Article 10 of said law provides the extension of the obligatory active military service over the period determined by law, in case of the adoption of the extraordinary measures.
- In the criteria of the exoneration from the obligatory active military service, alternative service and rights of the citizens in the obligatory active military service or alternative service, assure the right to equal access of all citizens.
- In such law, for the first time is provided for the alternative service as one form of the obligatory military service. Such provision ensures the citizen, who for religious or conscience reasons may not serve armed in the military forces, to fulfil the alternative service near a civil institution or even in the military forces rendering services in hospital, units etc, where it is not mandatory to hold arms or uniforms.
- Individuals who can afford to pay may do so and get exonerated from the military service (article 42). Such provision shall apply until 31 December 2010.

### **Economic exploitation and child labour**

582. Referring to such issue:

- On what concerns the additional protocols of the UN convention "On the Rights of the Child" it is in the process of work for the execution of the two additional protocols; "On the Sale of Children, Child Prostitution and Child Pornography" and also "On the Involvement of Children in Armed Conflicts", which shall contribute in the completion of the national legislation regarding the abuse of children and the exploitation of their labour for the abovementioned reasons.

- In the Labour Code, chapter X regarding the special legislative protection of the children, based on the Convention no. 182 of the ILO “On the worst forms of child labour” is provided:
  - Limitation of working hours for minors up to 6 hours per day
  - Children in the age from 14 to 16 may be subject of professional education
  - Children from 16 to 18 years of age may be employed in easy works which do not impair their health and education.

583. The Ministry of Labour and Social Affairs, in its work on implementing the National Strategy for Children has aimed to:

- Identify the groups of children in need
- Prevention and protection of the children from abuse and discrimination
- Integration of single marginalized groups of children in the social environment
- Collaboration with all NPO-s (non for profit organizations) and groups which aim the prevention and protection of the children from abuse as well as the integration of the children victims of abuse

584. For the unaccompanied emigrant children as well as the victims of trafficking, in collaboration with IOM and the Ministry of Public Order, the Ministry of Labour and Social Affairs has established a hosting centre in Linza, Tirana intended for the hosting of the children victims of trafficking.

585. The extension of the social services towards children within the community and the contribution in such direction of the World Bank Project “Distribution of the Social Services” by coordinating the financing, means and the interventions offered by the state, local government and the network of NPO-s.

586. In the Ministry of Labour and Social Affairs has been established the Unit for Child Labour aiming the implementation of the Project of said Ministry with ILO-IPEC, “On the abolition of child labour”. This Unit works as a national focal point for the coordination of the activities, projects and programs undertaken in the field of child labour, informs and makes aware the public on the phenomenon of child labour and its progressive abolition.

587. The Unit for Child Labour is working for the drafting of the strategies and national policies anti child labour through the involvement of the National Managing Board “On the abolition of the child labour” in inter-department levels as a policymaker forum which shall contribute in the integration of the child labour issue in the national social macro-economic policies.

- In close collaboration with the State Inspectorate of Labour there are undertaken control inspections nationwide for the identification of the state of child labour and the adoption of concrete measures up to penal proceeding for the employer who does not comply with the legislation in force with regard to such matter.
- It is commenced a study on the review of the national legislation with regard to child labour aiming its harmonization with international standards.
- It has been working towards strengthening of the identification and monitoring capacity of the child labour and especially in its worst forms through the training of the labour inspectors and the representatives of the child labour related institutions in a national or local level.
- Another relevant feature is the effort to raise the general awareness through various activities and related publications.
- In the Central Department of the Criminal Police it is established the division for the Warfare Against Trafficking of the Human Beings, which deals also with the issues of child trafficking; also extended in a regional level through the establishment of the Regional Offices for the Warfare Against Trafficking of Human Beings.

588. Projects implemented in the Ministry of Labour and Social Affairs in this regard:

**Project of the Ministry of Labour and Social Affairs with ILO-IPEC “Enhancement of the capacity of the Ministry of Labour and Social Affairs with regard to the warfare against child labour in Albania”**

589. The project will contribute in the progressive eradication of child labour through the enhancement of the institutional capacity of the Ministry of Labour and Social Affairs Issues and labour control, establishment of an institutional structure for the implementation of the national program for the abolition of child labour.

590. The program will contribute in the abolition of child labour in Albania through the prevention and protection of the employed children, their retirement and rehabilitation, by assuring professional counsel, concrete steps, gathering and sharing of information.

- Duration of the project is 18 months from February 2002-August 2003.
- Contribution of IPEC- USD 18.285
- Contribution of MLSI- USD 14.000 (in kind)

**Project “Enhancement of the capacity of the labour inspectors to fight the worst forms of child labour”**

591. Through this project will be completed the training of the labour inspectors and representatives of the institutions related to child labour with the necessary knowledge and



capacities for the identification, monitoring and treatment of the issues concerning child labour, and the necessity for coverage of all regions with trained inspectors as well as with the participation of a foreign inspector.

592. By giving priority to the development of the capacities of the labour inspectors in order to respond systematically and in a complete manner to all worst forms of child labour either in the formal and particularly in the informal sector, and also to the regional conditions of the country, such project addresses to said needs and will facilitate the raise of the general awareness.

- Duration of the project 12 months May 2003- May 2004
- Contribution of IPEC- USD 22.700
- Contribution of MLSA- USD 17.000 (in kind)

**Project “On the review of the national legislation related to child labour, its harmonization with international standards”**

593. The study, including the recommendations, will contribute in the improvement of the institutional legal frame concerning child labour by increasing their legislative protection, and assuring a complete analysis of the current state.

594. The abovementioned study shall be the first step towards the synchronization of our national legislation concerning child labour with the relative international regulations.

- Duration of the project 4 months October 2003- January 2004
- Contribution of IPEC- USD 3.500
- Contribution of UNICEF- USD 2000

**Project “National policies on the fight against child labour and elimination of its worst forms”**

595. The said project aims to draft a national document concerning the national Policies on child labour, the current state and the recommendations and work-plan proposed which will ease the process of implementation of such policies through the involvement of a wide group of individuals and institutions active in the child labour issues either in national or in regional level.

596. With the implementation of such project we will obtain the necessary information, a national report and a well-determined strategy on the fight against child labour and its worst forms. The project is in the phase of its authorization.

**Article 9**

**Right to liberty and security of the person**

597. One of the constitutional provisions, article 27, which guarantees the freedom of the individual, provides that the freedom may not be deprived to no one exception made for the

cases provided by the law. The cases when an individual may be deprived of its freedom are specifically determined in cases when the individual deprived from freedom represents serious social threat against the state or third parties.

598. The constitution provides for terms reported also in the Criminal Procedural Code and Civil Procedure Code, within which the individual deprived from its liberty shall be presented to the judge, which shall decide on its freedom or incarceration, not later than 48 hours from the moment of the commencement of the procedure.

599. Moreover, the Criminal Procedural Code provides that individual freedom may be limited by means of security measures only in the cases provided by the law and the inmates receive a human treatment and moral rehabilitation.

600. It is worth mentioning law no. 8328 dated 16.04.1998 “On the rights and treatment of the prisoners”, which provides special legislative regulations regarding the rights of the imprisoned individuals, and also the competencies of the various competent state authorities. Some of the special treatments reserved to the inmates are: guarantee of appropriate and compatible premises, which are with their personalities, full uninterrupted medical treatment, opportunities for employment by safeguarding the personality of each prisoner. In addition it is recognized the right of education and professional formation, promotion of cultural activities, entertainment and sports and relative premises for the accomplishment of such activities.

601. It is provided for the preservation of the family relations, there are permitted visits and correspondence with family and others. Family visits are encouraged.

### **Psychiatric care**

602. Law no. 8092 dated 21.03.1996; “On mental health” provides on the procedures and criteria for the psychiatric assistance and at the same time the obligations of the state and local government for the regulation of the psychiatric care.

603. Article 3 of the law quotes that the prevention policies for the safeguard of the mental health is determined in:

- Implementing the principles of the protection of the mental health in the educational and medical institutions, place of work and military units.
- Establishing of prevention and counselling institutions.
- Supporting of the organizations and initiatives in the field of mental health.
- Involving of the elements of the mental health in the education programs for individuals employed in the sectors of education, social care, healthcare, administration, and entertainment.
- Realization of studies focusing on the improvement of the mental health and prevention of mental disorders.
- Rehabilitation of the mental health of the affected person.

604. Individuals with retard mental development and the ones with mental disorders are treated without charge in the public institutions of therapy, rehabilitation and education. In case such individuals are under 18 years of age and are treated in private institutions, the state covers the part of expenses equal with the cost of treatment in public institutions.

605. Moreover, article 8 of the law provides that "In all psychiatric and rehabilitative institutions, the Ministry of Labour, Emigration, Social Support and Ex-Political Prisoners, appoints social employees in charge for the inspection of the cure of the patients from a social point of view and safeguarding of their rights.

606. The interdiction of the mentally challenged individuals may be proposed by the psychiatric and legal commission composed by, at least three members. The Court in compliance with the provisions of the Civil Procedure Code issues the relative decision. The court provides also for the appointment of the legal curator.

607. The head of the psychiatric and rehabilitative institution shall promptly inform the district court in case there is evidence that the legal curator of the mentally challenged individual, under the supervision of such institution, does not comply with its obligations. In such case, the court may revoke its decision by appointing a new curator.

608. The mentally challenged individual, his curator and familiars have the right to be informed on the medical conditions of the affected individual and on the methods of diagnosis and treatment which shall apply. Information is provided by the relative medical doctor or by the social employee, based on the medical condition of the patient and principles of medical deontology.

609. For the realization of the obligations deriving from said law, the physical restraint of the mentally challenged individuals may be adopted only in case the individual may cause hazard to his health and/or his life and/or the others; commits actions against the public safety; with his actions damages or destroys the property; in all such cases as provided in the regulation of the health care service.

610. The decision on the physical restraint is adopted by the medical doctor, which also provides for the mode of restraint and personally supervises its application. In the psychiatric and rehabilitative institutions, in case of impossibility of immediate decision of the physician, the nurse, who immediately notifies the physician, adopts the decision on physical restraint. The physician may annul the decision of the nurse. The decisions of the physician and his actions are reproduced in the respective documentation.

611. The person who is about to be physically restrained shall be informed on such decision. During the implement of the physical restraint the less severe treatment shall apply and particular attention shall be demonstrated towards the individual.

612. The decision on physical restraint shall be approved within 24 hours by a permanent commission established near the psychiatric and rehabilitative institution. The structure of the commission and its competencies are determined by regulation approved by the Ministry of Health and Environment. The Ministry of Health has not yet adopted such regulation.

613. A mentally challenged individual may be recovered in a psychiatric and rehabilitative institution, without his prior consent or the consent of the legal curator, only if as a consequence of the disorder he demonstrates a hazard to his life or health or to the others life or health. The specialized physician adopts the decision on the recovery of such individual, after a thorough personal examination. The affected individual, its curator and familiars have the right to be informed over the causes of the adoption of such measure. The recovery procedures are reflected in the clinical documents.

614. The physician who decides on the recovery, without the prior consent of the individual or his legal curator, shall notify within 24 hours the head of the clinic, who decides on the continuation of the treatment near the psychiatric and rehabilitative institution. The head of the clinic, within 48 hours from the forced recovery, shall present the case in front of the sole judge near the district court where the institution is located.

615. The sole judge, who decides on the matter not later than three days from the day of the presentation of the case, convokes the forcefully recovered individual, his legal curator, the physician who has ordered the recovery, head of the clinic and also familiars or other third interested parties. The decision of the sole judge on the forced recovery is immediately effective.

616. For any recovered individual in a psychiatric institution, his family or legal curator have the right to demand the release from the institution at any time. Such request may be made in any form and is reflected in the personal clinic document. In case of refusal, the abovementioned persons have the right of appeal within 7 days near the district court where the psychiatric institution is located, and the case is presented to the sole judge whose decision is definitive.

617. The psychiatric and rehabilitative institutions are obliged to examine all requests, complaints and proposals made by organizations or other volunteer associations of the patients, family members or interested third parties aiming the protection of the mentally challenged individuals.

## **Refugees**

618. The rights of refugees in the Republic of Albania are regulated by the following laws and other documentation:

- Constitution of the Republic of Albania, article 40 which provides for the right of accommodation in the Republic of Albania for foreigners. Based on this provisions the foreigners have the right of accommodation in the territory of the Republic of Albania.
- Law no. 8432 dated 14.12.1998 "On the asylum in the Republic of Albania and rights and duties of refugees and persons under temporary protection". Said law provides for the procedures for the grant of asylum in the Republic of Albania, as well as rights and duties of refugees and persons under temporary protection.
- Law no. 8492 dated 27.05.1999 "On foreigners" which provides for the procedures of entrance, of stay, circulation and employment of foreigners in the Republic of Albania as well as the their departure from its territory.

- Manual of UNHCR “On the procedures and criteria of determination of the status of refugee”. The main part of this manual provides for the criteria of the determination of the status of refugee, explains the different components of the definition refugee. Such manual is designed as a practical guide.
- The Convention of 1951 and Protocol of 1967 are two instruments, which provide for the determination of the status of refugee, in compliance with the provisions in force in the different contracting states.
- Universal Declaration on the Human Rights.
- Short guide on the European Convention on Human Rights.

619. Law no. 8432 dated 14.12.1998 “On the asylum in the Republic of Albania” provides that; asylum is the protection that the Republic of Albania offers to the refugees and persons under temporary protection. Asylum means rights and duties provided in the Geneva Convention “On the status of refugees” dated 28 July 1951 and Protocol of New York as of 1976, international treaties where Albania is part, as well as in the Albanian legislation (article 2).

620. Asylum seeker is defined the foreigner, who requests asylum because of fear based on persecution for reasons of race, belief, nationality, membership in a determined social group or political orientation, and is outside the territory of his country and is not able to, or as a consequence of the above concern does not want, to seek the protection of said country, or in case has no citizenship and is found outside he previous country of residence as a consequence of such events, is not able to or does not want to return and persons under temporary protection for humanitarian reasons.

621. The individual under temporary humanitarian protection is the foreigner that:

- Although does not meet the criteria of refugee as provided in article 4 of said law or the provisions of chapter V of the said law “On the temporary protection”, is not to be expelled from the country by the Albanian authorities, based on the causes determined in the European Convention for the prevention of torture and humiliating treatment or punishment, in the United Nations Conventions against torture and civil and political rights, on children rights and any other international instrument in which the Republic of Albania is or will be part.
- Is offered temporary protection in the Republic of Albania according to this law. The right of asylum with the same status belongs also to the consort, children up to 18 years of age and any other parent in custody of the refugee who has obtained the asylum provided that they live together.

622. The foreigner who has obtained the asylum in the Republic of Albania benefits from the status recognized by the Albanian legislation, the Section of the Final Act of the Conference of the Plenipotentiaries, with the United Nation Convention as of 1951 “On the status of refugees” and the other international treaties where Albania adheres as well as all rights recognized to foreigners by the Albanian legislation.

623. The refugee who has obtained the asylum is provided with a residency permit and special work permit. He has the same rights for social assistance as the Albanian citizens, granted by the office for refugees.

624. The refugees who obtain the right of asylum in the Republic of Albania, in compliance with the provisions of article 28 of the United States Convention "On the status of refugee", are provided with a travel document by the Ministry of Public Order, which contains a restitution clause. Such document, for the period of validity may be used for travel in all states, exception made for the state of origin, and return in Albania (article 12).

625. Each asylum seeker, who meets the criteria determined in said law and who has obtained temporary humanitarian protection from the competent Albanian authorities, enjoys the rights guaranteed by this law, granted to the refugees in compliance with the UN convention of 1951 "On the status of refugee", exception made for the travel document.

626. Each individual who has obtained temporary protection, enjoys the same rights granted to the refugees, exception made for limitations determined by the National Commission for Refugees, according to the provisions of the law.

627. The asylum seeker is treated in compliance with the respective provisions of the Albanian legislation determining the status of the foreigners, exception made for the different provisions of law.

628. The asylum seeker shall be guaranteed:

- The non-repatriation according to article 7 paragraph 2 of the law;
- The right of social assistance and equal social treatment with the Albanian citizens, which is received from the office for refugees.

629. The competent asylum authorities in the Republic of Albania are the Office for refugees, which is the sole competent authority to receive the petitions for asylum, as well as for the granting or revoking of the asylum in first grade and the National Commission for Refugees, composed of eight members:

- National Commissioner for Refugees
- representative of the Ministry of Local Government
- representative of the Ministry of Public Order
- representative of the Ministry of Foreign Affairs
- representative of the Ministry of Labour and Social Affairs
- representative of the National Intelligence Service

- representative of the Albanian Commission of Helsinki
- representative of the National Bar of Attorneys

630. Such commission is the only competent authority to review the appeals against the decisions of the office for refugees.

631. Moreover, the asylum seekers, refugees and individuals under temporary protection have the right to contact with the United Nations High Commission for Refugees (UNHCR). The representatives of UNHCR have the right to meet with every asylum seeker, refugee or individual under temporary protection who is located in the territory of the republic of Albania.

632. UNHCR may participate as an observer in the meetings of the office for refugees and of the National Commission for Refugees, with regard to the determination of the status of refugee.

The foreigners who wish to seek asylum in the Republic of Albania shall:

- Present to the competent authorities near the border or within the Territory of the Republic of Albania and file a petition for asylum.
- Present directly to the office for refugees and file a petition for asylum.

633. Petition for asylum is submitted in written form, in Albanian language or in one of the official languages of the United Nations, to the office for refugees. The petition, in addition to the identity shall contain the reasons based on which the asylum seeker seeks protection in the territory of the Republic of Albania.

634. In the office for refugees the asylum seeker is obliged to present all data and fill the application form prepared by the office for refugees. While filling the asylum application form, the asylum seeker receives an informative brochure on the procedures of determination of the status of refugee.

635. If the asylum seeker wishes, the office for refugees assists him to contact with no charge to an attorney, expert on asylum or the UNHCR. For the period of time until the final decision regarding the request for asylum, the asylum seeker is permitted to stay in the territory of the Republic of Albania.

636. The foreigners who receive temporary protection are temporarily admitted in the Republic of Albania. The rights of the foreigners under temporary protection, especially the right to work and freedom of movement may be restricted for objective reasons by the National Commission for Refugees during the first three years of stay in the territory of the Republic of Albania.

637. In any case, this category of foreigners is not prosecuted or receives a less favourable treatment because may have entered illegally the territory of the Republic of Albania and generally are treated according to the international standards on human rights, and the law provisions in force.

638. Foreigners who receive temporary protection have the right to submit request for asylum at the end of such status, in compliance with the criteria determined by the law.

## **Article 10**

### **Rights of persons deprived from liberty**

639. Currently, the activity of the penitentiary system is based in a legal framework that is considered with a substantial value in the direction of the erection of a democratic state. Such legal framework is composed of:

- Law no. 8321 dated 02.04.1998 “On the penitentiary police”
- Law no 8328 dated 16.04.1998 “On the rights and treatment of the prisoners”
- Law no. 8331 dated 21.04.1998 “On the execution of the penal decisions”

640. In implementation of the above legislative acts, has been drafted the General Penitentiaries Regulation, which draft was also approved by the experts of the Council of Europe and approved by the Albanian Government with Decision no. 63 dated 9 March 2000. The draft of the regulation was also reviewed by specialists in charge from the Albanian Committee of Helsinki, whose observations were reflected in the final version of the regulation. Moreover, the legal framework was completed with the approval of the Penitentiary Police Regulation, in June 2000.

641. According to article 18 of the law no 8328 dated 16.04.1998 “On the rights and treatment of the prisoners” and the General Penitentiaries Regulation, the single penitentiaries have prepared the respective regulations.

642. Furthermore, the Ministry of Justice and the Penitentiaries Administration have observed rigorously the various recommendations of the Council of Europe, which, in many cases, have been converted in orders of the Ministers or General Director, depending on the various issues and have been forwarded to the single institutions for implementation.

643. The penitentiary administration, civil or military, manages the activity of the penitentiaries in compliance with the laws in force. The use of force is determined in the law and is considered as extreme measure for the solution of a conflict or specific situation. According to article 48 of the general regulation of penitentiaries, the personnel of the penitentiaries is not allowed to perform actions towards the prisoners not provided in the law, punishments or other humiliating treatments and any form of torture. Such provision has been included in all regulations of the single institutions.

644. In conformity of the above provisions, articles 6 and 7 of law no. 8321 dated 02.04.1998 “On the penitentiary police”, provide that “The penitentiary police officers are obliged to observe the orders of their superior according to the function rank and in equal correlation with the hierarchy of the rank.



645. The orders shall be imparted in conformity with the function and its implementation, and should not contradict the law and dignity of the affected person. In case the direct superior is absent, in case of urgency and when there is no possibility to communicate with the superiors of a higher rank, the officer higher in rank shall impart the order to the officers equal or inferior in rank.

646. The written order, which is supposed illegitimate, shall be always observed; exception made when is evidently against the law. For verbal orders, which are supposed illegitimate, is mandatory the written form when required by the executor and, if this is impossible, it is given in writing subsequent to its execution.

647. In all cases, the executor of the order shall promptly notify the superior authority on the supposed illegitimacy. For the imparted order is always responsible the imparter, as well as the executor of the order, in case he did not present its objections as above described. For the execution of an order that is manifestly illegitimate it is always held responsible also the executor.

648. Together with the recruitment of professional personnel an important role in the formation of the penitentiary administration has played the establishment of the School of Penitentiary Police, provided for by law no. 8321 "On penitentiary police".

649. Through this institution it is aimed:

- Basic training of the new coming penitentiary personnel
- Incentive the existing penitentiary personnel for career advancement
- Training of the existing penitentiary personnel

650. The school is established from three years now and realizes the training of all penitentiary officers of basic role in courses of duration from 15 days to 3 months. For the year 2002 there have been trained 358 officers of basic role and 11 of middle role. At the same time said school organizes also training courses for middle role and there were organized also 1-2 day courses for executives of the penitentiaries. The activities of the school include also training seminars for the civil personnel of the penitentiaries, including the educational department.

651. According to data made available by the Ministry of Justice, on 1 September 1999 have been registered 340 persons in custody and 772 prisoners, for a total of 1.112. From the total number of prisoners, 287 have been sentenced with more than 10 years, while 30 with life imprisonment. During the year 1999, in a total number of 2922 prisoners, there has been reported only one death in prison and no suicide.

652. On 1 September 2000 have been registered a total of 1.467 prisoners. From the total number of prisoners, 384 have been sentenced with more than 10 years, while 42 with life imprisonment. There have been 888 guards, 54 social employees, 22 executives and 187 administrative staff. Has been reported only one death in prison and no suicide.

653. On 1 September 2001 have been registered 336 persons in custody and 1299 prisoners for a total of 1.635 prisoners. From the total number of prisoners, 616 have been sentenced with more than 10 years, while 54 with life imprisonment.

654. An ever-growing issue for the Albanian justice system is the overpopulation of the penitentiaries.

Year	No. of prisoners	Capacity of the institutions
September 1999	112	1 300
September 2000	1 467	1 300
September 2001	1 635	1 383

*Source:* Ministry of Justice.

655. The Ministry of Justice and the General Penitentiary Directorate have accomplished efforts to increase the capacity of the penitentiaries, through the rehabilitation of the penitentiary of Peqin and soon of the penitentiary of Lezha. With the operation in full capacity of the above penitentiaries, the problem of the over-population of the penitentiaries in Albania will be definitely solved.

#### **Distinctions between persons in custody and prisoners**

656. There are many differences between custody and imprisonment. Until March 2003, the personnel of the custody area were under the authority of the Ministry of Public Order. By an ordinance of the Prime Minister the personnel of the custody areas passed from the authority of the Ministry of Public Order under the authority of the Ministry of Justice within the first trimester of 2003.

657. The accused person even when is under isolation custody or is deprived from its freedom for any reason, is interrogated free, exception made for the case of preventive measures against escape or violence. There may not be used, even if the accused agrees, methods or techniques to determine the free will or that may alternate the memory or the evaluation of facts. Before the interrogation starts, it is explained to the accused person that he has the right to remain silent and in case of silence the proceeding will however take place.

658. The internal regulations of custody control provide disciplinary measures against the persons who breach the internal regulations of custody. There are also great efforts from the police personnel to prevent torture and any other humiliating treatment, especially during the escort of the persons under custody. Severe punishments have followed the evidenced cases of surpass of legitimate force in breach of the legislative provisions.

#### **General rules of treatment of prisoners**

659. The General Directorate of the Penitentiaries is the central authority, which manages and administrates all the penitentiaries and other accessory institutions. The general directorate exercises its authority in compliance with the provisions of law "On the rights and treatment of

the prisoners”, general regulation of penitentiaries, ordinances and instructions of the Minister of Justice, and all other laws or regulations. The Director of the institutions manages its activity in compliance with the above regulations and is responsible for the execution of the penal sentences.

660. The treatment of each inmate shall be done in accordance to the criterion of the individualization in conformity with the individual characteristics of each individual. The individualization is accomplished by determining the individual needs and by considering the social environment where the prisoner has lived, the social and educative causes that had determined its deviation. The observation is performed at the beginning of the treatment and the results are verified during the execution, by making the necessary adjustments.

661. The observations, program and execution of treatment are performed by the penitentiary administration through its personnel in collaboration with the competent state authorities. The contribution of the non-governmental organizations and individuals is encouraged from the penitentiary administration in the realization of the treatment program.

662. According to article 48 of the General Penitentiaries Regulation and provisions of the single regulations, the personnel of the penitentiaries is not allowed to perform actions towards the prisoners not provided in the law, punishments or other humiliating treatments and any form of torture.

### **Rehabilitation of prisoners**

663. According to article 9 of law no 8328 dated 16.04.1998, the inmates shall receive such a treatment aiming their re-education and their integration in the society.

664. The treatment of each prisoner shall be done in according to the criterion of the individualization in conformity with the individual characteristics of each prisoner. The individualization is accomplished by determining the individual needs and by considering the social environment where the prisoner has lived, the social and educative causes that had determined its deviation. The observation is performed at the beginning of the treatment and the results are verified during the execution, by making the necessary adjustments (article 10).

665. The observations, program and execution of treatment are performed by the penitentiary administration through its personnel in collaboration with the competent state authorities. The contribution of the non-governmental organizations and individuals is encouraged from the penitentiary administration in the realization of the treatment program (article 11).

666. Treatment of prisoner is done by guaranteeing premises to prisoners, which are appropriate and compatible with their personalities. The objectives of the treatment education and professional formation, promotion of cultural activities, entertainment and sports work, spiritual activities and other group activities which aim the reintegration of the prisoner in the society.

667. The treatment is performed through individual and group activities, accomplished by the penitentiary personnel duly specialized in pedagogy, in collaboration with the other staff of the institution. Contacts with the outer world and family are encouraged and are realized through individual and group programs (article 32).

668. The organization of cultural, entertainment and sport activities shall aim the preservation and development of the physical, psychological and spiritual abilities of the prisoners (article 38).

669. In the penitentiaries, according to the needs of re-education, should be guaranteed the appropriate and necessary means for the treatment, education, entertainment, cultural activities and any other individual or group activity. The institutions shall have a library and periodical publications.

670. Article 62, the prisoner shall be reattributed for excellent behaviour, for single humanitarian acts, for the good performance in work and other group activities. The retributions and the competent authority are determined in the law and by the internal regulation.

671. The prisoners, who observe the regulations and have a good record in the integrative activities, by giving concrete examples toward the integration in the society, may benefit one or more reduction of punishment, up to 90 days per every year. In the high security penitentiaries the reduction of the punishment is granted up to 45 days per year. The behaviour of the prisoner from the last reduction or last 12 months is determinant in the granting of such benefit. The reduction of punishment is done with a court order on request of the prisoner, prosecutor or the director of the institution.

### **Education in prison**

672. In compliance with the abovementioned law, article 37 provides that the education and cultural formation is realized through the establishment of a school, obligatory for the underage, and professional courses, according to the existent practice. It is stimulated the attendance of professional studies, by means of distance courses. It is supported the reading without limitation of the publications and the utilization of the other informative systems of the library of the institution. Particular concern is applied to the cultural and professional formation of the prisoners under 25 years of age.

673. In the prison of Vaqar is established the 8 year elementary and superior school for underage and other prisoners who have not completed this course of education.

### **Disciplinary sanctions in prison**

674. Article 52 of the law no. 8328 dated 16.04.1998, "On the rights and treatment of prisoners", provides that the prisoner may not be punished for a reason that is not expressly foreseen as a violation by the law, the regulation of penitentiaries and internal regulation of the institution. The sanction may be applied only after hearing the prisoner and substantiation of the fact. Sanctions are applied in relation with the nature and gravity of the violation, the conduct of the prisoner and his personal data. Sanctions are applied with regard to the personality of the prisoner.

Article 53, for disciplinary violations the following sanctions apply:

- Individual warning
- Admonition in presence of the other prisoners
- Expulsion from specific group activities up to 10 days
- Expulsion from the group outing up to 20 days
- Expulsion from all group activities up to 20 days
- Interruption of licenses

675. With regard to minors and women the sanctions provided in the points c, d and e apply reduced up to the half of the maximum time. For pregnant women or women who bear the child apply only the sanctions provided in points a and b.

676. In the regulation of penitentiaries the above sanctions may be differentiated depending on the institution, without exceeding the maximal limits.

677. The disciplinary measure of the expulsion from the group activities and group outing shall not apply without a prior written document, issued by the physician, who certifies that the prisoner is able to support it. The prisoner is subject to continuous medical observation.

678. Article 54, the disciplinary, measures of the admonition and warning are determined by the director of the penitentiary. The other measures are determined by the disciplinary council composed of the director or his substitute, in the quality of chairman, educator and the police force commander. Disciplinary measures are evidenced in the document of the prisoner and are considered as never settled in case they don't reapply for the next 6 months.

679. For the period 1999-2003, the number of disciplinary measures applied according to law was in total 635.

680. "Individual admonition" and "Expulsion from single group activities up to 10 days" are applied mostly by the disciplinary commissions at every single institution, according to article 53 paragraphs 1 of the abovementioned law. Between the sanctioned prisoners there have also been recidivists. For women, considering the fact that the law provides limitations, are applied individual admonitions and admonitions in public.

681. Such sanctions have been adopted for various reasons such as, disobedience to the police officer order, violence against the other prisoners, possession of illegal materials, offence towards the police officers, misconduct. Reasons/cases of the application off the disciplinary measures are provided in the General Regulation of the Penitentiaries and in the internal regulations of each institution.

682. The above information refers to the period 1999-2003, while for 2 penitentiaries (respectively the penitentiary of Rrogozhine and the Special Institution of Kruja), considering the facts that are established in 2002, the data refer only to the said period. During 2003 there was one organised attempt to escape from the penitentiary by 6 prisoners.

### **Prisoners contacts with the outside world**

683. Article 40, of law no. 8328 dated 16.04.1998, "On the rights and treatment of prisoners" provides for a special attention dedicated to the preservation, improvement or reestablishment of the familiar relationship of the prisoners. The prisoner may immediately inform its family when entering the institution or in case of transfer. In case of death or serious physical or mental infirmity of a prisoner, the family shall be promptly notified.

684. The institution immediately notifies the prisoner when receives notice of the death of his family members. For the prisoners who suffer a serious infirmity or mental disorders, the notification is done with prior authorization of the physician. For the juvenile prisoners and women who have adult children, it is conceived a special program encouraging the family relation.

685. Article 41, the prisoners are permitted to have meetings and correspondence with family members and other persons. Meetings are held in special areas under sight control and may not be heard by the supervising personnel. Particularly encouraged are meetings with family members. When the facilities of the institution allow, the prisoners may stay with family members over the specified time limit.

686. According to the criteria of the penitentiary regulations, meetings may be held in private areas. The penitentiary administration, grants to the prisoners, who may not afford so, the necessary means for correspondence. Telephonic correspondence may be authorized in relation with family members and in special cases even with non-family members.

687. Prisoners are permitted to keep newspapers, magazines, which are freely sold outside and contain permitted information sources. On prosecutor's request, when provided by the law the court may authorize the control of the correspondence of the prisoner. The director of the institution or other authorized persons may perform control in the presence of the prosecutor. The request of the prosecutor suspends the delivery of the correspondence.

688. Pursuant to article 43, external individuals may enter the facility only upon authorization of the Minister of Justice in case of a high security penitentiary and according to the penitentiary regulation for the other institutions. The prosecutor may directly authorize representatives of non-governmental organizations to visit the institutions where are located prisoners or persons under custody, for the confirmation of the guarantee and respect of their rights.

689. Penitentiaries may be visited without prior authorization by the President of the Republic, the Chairman of the Parliament, prime Minister and their accompanying staff, the Chairman of the Constitutional Court, the Chairman of the Supreme Court, General Prosecutor and his substitutes, members of the parliament elected in the area where the penitentiary is located, general Director of Penitentiaries his substitutes and also the Director of the Penitentiary Police.

690. Exception made for the high security penitentiaries, in the other institutions may enter without prior authorization ministers, judges of the Constitutional Court, vice ministers, members of the Parliament, members of the High Council of Justice and the Prefect, chairman and prosecutors of the Appeal Court, Chairman and prosecutors of the District Courts, judges during exertion of their activity, as well as the attorneys employed by the prisoners or appointed attorneys. No authorization is needed for the persons who accompany the above-mentioned persons, exception made for the high security penitentiaries, but always not more than two.

691. The Judicial Police officers may enter the institutions for professional reasons, through an authorization by the prosecutor. In urgent cases the director of the institution grants the authorization. The representatives of the religious communities may enter the penitentiaries according to the agreements entered with the General Directorate of Penitentiaries. Visitors, in case they receive complaints or requests from the prisoners in relation with the application of the law or penitentiary regulation, can make direct recommendations to the director of the institution or his superior and may present a petition to the prosecutor.

### **Penitentiary officials**

692. According to law no 8321 dated 02.04.1998, "On the penitentiary police", article 13 provides that the employment of penitentiary police officers is done by the General Director of Penitentiaries through a public contest according to the criteria determined by the Minister of Justice, where may participate the Albanian citizens who comply with the following:

- Age 20 to 35
- Posses the necessary physical and psychic abilities to perform the duty
- Degree in a superior education institute
- Clean criminal record and a good morality

The winners of the selection are appointed police officers. Their ranking is assigned following to the completion of the relative course in the Penitentiary Police School.

693. Article 14, appointment of officers, exception made for the Director of the Penitentiary Police, is done only upon completion of the professional ability test. Appointment and discharge from duty according to point a, b and c of article 5 of this law is done by the Minister of Justice, whereas the other appointments are done by the General Director of Penitentiaries. The arrangement of the test, the evaluation criteria and the composition of the commissions are determined by the Minister of Justice.

694. Article 15, the Director of the Penitentiary Police in the General Directorate of Penitentiaries is appointed between the active Penitentiary Police Officers, Criminal Police or the Army, with ranking at least Colonel. The Prime Minister upon proposal of the Minister of Justice appoints the Director of the Penitentiary Police.

695. In the year 2000, there were a total of 1.151 penitentiary personnel, of which 888 or 77.1% were guards. The ratio between the total number of prisoners and guards was 1.6 to 1.

### **Prisoners right to submit complaints**

696. According to article 8 of the law no. 8328 dated 16.04.1998 "On the rights and treatment of prisoners", the inmates are entitled to present petitions and complaints in relation with the application of the law and internal regulation in the form provided by the law and individually.

697. The petitions and complaints shall be addressed to the competent authority according to the law, however the prisoners when deemed necessary, may address any state authority or non-governmental organization within or outside the territory of the Republic of Albania. It is not permitted the presentation of collective petitions or complaints or other relative organized actions.

698. Pursuant to article 49, prisoners may present the petitions or complaints orally or in written form in closed envelope to the director of the institution, inspectors, general director of penitentiaries and Minister of Justice, district court and district prosecutor or persons who visit the institution.

699. The institution is obliged to confirm the complaints and their solution. In case of written complaints the delivery is registered.

700. Article 50, the competent authorities determined by this law examine as soon as possible the petitions and complaints, but not later than one month from their presentation, exception made for other time limits determined with special provisions of law. The prisoner has the right to present a special petition to the prosecutor or the district court for the delay of examination by the penitentiary authorities of his requests. When the solution of the request depends on the penitentiary authorities, the prosecutor orders the conclusion of the examination within a determined period of time. In all other cases the court issues such order.

### **Complaints about the penitentiaries and penitentiary administration presented to the Ombudsman**

701. Until the end of 2002 there have been 1780 prisoners in penitentiaries and 272 detainees held in the isolation areas of the police stations. There have also been reported 1220 persons under custody until the end of their proceeding. As a conclusion there has been a total of 3000 persons deprived from freedom considering 2650 at the end of 2001.

702. With regard to the penitentiaries and penitentiary personnel there has been a great number of complaints. Penitentiaries are closed institutions and freedom in all its expressions is limited and there is more room for violation of the rights of the prisoners. For such reason the Ombudsman has paid special attention to the complaints presented by such individuals.

703. During 2002 staff of the Ombudsman has visited nearly all the operating penitentiaries and also all the isolation areas of the police stations in the various districts where the prisoners and persons under custody are located.



704. During visits in such institutions there have been established personal contacts with 125 prisoners or persons in custody. In 225 cases the complaints of the prisoners are presented in writing. There have been a total of 345 complaining persons, including prisoners, their family members or personnel of the penitentiary administration, which have applied to the ombudsman with regard to the penitentiary administration, prosecution office and penitentiaries. During 2002 have complained a total of 107 persons more than 2001.

705. A characteristic for 2002 was a considerable growth of the complaints presented by the prisoners to the Ombudsman, the inspection of the penitentiaries and isolation areas from the staff of the Ombudsman, and the fact that the inmates could present their complaints to another institution.

706. In 12 cases (included in the total number) the complaints were presented by a telephone line in made available to the inmates. This fact shows a grater aperture of the Albanian penitentiaries and an accomplishment in the right direction for the institution of the Ombudsman.

707. The prisoners that have presented written complaints were 108 in total. Divided per penitentiary the situation is as follows:

1.	Penitentiary no. 313 Tirana	complained	19
2.	Penitentiary no. 302 Tirana	complained	21
3.	Penitentiary no. 325 Tirana	complained	7
4.	Penitentiary of Lushnja	complained	26
5.	Penitentiary of Tepelena	complained	11
6.	Penitentiary of Burrel	complained	28
7.	Penitentiary of Vaqarr	complained	14
8.	Penitentiary Hospital	complained	21
9.	Penitentiary of Rrogozhina	complained	7
10.	Penitentiary of Kruja	complained	1
11.	Custody	complained	13

708. There have also been 44 complaints presented by family members on behalf of the prisoners and the directories of the penitentiaries or police stations in the various districts presented 8 complaints. Divided by gender in 194 cases complaints were presented by men and in 19 cases by women.

709. According to the results the complaints may be categorized as follows:

- Are concluded 209 complaints or petitions on 220 received while are still under process 11 cases. 21 complaints carried from 2001 were examined during the first months of 2002.
- In the examined cases 81 or 38% were decided favourably, 96 or 45% are sent for competency of other authorities, 33 or 17% were considered not based on the law and were rejected as unjust.

710. Grouping the different categories of complaints it is evidenced that:

- Many detainees have complained that are held unjustly in the isolation areas of the police districts, whilst the court decision have already become executive. According to their claims, the rights, guaranteed by article 462 of the Code of Penal Procedure, that provides for the immediate implementation of court decisions rendered executive.
- The number of complaints of this kind has grown significantly during the year in question. Thus, the Institution of the Ombudsman initiated an inspection process, which showed that a substantial number of detainees had, and still is being held unjustly in the isolation areas of the police stations in the various districts.

711. In the case of specific complaints from detainees, the Ombudsman has intervened through recommendations, in order to have them sent to penitentiaries as soon as possible.

712. Independent of the overpopulation in penitentiaries, upon the Ombudsman recommendation, and recognizing the legal obligation to administer detainees convicted by executive court decision, the General Directorate of Penitentiaries has taken measures to transfer them from the isolation areas to penitentiaries.

713. The issue of detainees held unjustly in isolation rooms was, and shall remain one of the main focuses of the Ombudsman activity. In April 2001 the Institution of the Ombudsman initiated an investigation process, in order to look into the matter and the causes that led to the detention of prisoners in isolation areas, without transferring them to penitentiaries. At conclusion, measures to end law violation were recommended to the Ministry of Justice.

714. Responding to the Ombudsman recommendation, the Ministry of Justice expressed its commitment to solve this problem definitively once the penitentiaries in Rrogozhine and Lezhe are built. Following the completion of the Rrogozhine penitentiary and the publication of law no.8895, dated 16.05.2002 "On Amnesty Award", the number of prisoners in isolation rooms declined to only 160 detainees. Currently the number of prisoners in isolation rooms is larger. (It was 272 on date 07.01.2003).

715. In special cases, particularly regarding minors and persons that have been in custody for long, compromise about their transfer has always been reached with the General Directorate of Penitentiaries.

716. The Ombudsman shall continuously seek the fulfilment of the promises for the establishment of the penitentiaries of Peqin and Lezha. The opinion of the Ombudsman is that the overpopulation problem of the penitentiaries may not be solved simply by building new facilities. Overall attention should be focused on the prevention efforts performed in first hand by the society and the Albanian state and in second hand the prosecution offices and courts shall employ appropriate policies in the execution of the security measures.

717. Such measures as the bail or domiciliary arrest shall be more often applied as well as other forms of punishments different from the incarceration. The restraint from freedom is an extreme measure, which shall apply only if other alternative measures would have been considered inappropriate as a result of the great peril deriving from the crime and its author.

718. During 2002 the Ombudsman has organized an inspection in the Penitentiaries Hospital to monitor the situation of the mentally challenged patients for whom the court has adopted the obligatory medical treatment and are unjustly held in detention conditions.

719. It resulted from the inspection that the above individuals, although are not convicted, are still kept under the penitentiary system. From the investigation resulted that, above others, an impediment for the definitive solution of such problem was the non-implementation by the Ministry of Health and the Ministry of Justice of the sub-legislative acts for the custody of said individuals. For the above there is issued the recommendation as of 13.05.2002 for the implementation of the requirements of law no. 8092 dated 03.02.1996 "On Mental Health", the issuance of the regulation "On the security measures applied to individuals for whom the court has issued the security measure of the obligatory medical treatment". The recommendation stated as follows:

The family members of the individuals who have committed a crime and are treated as prisoners, have deposited a complaint to the institution of the Ombudsman requiring their transfer in a medical institution, according to article 45 of law no. 8331 dated 21.04.1998 "On the execution of the court decisions related to obligatory medical treatment", which quotes: "The measure of obligatory medical treatment is implemented in the specialized medical institution according to the terms determined by the Ministry of Health based on the request of the prosecutor".

720. Article 42, of law "On mental health", provides that security measures for the individuals mentioned in article 41 are adopted by the competent authorities in charge for their custody, according to the regulation stipulated by the Minister of Justice and Minister of Health.

721. Based on the above provisions the law provides for the obligation of the Minister of Justice and Minister of Health to stipulate the regulation on the security measures for individuals who have committed a crime and are sentenced by the court to carry out their punishment in a psychiatric institution. Even though six years passed from the date the law "On mental health" has entered into force, until the end of 2002 such regulation was not issued yet. At present, all individuals sentenced with obligatory medical treatment, reside in the Penitentiary Hospital or in some police stations.

722. The Ombudsman, observing that the non-achievement of the regulation provided by article 42 of the abovementioned law is a cause that determines or in the future may determine the violation of the right of the prisoners, has recommended the immediate drafting and stipulation of the regulation "On the security measures applied to individuals for whom the court has issued the security measure of the obligatory medical treatment".

723. As a matter of fact, the ex-hospital of Kruja, which was designed to become an institution for the mentally challenged individuals, operates as a prison and not as a medical institution. Considering the fact that the law prohibits the detainment of such individuals in the penitentiary system, the use of such facility becomes impossible. Such issue will continue to be on the focus of the Ombudsman for the year 2003.

### **Cases of violence or other violation of rights by the Penitentiary Police**

724. The Ombudsman has started an inquiry over the complaint of some prisoners of the penitentiary of Burrel. Initially it was organized a meeting with the prisoners, have performed their medical examination on eventual indications of violence, but as a conclusion the prisoners affirmed that the abuse has happened long ago, and signs of violence could not be revealed. Nevertheless, in an effort to prevent future cases of violence, we intervened with a recommendation to the General Director of Penitentiaries.

725. The response of the General Director of Penitentiaries confirmed our evidence that within the penitentiary of Burrel, the prisoner F.N had established a group which exercised violence on the other prisoners and that the recommendation of the Ombudsman was considered adequate. Based on the above, the necessary measures were adopted by transferring said prisoner in another penitentiary.

726. A work-group has been established to confirm the current situation and to adopt the necessary measures in compliance with the law.

727. There have been 7 complaints by terminally ill prisoners or paralysed individuals incapable to perform by their selves the life necessities. They have required going home to die in their own home rather than in prison, as has been recognised to other two prisoners.

728. On such complaints the Ombudsman forwarded the recommendation on the need for release of the terminally ill prisoners. Such request was welcomed and has already started the procedures for the release of the complaining prisoners.

729. Some prisoners have complained that their rights recognized by the law on amnesty of 1997 and 2000, were violated. There were submitted 10 complaints and in all cases was held a meeting with the prisoner or family member. They received information on the criteria of the application of the law, presenting the legal approach to be followed for the attainment of their rights. In the submitted cases, no case of misinterpretation of the law was found.

### **Petitions of prisoners with regard to court decisions**

730. There were 64 cases when the prisoners have accomplished all grades of judgement and still pretend that the courts have not considered the evidence and the facts of the crimes. They require legal assistance for the presentation of the petition for the revision of the court decision.

At the same time they have demonstrated their financial incapability to afford the private attorney fees. In such cases we have informed the prisoners that the court decisions do not fall under the jurisdiction of the Ombudsman. Their petition for free legal assistance have been forwarded by the Ombudsman to the appropriate organizations and have also informed the complainers.

### **Hunger strikes**

731. On four cases that we have been informed by the penitentiary administration on hunger strikes by the prisoners, the Ombudsman has played the role of the intermediary between the prisoners and the penitentiary administration. In some cases the prisoners have halted the hunger strike, following to the fulfilment of the request that were found just by the penitentiary administration.

### **Complaints about missing data in the personal files of the prisoners**

732. Five prisoners have complained that in their personal files kept by the penitentiary administration, were missing documents attesting that the mode of punishment shall be different from what show their current files. The Ombudsman has required detailed explanations on any case and there has been an immediate intervention for the reestablishment of the rights of such prisoners.

### **Complaints on unjust transfers or transfers to other penitentiaries**

733. In 9 cases the prisoners have complained on unjust transfers or have required to get transferred from one penitentiary to the other. From the verifications of the Ombudsman it is substantiated that there were no cases of illegal transfers from one penitentiary to the other. In special cases, based on cases of personal revenge, intervention near the general directorate of penitentiaries has been made in order to effectuate the required or necessary transfers.

734. There have been complaints by the prisoners pretending that their rights of license to go home on special occasions has been violated. In two cases the complaints were with no ground.

### **Complaints from prisoners extradited from Greece in the Albanian penitentiaries**

735. On demand of the directorate of the penitentiary of Rrogozhine, a group of the staff of the Ombudsman met with a group of 16 prisoners who pretended that their right regarding the court decisions of the Greek courts were violated. The staff of the Ombudsman met personally with each prisoner recording their complaints. They pretended that they were unjustly convicted.

736. The Ombudsman has replied that the court decisions are out of the jurisdiction of his office, at the same time informing them about the legal way to follow for the solution of their complaints. To the prisoners was recommended the appeal in the human rights court in Strasbourg by giving them written explanations on the relative procedures in front of such court.

737. There have been 4 complaints of family members of Albanian citizens convicted in other states. They have pretended that towards their relatives in Italy and Greece is exercised violence, that they have no information on the cause of the imprisonment of their relatives etc. Considering the fact that these complaints fall out of the jurisdiction of the Ombudsman, such

complaints were sent to the Counsellor Department near the Ministry of Foreign Affairs of the Republic of Albania, which through the Albanian counsellor offices in the respective countries to provide their assistance according to law no 8372 dated 09.07.1998 "On the exertion of the counsellor functions by the diplomatic representatives and the counsellor offices".

738. In order to assist the Albanian prisoners abroad the Ombudsman is preparing a brochure in the Albanian language nominated "Legal documents in assistance of the Albanian prisoners abroad". Said publication has been completed and the Ombudsman is waiting that the Ministry of Justice receives permission from the Ministries of Justice of the other countries where Albanian prisoners are located to permit the introduction of such brochure in the libraries of their penitentiaries.

739. From the analysis of the demands of the prisoners detained in penitentiaries and isolation rooms of the police stations, results that during 2003; the activity of the Ombudsman shall focus on the implementation of the following recommendations:

- Focus on the transfer of jurisdiction on the isolation rooms from the Ministry of Public Order to the Ministry of Justice, according to the ordinance of the Prime Minister for the completion of such procedures within March 2003.
- The establishment in a medical institution of the prisoners sentenced to obligatory medical treatment by the court, in compliance with the requirement of law.
- Fulfilment of the requirements of the law "On the rights and treatment of the prisoners", aiming the draft of the Decision of the Council of Ministers on the criteria of the determination of compensation for the work of the prisoners and its stipulation by the Government.

740. With regard to the issues raised during 2002 "On the rights of the prisoners" the recommendations of the Ombudsman became reality with the government decision on the compensation for the work in prison and the equipment of each institution with its own regulation.

### **Women in prisons**

741. According to article 17 of the law "On the rights and treatment of the prisoners", women and minors generally are detained in special institutions and in case of impossibility to do so, in special sections of the other institutions according to the criteria of such law. Mothers are permitted to keep their children until the age of three. For the care and assistance of these children are established special institutions.

742. On 1 September 2000 the total number of women in Albanian penitentiaries was 54 or 3.7% of the total number of prisoners.

### **Young prisoners**

743. The General Regulation of the Penitentiaries provides for humanitarian conditions such as living spaces, sanitary services, food, health care etc. The penitentiary of Vaqarr has a library, which is regularly frequented by the prisoners. The minors are engaged in computer courses, foreign language courses and religion courses. A sportive facility is built which permits to the prisoners to perform sport activities. In assistance of the juvenile prisoners is established the juvenile educator who informs them about their rights on complaints and legal assistance. It is also established the social assistant, who through continuous conversations with the prisoners aims their integration in society and the prevention of recidivism.

744. The juveniles follow regularly the school inside the institution, established through a bilateral agreement between the Ministry of Justice and the Ministry of Science and Education. The juveniles perform different activities within the institution, such as sports, different courses of foreign languages, participate in religious rituals etc.

745. On 1 September 2000, the average age of the prisoners was 35. Individuals deprived from freedom less than 18 years of age were 46, equal to 3.1% of the total number of the prisoners. The total number of prisoners under 21 years of age was 454 (31% of the total), and 408 (31%) of them were between 18-21 years of age.

### **Special care homes**

746. Article 16 of law "On the rights and treatment of the prisoners" provides that, specialized medical institutions or special departments in the penitentiaries or in hospitals outside the penitentiary system shall be used for the treatment of the physically or psychologically disabled prisoners.

747. The transfer of such individuals in these institutions may be decided from the start with the punishment decision or during the execution of the sentence, with the approval of the prosecutor and in urgent cases also from the director of the penitentiary where the prisoner is located, by immediately informing the prosecutors' office.

748. The release from such institutions is done with a proposal of the director of the institution and approval of the prosecutor. On the transfer, refusal of transfer, release or refusal of release, the prisoner or his curator have the right to appeal in front of the court within five days from notification.

749. In the medical treatment institutions all rights of the prisoners provided by the law are respected, as much as they may be observed under hospitalising conditions. The Minister of Justice and the Minister of Health determine the mode of implementation of this law in such institutions. With the ordinance of the prosecutor, in such institutions may work also prisoners whose profession is in the medical field or related fields, when no impediment is provided according to this law.

750. The hospitalisation of the prisoners in such institutions is done by the court in the cases provided by the Code of Penal Procedure. In such institutions, on recommendation of the penitentiary medical service or other medical institutions, prisoners may be transferred upon ordinance of the prosecutor. The release and transfer of the prisoners in the prisons is done upon ordinance of the same authority that has decided the transfer in such institution.

### **Article 11**

#### **Prohibition of imprisonment on the grounds of inability to fulfil a contractual obligation**

751. In Chapter II of the Constitution “Individual rights”, paragraph 3 of article 27 provides that no one may be deprived of his liberty solely on the grounds of inability to fulfil a contractual obligation. The inability to fulfil a contractual obligation falls under the provisions of the Civil Code and the Civil Procedural Code, which provide that in case of controversies deriving from civil contracts, they are settled by the competent court authorities.

### **Article 12**

#### **The right to freedom of movement and to free choice of residence**

752. The Albanian Constitution, article 38 provides that; everyone has the right to choose his residence and move freely in every part of the state territory. No one may be prohibited to get outside of the state.

753. Based on the above provision of the Albanian Constitution, the law no. 8950 dated 10.10.2002 “On the civil status”, in article 12 par. 1 provides the right of transfer of the civil status data, in the civil status office near the new residence.

754. The transfer of the civil status data in another civil status office is done on request of the head of the family, when he may attest the change of residence for not less than one year.

755. For the implementation of said law the Council of Ministers issued the decision no. 184 dated 20.03.2003, “On the rules and actions performed by the civil status offices and the obligations of the citizens for the transfer of the civil status data”, providing the administrative procedures performed by the civil status office in the new and existing residence, for the data transfer.

756. In order to assist the process of registration of the transferred families in new residencies, the abovementioned decision of the Council of Ministers, allows the head of the family, in case he has no ownership title or lease contract, to prove the new residency by a certificate issued by the local administrator or mayor attesting that he lives in the respective location. Such certificate is issued upon verification in loco of the residence.

757. Decision of the Council of Ministers no. 184 dated 20.03.2003, provides also on the process of legalization of new buildings.



## Aliens

758. The entrance, stay and treatment of the foreigners in the republic of Albania are disciplined by law no. 8492 dated 27.05.1999 "On Foreigners" and by the decision of the Council of Ministers no. 439 dated 04.08.2000 "On the entrance, stay and treatment of Foreigners in the Republic of Albania".

759. In compliance with law "On Foreigners", foreigners shall fulfil the following conditions to enter the territory of the Republic of Albania:

1. Poses one of the following documents:
  - (a) Passport or other valid travel document which enables the identification of the identity and citizenship of the individual, and is valid for at least six months following the entrance in the territory of the Republic of Albania and is recognised by the Albanian authorities;
  - (b) Identity card for the citizens of countries for which is permitted the entrance with such document;
  - (c) *laisse-passe* of the UN or its affiliates, Council of Europe, European Union, NATO and other organizations determined in by law acts issued for the implementation of said law.
  - (d) *laisse-passe* for children under 16 years.
2. Poses the permission granted by the Albanian authorities as visa or residency permit. Aliens may be required to present also the necessary documents based upon which the visa is issued or that attest the motive of the entrance in Albania, as provided in the by law acts issued for the implementation of said law.

760. Foreign citizens who, based on the provisions of the by law acts issued for the implementation of said law by the Council of Ministers are permitted to enter the territory of the republic without visa, are considered in poses of the permission to enter.

761. The foreigner must attest that is in poses of sufficient financial means and that during the stay in Albania will not apply for public assistance. As evidence may be considered: ticket of return, destination visa, hotel reservation for tourists, tourist travelling ticket, business certificate, business correspondence, export and import invoices, financial means such as ALL, credit card, bank confirmation, cash, pay slip, a letter of intent from a guarantor in Albania, according to other specifications in the by law acts issued for the implementation of said law etc. The abovementioned requirements do not apply to a foreigner who wishes to meet the family members, foreigners residing in the Republic of Albania or refugees. The visa or other document authorizing the entrance in the territory of the Republic of Albania is not valid in case the foreigner is considered as non-grata or is invalidated according to the provisions of law.

762. The Ministry of Public Order shall provide foreigners cards to all foreigners over 16 years of age resident in Albania for more than one year. Such card is renewed every year. For the foreigner who does not have or may not obtain the passport the foreign card is sufficient within the territory of the Republic of Albania.

763. The rules for the provision of foreigners with a foreigner passport are determined by the Minister of Public Order. The poses of such passport, even in case the foreigner temporarily leaves the territory of the Republic of Albania, allows him to return within the validity period of such document. The movement limitations for such documents are the same as the limitations, which apply for the Albanian citizens.

764. The foreigners' passport is valid for two years. The right to obtain such document belongs to:

1. foreigners with permanent residency permit;
2. foreigners who have obtained the status of refugees;
3. foreigners who have obtained a five year long residency permit or foreigners with Albanian origin with temporary permit, who have observed the legislation in force and may not receive a passport or other travel document from the state of origin or any other state.

765. According to article 69, the loss of the foreigner passport, foreigner card or any other document issued by the immigration authorities, is notified within 24 hours near the issuance authority or local police. The foreigner may obtain again after two months the above documents in case attests that the loss has happened for justifiable reasons.

766. In case of loss abroad of the foreigner passport issued by the Albanian authorities, the Albanian representative office abroad is authorised to provide the foreigner with a laissez-passer to return in the Republic of Albania, when the immigration authorities give confirmation on the issuance of such document. The foreigner shall also notify within three days the loss of the documents issued by the state of origin or any other state.

767. According to article 3 of the law "On Migration" the law recognises and respects the general principles of the international conventions. Article 4 of the law provides that, "The employees of the Albanian state administration, implied in the implementation of this law or other related by law acts, fulfil their duty in compliance with the general principles of the international covenants and international obligations assumed by the Republic of Albania with no prejudice to gender, nationality, race or religious belief of the individuals who wish to enter, exit or reside in the territory of the Republic of Albania.

768. Article 24 of the law provides that, "Individuals that due to persecution based on their race, religious belief, nationality, participation in a political or social group, are outside the state of origin and may not be protected in such country, or the ones who do not have a citizenship are outside their formal usual residence and may not return, are recognized as refugees according to the procedures provided in the by law acts issued for the implementation of this law".

769. The individual ceases to be a refugee as defined by the present law if:

(a) Has committed a crime against the peace, a war crime or a crime against humanity, according to the international covenants.

(b) Has committed a serious non-political crime outside the territory of the Republic of Albania, before he was admitted in Albania as a refugee.

(c) Obtains the Albanian citizenship or the citizenship of another country and receives protection from that other state.

(d) Goes voluntarily in the country he had left, or outside of which he had remained as a result of the fear of the persecution.

(e) May not continue to refuse the protection of the state of nationality, because the conditions under which he was recognized as a refugee have ceased, or in case he has lost the nationality, he refuses to return to the previous country of residence.

### **Article 13**

#### **Expulsion of foreigners**

770. According to article 39 paragraph 3 of the Constitution, "The collective deportation of the aliens is permitted only under the circumstances provided in the law". According to article 40, "The foreigners have the right of shelter in the Republic of Albania in compliance with the provisions of law".

771. Based on article 3 of law no 8492 dated 27.05.1999 "On Foreigners", the law recognizes the general principles generally recognized in the international covenants, the principle of reciprocity, and the principle of the respect for human rights as well as the interest on national security.

772. Article 4, if not differently provided by the present law, the foreigners shall be considered non-grata and the request for entrance, visa or residency permit in the Republic of Albania will be refused when:

1. act or propagate against the sovereignty, national security, constitutive order and public order;
2. are convicted for crimes for which the law provides punishment of not less than five years of incarceration;
3. are members of the terrorist organizations or of such organizations that threaten the constitutional order, as well as when support actions against any form of government;
4. are hunted by international organizations for crimes against humanity, crimes in time of war or other serious crimes;

5. constitute a threat or harm the relations of the Republic of Albania with other states;
6. there are serious suspects that will enter the territory of the Republic of Albania to commit a crime or constitute a threat for the country;
7. are involved in organized crime, prostitution, drug trafficking, illegal trafficking of immigrants in the Republic of Albania or their transit, as well as any other illegal traffic.

773. The restraint to enter the territory of the Republic of Albania for the abovementioned individuals shall continue for a period not less than ten years starting from the date of their proclamation as non-grata.

774. When the aliens have committed any of the actions that imply restrictions according to paragraph 1 of the present article, before 18 years of age, have the right to request the Minister of Public Order to review their request for entrance, visa or residency permit in the Republic of Albania.

775. Pursuant to article 46, the deportation outside of the territory of the Republic of Albania of the foreigner is done when:

1. there is an executive court decision
2. the visa is refused
3. the visa has expired
4. when the residency permit expires or is refused

For the above cases, the competent authority in the Ministry of Public Order issues the expulsion order.

776. Article 47, the foreigner will be expelled (forcefully) with a special order of the authorities of the Ministry of Public Order when:

1. has not left or there are serious suspects that will not leave the Republic of Albania, according to the laws in force
2. has entered or stays illegally in the territory of the Republic of Albania
3. has been expelled from another state and is readmitted by the Albanian state based on the international agreements.

777. Article 48, the foreigner is expelled or deported in the state of provenience, in the state of origin or the country of residence or in another country which admits him. Against the decision of expulsion or deportation, the foreigner may present an administrative or court appeal.

778. According to articles 26, 27 and 28 of law “On Migration”, there may not be expelled, deported or sent outside the territory of the Republic of Albania, the individuals who have sustained fear that their life or freedom is threatened based on reasons of race, gender, nationality, membership in a particular group or political opinion, in the boundaries of the territories where such risk is presented.

779. There may not be expelled, deported or sent outside the territory of the Republic of Albania, the individuals who have sustained fear that they will be subject of torture, dehumanising treatment or humiliations for any other reason, in the boundaries of the territories where such risk is presented. There may not be expelled, deported or sent outside the territory of the Republic of Albania, the individuals for whom there is sustained evidence that will be sentenced to death.

780. Any individual who is in the borders of the Republic of Albania or in the territory of the Republic of Albania, independently if has entered in a legal or illegal way, and who wishes to stay in Albania as a refugee according to the provisions of this law, shall submit a request to the competent authority determined in the by law acts issued for the implementation of such law.

781. No asylum seeker may be sent to another country for the examination of his request, until he has the possibility to explain why his request should be examined in the Republic of Albania and after such request has been fully examined. An individual that has submitted a request for asylum may not be expelled from Albania without the prior possibility of re-examination according to the relative procedures.

782. According to articles 33, 34 and 35 of the law “On migration”, the individuals, subject of the provisions of this law, legally residing in the Republic of Albania, may not be expelled, exception made for the execution of a decision adopted in compliance with the law.

783. They have the right to:

- present the reasons against their expulsion;
- to request the review of the expulsion order;
- to be represented in front of the competent authority determined in the by law acts issued for the implementation of such law.

784. Such individuals may be expelled before the exertion of the rights provided by the points a, b and c of this article, only when the expulsion is necessary in interest of the public order or national security. The individuals, subject of this law that legally reside in the territory of the Republic of Albania, are expelled in compliance with the procedures provided in the by law acts issued for the implementation of the present law which shall be rendered public.

785. In all cases, when is taken a decision on the expulsion of a person from the Republic of Albania, the following criteria apply independently if the person legally resides in the republic of Albania.

786. The persons who have a sustained request that their expulsion from the Republic of Albania constitutes a violation of their right to respect the private or family life, as provided by the general principles of the international covenants where Albania is part. They have the right of appeal in front of the court against the decision of expulsion.

787. The persons who have a sustained request that their expulsion from the Republic of Albania exposes them to a death sentence, torture or dehumanising treatment. They have the right of appeal before the court against the decision of expulsion.

788. Only when there is information that the actions of the individuals who try to enter illegally the territory of the republic of Albania are directed to the commitment of a crime, shall be requested their penal prosecution and the adoption of detention measures in compliance with Albanian law.

During 1991-2003 18 foreign citizens are expelled from the territory of the Republic of Albania.

## **Article 14**

### **Equality of all persons before the courts**

#### *Article 14/1 - Equality before the courts*

789. The governmental system in the Republic of Albania is based on the division and balance of the legislative, executive and judiciary systems (article 7 of the Constitution).

790. According to article 28/1,2,3 of the Constitution, “Anyone who is deprived from freedom has the right to be notified on the reasons of such measure and on the accusation. The individual, who is deprived from freedom, shall be notified that he has no obligation to render any declaration and has the right to communicate immediately with his lawyer and to have his rights guaranteed.

791. The person deprived from freedom according to article 27 paragraph 2, sub-paragraph c, shall be sent within 48 hours in front of the judge who shall decide on his detention or release not later than 48 hours starting from the moment he receives the file. The detainee has the right to appeal the decision of the judge. He has the right to be processed within a reasonable term or to be processed free in case of a financial guarantee according to the provisions of law”.

792. Article 43, anyone has the right of appeal against a court decision before a higher court, with the exception of cases when differently provided by the constitution.

793. Article 48, “Anyone, alone or in group, may present petitions, complaints or suggestions to the public authorities, which are obliged to answer within the terms and conditions provided by the law.

794. In addition, according to article 131/f, the Constitutional Court is the competent body for the examination of the petitions of individuals on the violation of their constitutional rights on a due process of law, following to the exertion of all other remedies.

795. According to article 131 of the Criminal Code, the intimidation presented to the victim of a crime to prevent his petition, complaint or to withdraw the accuse, constitutes a penal contravention and is punished with a fine or imprisonment up to two years.

796. Article 3 of the Criminal Procedural Code provides that, the court is independent and decides according to the law. The court decides according to sustained evidence presented during the hearings.

797. Article 4 of the Criminal Procedural Code provides that the suspect is presumed innocent until is not proven guilty by an executive court decision. Every doubt for the accuse is evaluated in favour of the accused.

798. Article 5 provides that individual freedom may be limited by means of security measures only in the cases provided by the law. No one shall be subject to torture, punishment or humiliating treatment. The prisoners receive human treatment and moral rehabilitation as provided in the law. No one shall be subject to torture, punishment or humiliating treatment.

799. Article 6, the accused has the right to defend himself alone or with the assistance of an attorney. The attorney assists the accused to guarantee his procedural rights and legal interests.

800. The principle of pre-investigation and independent judgment is guaranteed by article 15/3 of the Criminal Procedural Code which provides that: "The prosecutor or the person who has performed police investigations or has been attorney to the accused, representative of a party or testimony, expert or that has presented a complaint or that participated in the decision for the ignition of the investigation, may not be judge in the same process.

801. The organization of the judiciary system in the republic of Albania is represented in the Core Document. In implementation of the constitutional provisions there have passed a great number of legislative and sub-legislative acts, which enable the equality of the citizens in a court procedure.

802. The law no 8436 dated 28.12.1998 "On the organization of the judiciary system in the Republic of Albania" provides that:

- Article 1, the judiciary power is exercised only by the courts, in compliance with the constitution and the competencies granted by the law.
- Article 2, the courts are competent for the examination of all penal cases, military penal, civil, administrative, and any other matter determined by law.
- Article 3, the judges, during their office are independent and abide only to the constitution and law.

803. Articles 8, 9 and 10, the military courts are organized and function within the judiciary system according to the provisions of law. The military courts are composed by the first-degree court and appeal court. The military appeal court examines in second degree the appeals against the decisions of the first-degree military courts. It deliberates with a judging body composed of three judges.

804. Article 12, the general number of judges of all courts is determined by a decree of the President of the Republic, on proposal of the Minister of Justice, upon opinion of the High Council of Justice.

805. Article 14, at the beginning of every year, the chairman of the Appeal Court and the Chairman of the First Instance Court, determine the division of the judges in penal and civil sections of the court. In the civil section are included also the judges of the special processes. When the dimension of the court does not permit the division in at least one penal a civil sections, the division of the cases is done equally between all the judges.

806. The auxiliary services in the court are administered by the chancellor and carried out by the court secretariat, the administrative branches of finance, accounting, computerizing, register and preservation of data. The determination of the branches and organics for every court is done with an ordinance of the Minister of Justice.

807. The chancellor is appointed and dismissed by the Minister of Justice. Chancellor may be appointed a jurist with work experience of not less than five years. The chairman of the court with proposal of the chancellor does the appointment and dismissal of the court secretariat and administrative personnel. The director of the budget branch in the Court is appointed and dismissed by the Minister of Justice.

808. Article 15 and 16 provide that the division of the cases in all divisions of the judiciary system is done on draw according to the procedures determined by law. The court decisions may be revised only upon appeals through the judicial system according to the provisions of the procedural codes or special laws.

809. Article 17, near the High Council of Justice is established the Inspectorate. The High Council of Justice appoints the inspectors which are in charge of the inspections of the courts of first degree and appeal to verify the complaints of the citizens or institutions, organizations and judiciary services, to perform the substantiation of the professional abilities of the judges according to the provisions of article 45 of this law, the work load and the efficiency of the courts.

810. The Minister of Justice appoints to assist the inspectors the specialists of the ministry to assist in the completion of the above chores exception made for the professional tests of the judges. The Inspectors of the High Council of Justice are appointed jurists who are eligible as judges of the court of appeal. They have the same treatment as the judges of the courts of appeal. The organization and work of the Inspectorate near the High Council of Justice is done according to the Regulation of the High Council of Justice.

811. The judicial power has a separate budget that it administers itself pursuant to terms provided by a special law. The High Council of Justice is a public legal person and its activity is financed by the state budget in a separate line item.



812. Albanian citizens who meet the following requirements can be appointed judges:

- possess full legal capacity;
- hold a law degree;
- graduated from the Magistrates' School;
- have no criminal record and good reputation;
- are not less than twenty-five years old.

813. The High Council of Justice can appoint as judges persons who have not graduated from the Magistrates' School if they meet the other requirements defined by article 19 of this Law as well as one of the following requirements:

- have worked for more than three years as pedagogues of the Law Faculty or the Magistrates' School, Members of Parliament, legal advisors to the Assembly, the President [of the Republic] or the Council of Ministers or as specialists with the Ministry of Justice, the High Court or the General Prosecutor's Office.
- hold a degree from a long-term, post-graduate, legal training program abroad that meets the requirements of the Albanian legislation or international agreements.
- have worked for five or more years as judges, assistant-judges, prosecutors, advocates, or notaries public and have passed a professional competency examination organized according to this article.

814. The High Council of Justice shall appoint courts of appeal judges after they have worked for not less than five years in the courts of first instance and have demonstrated high ethical, moral and professional standards in the exercise of their duties.

815. The High Council of Justice shall appoint the chairs and deputy chairs of the courts of first instance and courts of appeal from the ranks of their judges.

816. Judges cannot be removed from office, except if they:

- resign;
- reach retirement age;
- are sentenced by a final court decision;
- are found physically or mentally incapacitated or professionally incompetent, according to the standards defined in article 45 or article 48 of this Law;

- have been subject to disciplinary measures taken by a competent authority in cases provided by law;
- take actions or hold functions in violation of articles 29 through 35 of this Law.

817. Article 1 of law No. 8136, dated 31.07.1996, “On the Magistrates’ School in the Republic of Albania”, the Magistrates’ School is established as a government-subsidized institution, which enjoys the status of a juridical person. The Magistrates’ School enjoys administrative, academic and financial autonomy for the accomplishment of the goals and duties defined by this law.

818. The Magistrates School assures the professional training of the magistrates (judges, prosecutors). The professional training program includes the mandatory initial training of the candidates for magistrate, and also the program for the continuing education of the magistrates. The Magistrates’ School, according to particular provisions, assumes the professional training of the judicial administration employees.

819. Article 14 provides that, the initial training of the candidates includes a three-year period that consists of:

- (a) one-year theoretical program including different subjects of law;
- (b) a one-year practice under the supervision of a well-qualified judge or prosecutor (the pre-professional internship period);
- (c) a one-year intensive practice dealing with cases of lesser importance under the supervision of a judge or prosecutor (the professional internship period).

820. The theoretical program of item a) of article 14 is common to all the candidates, while the year of the practice and the year of the professional internship are separated based on the career of judge or prosecutor chosen by the candidate. The Director of the School posts the lists of the courts and of the prosecutor’s offices where the internship is going to be taken, of the supervisor magistrates, and of the candidates for each court and prosecutor’s office.

### **Legal aid**

821. Criminal Procedural Code, article 6 provides that a defendant is entitled to self-defence or to defence by a defence lawyer. In case of insufficient means, he shall be provided legal aid. A defence lawyer shall assist the defendant to have all procedural rights guaranteed and his legitimate interests protected.

During 1991-2003, 110 inmates or detained persons have received legal aid free of charge.

822. In order to provide access to all the defendants during the entire proceedings before the court, foreigners and persons that due to various reasons don’t understand Albanian can be provided with translation free of charge.

823. Article 8 of the Criminal Procedural Code stipulates that in all stages of the proceedings the Albanian language shall be used. Persons who do not know Albanian shall use their mother tongue and, by assistance of an interpreter, enjoy the right to speak and to be informed of the evidence and acts and of the conduct of the proceedings.

824. Criminal procedural acts are made in Albanian language. The person who does not speak Albanian is interrogated in his mother's tongue and the minutes are kept also in this language. Into the same language there are translated the procedural acts given to him upon his request. Infringements of these rules render the act null and void (article 98).

825. The defendant who does not know the Albanian language is entitled to free assistance by an interpreter in order to understand the accusation and to attend the actions he participates in. By means of the interpreter he is obliged to make a written statement admitting he does not know the Albanian language. The proceeding authority shall also appoint an interpreter when a writing into a foreign language must be translated. The interpreter is also appointed when the court, the prosecutor or the officer of the judicial police do know the language to be translated (article 123).

826. There may not exercise the task of an interpreter:

(a) the juvenile, the one who is prohibited to translate, the one who is incapacitated, the mentally sick, the one who is prohibited or suspended the exercise of public duties and profession;

(b) the person under precautionary measures;

(c) the person who may not be asked as a witness, the one who has been summoned as a witness and as expert in the same process or in a process connected with this. Nevertheless, in case a deaf, a dumb or a deaf and dumb is asked the interpreter may be selected by their relatives (article 124).

827. By the end of October 2003, 11 Chamber of Advocates were functioning in Albania, with an overall number of 1826 registered advocates.

828. Many projects of local based NPO-s functioning in Albania have been developed, or are under way having as subject legal aid, or free of charge counselling to various defendants. The legal aid usually focuses vulnerable groups of persons, such as women, children, maltreated persons, corruption victims etc.

*Article 14/2 - Presumption of innocence*

829. Article 30 of the Constitution stipulates that, everyone is considered innocent so long as his guilt is not proven by a final judicial decision.

830. The Criminal Procedural Code stipulates that the defendant shall be presumed innocent unless his guilt is proven by a final court sentence. Any uncertainty related to the accusation shall be considered in the favour of the defendant (article 4).

831. Article 11/2 of the Code provides that, no one may be found guilty and be convicted for the commission of a criminal offence without a court sentence.

832. A defendant shall become the person who has been charged a criminal offence by the act of notification of accusation, which must give sufficient evidence to be held as a defendant. This act must be notified to the defendant and to his defence lawyer. The status of the defendant shall be retained at any stage and instant of the proceedings until the decision of the cessation, acquittal or punishment becomes final. The status of the defendant shall be renewed when the decision of the cessation is rendered null and void or when a retrial shall be decided (article 34).

833. Article 40/1, as the defendant appears, the proceeding authority invites him to state the personal data and anything else which may be useful to his identification, forewarning him for the consequences to the one who refuses to give his personal data or gives false ones, except when this statement implies self culpability.

*14/3 - Minimal guarantees during the criminal proceeding*

834. The Criminal Code provides that, no one may be sentenced for an act that is not already explicitly provided for by law as an offence or a criminal contravention.

835. The Constitution in article 31 stipulates that, during a criminal proceeding, everyone has the right:

- 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;
- to have the time and sufficient facilities to prepare his defence;
- to have the assistance without payment of a translator, when he does not speak or understand the Albanian language;
- 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 defence when he does not have sufficient means;
- to question witnesses who are present and to seek the presentation of witnesses, experts and other persons who can clarify the facts.

836. Article 1 of the Criminal Procedural Code stipulates that, the main role of criminal procedural legislation is to provide a fair, equal and due legal process, to protect the individuals' freedoms, the rights and the legal interests of the citizens, to contribute to the strengthening of the rule of law and to the application of the Constitution and laws ruling the country.

837. A defendant is entitled to self-defence or to defence by a defence lawyer. In case of insufficient means, he shall be provided legal aid. A defence lawyer shall assist the defendant to have all procedural rights guaranteed and his legitimate interests protected.

838. As for the legal aid to minors, the Code of the Criminal Procedure provides that, the juvenile defendant shall be provided legal and psychological assistance at any stage and instance of the proceedings by the presents of the parents or other persons requested by a juvenile and accepted by the proceeding.

839. Furthermore, the Code provides that when the defendant is less than 18 years old, the assistance of the defence lawyer is obligatory. In article 41, the Code provides that in any stage and instance of the proceedings, when there are reasons to believe that the defendant is a juvenile, the proceeding authority makes the necessary verifications and, if necessary, orders the expertise. When even after the verification and the expertise there are still doubts regarding the age of the defendant it is presumed that he is a juvenile.

840. Article 42 of the Code clearly defines that the proceeding authority collects information on the personal, familiar and social life conditions of the defendant juvenile intending to reveal the responsibility and its extent to evaluate the social importance of the fact and also to impose suitable criminal measures. The proceeding authority collects information from persons who have had relations with the juvenile and hears the opinion of the experts.

841. Having regard to article 40/b (iii) of the Convention on the Rights of the Child, by decision no. 30, dated 28 January 1999, the United Panel of the Supreme Court agreed to the defence being provided to a minor at all the stages of trial, either in his default or not. The Constitutional Court adopted the same approach while referring to the Convention on the Rights of the Child, and relying on article 122 of the Constitution of the Republic of Albania stating that any international agreement that has been ratified constitutes part of the internal juridical system after it is published in the Official Gazette of the Republic of Albania. An international agreement that has been ratified by law has superiority over laws of the country that are not compatible with it.

842. The Albanian Constitution provides that no one may be obliged to testify against himself or his family or to confess his guilt (article 32), everyone has the right to appeal a judicial decision to a higher court, except when the Constitution provides otherwise (article 43). Similarly the Criminal Procedural Code provides the right to appeal and recourse to higher court instances, according to the case (article 249, 407).

843. In order to respect the private life of the minor, except of what has been provided by the constitutional provisions, the provisions of the Criminal Procedural Code prohibit the publication of photos of the minor defendant, accused for a penal offence. The Civil Procedural Code,

adopted by law no. 8116, dated 29.03.1996, has foreseen the establishment of special sections next to the Courts of First Instance, which are competent to judge in cases when minors or families are involved (articles 320, 349, 368). Due to this the problems of the minors have been treated in a more specialised manner. This provision provides also that the section for minors is always competent if only one of the related proceedings falls under its authority.

*Article 14/4 - Rehabilitation of juveniles*

844. The provisions of the Criminal Procedure Code provide human treatment and moral rehabilitation of the prisoners (article 5/3). The provisions of the Albanian legislation regarding the inmates provide special attention toward preserving, improvement, or re-establishment of relations of the minor inmate with its family, preparing also a favouring program.

845. With regard to the security measures, the Criminal Procedural Code provides for the criteria and the circumstances to be considered by the court, mainly for the criminal offences committed by the minors. When the defendant is a minor the court consider the request to continue the respective educative process. In case the minor has committed contravention the arrest is not applied.

846. According to the Criminal Code the minimum age of a person for criminal responsibility is 14 years old when he commits a criminal act and 16 years old when he commits an offence. For minors, who at the time when they committed the criminal act were under 18 years old, the imprisonment sentence may not exceed half of the term of punishment provided for by law for the criminal act committed. The court, considering the irrelevant dangerousness of the criminal act, estimating the concrete circumstances under which it was committed, and the previous behavior of the minor, may exclude him from punishment. In this case the court may decide to place the minor to an educational institution.

847. According to the Law No. 8311, dated on 21.04.1998 "For the execution of penal sentences" and the Law No. 8328, dated on 16.04.1998 "On the rights and treatment of the prisoners", execution of penal sentences is conducted in places and favorable ways according to the legal provision.

848. In addition, Law "On the rights and treatment of the prisoners", entitles them with the following fundamental rights:

- Respect for their dignity;
- Non-discrimination;
- The right to submit a lawsuit and to appeal, etc.

849. The sentence is executed in special institutions for minors' education. At present, in the town of Kruja is constructed a building where minors will serve the sentence. This modern institution is planned to serve better the education of this category of children who need to reintegrate in social life.

850. According to the statistics, in the penitentiary institution in Vaqarr the number of minors serving the sentence is 8. three minors serve sentences for different criminal offences, for armed robbery and murder. Their minimum age is 15 years old and 17 is the maximum. The most severe sentence served until now was 10 years imprisonment. According to the statistics, sentenced minors come mainly from workers or farmers origin.

851. Article 17 of the Law "On the rights and treatment of the prisoners", provides that women or the minors regularly serve their punishment in special institutions used only for them and if impossible in special sectors of other institutions. Actually, these minors serve the sentence in different sectors from the adults. They are assisted with civil educatory servants and sociologists in addition of the police staff who deal with institutions protection, rule and discipline inside them.

852. Another form of punishment is the partition of imprisonment sentence. This provision is foreseen only for sentences of one-year imprisonment, or when hard familiar, medical, professional or social circumstances are in place. Partition means the sentence execution not less than two days per week for a period no longer than three years.

853. Educative sanctions may be conducted to minors excluded from the punishment, or to those who, because of their age, are not subject to penal responsibility. In these cases the minor is sent to a educative institution.

854. The court can revoke at any time the sentence on medical or educational sanctions if the circumstances under which they were taken cease to exist, but, in any case, the court is obliged ex officio to reconsider its decision after one year from the date of the court sentence. (article 46 of the Criminal Code).

855. Article 59 of the Criminal Code provides that if the person and the circumstances under which the criminal act was committed are of little dangerousness, the court, while sentencing up to five years of imprisonment, may rule the probation of the convicted, thus suspending the execution of the sentence, provided that during probation he will not commit any other criminal act equally serious or more serious than the previous one. Probation extends from eighteen months to five years.

856. The person under probation may be subject of a number of obligations, mainly of a social nature. This sentence serves as an educative or re-integrative measure. In addition, the article 63 provides for the execution of the sentence through the compulsion to perform labor in favor of public interest. This labor induces automatically the rehabilitation of the person.

857. Actually, in Albania are not established re-educative (reintegration) centers, but the Ministry of Justice has issued its recommendations as regards the establishment and functioning of these centers in joint efforts with UNICEF, which are some of its priorities. These centers have a preparatory role for the minor before he is released. He spends in these centers the last period of the sentence in order to be prepared for reintegrating the society.

858. Reintegration centers may serve, also, to the minors who:

- Have no family;
- Are not welcomed by their family;
- are at risk because of the conflict with the harmed party.

859. This solution is deemed to contribute:

- in over passing the first economical difficulties with which the minor is faced after the imprisonment, through the cooperation with labor offices and local institutions for their employment;
- in the resolution of conflicts. In this regard, centers' staff will closely cooperate with the other state and non-state structures.

*Article 14/5: The right to appeal in a higher court.*

860. The judicial system resolves disputes concerning the interpretation and application of laws. Justice is administered by: The Supreme Court, Courts of Appeal and Courts of First Instance (District Courts). Courts have three types of jurisdiction: civil, criminal and administrative.

861. According to the article 12 of the Code of Criminal Procedure, the criminal justice is provided by:

- The First Instance Criminal Courts;
- The Courts of Appeal;
- The Supreme Court.

862. Criminal offences are tried, in the first instance, by the district and military courts, in panel, in conformity to the rules provided by this code. The district and the military courts try in panel consisting of three judges, when crimes are involved, and by a judge and two assistant judges when criminal contraventions are involved. Judges who are qualified for these trials hold the trial for juveniles and who has been especially and additionally assigned this task. (article 13 of the Code of Criminal Procedure).

863. The civil court of appeal tries, in second instance, by three judges, the cases tried by the district courts. The military court of appeal tries, in the second instance, by three judges, the cases tried by the military courts.



**Penal cases revised by the first instance courts (district courts)  
(1997-1999)**

(In numbers)

District courts	1997		1998		1999	
	For judgement	Revised	For judgement	Revised	For judgement	Revised
Berat	1 006	680	149	98	218	159
Bulqizë	1 63	157	74	62	67	59
Dibër	4 21	369	91	81	82	68
Durrës	2 377	2 099	314	257	359	318
Elbasan	1 815	1 585	203	167	204	165
Fier	1 620	1 288	300	184	543	352
Gjirokastrë	1 244	1 069	71	60	67	54
Gramsh	64	39	69	52	74	64
Kavajë	873	796	92	85	79	60
Kolonjë	199	178	26	26	15	9
Korçë	2 443	2 098	257	197	270	227
Krujë	445	392	102	86	112	93
Kukës	474	456	177	124	180	119
Kurbin	1 023	939	86	68	102	67
Lezhë	309	287	92	77	126	90
Librazhd	158	134	103	96	68	62
Lushnjë	845	644	124	97	146	120
Mat	348	312	85	83	105	100
Mirditë	303	261	79	54	71	53
Përmet	120	87	37	34	39	30
Pogradec	32	14	81	71	96	75
Pukë	283	235	82	55	131	100
Sarandë	325	208	43	30	77	62
Shkodër	1054	780	122	72	371	245
Skrapar	162	146	33	26	34	30
Tepelenë	78	24	66	53	66	50
Tiranë	7999	6 647	1 262	1 076	1 106	880
Tropojë	193	142	35	28	37	27
Vlorë	1827	1 141	178	148	179	129
Total	28 203	23 207	4 433	3 547	5 024	3 867

Source: Ministry of Public Order.

**Civil and penal cases revised by the courts of appeal (district courts)  
(1998-1999)**

(in numbers)

Courts	1998			1999		
	Penal cases	Civil cases	Total	Penal cases	Civil cases	Total
Korçë	64	385	449	87	436	523
Durrës	170	732	902	272	783	1 055
Shkodër	51	295	346	103	565	668
Vlorë	104	995	1099	169	974	1 143
Gjirokastër	36	602	638	76	607	683
Tiranë	419	2 643	3 062	422	2 055	2 477
Total	844	5 652	6 496	1 129	5 420	6 549

Source: Ministry of Justice.

**Penal cases revised by supreme court  
(1997-1999)**

(in numbers)

District courts	1997		1998		1999	
	For judgement	Revised	For judgement	Revised	For judgement	Revised
Berat	0	0	5	3	12	11
Bulqizë	4	4	3	3	1	1
Dibër	6	6	3	3	3	3
Durrës	22	20	24	14	35	35
Elbasan	29	25	23	13	33	29
Fier	12	12	12	11	23	19
Gjirokastër	14	14	6	2	10	10
Gramsh	6	6	8	5	12	11
Kavajë	17	17	3	3	6	6
Kolonjë	2	2	2	2	5	5
Korçë	20	19	23	22	13	11
Kuçovë	2	2	2	2	3	2
Krujë	3	3	8	7	14	13
Kukës	5	5	4	3	6	6
Laç	9	9	7	4	11	11
Lezhë	7	7	12	12	13	13
Librazhd	7	7	6	5	11	9
Lushnjë	4	4	5	2	11	9
Mat	8	8	8	3	12	12
Mirditë	9	9	8	4	14	14

**Table (continued)**

District courts	1997		1998		1999	
	For judgement	Revised	For judgement	Revised	For judgement	Revised
Përmet	2	2	3	2	3	1
Pogradec	3	3	4	2	8	7
Pukë	2	2	3	1	6	5
Sarandë	7	7	1	1	4	4
Shkodër	23	23	5	3	14	14
Skrapar	2	2	1	1	4	4
Tepelenë	6	6	2	0	2	1
Tiranë	60	57	63	62	112	111
Tropojë	4	3	1	1	2	1
Vlorë	9	9	11	11	10	9
Total	304	293	266	207	413	387

*Source:* Ministry of Justice.

In addition to the above-mentioned measures of protection, individuals are entitled to submit their claims to the European Court of Human Rights.

*Article 14/6 Compensation for cases of misadministration of justice*

864. Article 44 of the Constitution provides that: “everyone has the right to be rehabilitated and/or indemnified in compliance with law if he is damaged because of an unlawful act, action or failure to act of the state organs”.

865. Article 9 of the Criminal Procedural Code stipulates: “Individuals who are proceeded against the law or who are convicted unfairly shall have their rights reinstated and shall be compensated for the injury undergone”.

866. According to the Chapter V of the Code of Criminal Procedure, ‘The Compensation for Unfair Imprisonment’, articles 268-269, “the one who is found innocent by final sentence is entitled to compensation for the served detention, except when it is proven that the wrong sentence or failure to discover the unknown fact in due time has been caused entirely or partly by himself. The same right shall have the punished who has been detained, when it is proven by a final decision that the act by which the measure has been imposed is issued when the requirements provided by articles 228 and 229 are inexistent.

867. The above provisions of shall also apply to the favour of the person for whom the court or the prosecutor has decided the dismissal of the case. When it is proven by court decision that the fact is not provided as a criminal offence by law, because of abrogation of the relevant, the right to compensation is not recognized for that part of the detention served before the abrogation.

868. The request for compensation must be presented within three years from the date the decision of acquittal or dismissal of the case has become final, otherwise it is not accepted. The amount of the compensation and the way of its assessment, as well as cases of compensation for the house arrest, are determined by special law”.

869. The article 397 of this Code provides that upon decision which accepts the request for the restitution of the object or the compensation for the damage, the court obliges solidarity the defendant and the civilly sued to pay the procedural expenses to the favour of the civil plaintiff, except when evaluates that it must decide the entire or partial compensation of them.

870. When the request is rejected or the defendant is found innocent, except when he is irresponsible, the court obliges the civil plaintiff to pay the procedural expenses made by the defendant and the civilly sued in relation to the civil lawsuit, but in any case when there are no reasons for the complete or partial compensation. When it is proved the gross negligence, the court may also charge with the compensation of the damages caused to the defendant or the civilly sued.

871. The following article 459 stipulates: “The one who is acquitted during the review, when has not given intentional causes or gross negligence for the wrong decision, is entitled to a compensation in proportion with the duration of the sentence and personal and familiar consequences deriving from the sentence. The compensation is made by payment of an amount of money or by providing means.

872. The request for compensation is made, by effect of non-acceptance within two years from the day that the decision of review has become final and or submitted to the secretary of the court that has rendered the decision. The request is communicated to the prosecutor and to the all of the interested person. The decision of compensation is subject to appeal to the court of appeal”.

873. When the sentenced dies even before the proceedings of review the right to compensation belongs to his heirs. The undeserved heirs shall not have this right. (article 460)

#### *Article 14/7 - Re-trying the same offence*

874. According to the article 7 of the Code of Criminal Procedure, no one may be tried again for the same criminal offence for which he has been tried by a final sentence, except when the competent court has decided the re-trial of the case.

### **Article 15**

#### **Non retroactive force of criminal law**

875. Article 29 of the constitution provides that, no one may be accused or declared guilty of a criminal act that was not considered as such by law at the time of its commission, with the exception of cases, which at the time of their commission, according to international law, constitute war crimes or crimes against humanity. No punishment may be given that is more severe than that which was contemplated by law at the time of commission of the criminal act. A favorable criminal law has retroactive effect.

876. Pursuant to article 3 of the Criminal Code of the Republic of Albania, no one may be sentenced for an act which, according to the law in effect when it was committed, did not constitute a criminal act. A new law, which does not criminalize a criminal act, has retroactive effect. If the person has been sentenced, the enforcement of the sentence shall not commence and, if it has commenced, it shall cease. If a law in force at the time when a criminal act has been committed differs from a subsequent law, the law whose provisions are more favorable to the person who has committed the criminal act shall apply.

## **Article 16**

### **The right to recognition as a person before the law**

877. Under the Albanian legislation, a child means every human being, born alive, below the age of eighteen years, when he acquires full juridical capacity to act. After birth the child automatically enjoys the legal capacity, which accompanies him for the rest of his life. With regard to the protection of children's rights before they are born, the Civil Code (article 2) stipulates that the legal capacity starts with the birth of the person alive, and ends with his death. The child, when born alive, enjoys legal capacity since the moment of the conception.

878. Article 320 of the Civil Code, likewise, provides for the protection of the rights of child to inherit, with those rights being acquired through inheritance as of the moment he has been conceived. This provision states in concrete terms that a person has capacity to inherit who, at the time of the opening of the inheritance, is alive, or has been conceived before the death of the person leaving the inheritance and is born alive. As of the moment of his birth until the age of fourteen years, the child has legal capacity only. From the age of fourteen years to the age of eighteen years, a child has partial legal capacity to act.

879. A minor who has not attained the age of fourteen years does not have the capacity to act. He may perform instant legal transactions that fit his age, as well as legal transactions that bring benefits without compensation. The legal representative performs all the other legal transactions on his behalf. Under the Family Code, any female who has attained the age of sixteen years and any male who has attained the age of eighteen years are entitled to marry. A child finishes obligatory education at the age of fourteen or fifteen years, depending on the age when he has started school.

### **Right to juridical personality**

880. Chapter II of the Albanian Civil Code "Juridical persons" stipulates that, private juridical acquire juridical personality in the way provided by law. The juridical person has its own full and abbreviated name and the residence of juridical person is situated where its directing organ is located.

881. The juridical person has the capacity to gain rights and to carry civil obligations from the moment of its establishment and, when law provides that it must be registered, from the moment of registration.

882. The juridical personality is liable for the damages caused by its organs during the period of the fulfilment of their duties. Special provisions provide for the way of termination and liquidation of the juridical person.

### **Article 17**

#### **Right to respect the privacy, family, home and correspondence, and protection of honour and reputation**

883. Article 37 of the Constitution provides that, the inviolability of the residence is guaranteed. Searches of a residence, as well as the premises that are equivalent to it, may be done only in the cases and manner provided by law. No one may be subjected to a personal search outside a criminal proceeding, with the exception of the cases of entry into the territory of the state and the leaving of it, or to avoid a risk that threatens public security.

884. The Criminal Code, article 112 provides that, breaking and entering into someone's house without his consent constitutes criminal contravention and is sentenced to a fine or up to three months of imprisonment. Committing the act forcefully or by threat of gunpoint constitutes criminal contravention and is sentenced to a fine or up to one year of imprisonment.

885. Article 254, entering into premises without the consent of a person living therein, committed by a person holding a state function or public service during the exercise of his duty, except the cases when it is permitted by law, is sentenced to a fine or up to five years of imprisonment.

886. Throwing stones or other items into the premises of a citizen, creating bothersome noises such as gunshots or different blasts, using sirens on vehicles irregularly, or doing any other indecent behavior in streets, squares and public places, which clearly affect peace and morality or show a clear indifference for the environment, constitutes criminal contravention and is sentenced to a fine or up to two years of imprisonment (article 274).

887. In compliance with the provisions of the Second Part of the Constitution Chapter II, articles 21-45, provide that the individual rights and freedoms, as the right to life, right to expression, radio and television, right to information, conscience and religion, inviolability of residence, private property and appeal against a court decision are guaranteed.

888. The right to life and its protection is provided in the special part, chapter II of the Criminal Code of Albania. In articles 131-133 of the Criminal Code are provided heavy punishments for criminal offences related to the freedom of conscience.

889. The right to expression, radio and television are explicitly provided by article 22 of the Constitution and law no. 8618 of 14.06.2000 "On Telecommunications in the Republic of Albania". Furthermore, the right to information is provided by article 20 of the Administrative Procedural Code of the Republic.

890. Articles 2 and 112 of the Criminal Code stipulate the right not to be sentenced for a criminal offence, which is not explicitly provided for by law as an offence or a criminal contravention and the right of inviolability of residence.

891. Provisions of the Second part of the Civil Code guarantee the right to private property. The right to appeal a court decision is provided by the provisions of Title I and VIII of the Civil Procedural Code.

892. A number of articles of the Criminal Code provide penal consequences for spreading false information and defamations with regard to the dignity of the individuals.

893. Article 119, intentionally insulting a person constitutes criminal contravention and is sentenced to a fine or to up to six months of imprisonment. When this act is committed publicly, it constitutes criminal contravention and is sentenced to a fine or up to two years of imprisonment

894. Article 120, intentionally spreading rumors, and any other knowingly false information, which affect the honor and dignity of the person, constitutes criminal contravention and is sentenced to a fine or up to one year of imprisonment. The same act, committed publicly, constitutes criminal contravention and is sentenced to a fine or up to two years of imprisonment.

895. Article 227, insulting prime ministers, cabinet members, parliamentarians of foreign states, diplomatic representatives, or [representatives] of recognized international bodies who are officially in the Republic of Albania, is sentenced up to a fine or up to three years of imprisonment.

896. Article 239, insulting intentionally an official acting in the execution of a state duty or public service, because of his state activity or service, constitutes criminal contravention and is sentenced to a fine or up to six months of imprisonment. When the same act is committed publicly, it constitutes criminal contravention and is sentenced to a fine or up to one year of imprisonment.

897. Article 240, intentional defamation committed toward an official acting in the execution of a state duty or public service, because of his state activity or service, constitutes criminal contravention and is sentenced to a fine or up to one year of imprisonment. When the same act is committed publicly, it constitutes criminal contravention and is sentenced to a fine or up to two years of imprisonment.

898. Article 241, intentional defamation committed toward the President of the Republic is sentenced to a fine or up to three years of imprisonment.

899. Article 318, insulting a judge or other members of trial panel, the prosecutor, the defense lawyer, the experts, or every arbitrator assigned to a case because of their activity, constitutes criminal contravention and is sentenced to a fine or up to two years of imprisonment.

### **Data protection**

900. Based on article 35 of the Constitution, no one can be forced to reveal information related to its person, except in the event that such revelation is considered mandatory by the law. The collection, the treatment and the disclosure of personal information should be made only with the

consent of the concerned person, except in the event that the law admits such actions. Anyone has the right to acquire knowledge on the personal data collected on him, except for the cases the law provides differently. Anyone has the right to request the correction, the elimination of false or incomplete information, or of information collected against the law.

901. According to article 3 and 4 of law no. 8517, dated 22.07.1999 “On the protection of personal information”, anyone can have knowledge of personal information regarding one individual, following the procedure provided by the law and in the measure permitted by the law. The following cases are excluded by the application of the above provision:

- Treatment of personal information made by the concerned person;
- Treatment of anonymous information;
- Personal information collected during the investigation of a crime or performance of a judiciary process;
- Data classified as state secret;
- Treatment of personal information for national security, crime prevention and protection of the public health issues;
- Treatment of personal information for population census issues.

902. Article 5, the treatment of personal information shall be made:

- In accordance with the procedures provided by the present law;
- For a clear, specific and legitimate issue;
- Using updated information in a correct way;
- Without over passing the objective of the treatment, and within the essential term, necessary to achieve the objective;
- Under the condition that the used data is protected from damages;
- Using only the relevant data for the achievement of the objective of the treatment.

903. Article 10, the treatment of personal information from third parties is allowed only in the event the concerned person has expressly given the approval for such treatment. The prior consent can be given for the whole treatment process, or for singular elements. The prior consent is valid only if is given in an unconditioned situation, and the concerned person is informed according to article 6 of same law. The treatment of sensitive personal information the prior consent is valid only if it is given by writing.



904. Article 11, the prior consent of the concerned person is not necessary in the following cases:

- When the treatment is necessary to execute contract obligations, where the concerned person is a party, or for the performance of contract preparatory actions;
- When the treatment is necessary to execute a law obligation by the concerned person;
- When the treatment regards data collected by public registers, deeds, or documents of public domain;
- When the treatment is necessary for the protection of the life of the concerned person, or third parties, and the prior consent of the concerned person is not possible to be obtained, due to physical unfeasibility, inability to act in case of irresponsibility.

905. Article 12, - anyone has the right to acquire knowledge at any time of the treatment process of its personal data. The person responsible for the personal information treatment, and any other person engaged with such process, within 10 days from the request must report to the concerned person the requested information.

906. Article 13, - excluding the cases provided in articles 4 and 10 of the present law, the concerned person may object to the treatment of its personal data. The person responsible for the personal information treatment must respond in writing the request of the concerned person within 15 days from the date of the request to stop such personal information treatment. If person responsible for the personal information treatment does not accept the request of the concerned person for the correction of its personal information elimination, he is obliged to attach of all uses to data in its posses, the data submitted by the concerned person.

907. Article 14, - personal information may be transferred to a foreign user, outside the territory of the Republic of Albania, only when:

- The concerned person has given its written approval;
- Such transfer is permitted by the law;
- The law of the foreign user offers for the treatment of personal information, the same guarantee offered by the present law.

908. Article 15, - the appeal to the Ombudsman and its competencies on issues personal information issues are provided by law no. 8454, dated 4.2.1999 "On the Ombudsman". The Ombudsman forms a register for the treatment of personal information.

909. Article 16, the breach of the provision of the present law, as long as it is not provided as a crime, will be condemned as a contravention according to law no. 7697, dated 7.4.1993 "On contraventions", and following amendments.

910. Anyone may propose an administrative appeal, in the event he/she considers that the rights provided in the present law are violated. Law provides the administrative appeal procedures.

911. Anyone may propose judiciary appeal, in the event he/she considers that the rights provided in the present law are violated. Further, anyone has the right to request compensation, in case the violation of the rights provided by the present law has caused a damage. Law provides damage compensation procedures.

912. Based on article 103 of the Criminal Procedural Code, the total or partial publication in the mass media of secret judiciary acts related to a cause, or the disclosure of its contents is prohibited. The total or partial publication of judiciary acts before the closure of the preliminary investigation phase is prohibited. The publication of judiciary acts is prohibited in case the trial is performed with closed doors.

913. Such prohibition ends with the terms provided by the law for the state archives or after ten years from the date in which the sentence has become definitive and such publication is authorized by the Minister of Justice. It is not allowed to publicize generalities and pictures when the accused, the witnesses, or the damaged person is juvenile. The court may permit such publication, when for in interest of the juvenile, or when the juvenile has reached his 16<sup>th</sup> birthday.

914. The breach of such prohibition by a state employee, or by an employee of a public institution, when it is not considered as a crime, will be treated as a disciplinary issue. In such case the persecutor's office must inform the body that is competent for the disciplinary measures (article 104).

### **Surveillance**

915. Notwithstanding article 22 of law no. 8618, dated 14.06.2000, "On Telecommunications in the Republic of Albania", which provides that the public telecom operator must take all necessary measures to ensure the secrecy of telecommunications and the treatment of personal information, the public telecom operator is obliged to keep files on personal information of its clients, when this is requested by "Telecommunication Authority" and any other authority provided by the Criminal Procedural Code.

916. The files must contain only data regarding the called numbers, the date and timing of such calls, even if the telephone numbers are not listed in the telephone book. The competent authorities may request the data contained in such files in electronic version, according to the directives of the "Telecommunication Authority" (article 24).

917. Notwithstanding the above article 22, the public telecom operator, in accordance with the Criminal Procedural Code provisions and the directive implementing article 57, must permit the authorized authorities by specific laws to execute the surveillance, registration and reproduction of communication performed through its network. The surveillance instruments connected to the network must be in accordance with the telecom standards, and may not interfere with such systems (article 25).

918. Law no. 8293, dated 26.02.1998, "On the Criminal Police" states that the activity of the criminal police is performed with or without secrecy, in order to protect the life, health, property, human rights and public order from any kind of criminal activity, within the territory of the Republic of Albania (article 2).

919. The activity of the criminal police is based on the principle of legality, respect of the human rights, preservation of the secrecy (article 3).

920. The criminal police, in order to execute its duties according to the law, may collect information and data from state authorities, private entities, such as companies and other juridical persons. Officials of the criminal police perform such duties directly, or with the help of other persons and officials that have technical knowledge, and collaborate openly or in secrecy with individuals (article 6).

### **Individual rights in criminal procedure**

921. Cases when freedom of a person may be limited:

- When he is punished with imprisonment by a competent court;
- For failure to comply with court orders or lawful obligation;
- When there are reasonable suspicions that he has committed, is about to or is escaping after the commission of a crime;
- For the supervision of a minor;
- When a person is carrier of a contagious disease, mentally incompetent and dangerous to society;
- Deportation or extradition cases.

922. At the moment of deprivation of liberty, a person has the following rights (art. 28 of the constitution):

- Notification in a language that he understands, of the accusations and the reasons of the deprivation of liberty.
- Informed of the right to communicate with a lawyer, and of the right not to make any declaration (right to remain silent) and he shall also be given the possibility to realize his rights.

923. Judicial review of deprivation of liberty must occur within 48 hours from the moment of detention and a judicial decision issued within 48 hours following the court hearing (article 288 of the constitution) (Criminal Procedural Code, art. 258/1 - 24 hours for the prosecutor and art. 259/5 - 24 hours for the judge).

924. A person in pre-trial detention has the right to appeal the judge's decision. He has the right to be tried within a reasonable period of time or to be released on bail pursuant to law.

925. During the criminal process, a person has the following rights (article 31 of the constitution):

- Immediate and detailed notification of the accusation made against him;
- Possibility to notify his family or those close to him;
- To have the assistance of an interpreter;
- To have the time and sufficient facilities to prepare his defence;
- To be defended by himself or with the assistance of a legal defender;
- To communicate freely and privately with his defender;
- To question witnesses who are present and to seek the presentation of witnesses, experts and other persons who can clarify the facts.

926. No one may be obliged to testify against himself or his family. No one may be obliged to confess his guilt. No one may be declared guilty on the basis of data collected in an unlawful manner (article 32 of the constitution).

927. Everyone, to protect his rights, has the right to a fair and public trial, within a reasonable time, by an independent and impartial court specified by law (article 42 of the Constitution).

Some Articles of the Criminal Procedural Code related to this issue:

- Arts 36 - 39 “Questioning and declarations of the defendant”
- Art. 48 - 49 “Selection and appointment of defence attorney”
- Art. 50 - “Rights of defence counsel”
- Art. 53 - “Conversations between defendant and counsel”
- Art. 55 - “Refusal, renouncement or revocation of defence counsel”
- Art. 56 - “Abandonment by defence counsel”
- Art. 57 - “Substitution of defence counsel”
- Art. 111 - “Statements and requests of detained person”
- Art. 172 - 173 “Identification procedures”
- Art. 179 - “Assignment of expert”
- Art. 246 - “Execution of precautionary measure”

- Art. 248 - “Interrogation of arrested/detained person”
- Art. 249 - “Appeal of precautionary measure”
- Art. 253 - “Detention of person suspected of having committed a crime”
- Art. 255 - “Duties of judicial police in arrest and detention cases”
- Art. 256 - “Interrogation of arrested or detained”
- Art. 258 - “Request for Review of arrest or detention”
- Art. 259 - “Hearing for the arrest/Detention review”
- Art. 268 - 269 “Compensation for unfair imprisonment”
- Art. 309 - “Appointment and assistance of defence attorney in Preliminary Investigations”
- Art. 344 - “Presence of the defendant at trial”
- Art. 350 - 352 “The absence of the defendant or defence attorney”

928. Article 172 of the Code provides that, after ordering the recognising person to leave, the proceeding authority provides the appearance of at least two persons, who take after the to be recognised. It invites the latter to choose his place trying to appear, as much as it is possible, in the same circumstances in which the recognising person might have seen him. After the recognising person appears, the court asks him whether he knows anyone of those who are under recognition and, if the answer is positive, it invites him to show the one he recognises and to specify whether he is pretty sure of this.

929. When there are reasons to think that the person cited to make recognition may feel scared or has any influence of the presence of the person to be recognised, the proceeding authority orders that the act is carried avoiding the first to be seen by the latter.

930. In the minutes there are noted, by sanction of nullity, the performance of the recognition. The proceeding authority may order the recording of the process of recognition, even by photographing or filming it.

### **Correspondence and communication**

931. The freedom and secrecy of the correspondence are assured by article 36 of the Constitution, which provides that the freedom and secrecy of correspondence and any other communication instrument is granted.

932. Law no. 8618, dated 14.06.2000, “On Telecommunications in the Republic of Albania”, provides that the public telecom operator must take all necessary measures to ensure the secrecy of telecommunications and of the treatment of personal information, and to prevent the

unauthorized access to the data treatment system. The public operator, its employees and other the authorized persons, are obliged to keep the secrecy of the communication made through its network, both during the validity term of its license and after.

933. The public operator may take knowledge of communication made through its system, only for the necessary measure for the performance of the telecom system security duty. The record, the publication and treatment of personal data and messages, transmitted through the telecom network, is not allowed (article 22).

934. The filed Telecom Authority documentation is available to the public during the official time schedule. Such files contain the documentation indexed in accordance with the Telecom Authority directives, procedures and standards, and in accordance with the principle of secrecy.

935. The important documentation, such as the criteria of the licensing, the licensing procedures, the issued licenses, the technical regulations and standards etc. are published in the Telecom Authority Bulletin (article 89). Furthermore, the law “On the rights and treatment of prisoners” grants the freedom and secrecy of the correspondence.

936. Article 121 of the Criminal Code provides that the placement of audio and video surveillance or recording instruments, and instruments capable to transmit audio and video signals and expose the private life of individuals without its approval, is considered a penal contravention, and is condemned with a fee or detention up to 2 years.

937. The disclosure of secrets related to the private life of individuals from the person that assures such information because of its duty or profession, and when has to keep such secret, is considered a penal contravention and is condemned with a fee or detention up to 1 year. Such penal contravention, if executed for profit purposes is condemned with a fee or detention up to 2 years (article 122).

938. The intentional commission/execution of crimes such as destruction, opening, reading letters or any other correspondence, or the surveillance of telephonic conversations, telegraphic communications and any other telecommunication technique is considered a penal contravention and is condemned with a fee or detention up to 2 years (article 123).

## **Article 18**

### **Freedom of thought, conscience and religion**

939. Freedom of thought, conscience and religion are the basis of a democratic society. Based on the European Convention of Human Rights, this is fundamental for the respect of identities and beliefs.

*Ensuring the freedom of conscience and religion in Albania.*

940. The freedom of conscience and religion is provided by article 24 of the Constitution of the Republic of Albania. Such article sanctions that the freedom of conscience and religion is granted. Anyone is free to choose or change its religious beliefs and to reveal them individually

or together with other persons in public or in private life, through the cult, education and the performance of rituals. Anyone has the right to be part of a religious community, perform its rituals and to reveal his/her beliefs.

941. For such purpose article 18 (2,3) of the Constitution provides that “no one can be discriminated for reasons such as sex, race, religion, ethnic group background, language, political, religious and philosophical beliefs, economic, educational and social status, and its family origin. No one can be discriminated for such reasons, except when there is a legitimate and objective ground.

942. This freedom is granted not only to Albanian citizen but also to other minorities. Specifically, based on article 20 second paragraph of the Constitution provides that “...they (minorities) have the right to express freely their ethnic group, cultural, linguistic and religious background. They have the right to keep and implement such peculiarities, be educated in their mother language and to create organisms and associations for the protection of their identity and interests”

943. Article 10 of the Constitution provides that in the Republic of Albania there is no official religion. The state is neutral to religious and conscience issues, and grants their free expression in the public life. The state recognizes the equality of religious communities. The state and the religious communities, reciprocally respect their independence, and collaborate for the prosperity of individuals and of the collectively. The relations of the state with religious communities are regulated by bilateral agreements, entered by their representatives and the Council of Ministers. Such agreements are ratified by the Parliament. Religious communities are juridical persons. They have independence on the administration of their property according to their canons and principles, as long as this does not jeopardize the interests of third parties.

944. The Criminal Code also grants the freedom of religious beliefs. Article 131 of the Criminal Code provides as crimes the “interference with the activity of religious institutions”, article 132, “destruction and damage of religious objects” and 133 consider penal contravention the “interference with the religious ceremonies”.

945. Considering that based on article 116/1.b the international agreements ratified by the parliament in the have immediate enforcement in the Albanian legal framework, and that in case of conflict between the law and such international agreements, the provisions of the latest prevail (article 122/2 Constitution), we consider that the freedom of religious beliefs is granted accordingly to the international levels, and provisions of the European Convention on Human Rights.

946. Article 17 of the Constitution provides for the limitation of rights. The individual rights can be limited only by the law, and for a legitimate reason of public order or for the protection of third parties rights. Such limitation must be proportionate with the state that has caused it, and they can never harm the human rights and overpass the provision of the European Convention on Human Rights.

947. Based on an analysis made by the Ombudsman, the internal Albanian legislation, the Constitutional provisions and of other existing laws comply with the provisions of article 9 of the European Convention on Human Rights.

*Implementation of freedom of thought, conscience and religion in Albania*

948. In order to implement such freedoms the Council of Ministers with decision no. 459 dated 23.09.1999 has created the State Cult Committee. Such committee is subject to the Council of Ministers and is competent to maintain relations with all religious communities and other organizations with religious objectives.

949. Based on information of the State Cult Committee the activity of such religious communities and other organizations with religious objectives is extended in fields such as education, health care, agriculture and other socially related fields. In Albania there are 64 educational institutions of different levels, managed by religious communities and associations.

950. Different religious groups are present in our country in a convivial atmosphere. Notwithstanding such fact, the state is still inactive in the direction of the conclusion of bilateral agreements that would regulate the relations between the state and the different religious communities. The Ombudsman as a constitutional institution competent for the protection of individual rights has examined different petitions comprising a case when some students of Muslim belief in Tirana end Fier, had decided to show their religion in public covering their head with veils also during classes.

951. These girls were not permitted by the Director of the school to express their religious beliefs, because the ritual of covering their head with veils was against the internal school regulation. Thus, based on the fact that according to article 24 of the Constitution the right to express in public the religious beliefs is granted, it cannot be limited by a school regulation.

952. Based on article 17 of the Constitution such rights can be limited only by the law, and not by a school regulation or directive of the Minister of Education. For this reason the Ombudsman has recommended to the Council of Ministers and to the Minister of Education the drafting of a law for this issue. The ombudsman has not reported any conflict related to the property of religious communities.

953. Being that the public education is laic, law no. 7952, dated 21.06.1995 "On the pre-university educational system", provides that religious propaganda during classes is prohibited. The Council of Ministers with decision no. 248, dated 28.05.1999 has fixed the criteria and procedures for the functioning of private educational institutions, both with and without religious profile. Such decision provides that the private religious educational institution must declare to undertake the responsibility for the respect of the Universal Declaration of Human Rights, and the Convention for the rights of Children. The decision does not provide for the consent of the children upon the registration in such private institution, but provides for the consent of parents, tutors or the student itself as necessary in case of activities out of normal classes. The decision does not provide for the age limit in which the student can give its consent.

954. The Criminal Code condemns the interference with the performance of religious ceremonies or with the expression of religious beliefs. Such action is considered as a penal contravention and is punished with a fee or detention up to one year.



955. Must be underlined the fact that religious communities in Albania are characterized by a harmonic and sincere feeling, which is reflected in the relations between individuals of different religious groups, and between religious and non-religious individuals. There are no exact statistics on the percentage of every different religious group. Based on a census of some decades ago 50% of the population was of Muslim religion, 20% orthodox religion, 20% bektash religion and 10% of catholic religion.

956. Based on the freedom of conscience and religious beliefs in Albania are present 62 Christian protestant, Evangelic, Adventist, Bahai and Mormon associations, mostly with origin from the Western Europe and USA. There are also many religious Islamic associations.

## **Article 19**

### **Freedom of expression**

957. Article 22 of the Constitution guarantees the freedom of information, speech and freedom of press as well as freedom of the radio television. Articles 56, 57 and 58 of the Constitution regarding the social-cultural rights, provide for the right of each individual to be informed on the state of environment and its protection, the right of education, the freedom of arts and scientific research.

958. The law no 8410 dated 30.09.1998 "On the public and private radio television" provides that, the radio television activity is free. The radio television activity observes in an independent way the right of information, political opinion and religious belief, personality, dignity, private life of the individual as well as his opinions and fundamental rights. In such activity are particularly observed the rights, interests and moral and legal requirements for the protection of the juvenile. The radio television activity may not harm the constitutional order, sovereignty and national integrity (article 4).

959. The law assures the editorial independence. The employment, career and rights and duties of the employees in public or private radio and televisions are not determined by sex, origin, political opinions, religious belief or membership in trade unions (article 5).

960. For the regulation and supervision of the radio television activity in the Republic of Albania is established the National Council of the Radio and Television (NCRT), which an independent authority, operating in compliance with the provisions of this present law (article 6).

961. Radio and television programs are defined the total amount of broadcasts transmitted by a determined channel. The public radio and television transmit informative, educational, cultural, artistic and entertaining broadcasts. Censure is forbidden in the radio television programs. Radio television broadcasts observe the limitations provided by law, the limitations provided by article 10 of the European Convention "On the protection of the fundamental human rights" and chapter "On the fundamental human rights" of the constitutional provisions of the Republic of Albania (article 35).

962. The radio television broadcasts, public or private, respect the personal dignity and fundamental rights of the individual, independence, pluralism of information, the rights of the children and adolescents, public order and national security, the Albanian language and culture, the constitutional rights of the individuals and of the national minorities in compliance with the international covenants signed by the Republic of Albania and the Albanian religious diversity (article 36).

963. The use of the Albanian language is obligatory for all programs, exception made for musical art in foreign language, educative foreign language courses, broadcasts aimed especially for the national minorities and the programs of local radio televisions licensed for the broadcast in the minorities language.

964. Movies in original language in the national channels are transmitted accompanied by subtitles or dubbing in Albanian language. For the local radio televisions such provision applies one year after licensing. The public radio and television reflect in their activity a language culture in compliance with the pre-determined standards of the national language. Exception is made for radio televisions differently licensed (article 37).

965. In the radio and television it is not permitted to broadcast programs that enhance violence, national religious and racial hatred, anti constitutional activity, the division of territories, discrimination caused by the political opinions and religious belief.

966. It is also forbidden:

- transmission of information that constitutes a secret of state according to the law and that harm the national security;
- transmission of information that may harm the life of private citizens;
- transmissions of encrypted messages against the fundamental interests of the state;
- production and broadcasting of pornography (article 38).

967. The journalist or the redactor in charge for the materials transmitted in the radio television, public or private, are held responsible, under penal or civil provisions, when as a cause of the misinformation of the program, the individuals or entities have sustained material or moral damage (article 45).

968. The subject harmed in his moral or material interests from the untrue transmissions, has the right to request the radio or television to transmit the correction reply.

969. The reply is transmitted free of charge in the next edition of the same program or of the programs of same category. The harmed person or his representative shall sign the reply and shall consider only the misleading facts.

970. The subject who demands the right for a correction reply shall sustain that the transmitted information is false and a legitimate interest has been harmed. There is no right of correction reply when the facts have risen during a parliament session or during court hearings.

971. The correction reply is refused when:

1. the interested subject has no legal interest in its publication;
2. the reply is far more large than the quoting declaration, for which the reply is required.
3. the demand for reply is not done within two months from the day of the false declaration.

972. The refusal of the reply for the above reasons is given in writing. The person in charge for the broadcast is punished according to the law in case of denial of the right of reply.

973. The refusal of the correction reply by the radio televisions is object of appeal before the National Council of Radio and Television (NCRT). Both parties may appeal the decisions of the NCRT before the court (article 47).

974. Law no 7756 of 11.10.1993 "On the press" provides that the press is free. The law protects freedom of press. Press is limited only by the constitution and the provisions of the present law.

975. It is forbidden the adoption of any other measure that harms the freedom of press. It is forbidden the establishment of the professional organisations of the press with obligatory membership and the establishment of special courts for the press, which have ordering authority over the press (article 1).

976. The press activity, the establishment of press manufactures and any other related activity does not require licensing (article 2).

977. The public authorities are obliged to give to the press representative's information that is relevant to the fulfilment of their duty.

978. The obligation to give information is not applied when:

- through such information the court activity may be impaired;
- the request for information is contrary to the law provisions for the preservation of the secret.
- a public or private interest protected by the law may be harmed.

979. It is forbidden the issuance of general ordinances that prevent the public authorities to give information to the press in general or to the press related to a periodical in particular.

980. The publishing house of a newspaper may request from the public authorities that their official information shall not be conferred later than to the other competitors (article 4).

981. The press is obliged to confirm all information before its publication in relation to its authenticity, content and source. The obligation to protect the publication content from censurable content is mandatory (article 5).

982. The editor in charge and the publisher of a periodical are obliged to publish the correction reply of an individual or other entity damaged from the published material. The obligation applies also to all accessory publications where the relevant material has been published.

983. The correction reply is refused when:

- (a) the interested subject has no legal interest in its publication;
- (b) the reply is not appropriate based on its extent;
- (c) it is only an advertisement related to business.

984. In the cases when the correction reply does not surpass the size of the referring text, it is considered appropriate. The correction reply shall contain only genuine information and may not contain censurable content. It must be submitted in writing and shall be signed by the harmed person or its legal representative.

985. The damaged person or its representative may request the publication of the correction reply only in case they have submitted it to the editor within three months after the related publication.

986. The correction shall be published immediately in the issue ready for print, in the same space and with the same font as the related text, without additions or reductions. The correction may not be published under the form of reader's letter. Its publishing is free. The individual who makes a correction in the same edition shall present only genuine facts.

987. For the refusal of the correction reply, may be followed the procedure provided in the law. Based on the petition of the harmed person, the court may order that the editor in charge or the publisher shall publish the correction reply according to the law. Such procedure is carried out according to the provisions of the Civil Procedural Code. The refusal of the publication is not required to be substantiated (article 10). No judiciary process is held so far on the issue.

988. Also the law no 8503 dated 1999, "On the right of information over official documents" although does not contain a special provision providing for children, in the article 2 quotes that the right of information belongs to the individuals or entities, local or foreigner. Considering the fact that children are individuals they have the right of information. Anyway there is a vacuum in the legislative acts on the concrete ways to realize such right for the specific case of children.

989. The children obtain information and express their views through the educational process, which provides that the education has a mission for the spiritual emancipation, material progress and social development of the individual (article 2). What is important in said law has to do with the participation of the children in the community by making possible their expression of opinions and request for information on such field (article 12/2).

990. A great possibility in this direction is the law no 8503 dated 30.06.1999 "On the right of information over official documents". The law does not specifically provide on children but also does not exclude them.

991. Article 2 of the law provides that by person is defined any individual or legal entity, local or foreigner. In addition, the law provides the right of administrative and court appeal in case of the violation of the right of information over official documents.

992. The constitution quotes that limitations of the rights provided in such document may be restrained only by a law on a public interest or for the protection of the rights of third parties. The limitation shall be adequate to the situation (article 17).

993. In October 2001 in Albania were 15 daily newspapers and most of them were electronically available in Internet.

### **Radio - Television**

994. At the beginning of 2002 there was a total of 97 operators of licensed radio and televisions. From which, 35 FM radio operators (one national and 34 local) and 62 TV operators (2 national and 54 local) including one satellite and five cable-TV operators.

995. From the active radio television operators, 32 radio operators and 47 TV operators, for a total of 79 operators or 82% of the total number, had operated prior to the licensing (inherited situation).

996. 3 radio operators and 15 TV operators were licensed during 2001 in compliance with the procedures provided in the law "On the public and private radio and television in the Republic of Albania".

997. According to a study in the end of 2001, published by ISO (Institution for Pools and Opinions), the credibility of the information delivered by the electronic media is greater than the information received in the written media (Television 64.2%, radio 28.3%, newspaper 4.1%, magazines 3.4%). These data are encouraging and show that the mission of freedom of the media is also understood as responsibility.

#### *Situation of the licensed operators until 08.02.2002*

### **The Council of Complaints next to the NCRT**

998. The Council of Complaints for the radio and television is an advisory council within the National Council for Radio and Television (NCRT). The members of the council of complaints are appointed by the NCRT. The council is composed of the chairman and 2 members, specialists in the media field, appointed for a term of 3 years with the right of reappointment for not more than one term.

999. The work of the Council of Complaints is based on the encouragement of the awareness of the public opinion to make the private and public radio and televisions more responsible and to fulfil the moral and ethical provisions in their broadcasts.

1000. The Council of Complaints supervises, particularly, the public and private radio and television broadcasts with relation to shows misrepresenting violence, sex and dignity. For this reason the council has the right to request and obtain for inspection any audiovisual material retained necessary for the fulfilment of its duty, only following to its broadcast.

1001. The Council of Complaints examines the complaints against the radio and television programs that disturb the public opinion, within 2 months from the date of broadcast.

1002. The Council of Complaints organises pools of the public with regard to the ethical and moral issues of the public and private radio and televisions. The conclusions of the pools are notified to the NCRT as well as to all mass media, which is obliged to publish such pools. Every 6 months the Council of Complaints in a special bulletin publishes the conclusions of the pools.

## **Article 20**

### **Prohibition of propaganda for war and inciting national, racial and religious hatred**

1003. According to article 9 paragraph 2 of the Constitution the political parties and other organizations, whose programs and activity is based on totalitarian means, that encourage and support the racist, religious, national or ethnic hatred, that use violence for the overthrow of the constituted power or to influence the policies of the state, as well as those with an hidden identity, are banned.

1004. Discrimination based on the origin, sex, and health, religious or political beliefs is anti-constitutional (article 18 of the Constitution). Article 73 of the Criminal Code provides that the implementation of a premeditated plan aiming the total or partial elimination of a national, ethnic, racial or religious group directed towards the members of the group and accompanied with actions such as: murder, physical injuries, placement under severe life conditions causing physical impairments, implementation of birth control measures, as well as the obligatory transfer of the children of one group in another group, is sentenced with imprisonment not less than 10 years or with life imprisonment.

1005. Article 74, murders, exterminations, slavery, interdictions and deportations, as well as any dehumanising torture performed for political, ideological, racial, ethnic and religious reasons, is sentenced not for not less than 15 years up to life imprisonment.

1006. Article 211, the commitment of actions aiming the war or to make the republic of Albania in front of the eventuality of the intervention of foreign states, is sentenced with imprisonment for not less than 15 years.

1007. Article 253 provides that, the instigation of violence or conflict between nationalities, races and religions, the preparation and publication or the possession for publication of the documents with such content, are punished with fine or imprisonment up to 10 years.

1008. Article 265, the instigation of the hatred and racial, national or religious conflicts as well as the preparation and publication or the possession for publication of the documents with such content, are punished with fine or imprisonment up to 10 years.

1009. Article 266, the endangerment of the public peace by instigation of hatred against parts of the population, by insults and offences, by requiring the use of violence or arbitrary acts, is sentenced with a fine or imprisonment up to five years.

1010. In the same way, article 7 of law no 8580 dated 17.02.2000, "On political parties", provides that is forbidden the registration of a political party in case the constitutive documents contain elements of the use of violence for the overthrow of constituted power or to influence is policies and is expressed or instigated the racial, religious, national or ethnic hatred.

1011. Article 26 of the law provides that the political party is dismissed when its activity is banned by a decision of the competent organ. The decision on the dismissing of the political party is deposited in the first-degree court of the Tirana district. Said court decides the de-registration of the party and its liquidation.

1012. According to article 41 of the Civil Code of the Republic of Albania, after the constitutive meeting has approved the by-laws and appointed the managing board, shall submit the request for registration of the association in the competent district court. The court controls the compliance of the by-laws with the law. The court also controls the compliance of the by-laws of the organization with the relative articles of the Constitution and of the Criminal Code of the republic of Albania.

1013. Article 52/ç provides that one of the reasons for the dismissal of an association with a court decision is when the association is far from its object or has started to apply illegal activities.

## **Article 21**

### **Right to peaceful assembly**

1014. According to article 47 of the Constitution, the freedom of peaceful and unarmed assembly is guaranteed. The peaceful gathering in public places is done in compliance with the procedures provided by the law.

1015. During the report period the right of assembly is guaranteed by 3 documents:

- Decree no 7408, dated 31.07.1990 "On the gatherings, assemblies and manifestations of the citizens in public places";
- Law no.8145, dated 11.09.1996 "On the right of assembly"; and
- Law no.8773, dated 23.4.2001 "On the gatherings", still in force.

1016. According to this latter law, in the Republic of Albania, any individual has the right to organise and participate in peaceful and unarmed assemblies. Such right may be restrained only in case of national security threat, political security, or the protection of the rights of others (article 1).

1017. The state police guarantees and protects the right of each individual to organise and participate in peaceful and unarmed assemblies. The prohibition or dissolution of an assembly is permitted only when provided in the law. In any case, the implementation of the measures for the prohibition and dissolution of an unarmed and peaceful assembly is done in stages (article 3).

1018. In case of gatherings in public places, the organiser and leader are obliged to inform in written the head of the police station not later than three days before the date of the gathering.

1019. The written notice shall contain:

- identity and address of the organiser and leader of the gathering;
- scope of the gathering;
- date, place, time of the start and termination of the gathering and its itinerary (if there is one);
- c) approximate number of the participants and number of auxiliary persons;
- d) persons who will address the meeting.

1020. In case the written notice does not contain the above information, it is returned for explanations to the organiser and leader of the gathering, who shall re-present it completed not later than 24 hours before the start of the gathering (article 5).

1021. In case of urgent matters, the gathering may be held before the term provided by the law but in any case there should be sent the written notice as above described and the matter of urgency. Notice is given immediately, but not later than 3 hours before the gathering (article 7).

1022. When there is sustained evidence that the organization of a gathering in a public place constitutes a real threat to national security, public safety, crime prevention, protection of the public health or moral or the protection of the rights of others and such threat may not be prevented by other less restrictive means, the head of the police station may prohibit the gathering or decide on the time and place of the gathering (article 8).

1023. A gathering in a public place may be dissolved by police forces in uniform, only when:

- (a) the gathering is taking place in such a manner that may harm in a concrete way the public order and safety of the participants;
- (b) crimes are committed during the gathering;
- (c) there is a public emergency related to public safety, when the place of gathering is required for emergency services.



1024. The police officer in charge to assist and supervise the gathering, may order the removal of a group of persons from the gathering, in case he is of the opinion that the threat may be avoided with such measure. In contrary case the police officer in charge to assist and supervise the gathering, may order the organisers leaders and participants to interrupt the gathering and leave the place (article 9).

1025. The gatherings in places opened to public are held without prior notification to the police according to article 5 of the law. The coordinators of the gathering may request the assistance of the police forces outside such places, to avoid disorders during or after the assembly (article 12).

1026. The gathering in places opened to public may be prohibited or dissolved when:

- (a) coordinator, leader or assistants permit the entrance of armed participants;
- (b) there is sustained evidence to believe that the gathering will be violent;
- (c) there is a threat for the life or health of the participants (article 16).

1027. Police may not intervene in private spaces where are held assemblies, without prior consent of the manager or owner, exception made for the flagrant cases when should be prevented a serious danger for the life and health of the participants. According to such article, private space means a space where the entrance is permitted only for a determined number of persons, whose identity is known (article 17).

1028. In assemblies organised in public places or in areas opened to public, the organiser, leader, assistants and participants, may not bear uniforms or symbols referring to associations or groups which are established to encourage discrimination, violence and hatred for reasons of race, ethnic background or religion (article 20).

1029. It is considered a criminal contravention:

- (a) Participation of individuals in prohibited gatherings, according to the law and is punished with a fine from 1.000 to 10.000 ALL;
- (b) Disobedience to police orders for the dismissal of the assembly according to the present law is punished with a fine from 1.000 to 10.000 ALL;
- (c) Use of clothes or other objects to hide the identity of the person during the gathering according to the law and is punished with a fine or imprisonment up to 6 months;
- (d) Use of symbols referring to associations or groups, which are established to encourage discrimination, violence and hatred for reasons of race, ethnic background or religion according to the law and is punished with a fine or imprisonment up to 6 months (article 24).

## Article 22

### Freedom of association and the right to form and join trade unions

1030. Article 46 of the Constitution provides that, everyone has the right to organize collectively for any legitimate scope. The registration in the court of the organizations or associations is done according to the procedures provided by law. The law prohibits the organizations that follow an illegitimate scope.

1031. Article 50, the employees have the right to establish and join freely trade unions for the protection of their employment rights and interests. In accordance with article 11 of the Constitution, the economic system in the Republic of Albania is based in the market economy and freedom of economic activities.

1032. Article 109/4, the organs of the local government have the right to establish unions and joint institutions with each other for the representation of their interests, collaborate with the local governmental units of other districts, and to be represented in the international organizations of local governments.

1033. Article 131/d, the Constitutional Court decides on the compliance with the constitution of the political parties and other political organizations as well as on their activity according to article 9 of the Constitution which provides that the organizations, whose activity is based on totalitarian means, that encourage and support the racist, religious, national or ethnic hatred, that use violence for the overthrow of the constituted power or to influence the policies of the state, as well as those with an hidden identity, are banned.

1034. According to article 134, various organizations may appeal before the Constitutional Court. According to the Civil Code of the Republic of Albania, the legal entities may be public or private. Public legal entities are considered the state owned institutions or companies, self financed or by the state budget, as well as other public entities recognized by the law as such. The public entities following a non-economic activity do not register (article 25).

1035. Private legal entities are the commercial companies, associations, foundations and other private entities, who gain their personality in compliance with the procedures provided by the law (article 26).

1036. The legal entity may assume civil rights and obligations from its establishment and, when the law provides for its registration, from the moment of registration (article 29). The associations are social organizations that follow a political, scientific, cultural, sportive, religious, charitable or any other non-commercial scope (article 39).

1037. The will of the parties for the establishment of the association is determined in the relative by-laws which shall be drafted in writing and contain:

- name and scope of the association, legal seat and the territory of its activity;
- the conditions of admission and expulsion of members, and their rights and duties;
- managing bodies of the association, their appointment and competencies;

- term, mode of convocation and competencies of the general meetings;
- financial sources and the contributions or fees due by each member;
- procedure of amendment of the by-laws and the termination of the association (article 40).

1038. The association is recognized as a legal entity from the day the district court has granted its approval and registered. Until such day the founders may perform the activities necessary to the organization, especially the convocation of the founders meeting and appointment of the managing bodies (article 42).

1039. The association may establish branches in various districts where the number of members determined in the by-laws resides (article 43). The admittance of new members, who meet the necessary criteria, is permitted at any time. The right of withdrawal is guaranteed under the condition that the request is submitted at least six month prior of the calendar year or within the term provided in the by-laws (article 48).

1040. Membership rights in the association may not be alienated or transferred through inheritance (article 49).

1041. Termination of the association is done:

- (a) by decision of the general meeting especially convoked;
- (b) when the number of its members is below the number determined in the by-laws or when its object is fulfilled or is impossible to fulfil;
- (c) in case of insolvency;
- (d) by decision of the competent court when the association is operating far from its object determined in the by-laws or is engaged in illegal activities (article 52).

1042. With regard to the foundations determined as a special form of legal entity, they are established for a specific object socially beneficial. Individuals or legal entities, local or foreigners establish foundations. They are constituted by a public deed or testament (article 54).

1043. The constitutive act of the foundation, on request of the founders, is registered in the district court where its legal seat is located. In the constitutive act are determined the names of the founders, object, financial sources and assets (money, securities and other movables or immovable), managing body, their competencies and names of the administration body (article 55). The foundation becomes legal entity from the date of its registration. Foundations may not exercise lucrative activity (article 56).

1044. Law no 8788, dated 7.5.2001, "On non-for profit organizations", determines the rules for the establishment, registration and activity of the non-for profit organization, which follow socially beneficial activities (article 1).

1045. According to the law, by “Non for profit organization”, is meant associations, foundations, centres, whose activity is exercised independently from the state. Trade unions, political parties and other non-for profit organizations whose activity is regulated by special law, are not subjects of this law. Anyone has the right of a collective organization, without need for registration as a non-for profit organization (article 3).

1046. Any individual or legal entity, local or foreigner, has the right to establish a non-for profit organization, to be its member or participate in the managing bodies or administrative personnel of the organization (article 4).

1047. Non-for profit organisations are independent from state interest and public administration (article 6). The state supports and encourages the activity of the non-for profit organizations. Law determines the support of the state to the non-for profit organizations. The state authorities do not interfere with the activity of the non-for profit organizations. The restriction or limitation of the activity of the NGOs is done only in the cases provided by the law.

1048. Depending on the organization the NGOs are divided in NGOs with membership and without membership. NGOs without membership are considered the foundations and centres.

1049. Depending from the place of registration the NGOs are divided in local NGOs established and recognised according to the Albanian law and foreign NGOs, which are established and registered in another country.

1050. Article 13, the NGOs, subject of the present law; gain the personality following their constitution and registration with the court according to the law. Same registration procedures also apply to branches of foreign NGOs. The founders of the NGO approve the constitutive act and by-laws and may authorize one or more individuals to complete the registration procedures. The above procedure does not apply for foundations established by testament. Such foundations, if in compliance with the requirements of law, shall be registered according to the general rules of the testamentary execution.

1051. The NGO is recognised as legal entity from the day the court decision on the registration has become effective. The NGO terminates the day the court decision on the termination becomes effective (article 14).

1052. Foreign NGOs may temporarily or permanently operate in Albania, observing the Albanian legislation and functioning similarly to the Albanian NGOs. Foreign NGOs, for their operation in Albania, may establish NGOs or branches according to the Albanian law (article 29).

1053. Except when is differently provided in bilateral or multilateral agreements, the foreign NGOs, in order to exercise temporary activity, on their request, obtain only the preliminary consent of the state authority, which exercises its activity in the same or similar field with the foreign NGO. The consent is granted within a month from the day of the submission of the request. If not the consent is considered granted. The denial may be appealed in front of the court within thirty days from notification. Temporary activities for less than 30 consecutive days do not need temporary permission (article 30).

1054. Foreign NGOs who wish to exercise temporary activity, in addition to the other requirements of law, as well as the obtainment of the temporary permission by the competent state authority, attached to the request shall present the following documents:

(a) Documents certifying their personality as NGOs in the country of origin.

(b) Declaration of the NGO certifying that its activity in Albania is in compliance with the object of the NGO and the laws of the country of origin.

1055. The accompanying documents issued in foreign countries shall be authenticated and sealed by the foreign competent authority as well as translated in the Albanian language and authenticated by a public notary (article 31).

1056. Foreign NGOs who wish to establish a branch in Albania, attached to the request for registration in the court shall submit copies of the constitutive act, by-laws and resolution of the competent body for the establishment of the branch in Albania. The accompanying documents issued in foreign countries shall be authenticated and sealed by the foreign competent authority as well as translated in the Albanian language and authenticated by a public notary (article 32).

1057. Foreign NGOs have the same rights and duties as local NGOs, exception made when differently provided by the law or international agreement.

1058. The court may decide upon the termination of the NGO on request of its members, managing bodies, competent state authority in case its activity violates the Constitution, the NGO engages in illegal activity, NGO is not established according to the requirements of law or the NGO has gone bankrupt according to the law on bankruptcy.

1059. Except for the cases when the activity of the organization constitutes a serious danger for the public, in general the court shall notify in writing the organization for the violation of law and grant 30 days for the necessary adjustments (article 44).

### **Non Profit Organizations NPO**

1060. The Law no. 8788, dated 07.05.2001 "On non-profit organizations" and the Civil Code of the Republic of Albania, regulates the foundation and functioning of non-profit organizations. As non-profit organizations are defined the Foundations, Centres and Associations.

#### **1. Foundations**

1061. According to the above-mentioned laws the nonprofits foundations are formed to achieve specific, socially beneficial purposes. These laws do not expressly recognize lending, as a socially beneficial purpose for which foundations may be formed. However, no other provisions expressly prohibit foundations from engaging in lending activities. One or more individuals, local or foreign, may found foundations.

2. Associations

1062. The membership - based associations are established to achieve various “non-profit goals”. As to Foundations, the laws do not expressly specify lending, as a “non-profit goal” for which an association may be formed. Similarly, no other provisions expressly prohibit associations from engaging in lending activities. At least 5 individuals or 2 legal entities, local or foreign, may found associations.

3. Centres

1063. The law on NPO provides another form called Centre that may be structured like foundations (without a membership class), which provide services or implement programs for public benefit. One or more individuals may found centres.

**Commercial companies**

1064. Law No. 7638, dated 19.11.1992 “On Commercial Companies” is the basic legislation governing the registration of companies and businesses in Albania.

The Law provides 4 forms of companies:

1. General Partnership;
2. Limited Partnership;
3. Limited Liability; or
4. Joint Stock.

General Partnership

1065. General partnership is considered the simplest form of business organization. Under a general partnership, all partners are jointly and severally liable.

Limited Partnership

1066. In a limited partnership there are both limited and general partners, the former are liable for partnership obligations only up to the value of their investment in the partnership. No minimum capital is required to establish a limited partnership.

Limited Liability

1067. Limited Liability company (SHPK) is the most common Albanian corporate form and partners are only liable up to the value of their contribution to the company. Albanian law requires a minimum capital investment of 100,000 lek (approximately USD 950) for the establishment of a SHPK. An Albanian limited liability company may not issue shares.

### Joint Stock Company

1068. Joint Stock Companies (SHA), which mean societate anonime (SA), can be public or limited by shares. The minimum capital investment required to establish a ShA depends on whether shares will be publicly offered. A Joint Stock Company offering shares requires a minimum initial capital of 10 million lek (USD 85,000), whereas a ShA that will not offer shares requires a minimum initial capital of only 2 million lek (USD 16,000).

1069. The number of shareholders is unlimited. A sole shareholder can also establish it. A company obtains legal status when registered with Tirana Court of First Instance. But in addition, under the law No.7804, dated 01.03.1994 “On the Chamber of Commerce and Industry” a company must be admitted as a member of the Chamber of Commerce and Industry.

1070. According to law no 7892, dated 21.12.1994, “On Sponsoring”, the sponsor earns up to 4% of the gross profit if it is established as major business. Minor businesses receive a deduction up to 1% of the taxable income.

1071. The tax facilities provided above are applied by the tax authorities based on the documents provided by the sponsor as follows:

- Juridical act (contract).
- Documents certifying the realization of the sponsorship.
- In case of irregularities, withhold by the sponsor of the sponsorships provided in the contract, are applied the sanctions provided by the tax legislation in force.

### **Non-governmental organisations dealing with human rights**

1072. A great number of NGOs focuses on human right protection, or in particular in the protection of the rights of women, children, in the education field, healthcare etc. As an example of NGOs dealing with human right we can mention Albanian Helsinki Committee, Albanian Centre for Human Rights, Albanian Human Rights Group etc. In the First Instance courts there have been registered around 100 (year 2000) national organizations and NGOs that deal with problems of gender equality. Their field of activities varies from the birth control programs, standing on the top, to the legal assistance and advising, awareness of gender issues, home violence etc.

- The Independent Forum of Albanian Women was established in September 1991 as a non-religious NGO spread all over the country. The object of said organization is the protection of women rights, awareness of the women on their rights and their role in the family and society, controversies and abuse, religious and racial diversity etc. IFAW has implemented many projects on the above issues.
- The Albanian Organization on Birth Control is established since 1993 as an NGO, as one of the main organizations dealing with the issues of the reproductive health in Albania, including birth control. Within such organization works a group of young people called the Youth Group and 2 trainers. Through three centres of birth control

established in Tirana, Durres and Lezha, they offer free advises and assistance for birth control. Also, since the women centre was established in Vlora in 1998, they offer legal and psychological assistance. The NGO has a wide variety of publishing's. Near the centre is established a rich library.

- The network of Millennium Women and the Albanian Federation of Women deals with issues of women and children rights, health promotion, the establishment of a network of the NGOs and their collaboration. They have a broad experience in relation with the activities for the promotion of the women participation in the decision-making process.
- The same success is also attributed to the Women's NGO "In benefit of the Albanian woman". This NGO is focused on issues concerning the trainings on employment issues, in the economic aid necessary for the woman and children, prevention of the trafficking of human beings etc.
- The group of NGOs called the "Hearth of the Vlora women" is working in collaboration with the public institutions on the improvement of the legal ground related to the trafficking of human beings.
- The Women Law Centre established since November 1997, offers free counsel and assistance for the abused women and women who could not obtain other assistance.
- One of the first NGOs established in Albania is "Reflections" dealing with issues concerning violence towards women. Many projects were transformed in successful NGOs such as the Woman Centre offering trainings and information on women, "The abused women line" and the establishment of the facilities for their accommodation. Violence within families was covered for the first time in 1995, in an awareness campaign from the NGO Reflections. Partial data shows that over 63.7% of the married women are abused psychologically, physically or sexually and indirect reports show that only 5% of the abuses are reported. The establishment of the first centre for the abused women (December 1998) on Albania is an example of the need for institutions caring on the victims of abuse.

1073. The general tendency of the women to gather in independent organizations (not related to the political parties) developed since 1990 as a reply to the transition and also as a need to draw attention of the government towards the marginalized groups and their difficulties in the changing society.

1074. In the first period after the fall of communism (1990-1995), the involvement of women in NGOs was spontaneous and there was no mid term or long term strategy. During the last years there has been noticed a general maturity of the women organizations (1995-2000). The women organizations started to provide social services to most of the marginalized groups (children, women carrying the family, the elderly and the disabled). It should be mentioned that most of the women organizations are established in Tirana whether in other districts the level is low. Many of the women organizations have a general object and not specific and also have problems in the analytical evaluation and fund raising.



1075. With regard to the human resources management, the women NGOs, compared with other NGOs have reached a distinctive level of voluntary work. Often the voluntary work required by the NGOs is compared to the voluntary work which people were obliged to perform during communism. For such reason 36% of the people do not wish to perform voluntary work for NGOs.

1076. In Albania there is a large and developed network of NGOs that deals mainly with the problems of children and their rights. The Civil Code of the Republic of Albania provides the procedures for the establishment of an NGO. Such provisions are the sole relation between the state and such NGOs, considering the fact that their activity is totally independent. The following is a list of the NGOs and their activity:

- Centre for the Protection of the Children's Rights in Albania - mainly deals with the children rights.
- Association Friends of the Talented Children - mainly oriented in the field of the talented children and culture.
- Hope of Tirana Children - a local NGO, which focuses on the improvement of the life conditions of the abandoned children.
- National Union for the Human Rights in High Schools.
- The Albanian Orphans Association - a national association, which focuses on juvenile working orphans, women etc.
- The Teachers of Human Rights - a local association from Vlora, which deals with the teaching of the human rights in schools.
- The club of young painters "The Heart of the Lake" - a local association focused on the assistance provided to minors from 8-14 years for the development of their painting talent.
- The Albanian Union of Marionettes and Children Theatre - focused on the show presentations in kindergartens and schools.
- Serving the Future - Local association oriented in the field of protection of the children rights.
- Aid for the Children - a local association for the protection of the abandoned children rights in the city of Korca.
- Our Children - local association (Burrel) that attempts, in collaboration with the parents to assist in the return of the children who have abandoned school.
- Help the Children - a local association (Lac) focused in the field of labour, education, health and social economic issues of the children.

- The Organization of the Book for Young and Children - a local association of Tirana for the encouragement of the children and young to read, exchange cultures, tolerance and collaboration between the new generations in Tirana.
- Tirana Basket Association - a local association (Tirana) focused on the coaching of mini-basket for kids.

1077. In addition to the abovementioned associations, there is also a network of NGOs, which do not focus mainly on children issues but, nevertheless, sporadically implement projects and activities for the children.

1078. The Ministry of Labour and Social Affairs, the Woman and Family Committee, Ministry of Education and Science, Ministry of Local Government and Decentralisation, collaborate with NGOs dealing with children rights issues in various projects in interest of the children. In this context there are established 10 institutions administered by foundations and associations, which have contracts with the Albanian Ministry of Labour and Social Services.

1079. In the field of the struggle against torture and health care, it is worth mentioning the Albanian Centre for the Rehabilitation of the Traumas and Torture with which the Ministry of Health, Ministry of Public Order, Ministry of Education and Science, State Institute on Integration, General Directorate of Penitentiaries, Tirana University have signed a formal agreement for the improvement of the work with individuals suffering from psychological disorders, victims of torture and other traumas.

### **Political parties**

1080. The right to establish political parties is provided by article 9 of the Constitution, which determines that the political parties may be freely established. Their organization should be in compliance with the democratic principles. Political parties and other organizations, whose programs and activity is based on totalitarian means, that encourage and support the racist, religious, national or ethnic hatred, that use violence for the overthrow of the constituted power or to influence the policies of the state, as well as those with an hidden identity, are banned. The financial resources of the parties and expenses are always published.

1081. According to law no 8580 dated 17.02.2000 "On Political Parties", the political parties are voluntary gathering of individuals based on the ideas, opinions or common political interests, who aim to influence the politics of the country through the participation in the elections and representation of the people in the elected authorities.

1082. The Albanian political parties are part of a free democratic governing system. Their establishment and activity is free and guaranteed by the Constitution (article 3). The activity of the political; parties may spread all over the territory of the Republic of Albania or in particular districts of the country (article 5).

1083. The registration of the political parties is done in the District Court of Tirana that holds the register of political parties. In the register is registered the serial number of registration, number of the act, number of the court decision, date of publication, content of the decision, full name of the party, initials, the symbol, description of the seal configuration, name of the

chairman, annotations on the change of name, seal configuration or chairman, termination of the activity, date of annotation and signature if the competent employee. The political party is recognized as legal entity from the date of registration. Until the date of registration the founders may perform necessary activities such as convocation of the meetings of the founders and appointment of managing bodies, but may not act as a political party (article 9).

1084. Following to the approval of the political party documents, by-laws, program and managing bodies, the request for registration shall be submitted to the court. The petition for the registration of a political party should be signed by not less than 500 people, Albanian citizens, founding members, with residence in the Republic of Albania (article 10).

1085. The decision of the court on registration may be appealed in front of the Appeal Court within 15 days from the publication. The state assists materially the political parties during their establishment. The aid is granted immediately following the registration and amounts to 100.000 Lek.

1086. The state helps the activity of the political parties by offering the free use of the public mass media in case of electoral campaigns and referendums and providing to the parliamentary parties a legal seat and district offices. In case this is impossible the state pays the rent (article 22).

1087. The political party is dissolved:

1. in case of merger with other parties;
2. in case of division in two or more parties bearing new names;
3. when it self-terminates in compliance with the provisions of the by-laws;
4. when the number of members is below the required number by the law or by-laws;
5. when its activity is prohibited by a decision of the competent organ;
6. The decision on the termination of the political party is deposited in the Tirana district court. Such court decides on the de-registration of the party and liquidation procedures (article 26).

#### **Statistics on the results of the 2001 parliamentary elections**

Socialist Party	73 seats	41.513%
“Union for Victory”	46 seats	36.809%
Democratic Party (R)	6 seats	5.087%
Social-Democratic Party	4 seats	3.645%
Human Rights Union Party	3 seats	2.614%
Agrarian Party	3 seats	2.568%
Democratic Alliance Party	3 seats	2.547%
Independent	2 seats	-

Deputies according to proportional list:

“Union for Victory”	21 seats
Democratic Party (R)	6 seats
Social-Democratic Party	4 seats
Human Rights Union Party	3 seats
Agrarian Party	3 seats
Democratic Alliance Party	3 seats

Deputies according to sex:

Men	132 deputies
Women	8 deputies

Deputies according to age:

Average Age	52 - years
Oldest Deputy	70 - years
Youngest Deputy	25 - years

Deputies according to profession:

Jurist	6 deputies
Economist	29 deputies
Teacher	77 deputies
Engineer	17 deputies
Medical Doctor	16 deputies
Agronomist	9 deputies
Journalist	9 deputies
Artist	6 deputies
Writer	3 deputies
Archaeologist	4 deputies
Military Officer	3 deputies
Others	11 deputies

Qualifications and scientific degrees:

Professor	6 deputies
Doctor-Professor	7 deputies
Assistant. Doctor-Professor	5 deputies
Doctor of Sciences	31 deputies

Members of the Government	19 deputies
Deputies elected in two legislatures	29 deputies
Deputies elected in three legislatures	18 deputies
Deputies elected in four legislatures	19 deputies

### **The right to form and join trade unions**

1088. According to article 50 and 51 of the Constitution, the employees have the right to join trade unions for the protection of their labour interests. The right to labour related strike is guaranteed. Limitations for special categories of employees may be determined by law for the guarantee of the necessary public utilities.

1089. The requirements for the establishment of trade unions are provided in articles 177-179 of the Labour Code. The court may not demand other requirements, and especially may not impose conditions not in compliance with the fundamental human rights guaranteed by the Constitution and article 181 of the Labour Code.

1090. Trade unions are social organizations, constituted as voluntary association of employees, aiming the protection and representation of the economic, social and professional rights and interests of the members. The organizations of employers or employees have the right to constitute federations, confederations and be part of them. Any organization, federation or confederation has the right to be member of international organizations of employers or employees. Pensioners and unemployed may be registered in the employee's organizations (article 176).

1091. With law no 9125 dated 29.07.2003 the above article changes as follows, trade unions and the employers associations are professional organizations. The professional organizations of the employers and employees are social, independent organizations established as voluntary unions and whose objective is the protection and representation of the rights and economic, social and professional interests of the members.

1092. The organizations of employers or employees have the right to constitute federations, confederations and be part of them. The voluntary association of two or more professional associations constitutes federations. The voluntary association of two or more federations constitutes the confederation. Any organization, federation or confederation has the right to be member of international organizations of employers or employees.

1093. The trade unions, federations and confederations shall submit their by-laws in the Tirana District Court for their recognition as legal entity. The organization becomes legal entity 60 days subsequent to the submission of the by-laws in the Tirana District Court, exception for the cases when the court decides on the contrary (article 178).

1094. The trade union is freely organized and administered and drafts its program. Every trade union shall act in compliance with the law. The discrimination towards trade union representatives is forbidden (article 181). Any employee's organization recognized as legal entity may address the court for the protection of the interests of its members and the fulfilment of the collective contracts (article 182). It is forbidden the intervention of the state authorities or employers association during the establishment, activity or administration of the trade union (article 184).

1095. With law no 9125 dated 29.07.2003 the above article changes as follows, it is forbidden the intervention of the state authorities during the establishment, activity or administration of the trade union. It is forbidden the intervention of the employers association during the establishment, activity or administration of the trade union.

1096. The state authority does not interfere in cases of limitations of the rights provided by article 182 of this Code or that their exertion, exception made for the violations of law. The trade union may direct the court for the prevention of any interference or threat (article 185).

1097. Are considered as interference of the employer or an employers organization the following:

(a) encourage the establishment of trade unions influenced by one employer or an employer's organization or that support financially or by other means the trade unions aiming the submission of such organization to one employer or employers organization.

(b) obstacle the establishment, activity or administration of a trade union".

(c) damage the employer based on its membership in a trade union, by discrimination (article 186).

1098. The termination of a trade union is done in accordance with the provisions of the by-laws. On request of the Minister of Labour or any other authority determined by the law, the Tirana District Court may decide the termination of the trade union, in case of evident violations of law (article 187).

1099. According to law no 9125 dated 29.07.2003, the right of strike is guaranteed by the constitution of the Republic of Albania. Trade unions have the right to exercise strike for the solution of their social and economic requests in compliance with the provisions of the Labour Code. Participation in strikes is voluntary. No one may be obliged to participate in a strike against his will.

1100. It is forbidden any action aiming the constriction, harm or discrimination of the employees because of their participation in the strike. During the strike the parties shall enter negotiations for the resolution of the controversies and execution of an agreement. Only trade unions may organize a strike.

1101. Use of force for the interruption of a legal strike is prohibited. The employees associations shall endeavour peaceful actions to convince the employees to participate in the strike, without harming the right to work for the employees who wish to work. The employer may not substitute the strikers with other personnel who did not work for him and may not employee new personnel during the strike.

1102. The strike is legitimate when meets the following criteria:

- Is organized by a trade union that is a legal entity or is part of a trade union that is a legal entity.
- Aims to execute a collective work contract or, if such contract exists, the fulfilment of the requests that derive from work relations and that are not regulated by such contract, exception for the case when such contract provides for the full payment of the wage according to article 169/2.
- The trade union from one side and the employers associations from the other have tried to reach an agreement, applying the conciliation procedures.
- Does not violate the law.
- Strikes may not be organized, or shall be suspended, in case of an extraordinary situation until such situation continues.

1103. There are considered extraordinary situations:

- Natural disasters;
- War situation;
- Adoption of extraordinary measures;
- Cases of hazard to the freedom of vote.

1104. The strike may not be exercised in vital sectors, where the interruption risks the life, personal security or health of part or entire population. In such case the collective controversies are solved according to article 196 of the Labour Code.

1105. There are considered services of vital importance:

- (a) necessary medical and hospital services;
- (b) water supply;
- (c) electric supply;
- (d) air traffic control;
- (e) fire prevention services;
- (f) penitentiary services

1106. The strike may not be exercised if the minimal services are not guaranteed. The minimal services may be required in the services sector, for the fulfilment of vital importance to the population. For the minimal services preservation the trade unions shall appoint a number of

employees in charge for the preservation of the work assets. The above employees are determined through a mutual agreement between the trade union and employer. When the mutual agreement may not be reached, an arbiter chosen by the Minister of Labour and Social Issues or the authorized authority definitively solves the controversy. The arbiter shall decide within 24 hours from its appointment. The solidarity strike is deemed to be legal in case it supports a legal strike against one employer.

1107. When the strike is illegal, the employer may terminate the work relation with the strikers. He has the right to terminate the work contract with all employees who do not start work within three days and to ask them the payment of damages. In such case the provisions on the termination of the work contract do not apply.

1108. The request for reimbursement of damages may be presented also to the trade union organizing the strike. When the strike is accompanied with illegal actions the parties may direct the court that determines the responsibility of the parties, their future actions, determines the damage and the obligations of the parties. If the circumstances permit, the court may order the re-establishment of work. The strike terminates when the parties reach an agreement or when the trade union decides to stop it.

### **Trade unionism during 1991-2003**

#### **Particularities of trade union movement after 1990**

1109. As in other Eastern European countries, in 1990 in Albania the communist regime was overthrown and pluralism was established. Such changes made possible the establishment and consolidation of real trade unionism.

1110. In 29.04.1991 the Parliament passed the law "On Trade Unions in the Republic of Albania". Article 1 of such law provides that "Trade unions are social organizations, constituted as voluntary association of employees, aiming the protection and representation of the economic, social and professional rights and interests of the members. The organization and activity of trade unions is free and guaranteed by the law". Article 4 of said law provides that: "Trade unions are established on request of 300 employees and approval of the Ministry of Justice".

1111. Following the adoption of the Labour Code of the Republic of Albania, the provisions of the above law were included there.

1112. Based on data from the Ministry of Labour and Social Affairs, in 2001 were registered the following trade unions:

- Trade union Federation of education and science
- Independent trade union of Albanian Miners
- Federation of the textile, artisan, glass and porcelain worker trade unions
- Agricultural workers trade union
- Federation of the construction workers trade union



- Federation of the miners, geologists and energetic workers trade union
- Federation of the construction workers trade union
- Agricultural and food trade union
- Albanian Healthcare trade union
- Independent trade union of the civil workers of the order protection
- General Confederation of the Albanian Workers
- The trade union of the transport workers
- The federation of independent trade unions of the Albanian transport
- Federation of independent trade unions of trade
- General Union of the Albanian trade unions
- Independent trade union of the oil industry
- Independent trade union of the oil industry workers
- Oil trade union Vlora
- Independent trade union of the flour-bread workers
- Independent trade union of textiles
- Independent trade union of the post and telecommunication
- Federation of the Trade Unions of construction and wood in Albania
- Independent trade union of the healthcare
- Independent trade union of education
- Trade union of construction wood and communal services
- Trade union of the unemployed and pensioners of Albania
- The Agriculture trade union federation
- General federation of transport trade unions
- Independent trade union of the communal service of Albania
- Independent trade union of the Culture

- Independent trade union of the water supply of Albania
- Independent trade union of the healthcare services
- Independent trade union of trade
- Independent trade union of the tourism in Albania
- Independent trade union of the artisans of Albania
- Independent trade union of the mines and metallurgy of Albania
- Trade union of oil refinement industry
- Independent trade union of the light industry and textile
- Federation of the independent trade unions of the civil workers of defence
- Union of the Albanian workers trade unions
- Independent trade union of the food industry workers of Albania
- Independent trade union of the education in Albania
- Independent trade union of the post-telecommunication
- Independent trade union of the transportation
- Independent trade union of the pensioners
- Federation of the trade union of construction workers of Albania
- Federation of the trade unions of the wood construction in Albania
- Central trade union of oil in Mallakstra
- Union of independent trade unions of Albania
- Albanian trade union confederation
- United trade union of the workers of Durres
- Trade union of the mechanical industry workers of Albania
- Independent trade union of the chemistry in Albania
- Union of trade unions of Albania
- Independent trade union of the artists in Albania

- Independent trade union of the electro energetic in Albania
- Trade union of Lushnja workers
- Independent trade union of the typography
- Federation of trade union of trade, banks, and services
- Independent trade union of the civil workers in defence and public order
- Independent trade union of the train transporters
- Federation of the independent trade union of the employees
- Independent trade union of the Centre Oil Production, Kucova.

In the following years (from 2001) are established some other federations of trade unions.

**Declared members of various trade unions**

1113. *Declared members (sympathizers) in thousands:*

Sector	Total	Two Confederation	BSPSH	KSSH	Other trade unions
A. Employees	177	164	80	84	15
(a) public and private non agricultural sector	159	149	75	74	10
1. Public sector	111	104	49	55	7
2. Private sector Non agricultural	48	45	26	19	3
(b) Farmers	18	15	5	10	3
B. Pensioners	28	26	10	16	2
Total	205	190	90	10	15

*Source:* Institute of trade union studies.

*Real members (paying membership fees) (in thousands)*

Sector	Total
A. Employees	59
(a) Public and private non agricultural sector	55
1. Public sector	32
2. Private non agricultural sector	23
(b) Private farmers	4
B. Pensioners	4
Total	63

*Source:* Institute of trade union studies.

*Specific influence of declared and real trade union members in percentage*

Sector	Declared members	Members who pay membership fees
A. Employees	19.2	6.4
(a) Public and private non agricultural sector	59.6	17.2
1. Public sector	23.1	11.1
2. Private non agricultural sector	40.4	14.0
(b) Private farmers	3.4	1.0
B. Pensioners	9.8	1.4

*Source:* Institute of trade union studies.

**Participation of women in trade unions***Specific influence of women in declared members of trade unions*

Name	Specific influence of women (%)
1. Mines and metallurgy	29
2. Energetics	8
3. Chemical Industry	6
4. Oil Industry	9
5. Light industry	54
6. Food Industry	54
7. Construction	8
8. Transportation	6
9. Post-telecommunication	35
10. Trade	39
11. Services	24
12. Banks	43
13. Typography	60
14. Education	29
15. Healthcare	69
16. Civil in Defence etc	34
17. Civil servants	18
Total non agricultural sector	28

*Source:* Institute of trade union studies.

**Participation of women in trade unions (in percentage)**

Branches and sectors	BSPSH	KSSH	Others
1. Mines etc	10	40	20
2. Oil	20		
3. Energetics	20		
4. Chemical	60	10	
5. Light industry	82	70	
6. Food industry			70
7. Agriculture	10	30	30
8. Construction	10	12	
9. Transport		8	10
10. Telecom		70	
11. Trade		60	40
12. Education	70	70	
13. Healthcare	80	76	
14. Defence	40	38	40
15. Pensioners	8	40	
16. Banks			60
17. Services			40
18. Typography			
19. Mechanical Industry			
20. Art			30

*Source:* Institute of trade union studies.

The specific influence of women in trade unions is 28% compared to men with 40%.

*Constitution in percentage of the members of BSPSH (Union of the Independent Trade Unions of Albania) according to group ages (1998)*

Age group	Influence in %
18-25	13
26-35	28
36-45	32.5
46-55	21
56 and up	5.5
Total	100

*Source:* Institute of trade union studies

1114. The federation of trade unions may gather in confederations. In Albania operate two confederations of trade unions, the Union of the Independent Trade Unions of Albania (BSPSH) and the Confederation of the Trade Unions of Albania (KSSH).

## Article 23

### Protection of the family, the right to marriage and equality of the spouses

1115. According to the Constitution, article 53, every individual has the right to get married and have a family and that marriage and family get special protection by the state. Since its establishment, the Social Assistance Programme played a decisive role not only in the rural areas, but also in the urban ones. The reason of operating in such areas is the existence of small farms and numerous unemployed people. The Programme has been designed to shift revenues to those families which had no income or insignificant such and did not qualify for the unemployment cash benefit. During 1997, it was estimated that 21% of the population (out of which 50% lived in the urban areas) benefited from the social assistance cash benefit (this is the year during which the delivered cash benefit reached the highest amount).

1116. In October 1991, law no. 7521 provides one-year unemployment cash benefit to the ones who became unemployed due to the economic reforms. Law no. 7579, of July 1992 foresees some additional provisions. Ever since the unemployment cash benefit is delivered (for a maximum period of up to one year) only to the ones who have paid the social insurance contributions for at least 12 months. Statistical data show that the number of population benefiting from the unemployment cash benefit in relation to the registered unemployed population has decreased since 1993. This shows that unemployment in Albania is a phenomenon, which requires more time to be smoothened. In addition, the Ministry of Labour and Social Affairs points out that there is a wide spread phenomenon that employees are employed without appropriate labour contracts.

### Total families and total family protection fund

#### By family structure (1994-1999)

(End of period)

Families by structure	1994	1995	1996	1997	1998	1999
Total families (No.)	145 002	134 872	144 376	145 956	139 850	149 220
- with 1 member	12 194	10 725	10 617	10 457	9 780	9 605
- with 2 members	20 446	18 800	19 381	15 964	15 069	14 870
- with 3 members	29 066	28 243	29 649	28 639	26 690	25 982
- with 4 members	33 387	33 206	36 195	41 786	40 561	43 497
- with 5 members	20 970	19 772	21 875	23 338	22 803	26 418
- with 6 members	13 146	11 521	12 510	12 749	12 509	14 193
- with over 6 members	15 793	12 605	14 149	13 023	12 438	14 655
Total fund (in thousand leks)	3 241 357	3 206 204	2 448 088	3 158 175	4 578 839	4 500 462
- with 1 member	162 308	165 753	120 882	158 284	223 948	212 542
- with 2 members	389 410	407 816	264 459	289 114	390 345	361 966
- with 3 members	629 403	660 472	477 678	577 904	792 003	711 144
- with 4 members	816 135	869 037	708 809	1 009 392	1 427 479	1 396 731
- with 5 members	513 486	498 335	408 971	543 231	821 541	845 256
- with 6 members	320 440	276 679	214 312	278 309	447 384	470 409
- with over 6 members	410 175	328 112	252 977	301 941	476 139	502 414

**Total families and fund of social family protection****By type and administrative division**

Families by structure	1994	1995	1996	1997	1998	1999
Total families (No.)	145 002	134 872	144376	145 956	139 850	149 220
of which:						
- Partial payment	81 615	71 614	79 204	72 685	73 743	85 639
- Full payment	63 387	63 258	65 172	73 271	66 107	63 581
- In communes	83 949	73 691	81 999	71 419	71 917	81 293
- In municipalities	61 053	61 181	62 377	74 537	67 933	67 927
Total fund	3 241 357	3 206 204	2 448 088	3 158 175	4 578 839	4 500 462
(in thousand leks)						
of which:						
- Partial payment	1 380 087	1 205 300	892 565	1 022 885	2 755 393	1 966 909
- Full payment	1 861 270	2 000 904	1 555 523	2 135 290	1 823 446	2 533 553
- In communes	1 536 262	1 310 058	971 753	1 094 000	1 810 183	1 882 281
- In municipalities	1 705 095	1 896 146	1 476 335	2 064 175	2 768 656	2 618 181

**Disabled that benefit from social protection  
and total fund of disability benefit  
(1995-1999)**

(end of period)

	1995	1996	1997	1998	1999
Total (No.)	16 739	19 159	18 703	25 647	30 692
- In municipalities	6 049	6 733	8 173	10 983	13 454
- In communes	10 690	12 426	10 530	14 664	17 238
Total fund	271 196	581 718	746 881	1 347	1 511
(in thousand leks)				427	518
- In municipalities	100 668	215 624	332 123	613 162	666 276
- In communes	170 528	366 094	414 758	734 265	845 242

**Families receiving cash benefit  
in thousands**

	2000	2001	2002
Total families	147	143	132
1 member	9	9	9
2 members	15	13	12
3 members	24	22	19
4 members	44	43	39
5 members	27	27	26
6 members	14	15	14
More than 6 members	14	14	13

**Families receiving cash benefit by prefectures  
in thousands**

	2000	2001	2002
Total	147	143	132
Berat	13	12	11
Dibër	19	18	18
Durrës	4	4	3
Elbasan	19	19	18
Fier	7	7	6
Gjirokastrë	3	3	3
Korçë	13	13	11
Kukës	14	14	13
Lezhë	10	10	9
Shkodër	25	24	22
Tiranë	16	16	15
Vlorë	4	3	3

1117. The Social Insurance Institute established in 1995 subsidises the pharmaceutical products for the population which is covered by its scheme (all citizens and international residents); the employer's contribution at 34.2% of the nest. This insurance covers free medical services (family doctor) and the subsidies for the purchase of certain defined pharmaceutical products. The group, which benefits from the total payment of the contribution, comprises children from 1 to 6 years of age, students, individuals who receive the cash benefit and the unemployment benefit, pensioners, disabled, pregnant women up to one year after the delivery day and the military personnel. The disabled, pensioners and cancer & TBC patients benefit 100% of the subsidy.

**Right to marry and to found a family**

1118. The Constitution, Family Code and Civil Code guarantee equality in marriage and in the family life. Marriage and its separation (up to January 1st, 2004 when the new Family Code comes into effect) are regulated by the Family Code (law no. 6599 dated 29.06.1982) and the by the provision of the Civil Code. According to article 6 of the Family Code, the family members enjoy equal rights and obligations in the family. This article specifically guarantees equal rights between spouses in a marriage.

1119. According to article 13, both spouses should desire to get married. Article 22 envisages that when one of the spouses has been obliged to get married, then the marriage is not acceptable. Article 26 envisages the right to decide independently on the family name of each of the spouses to retain after the marriage. This has to be decided at the moment of registering the marriage at the Civil Status Offices with the presence of both spouses. The decision on the retained family name is taken based on an official paper.



### **Free and full consent of intending spouses**

1120. The new Family Code, approved by law no. 9062, dated 08.05.2003, envisages that the marriage, as a legal co-living, is based on a molar and juridical equality of spouses; it is based on love, respect and a reciprocal understanding are the basis of the family unity. Marriage and family enjoy the special protection from the state (article 1).

1121. The marriage can be a relation between a woman and a man who have reached the age of 18 years. The Court of the city or town where the marriage has been established can accept the marriage before this age, only due to some important reasons (article 7). Marriages are established in front of the civil status official, with the free acceptance of both future spouses (article 8). A person who is already married cannot establish another marriage, till the previous one has not been declared as of any value, or has not been broken (article 9).

### **Equality of rights and responsibilities of spouses**

1122. In a marriage relationship, both spouses enjoy equal rights and take over equal obligations. Marriage leads to the reciprocal obligation of loyalty, moral and material support, of co-operation for the family benefit and co-living (article 50). Spouses cannot avoid the rights and obligations deriving from the marriage, as well as the parenthood responsibilities and the rules of legal administration and tutorship (article 67). At the marriage contract, the spouses can change the legal aspect of it through an agreement, which should not come in disagreement with articles 66 and 67 of this law.

1123. The spouses can come into agreement that:

- the unity may incorporate the mobile estate before the marriage as well as the profits from the personal estates during the marriage;
- rules are changed in regard to the administration;
- they both can have equal shares;
- universal unity exists between them.

1124. The rules of the legal unity remain applicable for all the points, which have not been incorporated in the marriage contract between them (article 108). Co-living is a factual unity between the man and woman who live as a couple, characterised by a common, stabilised and continuous life (article 163).

1125. The persons living together can have an agreement in the presence of a notary, where they can define the consequences deriving from the common living in relation to the children and the properties during the common life (article 164).

1126. The provisions of the Family Code (2003) have regulated the property during the marriage (articles 86 and 87). According to article 86, the mobile estate, bank deposits and every profit gained by the spouses during the marriage (excluding the personal properties) become

joined property. Joined property implies that the shares of each spouse are equal, until the contrary has been proved based on relevant criteria. Spouses enjoy equal rights towards the joined property. This holds true even when one of them has been dealing with house works.

1127. Although the woman would normally go to live at the husband's house (which is not a property established during the marriage), quite often the woman would not claim her share for the house. The number of marriages in 1996 was the same with 1986, 8.4 marriages in every one thousand inhabitants, at a time when in 1994 there was a 30% decrease compared with 1990.

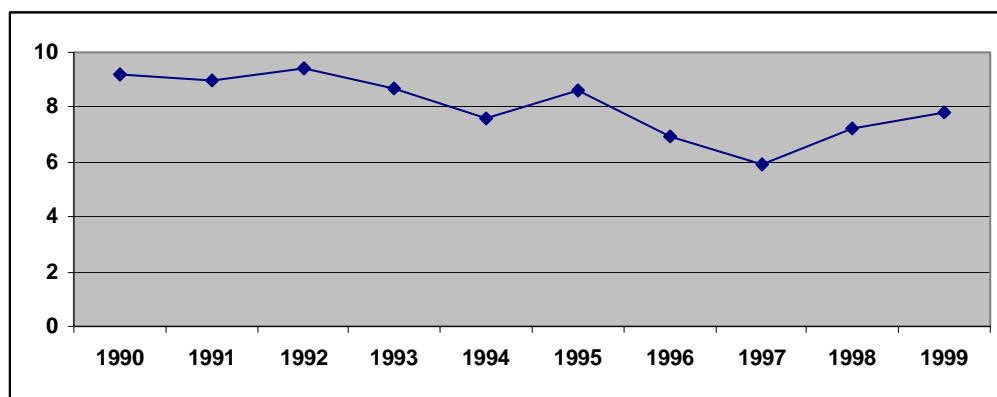
1128. The marriages are higher in number at the rural areas (10 in 1) compared with the towns. There is a tendency amongst youngsters to postpone their marriage, especially at the urban areas. Marriages with foreign citizens started in the '90ties, after a period of 30 years when they were prohibited.

1129. Common life (Co-living) or when an unmarried couple live together is a recognised phenomenon of developed societies. Whereas it has been considered as uncommon in Albania. There are few cases at the Capital, but mainly between two well-educated people. The tendency for these cases to become more often has not been recognised yet. In the past, the 'common life without a legal marriage was against the law', whereas now it has been recognised and accepted by the majority of the young urban population.

### **The right to divorce**

1130. Both spouses have the right to individually or jointly request the divorce at the civil courts. According to the Family Code, article 97, the Court decides on the parent who will be responsible for the child and at the same time, for the required contribution for the child till the child becomes an adult. According to article 101 of the Family Code, the courts also decided for the house ownership. The new Family Code envisages that, the spouses accept the divorce reciprocally even when one of them requires the separation from the joined life.

1131. The number of divorces in Albania has increased during the '80ties. In 1980 the total number of divorces was 2,024 at a time when in 1988 the number reached 2,597 and in 1989, 9.5 was the number of divorced women out of 100 married ones. During the two first years of the transition period, the number of divorces increased significantly. In 1991 the number reached its peak, one divorce per every ten marriages.



**Marriages and divorces  
(1990-1999)**

Year	Marriages		Divorces	
	Total	Per 1,000 inhabitants	Total	Per 100 marriages
1990	28 992	8.9	2 675	9.2
1991	24 853	7.6	2 236	9.0
1992	26 405	8.3	2 480	9.4
1993	25 963	8.2	2 251	8.7
1994	27 895	8.7	2 108	7.6
1995	26 989	8.3	2 331	8.6
1996	27 690	8.4	1 901	6.9
1997	24 122	7.3	1 430	5.9
1998	27 871	8.3	2 005	7.2
1999	27 254	8.1	2 114	7.8

1132. Actually in the big urban areas, this percentage was higher. This peak (not confirmed by the latter data) was due to the fact that unsuccessful long-lasting marriages separated officially. During the last years, the number of divorces has decreased in proportion with the number of the new marriages (from 7.5 divorces for every 100 marriages to 5.9 divorces, in 1997). After the 1997, another tendency of increased number of divorces has been recognised.

1133. The difference between the previous percentages of divorces is the ratio between the genders of the spouses requesting the divorce. In 1993, 1304 males and 1589 females presented the requests for divorce in 1997. In 1994 there were 1297 males and 1545 females, and in 1996, 1114 males and 1151 females. The decrease of the number of requests presented by female spouses may have to do with the unemployment factor, which has affected the women more than men. This leads to the phenomenon that women are under the economic dependency of their husbands.

1134. After the divorce, women do not automatically benefit from the nutrition benefit, whereas this becomes an automatic right only when the wife has been declared as disabled to work and it is granted for a period not longer than three years. Thus, regardless of the economic conditions and the possible unemployment, divorced women do not benefit from their former husband's support. In principle, the support for the child should be established in accordance with the parent's income and with the child's needs. Whereas in practice, the court decides on a fixed monthly amount. In the cases of divorces, the Albanian courts have the tendency to provide the mother with the tutorship for the child (four out of five cases).

**Family rights**

1135. Article 11 of the Family Code guarantees that the family members should support each other and should participate in the improvement of the living standards of the family. The family remains the most sustainable institution of the Albanian society. However, the economic changes have led to a decrease in the number of the household members. At the beginning of the

'80ties, the countryside household was composed of 6.2 members. Whereas since 1989 this number decreased to 5.3 members, at a time when the number of households in the urban areas decreased from 4.6 to 3.9 members.

1136. The changes in the household structures, mainly due to the former communist period and afterwards to the transition period, have greatly impacted the gender relationship. In the past, the strong patriarchal orientation of the family life provided men with the possibility to dominate in the local politics and in the economic decision making, at a time when the market economy of today has caused certain uncertainties between the spouses regarding their roles. Most of the households continue to be composed of husband, wife, unmarried children and the spouses and children of the married sons.

1137. Another impact of the transition period was over the marriage age (which is getting lower) of the village women, this because the majority of the youngsters migrate out of the country and the sexually active males are few in numbers. This affects the education of the young women, which get engaged and married before they complete the school studies, thus limiting themselves the possibilities for the future.

1138. The newly married couples normally live with the parents of the husband or wife (at fewer cases) up to a moment when their income allow them to have a house for themselves. Within a normal family, composed of husband and wife, the wife can have the same status with the husband only if she contributes in the households' revenues and gives birth to a male child.

1139. The number of single-parent households is increasing. Although there are no clear data, the single-parent households are mainly due to natural deaths. Partial observations prove that a woman manages 80% of the house works as a single parent.

### **Use of violence within the family**

1140. Violence in the Albanian families continues to be considered as a private problem, which should be negotiated within the family. Regardless of a series of provisions incorporated in the Criminal Code, which are against the violence (be that within or out of the households) the numbers of women, which are target of violence, is relatively high. However these cases are not been announced in the respective public or health institutions specifically established for this purpose.

1141. Albanian Criminal Code does not differentiate in its formulation, between the violent acts conducted by a stranger or a household member. Thus fine or sentence with one-year imprisonment (article 84 of the Criminal Code) condemns the serious death or dangerous personal threats. The inhumane treatments, which cause permanent physical disabilities, are condemned with 10 or 20 years of imprisonment (article 86 and 87 of the Criminal Code). Serious intentional damages are condemned with 3-10 years of imprisonment (article 88) whereas the minor intentional damages are condemned with a fine or 2 years of imprisonment.

1142. Sexual harassment is covered by the Criminal Code, specifically articles 100-108 and provides penal obligations based on the homicide level and age of the victim. Sexual relations, with a minor who has not reached the age of 14 years or has not reached the sexual maturity,

conducted with the approval of both parties, are condemned with 5 to 15 years of imprisonment for the elder partner; whereas if the relations is abusive / violent, then the sentence varies from 10 to 20 years of imprisonment. If the sexual relations lead to the death or suicide of the victim, the sentence is not less than 20 years of imprisonment.

1143. Violent sexual relations with a young female (14-18 years of age) are sentenced with 5-10 years of imprisonment. In cases when the circumstances deteriorate, the sentence is more that 10 years of imprisonment. Violent sexual relations are sentenced with 3-10 years of imprisonment (and up to 20 years of imprisonment in cases of death). Article 106 regards the incense, which is sentenced with a maximum of 5 years of imprisonment.

1144. The household violence generally is not announced due to some reasons:

- The concept of women that the reason of the abuse against them might be based on their own mistakes;
- Sometimes the lack of trust women have towards the police and legal system;
- Lack of public awareness as regards the fact that violence in the family should be considered a homicide and as such, it should be punished;
- Lack of specialised police and health structures which deal with the violence in the family;
- Lack of awareness amongst the legal system regarding the expansion of the phenomenon and the way it should be treated;
- Lack of services all over the country in cases of violence.

1145. So far the State does not provide support services in cases of such violence, whereas the women associations have established telephone lines offering consultancy and support services (in Tirana, Durrresi, Elbasan, Berati, Shkodra and Pogradeci). In addition, an NGO in Tirana has established a shelter where violated women can reside.

1146. No official data exist as far as violence in the households is concerned. This is also due to the small number of cases denounced. On the other side, the observations made by the NGOs show that 64% of the interviewed women have been victims of physical and psychological violence, at home or out of it. Approximately of 34% of them accept that (physical or psychological) violence has been noticed in the families they were raised. The fact that violence within the households is a serious problem in Albania is confirmed indirectly by the great number of women conducting homicides. Women are less involved in homicides than men, but out of 28 women, which live in the single women jail in Albania in 1999, 23 of them were sentenced because of committing homicides and generally the victim was either the partner or former partner or a male member of the household.

1147. The Woman and Family Committee in collaboration with the Advocacy centre for Violated Women are working together for the formulation and endorsement by the Parliament of the Law against violence towards women.

### **Child and family policy**

1148. The Ministry of Education and Science, Ministry of Labour and Social Issues, Ministry of Health, Ministry of Justice, Ministry of Public Order, Ministry of Local Government and Decentralisation, Ministry of Culture, Youth and Sports, the Equal Opportunity Committee and the Social State Service are the competent departments chiefly dealing with issues concerning the children's rights referred to in the Convention on the Rights of the Child.

1149. The Ministry of Education and Science is the competent institution for the instruction and education of children. In recent years, the Ministry of Education has undertaken major efforts to ensure the creation of normal conditions for the instruction and education of children in all areas, focusing especially on the setting up of new instructional institutions and the restoration of the existing ones. The present Ministry is currently faced with the important challenge of lowering the drop out rate by getting back to school pupils who have skipped it. In this framework, the Ministry of Education is intensively co-operating with the local government bodies.

1150. The Ministry of Labour and Social Issues provides assistance to abandoned children, with a focus on their social rehabilitation. The 1999 data reveal that one per cent of these children is involved in various jobs.

1151. The Ministry of Health has the competence of developing special policies on the child's health and on everything concerning the mother and child special care. The present Ministry attaches special attention to the declining infant mortality rate.

1152. A special department that has the responsibility to amend legal provisions on the protection of the children's rights, and rehabilitate children involved in wrongdoing, is set up recently in the Ministry of Justice.

1153. One of the principal tasks of the Ministry of Public Order is to ensure protection of children from physical violence, and prevent trafficking of children. The State Police structures such as the Interpol, the Public Order Police, the Criminal Police, the Border Police and the Anti-drug Unit are part and parcel of the Ministry of Public Order, and contribute to achieving the above-mentioned tasks.

1154. The Ministry of Local Government and decentralisation co-ordinates locally the efforts to ensure the accurate implementation of child-related programmes and projects. The Children's National Cultural Centre, operating under the Ministry of Culture, Youth and Sports, carries out a number of child-related projects.

1155. The Equal Opportunity Committee, functioning under the Council of Ministers, is currently working on the National Strategy for Children. The Social State Service is a state run agency that pursues social protection policies.

1156. In 2001 was adopted the National Strategy for Children 2001-2005. This is the most important document in which the Albanian Government sets out the policies in respect of the rights of the child. The task of drafting the present Strategy was assigned to a working group

consisting of experts from governmental institutions that are more familiar with children's problems, and from several non-governmental associations focused on the rights of the child. The Equal Opportunity Committee was in charge of the present working group.

1157. The National Strategy for Children relies on the Constitution of the Republic of Albania - article 54, and on the Convention of the Rights of the Child. The attached Action Plan is binding upon all the governmental institutions and the non-governmental organisations, and will help improve the children's situation in Albania.

## **Article 24**

### **Rights of children**

1158. With the objective of adopting the local legislation with the United Nations Convention on the Rights of Children, after March 1992 a series of Laws and Decisions have been endorsed. They directly or indirectly influence the improvement of children's rights in the Republic of Albania. As such we can mention:

- Family Code, law no. 9062, 08.05.2003.
- Criminal Code, law no. 7895, dated 27.01.1995, with amendments by law no. 8279, dated 15.01.1998.
- Criminal Procedural Code, law no 7905, dated 21.3.1995.
- Civil Code, law no. 7850, dated 29.07.1994.
- Civil Procedural Code, law no. 8116, dated 29.03.1996.
- Labour Code, law no. 7961, dated 12.07.1995.
- Decision no. 384 dated 20.05.1996, "On the Protection of Minors at Work".
- Hague Convention "On the Protection of Children and Co-operation for their adoption out of the country" ratified in June 2000, by law no. 8624, dated 15.06.2000.
- Convention 182 "On the worst forms of child labour" and recommendation no. 190, 'The Worst Forms of Child labour' approved by the Albanian Government in September 2000.
- General prisons Regulation.
- Law no. 8328, dated 14.04.1998 "On the rights and treatment of prisoners".
- Law no. 7650, dated 17.12.1992 'On the adoption of infants by foreign citizens and on some Changes of the Family Code".

- Law no. 5840, dated 20.21.1979 “On the Registration of the Civil Status acts’ which has been amended in respect of the retention of the name or family name of the person by law no. 7682, dated 9.03.1993, “On some Changes in Laws”.
- Law no. 8389, dated 5.08.1998, “On Albanian Citizenship”, article 5, etc, amended by law no.8442, dated 21.1.1999.
- Law no. 8432, dated 14.12.1998, “On Asylum in the Republic of Albania”.
- Law no. 8410, dated 30.09.1998, “On the Public and Private Radio and Television in the Republic of Albania”.
- Convention against Torture and Other Cruel and Degrading Treatment or Punishment, ratified by law no. 7727, dated 30.06.1993.
- Convention on the Elimination of all Forms of Racial Discrimination, ratified by law no. 7768, dated 9.11.1993.
- Law no. 3766, dated 17.12.1963, “On Health Care”, amended by law no. 7718, dated 3.06.1993, and law no. 7738, and dated 21.07.1993.
- Law no. 7761, dated 19.10.1993, “On the Prevention and Fight against infectious diseases”.
- Law 8528, dated 23.09.1999, “On the promotion and Support of Breast-feeding”.
- “European Convention on ‘Protection of Fundamental Rights and Freedoms” ratified by law no. 8137, dated 31.07.1996.
- Law 8153, dated 31.10.1996, “On the Status of the Orphan”.
- Law no. 8331, dated 21.4.1998, “On the execution of Penal Decisions”.
- Law no.7710, dated 18.5.2000, “On the Social Protection and Assistance” amended by Law no.7886, dated 8.12.1994, and Lawn no.8008, dated 5.10.1995 and by-laws articles issued by the Ministry of Labour and Social Affairs.
- Law no.8092, dated 21.3.1996 “On Mental Health”.
- Law no.7889, dated 14.12.1994 “On the Status of the Disabled”.
- Law no.7952, dated 30.07.1998, “On the pre-University Education System” changed by Law no. 8387, dated 21.6.2000, “On the pre-University Education System”
- Decision no. 39 dated 22. 08, 1994, “On the Elementary education in the mother tongue of the individuals belonging to national minorities”.



- Law no.8689 dated 16.11.2000, “On the Prevention for the spread of the infection of HIV- AIDS in the Republic of Albania” (articles 20-22).
- Law no.986 dated 13.9.1995 “On the State Labour Inspectorate”.
- Law no. 7635 dated 11.11.1992 “On some changes to the law no. 4624, dated 24. 12. 1969 “On the Education System”.
- Law “On the Organisation of the Court System in the Republic of Albania” changed by Law 8436, dated 28.12.1998, changed by Law no 8546, dated 5.11.1999, changed by lawn no. 8656, dated 31.07.2000, article 25/a participation of the psychologist in the court sessions of a minor.
- Constitution of the Republic of Albania endorsed in November 1998, article 18, 122 etc.
- Law no. 8045 “On Abortion”, dated 7.12.1995.
- Law no 7939, “On Migration”, dated 25.5.1995; article 15 provides facilities for receiving stay permit in favour of children who are below the age of 18 years.
- European Convention on Inter-Boarder televisions, by law no. 8525, dated 9.09.1999.
- Law no. 8503, dated 30.06.1999 “On the Right to Information on the Official Documents”.
- Decision no. 248, dated 28.05.1999, of the Council of Ministers, envisaging the presentation of a declaration by the non-public education institutions, though which they take over the responsibility of respecting the Convention ‘On the Rights of the Child’ (CRC).
- Law no. 8096, dated 29.04.1996, “On Cinematography”, which foresees the transmission of films at a differentiated way as per the age-groups of the children, as well as defines the timetable of their transmission.
- Law no. 8492, dated 27.05.1999 “On Foreigners”, which envisages the right of a child below the age of 16 years, to apply for a visa or the right to enter the Republic of Albania with the permission of his / her tutor. In line with its implementation, the Decision of the Council of Ministers no. 439, dated 04.08.2002 has been endorsed, ‘On the entrance, stay and treatment of the foreigners in the territory of the Republic of Albania’ which covers the cases for children, too.
- “Agreement between the Government of the Republic of Albania and the United Nations High Commissioner for Refugees’ ratified by Kuvendi (the Parliament) by law no. 7833, dated 22. 06.1994.

1159. The further improvement of legislation in the area of social protection of children will definitively reflect the requirements and standards of the international important documents such as the Convention for the Protection of Children's Rights, Reviewed Social European charter and other instruments ratified by the Albanian Government.

1160. Some of the immediate measures to be taken in this direction are:

- Establishment of the Court for the Minors and of the police structures for the issues regarding the protection of the rights of the children.
- Revision of the law that deals with the problem of orphans, with the adoption and the temporary and obligatory placement of the orphans at institutions of social care.
- Establishment and empowerment of a complete information system for data collection in relation with children at risk. Based on these data, objectives, programmes and efficient projects may be developed for the social services.
- Placement of the social worker at institutions such as schools, health centres, prisons for minors and at communities, with the objective of preventing and early training of the problems which risk the rights of the children, and of supporting the relevant structures when dealing with the social needs of the children in accordance with the contemporary standards.
- Gradual replacement of the residential shelters for children into smaller institutions such as Houses-Families, SOS Villages, etc.
- Social and economic assistance to the families in need, especially for young mothers and women heads of households with young children. This has been viewed as a preventive measure for decreasing the number of abandoned, maltreated and exploited children.
- Formulation of a national plan to fight against the sexual abuse of children with the final objective of preventing, protecting and caring and regional collaborating (the anti-traffic strategy is being developed).

**Right to receive from his family, society and the state the protection required by his status as minor**

1161. The most important document of the Albanian Government in relation with the rights of the children is the National Strategy for Children. The strategy has been formulated by a working group composed of specialists from state institutions close to the problems of the children, and from some NGOs working for the rights of the children. The Committee for Equal Rights led this working group.

1162. The National Strategy for Children is based on the Constitution of the Republic of Albania - article 54, as well as on the Convention on the Rights of the Child. A plan of action accompanies the strategy, which is compulsory to all state institutions and non-governmental institutions. This plan of action will serve for the improvement of the status of children in Albania.

1163. Albanian Government is taking all the required measures not only towards making the necessary changes in the legislation and adopting it to the provisions of the Convention on the Rights of the Child, but also towards shifting the National Strategy for Children into an obligatory action plan for all the institutions in the country. The above will be achieved through defining the responsibilities, and through taking complex and concrete measures in the area of children's education, protecting their psychological and physical rights in every environment, improving the conditions of the environments directly related to them, or indirectly to their cultural education, to their access to information, to their health development and to their recreation supporting and promoting their talent.

1164. The protection of the children's rights is one of the main pillars of the social protection policies in the Republic of Albania. The foundations of the social policies addressed towards the protection of the children's rights reflect the fundamental principles of the UN Convention for the Rights of the Child and of other international instruments ratified by the Albanian Government. The above stress out that children, due to their age specifics and the lack of physical and intellectual maturity need a special protection and attention from the family and state institutions.

1165. Based on these principles and taking into consideration the fact that children are the most vulnerable category in relation with the conditions and risks of the market economy; the consideration of the social problems of children at risk has become a significant part of the complex activities of the State Social Services.

1166. The objective of the social protection related to the children's rights is that through a modern system of social services with contemporary standards and parameters, the support, rehabilitation and re-integration in the society of the marginalized and children at risk are ensured.

1167. Changes, which have happened during the last decade, have significantly increased the risks for the children and their families. Under the influence of social phenomena such as migration, uncontrolled urbanisation, poverty and unemployment, family disintegration and divorce, the number and scale of social effects towards various children categories tends to increase. Problems and risks that children have to cope with reflect to the challenges of development and the complex difficulties that the Government, society and family are facing during the transition period. Taking this situation under consideration, State Social Services aim to widen the range of the offered services, to promote the new typologies and alternatives, focusing significantly on the satisfaction of social needs of children in need.

1168. The social categories of children targeted by the State Social Services through offering social protection and assistance are:

- Abandoned children and orphans
- Disabled children (mentally and physically)
- Children victims of violence, maltreatment and sexual abuse
- Children / minors victims of prostitution and drugs
- Repatriated children (migrating without their parents)
- Street children

1169. State Social Services administer the network of Institutions of the Social Case (22 Institutions), which offer services and care to the lonely elderly, orphans and people with disabilities. Institutional care of children is mainly offered as a classical residential care.

1170. Currently there are 15 Residential Institutions, which care for children. They are:

- 5 homes for infants (0 - 3 years old),
- 2 homes for pre-school children (3 - 6 years old),
- 3 Homes for school children (6 - 14 years old),
- 5 rehabilitation and development centres for disabled children,
- 2 daily centres offer treatment for children with minor disabilities.

1171. For satisfying the social needs of these children at risk, in addition to state social structures (which are limited as far as their capacities and typology are concerned), local and international NGOs are offering an important contribution which provides qualitative changes not only regarding the approach but also the range and structure of the services, thus promoting new forms and alternatives in social services.

1172. State Social Services in collaboration with the non-governmental sector, have promoted the establishment and development of new service models and their geographically balanced distribution in accordance with the actual needs. Services such as Family Homes or Children Villages have been established in Tirana, Shkodra and Elbasan.

1173. Besides the positive changes in the social protection policies for the targeted children, the sharp problems and needs identified in this group have increased the necessity for moving towards a new stand, a more qualitative one that should promote more efficient, qualitative and of a wider range services. The final objective of these policies should be the prevention, treatment and re-integration of children in the normal life. Social Services Development Strategy for children is led by the idea of the establishment of a wider range community-based and decentralised services, in accordance with their specific needs.

1174. Social Services Development Strategy for children in need is an essential component of the national strategy for the social protection of vulnerable population groups. The strategy aims the protection of the highest personal interests of the child. This includes first and foremost, their well-being. Within the category of children at risk, the targeted ones are the orphans (biological and social ones), mentally and physically disabled children, and the children who are victims of maltreatment, trafficking, sexual abuse and participating in the worst forms of employment, etc.

1175. The aim for the future is to shift from offering social care in residential centres to a wider variety of offered services, giving priority to services offered in natural social environment (homes, community).

1176. The main line of developing social services to children will be characterised by:

- De-institutionalisation of clients.
- Decentralisation of services.

1177. The further development of services for children will consist in two ways:

- Temporary care in the residential institutions (social care institutions, development centres),
- Non-residential services (new models and regimes close to the beneficiaries) prioritising the latter as they are closer to the natural environment of children in need. They are reachable and real for the beneficiaries and at a lower cost. The residential care for children is offered as the last alternative, especially to orphans (biological and social), disabled children (mentally and physically) at the highest level of their disability. The achievement of the defined objectives in the social services development strategy and the coverage of social needs of vulnerable groups are closely related with the important World Bank Project on the 'Development of Social Services in Albania'.

1178. Ministry of Labour and Social Affairs and the State Social Services, as the institutions responsible for the policy implementation in the area of social services, with the support of World Bank and other donors, have already started the implementation of the project of 'Development of Social Services'. The essence of this project is the preparation of the environment and the development of capacities for the shift of residential type of services towards modern decentralised and community based services, by increasing the participation of local government, communities and civil society.

1179. The project will contribute in the improvement of the living standards and the re-integration of marginalized groups and categories, though promoting community based services and the participation of communities in defining priorities and decision making.

1180. Within the framework of this project, in addition to the care offered for other social groups (lonely elderly, women at risk, youth under drug effect, unemployed people, etc. new community based services will be promoted towards various children groups at risk. By way of this project, an important step forward will be taken in widening the range of services for the treatment and protection of children at risk.

1181. Taking into consideration the experience of the NGOs in the area of social services, the objective is to target integrated services to the community and in the families, co-ordinating the resources, means and interventions offered by the state, local government and NGO network. These activities will take place in close collaboration with the local government, which will identify the persons in need for social services, and afterwards the specialists of this area will decide on the best alternatives for the children at risk.

1182. The objective of the State Social Services is that, during 2000 - 2005, in partnership with the civic society, local government and NGO sector, possible alternatives are implemented for the further development of social services for children, focusing in these directions:

- Day centres for the support, psychological treatment, education and advice to the street children, maltreated and abused children, children who risk abandoning the schools.
- Shelters for receiving and temporary sheltering of repatriated children who have migrated without their parents, of young age victims of prostitution, etc.
- Development centres for children and youngsters under drugs and alcohol; offering them psychological care, advice, professional education, rehabilitation and inclusion in the normal life.
- Home-families and Day centres offering care to handicapped children and orphans who leave the care institutions; to children coming from families with social problems, etc.
- Legal Advisory Centres for juridical problems of children's rights protection or social problems.
- Polyvalent centres which offer a wide range of services such as advice, juridical consultancy, psychosocial support, assistance in the family, vocational training, information for the solution of extraordinary situations of persons at risk, etc.
- Tutorship, which is one of the most optimal solutions for children who live in families with social and economic problems, or for children born out-of-marriage relations, whose mothers have economic problems and conflicts with their original families. Their placement in a family, which is willing to accept them for as long as families and parents continue to have these problems, is a valuable and natural alternative for the children.
- Adoption, as the best alternative for abandoned children and for the ones whose parents are not known.

1183. In order to increase the efficiency of the partnership between state and civic society for the improvement of the social services development towards children in need, based on the relevant legislation, the followings will be promoted:

- Establishment of children social care departments at the local government entities.
- Establishment of social service centres in the main cities and towns of the country for the management of the residential social care institutions, and for the harmonisation of services, improvement of the collaboration amongst stakeholders operating in the area of children's care.
- Improvement of the legislation in the area of social services, to insure a better protection of children's rights / minors in need.

1184. The Constitution and other legal provisions into effect in the Republic of Albania guarantee every child, at a permanent-stay status in Albania, residents under the relevant state's jurisdiction, at a temporary-stay status, visitor-children or others who are in Albania for whatever reasons, with the following rights:

- The freedom of discrimination - Constitution of the Republic of Albania, article 18
- The right to life - Constitution, article 21
- Special protection from the state - article 54 of the Constitution
- Non-discrimination of children - paragraph 2 of article 54 of the Constitution. Paragraph 2 of article 54 envisages an important element of non-discrimination of children mentioning the equal rights of children born out-of-marriage relations with the ones in-marriage relations
- Protection against violence, maltreatment and exploitation - paragraph 3 of article 54 of the Constitution
- Property right of inheritance - article 320 of the Civil Code "The person who is alive at the moment of inheritance issuance or has been conceived before death and was born alive, enjoys the right to inheritance"
- The right to the name - article 5 of the Civil Code
- The right to place of residence - Civil Code, article 13: The children's place of residence is that of the parents
- Citizenship - Law no. 8442 dated 21.01.1999 'On Citizenship'
- The right to be heard by the administrative and juridical entities - Fundamental Civil Code
- The right to protection at work - Labour Code

- Freedom of thought, consciousness and religious belief - article 24 of the Constitution
- The right to Information - article 22 of the Constitution
- The right to organisation - article 46 of the Constitution
- The right to health care - article 55 of the Constitution
- The rights in the penal issues envisaged by the Criminal Code provisions, of the Criminal Procedural Code, etc.

1185. The New Family Code, approved by law no. 9062 dated 08.05.2003 (articles 2-6) envisages that parents, the responsible entities and courts should take into account the highest interests of children, while taking their decisions.

1186. The parents enjoy the right and responsibility to take care for their children, the well being and education of the children born out of their marriage. The state and society should offer the families with the required support for the retention of children within the families, for the prevention of maltreatment and abandonment of children, as well as for maintaining the sustainability of the family. Children born out-of-marriage relations enjoy the same rights and obligations with the ones born-in-marriage relationships.

1187. Every child to get a complete and harmonised developed personality should enjoy the right to be raised in a family environment, in an atmosphere full of love, joy and understanding. The child enjoys the right to be heard at every procedures affecting him / her, in accordance with the age and capacities to understand, maintaining the freedom provided by the special provisions guaranteeing the intervention and providing the consent from his / her side. In cases when the minor requests to be heard, his / her requests cannot be denied unless major reasons are presented and the decision is well motivated.

1188. The minor may be heard personally or through his solicitor or any other person selected by him / her. The presence of the psychologist is mandatory in every procedure the minor participates. The psychologist validates the minor's statements in accordance with his / her mental maturity and his / her social status.

### **Separation from parents**

1189. Family Code of the Republic of Albania (article 70) envisages the case when parents may request the court to repatriation of their child, when the child does not live with them and has been retained illegally by other people. Under these circumstances the court decides on the return of the child if this decision is not against the child's interests and takes into account the opinion of the child when he / she has reached the age of 10 years old.

1190. Besides, Criminal Code (article 127) states that the unfair retention of the child, departing him / her from the person exercising the parental duties, or has been appoint as his / her tutor and educator, and not bringing him / her back to the parent, is a penal offence and is condemned by a fine or imprisonment up to six months.



1191. As far as tutorship is concerned, the Family Code (article 75) provides the right to the Tutorship Council to request the Court to decide that the child does not continue to remain under the parents' responsibilities when these parents do not care for the child's treatment and education or when this request is for the child's best interest. The Council can request the court to hand the responsibility for the child's education over to a state institution or another person, when s/he agrees.

1192. After the years 1990-1991, while a lot of right's issues were amended, the issues of the family rights are undergoing these changes through difficulties. In addition, many of the entities functioning for the protection of children's right have ceased functioning as such (Tutorship Councils at Municipalities). This leads to the fact that responsibilities of these entities remain in paper and that the negative impact of this aspect affects the children's interests.

1193. In cases when the parent misuses the paternal rights and authorities or shows no interest in playing these rights, or when though his / her actions badly influences the child's education, the other parent or the Tutorship Council can request the elimination of paternal right through the relevant court's decision.

1194. In the majority of their decisions, the Courts have tried to apply the principle of the best child's interest while deciding on the paternal authority during the divorce procedures when the child or children have to live with one of the parents. But there are cases when the court does not express clearly at the best child's interests. The Court procedures before the 1990-ties were more consolidated in this aspect base don the recommendations provided by the Supreme Court, which formed the basis of the decisions to be taken by the other courts.

1195. With regard to the expression of opinion of minors, and in the cases when the child will remain with one of the parents or with someone else, the Family Code has defined the age of 10 years old (articles 66 & 67). Thus the court considers the opinion of the child when s/he is 10 years of age.

1196. The new Family Code has foreseen, at a special part, the consequences of the divorce over the children. Thus, according to article 154, divorce does not affect the right and the responsibilities of the parents towards their children, with the exception of cases foreseen by the law.

1197. Article 155, before the court takes any temporary or final decisions in relation with the exercise of paternal responsibilities, the right to visit or the Tutorship for one of the parents, it should request the presence of the psychologist or the social worker who, before expressing his / her opinion should get some information on the material and moral status of the family, living conditions and decide which are the most comfortable conditions for the child to live in. If the court decides that temporarily the child should reside with a third person or a tutorship family, it should take into consideration the opinion of the social service department at the relevant local entity where the decision is taken.

1198. Article 156, the court decides for the way the paternal responsibility will be implemented or to place the child under the responsibility of a third person, based on the request of one of the parties, family members or prosecutor, if there are serious reasons related with the abusive paternal responsibilities.

1199. Article 157, the lawyer in these cases, takes into consideration:

- the agreement made between former spouses;
- expressed opinion and feelings of the minor child, taking into account the age and the maturity;
- The opinion of the psychologist or the social services department at the municipality, after the latter have heard what the child has expressed.

1200. Article 158, the parent who has not been declared as the tutor of the child, retains the right to supervise the tutorship and education of the child, and consequently to be informed and consulted for the solution of serious problems related to the child's life. S/he contributes in relation with his / her resources and of those of the other parent. The right to visit and have the child, according to the conditions set by the court, cannot be denied only because of major reasons, which have a negative impact on the child's interests.

1201. Article 159, the decision related to the exercise of the parent's responsibilities may be amended at any moment by the court, based on the requests of one of the former spouses or relative of the prosecutor.

1202. Article 160, in case of divorces due to mutual request, the conditions set by the court on the tutorship rights, may be revisited because of important reasons and as requested by one of the former spouses or the prosecutor.

1203. Article 161, while taking the divorce decision, the contribution for the child's care has been set against one of the former spouses, in accordance with the provisions of Chapter 'on Nutrition Obligations' of this Law.

1204. Article 162, each of the former spouses is responsible to provide the other with correct information on the property and income, when they are required to define the nutrition obligation. Based on the request of one of the former spouses, the employer, the respective financial institutions, tax-offices and any other entity where these proofs can be generated, are obliged to provide all the required information on the property status of the other former spouse and on all income related to him / her.

1205. According to the Statute of the Vaqarri prison (prison for children) the meetings / visits are allowed four times per month. One out of these four visits allows for a special meeting with the family. The family has the right to stay for 12 hours with the imprisoned child and can remain within the prison during this whole period.

1206. Although the Family Code does not envisages the separation of spouses before divorce, as an institution. This has been envisaged in a special provision only in respect of the relations of one parent with the child who resides with the other parent (article 66). This provision refers to cases when parents live separately although they are not divorced.

1207. Tutorship Council is the entity, which decides who the child will reside with, and what the relations with the other parent will be. But in cases when Tutorship Council does not function, the issue of regulating the child's relations with the residing parent requires a solution especially when the parents live separately for other reasons than divorce. Such may be the cases when one of the parent has been transferred for work-related reasons and parents do not agree who the child will reside with as well as what the relations with the other parent will be.

1208. According to the existing laws, there exist a problematic collision of provisions in regards to the competencies of the entity, which defines the responsibilities for the nutrition, and education of the child before divorce. This conflict of legal provisions is expected to be eliminated with the endorsement of the new Family Code.

1209. The Civil Procedural Code came into effect in June 1996. This happened without amending or replacing the above-mentioned provision of the Family Code. It regulates at a different way, the definition of responsibilities of the entity to define whom the tutor will be during the period before divorce. According to the Civil Procedural Code, the Department responsible for reviewing the Family Disagreements, at the First Instance Court, is responsible to decide whom the child will reside with, till the divorce is legal.

1210. The law almost ignores the role of the Tutorship Council and an important role has been placed over the Court in respect of the protection of child's rights and interests. The project envisages the relations the child should have with the tutor, which are stated to be similar with the one the child could have with the parents. The tutor takes care of the child and represents him / her in all legal cases and administers the child's property in accordance with the provisions set by law on parental authorities.

1211. According to the law, the child generally resides with his tutor, unless the court decides differently. The Projects envisages the obligation of the court that before deciding for the tutorship, it has to listen and take into consideration the opinion of the child who has reached the age of 10 years. In case of conflict of interests between the child and the parent or tutor, the court decides on a special tutor, while defining his / her relations with the child.

1212. Based on some partial data received from the Committee of Equal Opportunities, approximately 4,000 children have migrated without being accompanied by their parents (3,000 in Greece and 1,000 in Italy).

1213. This category of children residing in other countries and away from their families and their care quite often faces high risks and maltreatment, physical and sexual abuse and are involved in work exploitation and illegal trafficking. There are cases when children are sold by their parents or are exploited criminal networks for profit purposes.

#### **Abuse and exploitation of children**

1214. Abuse and exploitation of children has been a serious problem for Albania during the period under review. This is the reason that in the framework of the Strategy for Children, legal and police measures have been continuously taken with the final objective of abolishing this phenomenon.

1215. The sources for recruiting children in trafficking have been, mainly:

- From families with divorces and lack of family care
- From families with many children and at poor economic conditions
- From countryside families which count on the children's support
- From orphans and not-cared children
- From families whose head of the households has migrated out of the country
- From children who have abandoned school and have dealt with beggary or other illegal activities in Albania

1216. The living conditions of trafficked children in most of the cases are very vulnerable, and they work long hours at a minimum wage sufficient only for making the living. These are the preferred children for the traffickers as they cost very little whereas the profit they get back from them is increasingly high.

1217. The ways of trafficking are usually similar to the ones used for trafficking human beings. However the traffickers use false papers trying to prove that they are the tutors or parents of the children. The work for the re-integration of these children and their return in Albania has been considered a difficult task and requires the engagement not only of the state institutions but also of the non-governmental organisations, which have special programmes for this purpose and have already started their activities.

1218. The Albanian legislation considers the 'trafficking of human beings; as a special offence. This offence can be expressed in trafficking people, females for prostitution, trafficking children, etc. as well as committing penal acts related to the trafficking of these human beings such as hiding or intentional replacement of children, illegal travelling out of the country, assisting in the illegal travel out of the country, organising prostitution and acts related to it.

1219. The Albanian Criminal Code envisages measures against criminal acts directly or indirectly related to trafficking human beings. These would include all the above as well as retention, exploitation and financing environment for prostitution, hostages as well as children hostages under 14 years of age, putting the individuals at risk for life or making him / her suffer from physical and sexual abuse, robbery of identification papers, re-producing fake identification papers, threats as well as collaboration with criminal or armed organisations.

1220. According to the Albanian Criminal Code, all means used or assigned to be used for committing criminal acts, including every kind of tools, and the monetary resources deriving from committing these acts or pledging to commit, are confiscated and become state property after the proclamation of the condemnation.

1221. According to the Albanian legislation, the foreign citizens may be dispatched if they have entered Albania illegally. However, the witnesses may be excluded from the dispatch if the State's interests require it or there is need to keep them as witnesses till the court procedures are

finalised. The traffic victims enjoy the right to be represented by a legal representative or someone else possessing a special proxy. They are also entitled to have interpreters who are paid by the state. They are entitled to speak and be informed on the facts and acts as well as on the process developments, with the help of the interpreter.

1222. Currently has been drafted the Law on the Protection of Witnesses. It is expected that this law will be approved by the parliament by the end of 2003. The existing law does protect the witnesses, however the lack of financial and human resources limits the level of protection.

1223. According to the Criminal Procedural Code, the persons arrested and condemned for having committed penal acts related to drugs trafficking, prostitution and clandestine, and who assist and collaborate afterwards with the relevant entities, can not be condemned more than half of the condemnation foreseen for their commitments. In special cases these persons may be excluded from being condemned. A detailed analysis of the Albanian legislation on these issues led to the amendment of Criminal Code of the Republic of Albania during 2001. The amendments envisage specific articles on trafficking human beings, firstly including children, as well as serious consequences for the authors of these offences.

1224. Of major importance is the fact that the amendments of the Criminal Code related to the international co-operation in the fight against this phenomenon, through bilateral agreements or adhering in the existing ones. In this framework, in collaboration with interested states such as Italy, Germany, Greece, etc. a powerful anti-trafficking centre has been established in Vlora. The centre fights firstly against trafficking human beings, especially women and children.

1225. Special protection has been offered to the refugee children by the law no. 3920 dated 21.11.1964 'On the Civil Rights of Foreigners and the Implementation on the Law on Foreigners' which guarantee the civil rights acknowledged to Albanian citizens, as well as per Law no. 8432, dated 14.12.1998 'On Asylum' guaranteeing the protection and special assistance towards refugee children, and children from poor families, or children who risk to be involved in criminal acts, and minor children victims of prostitution.

1226. This is the reason why in foreign cities, where a great number of Albanian refugees are placed, Albanian Cultural Centres will be established. These centres will offer various services for the emigrants' children, including Albanian language courses, Albanian movie shows, library services, etc.

1227. Paragraph 3 of article 54 of the Constitution recognises the right of children to be protected against violence, exploitation and hard labour, under the minimal age for work (which according to the Albanian legislation is 16 years of age), which may damage the health, morale and may put the child's life and development at risk.

1228. In accordance with the Family Code, when the court recognises that the parent misuses the paternity rate or shows no care while exercising these rights, or plays a negative role in the education of the child, the court may deprive the parent of these paternal rights (article 76).

1229. The Family Code envisages the cases when the parent, who is not the tutor of the child after the divorce, can approach the Tutorship Council for special measures, in the cases when s/he is not in agreement with the actions and measures taken by the other parent towards the

child (article 68). The Family Code does not state specifically the types of actions taken against the child, but based on the court procedures it results that these cases refer to actions which are related to the maltreatment of the child, physical violence, offence and sexual abuse. The Criminal Code has envisaged the issue of maltreatment and abuse towards children for defined cases. The respective sentences have been also defined.

1230. Based on the Criminal Code, non-provision of necessary means for the child's life by the person requested to do so from the Court, has been considered a criminal offence and is fined or punished with up to one year imprisonment (article 125).

1231. In addition, the Criminal Code considers the abandonment by the parent or the tutor, of children below 14 years of age, as a legal violence. Under these circumstances, the person should be fined or condemned with up to three years of imprisonment. If while exercising these acts, serious impacts have been noticed in the child's health or they may have led to the death of the child, the condemnation starts with three up to ten years imprisonment (article 124). However the Criminal Code does not envisage special measures for cases of offence, ignorance, and mental violence towards the child. These cases fall under the provisions of Criminal Code as all the other cases mentioned previously.

1232. The amendments of Criminal Code state that serious threats of revenge or blood feud made towards the person depriving him / her and the children, of free movement and education, are considered as legal violence and should be fined or condemned with up to two years imprisonment. This amendment in the Criminal Code is important under the conditions when the isolated minors are deprived of the right to free movement, information, right of education and are indirectly suffering from mental violence of consequences.

1233. The maltreatment of children is one of the sharpest problems, which the Albanian society is facing. The cases of maltreatment are expressed in various forms within and out of the family. Revenge and blood feud has become a serious problem during the last ten years. Children are directly and indirectly influenced by these phenomena, as the subject and object of the offences. Many are the minor children who are obliged to abandon the schools due to this reason.

1234. Street children represent the most unprotected category of children. They are exposed to numerous risks such as maltreatment, insecurity, illiteracy, malnutrition, etc. The marginalisation of this category is due to many economic, social, cultural, educational and family factors. According to some partial information for Tirana, 800 street children have been identified to exercise their profession as beggars, sellers, shoe shiners, etc.

1235. Unprotected children, orphans with divorced parents, quite often become targets of various forms of exploitation and violence. These have become the objects for the written and electronic media and the charity associations have considered the majority of these cases.

1236. The children involved in labour or other profit-making activities, have completely abandoned the schools, whereas others go to schools but continue these various activities after the school hours, thus participating in the economic family or non-family activities. The court practice recently shows that there have been cases when decisions have not been based on the reasons, which led to the maltreatment of the children or their family situation, approach that is against the interests of the child.

1237. The Criminal Code states those sexual or homosexual relations with relatives or persons under the tutorship are considered as penal acts. In accordance with the respective provisions, the sexual or homosexual relations between the parents and child, between brothers and sisters, or between persons who are in tutorship or adoption relations are condemned with up to five years of imprisonment.

1238. The amendments of the Criminal Code envisage that for homosexual or other sexual acts, the condemnation be from 5 to 7 years of imprisonment. In addition to other reasons, another objective is to provide clear definition of provisions.

1239. According to article 54 of the Constitution, children (children below and over 14 years of age) enjoy the right to special protection by the state. In this aspect, the major problem does not lie with the juridical protection of the child, but with the effective implementation of this protection, especially under the conditions when the families are very closed and do not allow the situation become known and that protective and preventive measures are taken for the child's interest.

1240. So far studies have not taken place in Albania in order to define the types of maltreatment of children. One of the studies in this area comes to the conclusion that the written and electronic media plays an important role in raising the awareness of the society and specifically of the children. Media should assist parents and children in dealing with psychological violence or negligence, as these phenomena seem to remain hidden.

1241. The establishment of special centres for children would support them emotionally and gradually would lead to surpassing the consequences of maltreatment from the children. The Council of Minister's Decision no. 415, dated 01.07.1998 'On the Establishment of the Committee Woman and Family' accepts the establishment of the Committee as an independent structure under the direct supervision of the Council of Ministers.

1242. Albanian legislation has not foreseen special provisions incorporated in one legal act, regarding the maltreatment of children that have become victims of exploitation, maltreatment, torture, etc. However these measures are found in special laws as per the respective case.

1243. The treatment of refugees coming in Albania and the measures taken for their re-integration have been pointed out in the Law related to refugees. Whereas the Criminal Procedural Code points out the ways of repairing the non-property damages deriving from the criminal acts.

### **Cultural development of children**

1244. The Constitution of the Republic of Albania, under the Chapter on Social Objectives, points out the state's objective for the development of sports and recreation activities (article 59).

1245. Recreation is an important component of the children's life. At present, much of the cultural and recreational infrastructure for children does not function in Albania. It has either changed direction or is facing complete degradation. As a result, there exists a very small number of environments for the recreation or education of children. Playgrounds, where children may have fun and play, are almost nonexistent. The former playgrounds are

disappearing with each passing day, leaving room to new constructions, which are mercilessly destroying those few playgrounds for children who are too weak to call a halt to them. The dwelling place is the only environment left to them to play, watch TV and operate electronic games. In every town there is a single state-run cultural centre for children. It makes arrangements for the children's festival that takes place every year on the 1st of June.

1246. Lack of environments appropriate to them has driven children into spending long hours in front of the TV-sets. Its influence is so evident that, at the lowest levels, has succeeded in shifting the other natural interests of their age. Today psychologists and sociologists trace increased juvenile criminality to the intensive perception of the television reality, the powerful effect of violent scenes on children's emotions and their tendency to imitate in real life the television scenes they experience so profoundly. In this aspect, the relevant legislation helps to prevent and reduce the negative influence of electronic mass media on increased violence among members of this age-group. Parents who are doing poorly economically speaking, find it impossible to provide for the numerous cultural and recreational needs of their children.

1247. Schools offer very limited possibilities for out of class leisure and recreation. Nonetheless, the vast majority of the cultural or sports activities are organised by schools, whereas parents who take an interest in their children's recreation arrange others.

1248. Even when the families can devote all the needed time to their children, more often parents do not have the appropriate preparation to raise a happy child. Children are facing the same social-economic situation as the whole of the Albanian people. However, the foregoing peculiarities raise the need for possibilities to be created to ensure a gradual lessening of the impact of the negative consequences of the difficult transition Albania is going through. This will help children live their life and make their contribution to the society, making use of the rights due to them.

### **Right to be registered immediately after birth and to have a name**

1249. The right to have a name has been envisaged in the Civil Code (article 5) which states that every individual (including children) are entitled and obliged to have a given and family name which is given in accordance with the law. The person, who is deprived of using these names or suffers the unfair use from others, may approach the court for the proper use of the own name or family name, for the protection against the percept risk and may request the relevant compensation.

1250. In cases when the court accepts the claim, it requires the publication of the decision in the Official Journal. If requested by the claimer, the court may decide on the publication of its decision in other journals, too.

1251. Law no. 840 dated 20.02.1979 'On Civil Status' regulates the registration procedures of the new born children. The registration of the born child is handled at the civil status offices responsible for the area where the parents live or where the newborn baby lives.



1252. The birth should be declared within thirty days from the birthday and when the baby was born dead, within three days. When the established periods are not respected, the registration is done through a written decision of the head of the administrative entity, which covers the area, where the parents live or where the birth took place, after the birth date has been confirmed.

1253. The parents are responsible for declaring the child's birth. They are also responsible for giving the child a name. When the parents of the child find it impossible to do, in their absence, the relatives define the name for the baby. The declaration is made by the other adult members of the family or by the nurse who was in the delivery process or by the health institution where the child was born. The child's birth is registered in the Register of Births.

1254. The registers of the civil status include: books of births, marriages, deaths and the fundamental book of citizens. The child takes the common family name of parents. When parents have different family names, all the children retain one family name, the one that parents decide in agreement. When there is no agreement, the children retain the father's family name. When the child is not alive at the moment of registration, the name is given upon consent of the parents. Afterwards the child is registered by name and is also registered as dead. When the child was born dead, it gets registered without a name and the respective note is taken under the respective column of notes in the register. The child born out of marriage relations gets registered under its name, mother's name and under the non-existing father's name. Whereas the family name of the child is as per the mother's maiden name.

1255. If the paternity is known and recognised, the father's name and father's family name is registered, too. The child born out-of-marriage relations is registered at the closest civil status offices, within three days, by the head of the institution, after the consent of the mother for the child's name. The found child gets registered within three days, by the state entity or administration of the children's institution based on a written document compiled at the moment the child was found. Under these circumstances, the civil status official gives a name to the child and registers the child under this name, giving unreal names for the father, mother and family name.

1256. Under these circumstances, the situation existing in Albania after the '90ties requires a detailed legal regulatory approach, as numerous cases have been noticed when many mothers leave the maternity right after delivery and do not provide any identification or provide false ones. This is mainly due to irregularities, which happen in maternity hospitals as well as due to legal amendments, which have created the opportunity of placing children at non-governmental institution, in and out of the country.

### **Right to acquire citizenship**

1257. Under the Constitution of the Republic of Albania (article 19), everyone born of at least one parent with Albanian citizenship acquires automatically Albanian citizenship. Albanian citizenship is acquired also for other reasons provided by law. An Albanian citizen may not lose his citizenship, except when he gives it up.

1258. Law no. 8389, dated 5 August 1998, "On Albanian Citizenship", provides for the cases where the child acquires the citizenship and where it is removed. Under the present law (article 5), the minor acquires and reacquires Albanian citizenship and gives it up with the

consent of the parents, and for any change in the citizenship of a minor aged 14-18 the consent of the minor should be sought. On the basis of the above-mentioned law on citizenship, Albanian citizenship is acquired through birth, naturalisation and adoption.

1259. Acquiring of Albanian citizenship at the time of birth was changed by law no. 8442, dated 21 January 1999, according to which everyone born of at least one parent with Albanian citizenship acquires Albanian citizenship automatically. In accordance with the second paragraph of article 7 of the Convention on the Rights of the Child, the legislation on citizenship also provides for the cases where the child risks of being deprived of citizenship. Under the present legislation, a child born or found within the territory of the Republic of Albania acquires Albanian citizenship in the event that he is born of unknown parents, in which case the child would otherwise be stateless (article 7). If the child's parents become known before the child attains the age of fourteen years (after this age the child's consent should be sought), and they are of foreign citizenship, the Albanian citizenship may be removed at the request of the legally recognised parents, provided that subsequently the child is not stateless as a result of this act.

1260. The legislation has also provided for the cases where the child is born of foreign parents (bearers of a different citizenship). In this case, the child may acquire the Albanian citizenship after his parents have given their consent on the condition that:

- First, the child is born within the territory of the Republic of Albania, and
- Second, the child's parents are legal residents in the territory of the Republic of Albania.

1261. A person above eighteen years of age who wants to acquire Albanian citizenship through naturalisation should submit his application, thus meeting the first condition to that effect. Hence, minors do not fall under this category. The said legislation, however, provides for exceptions in terms of stateless persons, in these way-favouring minors below the age of eighteen years who, in these cases, may acquire the Albanian citizenship although they fail to comply with the age condition, and several other terms established by law (article 9). In the event that both parents acquire the Albanian citizenship through naturalisation, the child may also acquire the Albanian citizenship, at the request of his parents, and after he has given his own consent if he is aged 14-18.

1262. The application to acquire the Albanian citizenship is filed with the Ministry of Public Order, and if the applicant lives abroad, with the diplomatic or consulate representations of the Republic of Albania in other countries. Under the present law, a set of other documents should be produced along with the application. The above-mentioned bodies consider the relevant package of documents, and if they find them complying with the requirements of the law, they present them to the President of the Republic who issues the relevant decree.

1263. Article 23 of the Constitution of the Republic of Albania recognises the right to information in general, whereas article 35 the everyone's right to become acquainted with the data collected about him, except for the cases provided by law. The two foregoing constitutional provisions also incorporate the right of the child to information, and to become acquainted with the data on his parents, which are available with the relevant bodies.

1264. The Albanian law addresses the issue of information in two cases: the adoption of minors, and the child's placement in an orphanage. The Family Code, amended by Law no. 7650, dated 17 December 1992, "For the Adoption of Minors by Foreign Citizens and Several Changes in the Family Code", recognises full adoption only. Hence, the relationships between the adopted child and the adopters are similar to those between parents and child. The rights and obligations between the adopted child and the children born to him, on the one hand, and his family of origin, on the other hand, cease to exist (article 57). Under Law "For the Registration of the Acts of the Registrar's Office", the child's registration made before he was offered for adoption should be kept in the registrar's office registers. The registrar has to make sure that the true origin of the adopted child remains intact, and he should not erase his previous generalities that are entered into the birth certificate. On the basis of the court decision on adoption, the registrar takes down the necessary notes under the special column of notes contained in the birth certificate of the adopted child. The registrar may reveal data on the origin of the child only to the court or the prosecutor's office, observing what the law provides for in these cases.

1265. In the course of practice this issue has proven to be more problematic with regard to children who are placed in orphanages and do not know their parents. The mother is supposed to be known, which is not the case when dealing with a found child. Nonetheless, this information is very hard to be found in the orphanages. When it comes to registering the mother's real name the approach maternity wards adopt in some cases often encroaches on the child's right to know one of the parents, as irregularities in registration do frequently deny the child the possibility to know at least his mother.

1266. The new draft law on the Civil Status, which is going through the last round of debates, provides for the civil status of the Albanian citizens, who are permanent residents in foreign countries, as well as foreign citizens and stateless persons. In the meaning of the draft law, the family is composed of persons who voluntarily are registered together in the documents available in the registrar's office.

1267. Under the draft law, family relationships mean the relationships between the parent and his family, following the birth of a person, marriage or adoption and may change in the form of separation only, at the request of the adult person and with the approval of the competent body or the court. Under the draft law, minors follow their parents. When parents are separated and disagree on how to handle the children, the court decision is acted upon, at the request of each one of the parents. For reasons of registration and meaning of the family, the draft law provides for the actions to be taken when the child lives with the parents.

1268. The present draft law stipulates that the child is registered with the name the parents want him to bear, and if at this point the parents disagree, they should turn to court, and its decision instructs on how to do the registration. Under the said draft law, the child should bear the surname of the parents, and if both the parents do have their own surnames, the child bears both surnames. In the absence of a father, the child bears the mother's surname only. The draft law provides that change of name and surname takes place for reasonable grounds only.

1269. The introduction of artificial reproduction methods is another tendency, which is highly debatable nowadays. The draft law on the reproductive health, amongst others, provides for the introduction of the new artificial reproduction techniques for the first time in Albania. The draft

law prescribes the surrogate adoption, artificial insemination, and the experimental “in vitro” birth. The present draft law takes account of the desires of the parents to choose the reproduction methods. A good number of specialists, however, share the opinion that the application of the surrogate adoption is pre-timely in Albania, owing to the prevailing mentality of the Albanian society. The draft law stipulates, amongst others, that the Ministry of Health should issue the appropriate acts to define the details and procedures for the realisation of these services.

1270. However, artificial insemination has given rise to a larger number of problems in comparison with natural insemination, leading to various situations in contravention with the children’s interests. For instance, a child is born in the absence of the legal parent, who exists physically at the moment when the child is born, but the law does not recognise his title, rights and obligations as a father. Or another case is that of the simultaneous existence of two mothers, as two women have contributed to the birth of the child. One of them is the genetic mother, and the other is the bearing mother. In this case, the draft law provides for a contract to be drawn before the notary between the couple and the bearing mother, who has to give the child to the couple when the child is born alive.

### **Preservation of identity**

1271. The Constitution of the Republic of Albania and the relevant legislation provide for the right of a person (including minors) to preserve his identity in terms of its constituent elements, including citizenship, family ties, language and culture. Under the Constitution of the Republic of Albania (article 3), the State has the duty of respecting and protecting the national identity, which has a broader meaning than the person’s identity.

1272. Under the heading of the general principles of the fundamental human rights and freedoms, the Constitution of the Republic of Albania recognises the obligation of the organs of public order to respect the fundamental human rights and freedoms, and contribute to their realisation. Law may only provide for the limitation of the rights and freedoms for a public interest or for the protection of the rights of others. This limitation shall be in proportion with the situation that has dictated it (article 17).

1273. The Constitution of the Republic of Albania, likewise, respects preservation of identity of the national minorities, which have the right to express and preserve their ethnic, cultural, religious and linguistic identity.

1274. Under the first chapter of the Civil Code, a person has the right to preserve his name and surname, as well as his residence (articles 5 and 12). The present Code also prescribes the right of the physical person to the enjoyment of civil rights, except for the cases provided by law.

1275. Under the Constitution of the Republic of Albania and Law no. 8389, dated 5 August 1998, “On Albanian Citizenship”, the preservation of the Albanian citizenship acquired pursuant to law is guaranteed. The Constitution of the Republic of Albania contemplates that the Albanian citizen may not lose the citizenship, except when he gives it up. The parents decide on the citizenship of the minor below the age of fourteen years, in accordance with the criteria established by law. Children aged 14-18 should give their consent to that effect.

1276. As far as the preservation of the persons' name or surname is concerned, Law no. 5840, dated 20 February 1979, "On the Registration of the Acts of the Registrar's Office", has been amended by Law no. 7682, dated 9 March 1993, "For Several Changes in the Legislation".

1277. Under this law, each and every citizen has the right to file a petition seeking to change the name or surname, while also setting forth the motives prompting this change, as well as the proposal for the name or surname he has chosen. The council of the commune or the municipality takes the decision on the change of the name or surname. This decision is then handed on to the respective registrar's office that fills in the necessary changes in the fundamental register of the citizens. Under the Family Code, following adoption all the ties that the adopted child used to have with his family of origin cease to exist.

1278. Under the draft law on the Civil Status, the family sheet of paper for each and every member of the family, including children, should contain the name, surname, number of the identity card, sex, date of birth, place of birth, father's name, mother's name, citizenship, and the family status and relationships. Pursuant to the present draft law, the child acquires the citizenship of the parents when they have the same citizenship, which may not be changed by a court decision, except when the parents' citizenship is found out to be inaccurate, or when paternity or maternity are changed by way of legal proceedings. When parents of different nationalities do not reach an agreement, the registrar's office temporarily assigns the father's citizenship to the child. Eventually, the latter acquires his citizenship when he becomes of age. The said draft law also determines the citizenship of the child born out of wedlock, of the adopted child, of the child without parents, and of the child born through artificial insemination methods. In terms of children born through the latter methods, the draft law limits itself on to children born of a married woman.

## **Article 25**

### **Right to participate in public affairs, voting rights and the right of equal access to public service**

1279. The Constitution of the Republic, article 1/3, envisages that governance is based on a free, fair, general and periodic election system. Article 45, every citizen that has reached the 18 years of age the latest on the Election Day, has the right to participate in elections and be elected. The citizens declared to be under a court procedure considering them as mentally disabled are deprived of this right. The prisoners who are exercising their conviction of deprived from liberty, enjoy the right to elect, only. The vote is personal, fair, free and secret.

1280. The Parliament is composed of 140 members. 100 MPs are directly elected in nominated areas with approximate equal voters. 40 MPs are elected from the multi-nomination list of parties/or coalitions of parties as per the order in them. The general number of MPs from every party/or coalition of parties is defined in ratio with the valid votes taken all over the country during the first round of elections. The parties which receive less than 2.5 percent and coalitions of parties which have received less than 4 percent of the valid votes all over the country during the first round of elections do not profit from the respective multi-nomination list (article 64).

### **Elections for the Parliament**

1281. The Constitution defines that the political parties, coalitions of parties and by the voters, may introduce the candidates for MPs. The rules for defining the candidates for MPs, the organisation and development of elections, as well as the election areas and the validity of these elections are set by the Law on Elections (article 68).

1282 There are certain persons who cannot be candidates or elected as MPs, without resigning from their duties, the following group of people:

- solicitors, prosecutors;
- military active servants;
- national police and security servants;
- diplomatic representatives;
- mayors or heads of communes, as well as heads of prefectures at the location they exercise their duties;
- chairs and members of the election commissions;
- president of the Republic and high officials of the government administration defined by law.

1283. Law no. 9087, dated 19 June 2003, Election Law of the Republic of Albania drafted with the assistance of the OSCE defines that in addition to the conditions for being a voter, a candidate also must meet the conditions of section 3 of article 45 and article 69 of the Constitution.

1284. A candidate for local government bodies, in addition to the conditions provided in article 45 of the Constitution, should be a citizen domiciled in the respective local government unit. A candidate for the organs of local government may not be a deputy in the Assembly or a candidate for deputy. The candidates of the party lists deposited with the electoral commissions shall meet the conditions contemplated in sections 1 and 2 of this article.

### **1991 elections**

#### **Valid ballots according to political parties**

Political parties	In thousands	In percentage
The Party of Labour	1 052	56
Democratic Party	725	39
Republican Party	33	2
“Omonia” Organization	14	1
Committee of Veterans	5	0
Agrarian Party	1	0
Other Parties	43	2
Total	1 873	100

Source: INSTAT.

### 2001 elections

Political subject	Number of seats		
	Direct	From the multi-nomination list	Total
PSSH	73		73
PD + BF	25	21	46
PDr		6	6
PSD		4	4
PBDNJ		3	3
PASH		3	3
PAD		3	3
Independent	2		2
Total	100		140

### Elections to local government councils

1285. In accordance with article 108 and 109 of the Constitutions, communes and municipalities are basic units of local government. They perform all the duties of self-government, with the exception of those that are given by law to other units of local government. Self-government in the local units is exercised through their representative organs and local referenda. The principles and procedures for the conduct of local referenda are provided by law in accordance with article 151, paragraph 2.

1286. The representative organs of the basic units of local government are the councils, which are elected every three years by general direct elections and by secret ballot. The executive organ of a municipality or commune is the mayor, who is elected directly by the people in the manner contemplated in paragraph 1 of this article. Only citizens with permanent residence in the territory of the respective local unit have the right to be elected to the local councils and as mayor of the municipality or commune.

1287. The Qarku (Region) is composed of some local government units with traditional, economic and social links and of common interests. The Qark is the unit, which defines and implements regional policies and where these policies get harmonised with those of the central government. The representational entity of Qarku is the Council. The municipalities and communes delegate members in the Qarku Council in proportion with their population and at least one member. The Mayors and heads of communes are always members of this council. The other members of the Qarku Council are elected through the proportional list amongst the municipality and commune councillors. The Qarku Council is responsible to issue orders and decisions of obligatory nature over the whole Qarku (article 110). Local government units are juridical persons. The local government units have independent budget, which is established in accordance with the law.

1288. According to Law no. 9087, dated 19 June 2003, on the Election Law of the Republic of Albania, the mayors of the municipalities or communes, as well as members of the councils of municipalities or communes, are elected by direct votes by the voters with a domicile in the territory of the municipality or commune.

1289. The members of the councils of the municipalities and communes are elected on the basis of the multi-name lists submitted by political parties and coalitions, as well as on the basis of individual independent candidacies. Political parties registered at the CEC have the right to submit joint candidates for mayor of a municipality or commune, as well as joint multi-name lists for local councils (article 76).

1290. The Criminal Code of the Republic, article 10, covers penal acts, which relate to the electoral process, free elections and democratic system. Thus, violent hindrance and any kind of hindrance towards the process of electoral entities to exercise their activities in accordance with the law, during the election campaign, is convicted by a fine or imprisonment for up to three years (article 325).

1291. Presentation in the election documents of data, circumstances, figures that are recognised as being incorrect, formulation of false documents or replacement of correct documents with false ones, committed by individuals responsible for the processing, validating, and surveillance of the documents, is considered as a legal violation and is convicted by a fine or imprisonment for up to five years (article 326).

1292. Violating the secrecy of voting by persons responsible for the elections is considered as a legal violation and is convicted by a fine or imprisonment for up to one year (article 327). Offering or giving bribes, making pledges for employment or favours of any kind, with the objective of collecting signatures for the candidacy, or to vote in favour or against a candidate or to participate or not in the elections, is considered a legal violence and is convicted by a fine or imprisonment for up to six months. Acceptance of bribery and other favours to conduct the above-mentioned actions is considered as legal violation and is convicted by a fine (article 328).

1293. The threat towards the voters to vote in favour or against one candidate, as well as to participate or not in the elections is considered as a legal violence and is convicted by a fine or imprisonment for up to two years (article 329).

1294. Intentional non-inclusion of voters in the lists or the intentional addition of others who do not enjoy the right to vote, is considered a legal violence and is convicted by a fine or up to one year imprisonment (article 331).

1295. Misuse of the military authority by an officer or military servant in order to influence upon the ballots of the military supervisees, or by ordering or advising them, is considered as a legal violation and is convicted by a fine or imprisonment up to two years (article 332).

### **Information about the elections**

1296. Pursuant to law no. 9087 dated 19 June 2003, "The electoral Code of the Republic of Albania", every Albanian citizen eligible to vote and who meets the requirements of this article can be selected as a member of the CEC. A member of the CEC should meet the following requirements:

- (a) to have higher education;
- (b) not to have been convicted of an offence by a final court decision;



(c) not to have been a member of the steering organs of any political party at the central and local level during the last 5 years;

(d) not to have been a member of the State Information Service or of the State Police in the last 5 years;

(e) not to have been dismissed from the public administration for a violation of the law.

1297. A member of the CEC must have a working experience of no less than 5 years:

(a) in the field of law;

(b) in public or electoral administration;

(c) in associations and non-profit organisations that operate in the field of the protection of human rights;

(d) in public relations;

(e) in statistics;

(f) in political science (article 20).

### **General principles for the election of CEC members**

1298. Members of the CEC are selected pursuant to article 154 of the Constitution. The members of the CEC collectively shall satisfy, at all times, the requirements of article 20 of this Code. The members of the CEC have a 7-year mandated and can be re-elected only once. The beginning and the end of the mandated of CEC members are determined in this Code. Membership in the CEC is incompatible with any other state or political activity (article 21).

1299. Article 22 of the electoral code provides the procedure of the election of the CEC members. According to article 22, The Assembly of Albania elects two members of the CEC upon the respective proposals from the left and right spectrum of its political composition, excluding the largest political party of either political spectrum.

1300. The number of candidates presented to the Assembly of Albania shall not be more than two for each vacancy. The candidacies within the groups are selected with consensus or according to the number of supporting votes of the deputies belonging to the same spectrum as the proposing party, excluding the largest political party of the respective spectrum. A deputy cannot support more than one list of candidates. The Speaker presents the proposed candidates to the Assembly.

1301. The President of the Republic appoints two members of the CEC upon the respective proposals of the two largest political parties of the majority and the opposition. The number of the proposed candidates is not higher than two for each vacancy in the CEC.

1302. The High Council of Justice selects three members of the CEC according to this procedure:

(a) two members of the CEC are approved from among two candidates for each vacancy proposed respectively from the two largest parties;

(b) the third candidate is selected by the High Council of Justice according to this procedure: the two largest parliamentary groups propose four candidates who are jurists by profession. Each of the parliamentary groups selects two of the four candidates from the other group. The four selected candidacies are voted on by the High Council of Justice no later than 48 hours after having been deposited;

(c) the High Council of Justice decides with two-thirds of the votes of all its members;

(d) in the case that none of the candidates obtain the required majority, a second round takes place on the same day, between the two candidates who received the highest number of votes in the first round;

(e) if, in the second round as well, no candidate obtains two-thirds of the votes of all members of the High Council of Justice, a third round takes place on the same day, between the candidates of the second round. In the third round, the candidate who obtains 50% plus one of the votes of all members of the High Council of Justice wins.

### **Renewal of the composition and replacement of members of the CEC**

1303. The mandate of a CEC member ends on the same date of the same month of the seventh year after the date of his election. New members replacing the members, whose mandates have expired according to section 1 of this article and article 25 of this Code, are elected not later than 30 days from the date of the end of the mandate. During an electoral period, the replacement is done not later than 5 days from the date of the end of the mandate (article 26).

### **The competencies of the CEC**

1304. In compliance with article 153 of the Constitution, the CEC performs the following duties:

1. Within its jurisdiction, issues decisions and instructions with general juridical power in the whole territory of the Republic of Albania, based on and for the implementation of the law;
2. Takes decisions for the unification of electoral practices;
3. Through its structures direct and check the pre-electoral and electoral process;

4. Declares through a decision the final result of the elections at a national level, based on the results announced by the ZEC, or in certain cases the LGEC, and after the examination of appeals in the court has been completed. The declaration is made no later than 3 days from the dated when the CEC receives all the official data from the election commissions and the court decisions as provided in this Code. The decision is published in the Official Journal no later than three days after its issuance;
5. Announces the winning candidates from the multi-name lists for deputy;
6. Issues sub-statutory acts for regulating the voter registration process, supervises this process, verifies the accuracy of the data and administers the National Registry of Voters in accordance with the rules provided in this Code;
7. Implements voter education programs for citizens and training of members of election commissions;
8. Appoints and dismisses, in accordance with this Code, ZEC and LGEC members and supervises them in the accomplishment of their duties;
9. Publishes the election bulletin, which contains the results of elections for each electoral unit and voting centre, as well as a report on electoral expenses;
10. Presents an annual report on the activity of the previous year to the Assembly, by the Month of February of each year;
11. Prepares the annual draft budget according to the respective law for the functioning of the institution and, after the approval by law of the budget, defines in a general manner the structure of the budget expenses;
12. Prepares the draft budget for the up-coming elections and administers funds allocated from the state budget and from other lawful sources for purposes of the election, by deciding on the structure of budget expenses and various donations for the elections;
13. Examines and resolves the claims of electoral subjects on the conduct of the electoral process, in accordance with the rules of this Code;
14. Compiles and distributes the electoral complaint forms, including court appeals, in accordance with the rules provided in this Code;
15. Determines the amount of remuneration for non-voting members and representatives on the electoral commissions;
16. Applies administrative sanctions against persons who commit administrative infractions, as well as files criminal charges for criminal offences related to the elections;

17. Approves the structure, personnel needs and the salary structure of the CEC administration;
18. In certain periods, may decide to employ on a temporary and part-time basis, employees of different levels;
19. Approves the regulations for its organisation and functioning;
20. Performs other duties stemming from this Code or from other laws (article 29).

### **Local Government Election Commission (LGEC)**

1305. An LGEC consist of seven members who are appointed according to the following procedure:

(a) Two of the members are proposed by the main ruling party, two members are proposed by the main party of the parliamentary opposition and two members are proposed respectively by the second party within the ruling political spectrum based on the number of votes obtained during the last local governmental election and by the second party within the political spectrum of the opposition based on the number of votes obtained during the last local governmental election.

(b) In half of LGECs, the seventh member is proposed by the main governing party, and in the other half by the main party of the parliamentary opposition. The respective LGECs are established by CEC according to objective criteria based on:

- (i) Random selection; and
- (ii) Equal distribution in the electoral territory;

(c) The chairman and deputy chairman of the LGEC are selected by the CEC upon the proposal of the LGEC. In those LGECs where the main governing party selects the seventh member, the chairman is selected from among the members of LGEC representing the main governing party, and in the other half a representative of the main party of the parliamentary opposition. The deputy chairman is of the opposite political affiliation to that of the chairman.

1306. The secretary of an LGEC is appointed by the CEC on the proposal of the LGEC, for a period of time determined by the CEC. The secretary of an LGEC shall be a jurist and have the status of a non-voting member of the LGEC. Members of an LGEC may not be deputies or candidates for the Assembly, part of the representative organs of local government, or members of another LGEC. Members of the LGEC may not be military personnel or members of the structures of the State Police or the State Information Service.

1307. Members of the LGEC shall, as a rule, have higher education and may not have been convicted of an offence by a final court decision. Members of the LGEC shall have a domicile or registered residence in the respective local unit. The LGEC is a permanent organ, but its members do not work full-time. The CEC determines the working hours of the members of the LGEC during the election period or outside of it.

1308. Political parties registered with the CEC as electoral subjects, that do not have a member in the LGEC in accordance with section 1 of this article, have the right to designate one non-voting representative each to the LGEC after nomination of their candidate for mayor of a commune or municipality, or multi-name list candidates for the local council.

1309. Independent candidates in a commune or municipality have the right to name one nonvoting representative each to the LGEC. If a political party represented in the LGEC does not nominate a candidate for mayor of a commune or municipality and has not submitted a multi-name list for the local council, it relinquishes its seat on the LGEC.

1310. The LGEC is re-established in accordance with the results of the last elections to the local council no later than one month after the declaration of the final results of the local elections by the CEC. When the seat of a member of the LGEC is vacant, it is filled in compliance with the rules provided in this article within 30 days from the dated of creation of the vacancy. During the election period, vacant seats are filled within three days (article 40).

### **Referendum**

1311. Part eleven of the constitution (articles 150-152), provides for the conditions and cases for holding a referendum. The people, through 50 thousand citizens who enjoy the right to vote, have the right to a referendum for the abrogation of a law, as well as to request the President of the Republic to hold a referendum about issues of special importance. The Assembly, upon the proposal of not less than one-fifth of the deputies or the Council of Ministers, can decide that an issue or a draft law of special importance be presented for referendum. Law provides principles and procedures for holding a referendum, as well as its validity.

1312. The President of the Republic promulgates a law approved by referendum. Issues related to the territorial integrity of the Republic of Albania, limitations of fundamental human rights and freedoms, budget, taxes, financial obligations of the state, declaration and abrogation of the state of emergency, declaration of war and peace, as well as amnesty, cannot be voted upon in a referendum. A referendum upon the same issue cannot be repeated before 3 years have passed since it was held.

1313. Law No. 7866, date 06.10.1994, amended by the law no. 8416, dated 12/10/1998 "On the Referendum" provide the legal framework for holding a referendum. According to this law, a referendum is a means of exercising the power of the people through general, equal, direct and secret voting. A referendum may be held to approve the Constitution and its amendments, as well as other specifically important national issues that are related to the independence and integrity of the Republic of Albania, as well as other major issues. A referendum may be held to resolve important administrative-territorial disputes, under the condition that this does not violate the unique and national character of the Albanian State.

1314. Referenda, depending on their nature must be national or partial. National referenda shall be held throughout the territory of the Republic of Albania and all the Albanian citizens participate who have the right to vote. Partial referenda are held in one or more administrative units of the Republic of Albania where all the Albanian citizens, who are permanent residents in those units and who have the right to vote, participate.

1315. All Albanian citizens who by Election Day have reached the age of 18 years and above have the right to vote. All citizens whose capacity to act is abolished, are excluded from this right. The citizens, political parties, organizations have the right to campaign in favour of their option.

1316. The following bodies are established for the referendum:

- The Central Election Commission.
- The zone, commune and municipality commissions.
- Polling station commissions.

1317. The topics of the referendum shall be printed on top of the ballot paper in the form of the question, the two options “**YES**” and “**NO**” - on the left side, two rectangles where the voter marks the vote - horizontally on the right side. The voter will mark “+” in the rectangle corresponding to the alternative he/she favours.

1318. To ensure the free choice of citizens, those persons who, through violence, fraud, threats or any other means, harass citizens either to participate in, or boycott, the referendum, or who force a citizen to vote yes or no, shall be punished with fines or imprisonment of up to three years. The deliberate submission of inaccurate data, facts, figures, false documents, or the substitution of official documents with false ones, committed by persons in charge of compiling, assessing, issuing or maintaining documents, shall be punished with fines or imprisonment of up to 5 years. Any violation of other provisions provided for in this law constitutes an administrative violation and shall be punished with a fine of lek 1,000 to lek 10,000. The respective voting commissions shall issue such decisions.

1319. Three referendums were held during the reporting period, two aiming the adoption of the new constitution (1994, 1998) and the third one in 1997, having as subject the restitution of the parliamentary monarchy. From the above only the 1998 referendum on the constitution succeeded.

### **Right to equal access to public services**

1320. Law no. 8549, dated 11.11.1999, “On the Status of the Civil Servant” states that the objective of this law is to define similar rules for the conditions and procedures of acquiring the civil servant status, for initialising and ceasing the working relations, for career development, for the guarantee of rights and definition of responsibilities of the civil servants, with the final objective to establish a sustainable professional and efficient civil service (article 1/1).

1321. Article 12, the persons to be accepted, as civil servants should meet some general criteria:

- should be Albanian citizens,
- should be able to act,
- to meet the legal requirements for the educational background and required professional experience as per the job description,

- enjoy good health to undertake the defined tasks,
- not to be convicted by any kind of firm court decision for offence commitment,
- not have records of previous termination of civil servant status due to serious disciplinary violations.

1322. Article 13, the acceptance into the civil services should be through open competition, based on his/her merits. The Department of Public Administration, based on the request of the respective institution, announces the vacancies at the central administration. The independent institutions place the vacancies through the human resources departments.

1323. The vacancy is announced in two widely circulated newspapers at least thirty days before the day of the competition. The announcement for the competition includes a list of general requirements and special job requirements that the candidates should meet, defined by the Department of the Public Administration in collaboration with the institute of the central administration and with the human resources departments of the independent institutions.

1324. The competition is developed in three phases:

- During the first phase, the short-listing of candidates takes place. They afterwards will undergo the test, which consists of checking whether the candidates meet the general requirements and the specific job requirements already announced. Only the candidates who meet these requirements will be accepted to undergo the test. This phase is conducted by the Department of the Public Administration for the central administration institutions and by the departments of the human resources for the independent institutions.
- During the second phase, the test takes place. Ad-hoc committees are established by the Department of the Public Administration for Central government institutions and by the human resources departments for the independent institutions.

These committees are composed of five members: a representative of the Public Administration Department, for Central Government institutions or representative of the Human resources department for the independent institutions; two representatives of the central or local public administration institution requesting the vacant post to be filled; two professors of the faculty in accordance with the area on which the testing will be conducted or two recognised specialists in the respective fields.

The ad-hoc committee should compile a list of the three candidates with the best results, based on the tests results and also on their qualification and experience, scientific publications and special skills of the candidates. The results of the tests will make up for the 70% of the total points, whereas qualifications, professional experience, scientific publications and special skills of the candidates will make up for the 30% of the points.

- The third phase consists of the final evaluation of the candidates. During this phase, the direct supervisor who will be working with the employee will select one of the three candidates proposed by the ad-hoc committee.

1325. The claims for the competition process are presented in the Civil Services Council within thirty days from the announcement of the results in two of the widest circulated newspapers. If a claim results to be valid, the claimer will be proposed to institutions for the first relevant vacancy they will have.

1326. The legal relations of the civil servant start with the appointment at the civil services and are not time bounded. The employment act is signed by the Department of the Public Administration for the central administration and by the human resources department at the independent institutions, after the timeframe of claims is over, and this pointed out in point 6 of this article.

1327. Civil servants are officials of the public administration at the central level, who exercise their public authorities of a managerial, organisational, supervision and executive level. The public administration institutions at the central or local level are:

- Parliament's administration,
- President's office administration,
- Council of Ministers' officials,
- Officials at the Ministries,
- Independent central institutions,
- Municipalities and Qarks (Regions).

1328. Article 11, the civil servants classes are:

- Civil servants at the senior managerial level,
- Civil servants at the middle managerial level,
- Civil servants at the lower managerial level,
- Civil servants at the executing level,

Civil servants at the senior managerial level are:

- General Secretary,
- Head of the Department,



- Head of the General Directorate,
- Positions equivalent with the three above mentioned ones at the central or local public administration institutions.

Civil servants at the middle managerial level are:

- Director of the Directorate,
- Positions equivalent with the above.

Civil servants at the lower managerial level are:

- Chief of the Sector,
- Head of the Unit,
- Positions equivalent with the above.

The specialists are considered as civil servants at the executive level.

1329. The Council of Ministers and the independent institutions classify and define the various levels within every group, for the central and local public administration institutions or for the independent ones, respectively.

## **Article 26**

### **Prohibition of discrimination**

1330. The Constitution (article 3) points out the universal principles on human rights and freedoms, constitutional order, pluralism, national identification and national heritage, religion co-existence and good understanding between national minorities. Article 15 of the Constitution defines the fundamental human rights as 'reliable, sustainable, and resistible lying at the foundations of the juridical order'. Thus this article stresses the equality without any discrimination amongst all citizens in the territory of the Republic of Albania, Albanians, national minorities, foreigners or individuals without citizenship. The principles related with the political, economic, social and cultural rights and freedoms defined in various international instruments have become parts of the constitutional and legal Albanian framework.

1331. The fundamental rights and freedoms as well as the obligations envisaged by the Constitution with regard to the Albanian citizens, maintain the same effectiveness towards the foreigners and individuals without citizenship residing within the territory of the Republic of Albania, with the exception of the cases when the Constitution specifically relate the rights and freedoms with the Albanian citizenship (article 16).

1332. According to article 18 of the Constitution:

- ‘Everyone is equal in front of the law.
- No one can be discriminated unfairly for reasons such as gender, race, religion, ethnicity, language, political opinions, and philosophy, economic or educational or social status and paternal origin.
- No one can be discriminated for reasons mentioned in paragraph 2, if there is no reasonable and objective justification’.

1333. National minorities are considered part of the Albanian society. Constitutional provisions guarantee individuals of national minorities and other ethnic and racial groups, with complete equal rights to enjoy their rights and freedoms. In addition, according to the Constitution, ‘the national minorities are free to express their ethnic, cultural, religious and linguistic origin. They are entitled to preserve and develop this origin and to learn their mother tongue. They have the right to be assembled in associations for the protection of their interests and identity’ (article 20).

1334. Acceptance of the non-discrimination has been included in the provisions of the Administrative Procedural Law. This Law guarantees individuals of these ethnic and racial minorities that: in relations with the private individuals, the public administration is led by the principle of equality. This means that none should be privileged or discriminated due to the origin, race, ethnicity, language, political beliefs, religious beliefs, economic status, education, social status or parental origin.

1335. National minorities enjoy protection in the area of labour and social insurance, too. Thus article 9 of the Labour Code prohibits any kind of discrimination in employment or professional career development. The legislation on insurance’s, any type of them including social (invalidity and retirement benefits) and health insurance, offers equal benefits to all, regardless of the nationality or race. In order to solve the cases of violation in this area, the Supreme Commission has been established. The decisions of this Commission are obligatory.

1336. According to article 5 of law no. 8328, dated 16.04.1998 ‘On the Rights and Treatment of Prisoners’, the convicted should not be discriminated because of sex, nationality, race, economic or social status, political and religious beliefs.

1337. The Rules of the Prisons at the Republic of Albania, which are approved by the Council’s of Ministers Decision No. 96, dated 09.03.2000, especially articles no. 13, 45, 53 and 63, state out the notification of the convicted persons in their language. They are informed on the rules governing the prisons, the way they will exercise the conviction, their rights and obligations as prisoners, etc.

1338. The provisions of law ‘On Asylum’, no. 8432, dated 14.12.1998 foresee the non-discrimination principle. In accordance with this law, Republic of Albania acknowledges and respects the rights of individuals who have acquired the right to asylum, ‘so that they are not

transferred out of the territory of the Republic of Albania' in another state where their freedom and life are threatened due to their race, religious belief, nationality or membership in a certain social or political group.

1339. Article 12 of law 'On the People's Advocate' states out that 'Every individual, group of individuals or non-governmental organisations, which claim that their rights, freedoms and legal interests have been violated by the illegal acts of the public administration, enjoy the right to appeal or to inform the People's Solicitor and may request his / her intervention for placing everything right and get the violated freedoms and rights'.

1340. One of the main issues related to the non-discrimination policy of the Albanian Government is the fair treatment and protection of the various minorities living in Albania. This is considered as a fundamental element that serves to bridging the relations amongst neighbouring nations and countries. Within this context, the Albanian politics is supported in two main pillars, defined by the international institutions for the protection of minorities:

- Legal warranties and practical implementation of the rights to a non-discrimination treatment of citizens belonging to national or linguistic minorities. These rights relate to the fundamental human rights, their civil and political freedoms stated out in the Constitution and the legislation covering all Albanian citizens.
- Legal warranties and concrete measures taken for the protection of the rights of the minority members, such as: the freedom to expressions of their origin, retention and development of their identity through exercising freely their specific characteristic life as a minority, lessons in their mother tongue, cultural activities, their specific religious activities, etc.

1341. Article 7 of law no. 8580, dated 17.02.2000 'On Political Parties' prohibits the registration of parties in cases when their internal establishment is against the democratic principles, when their establishment is against the constitutional provisions and when they promote and support racial and religious hatred and when they are based on totalitarian principles and methods, etc.

1342. There is no official religion in the Republic of Albania. The State is neuter in relation with beliefs and consciousness and guarantees the freedom of the public expression. The state of religious communities reciprocally respects their independence and work together for the reciprocal interests.

1343. Religious communities are juridical persons. They enjoy independence in managing their properties in accordance with their principles, rules and habits, to the extend that interests of third parties are not at risk. Discrimination because of origin, sex, health and political or religious beliefs trade union participation or because of membership at any ethnic, racial or national group is considered anti constitutional (article 18 of the Constitution, article 253 of Criminal Code).

1344. Promoting hatred or disagreements between nationalities, races or religions, as well as preparation, distribution and maintenance of notes incorporating the above, are convicted by fine of imprisonment up to ten years (article 265, Criminal Code).

1345. Hindrance of the religious activities, destruction of religious works of arts and preventing individuals from participating in the religious ceremonies are considered violations and are convicted by fine or imprisonment up to three years (Criminal Code, articles 131, 132 and 133).

1346. Law no. 8503 of 1999 'On the Freedom to Information on Official Documents' incorporates the right to this freedom to all the physical and juridical individuals, nationals and foreigners. However, this law does not provide special provisions for individuals belonging to minority groups or other groups.

1347. Article 2 of this Law defines that the definition of 'a person' under this Law is every physical and juridical person, national or foreigner. In addition, the Law covers the right to complain in an administrative or juridical way, against the cases of violation of the freedom to information on the official documents.

1348. Law no. 7961, dated 12.07.1995 'Labour Code of the Republic of Albania', amended by law no. 8085, dated 13.03.1996 prohibits any kind of discrimination in the area of employment and profession (article 9).

1349. Article 10, 176 - 187 guarantee the trade union freedoms and non-discrimination due to participating in them. According to article 201, special provisions are set in place for the violations of the above guaranteed freedoms. Article 52 of the Constitution guarantees the right to social insurance.

1350. Law no. 7703, dated 11.05.1993 'On Social Insurance in the Republic of Albania' guarantees the protection of the rights to income, without any differentiation:

- of employed persons in cases of temporary disability to work, pregnancy status, old age, disability and loss of the family's head, unemployment, etc.
- of other persons economically active related to the pregnancy status, invalidity, loss of the family's head and old age.

1351. Law no. 7710, dated 18.05.1993 'On Social Assistance' guarantees the cash benefit to Albanian citizen's families who lack the living means, or do not have enough of them, as well as guarantees the cash benefit and social services to the disabled.

1352. Infant mortality 0-12 months or child mortality 0-5 years has decreased during these last ten years. Currently that has been decreased by half compared to its levels of 80-90ties. However these mortality rates still remain amongst the highest in Europe. Infant mortality is a significant phenomenon amongst the Roma people compared with the other part of the population.

1353. With the objective of destroying these disease, obligatory vaccination has been defined. In accordance with the law, the vaccination is obligatory for the age groups 0 - 15 years old. Every child that enters school for the first time, the health institutions provide the child with an official document that proves their vaccination as per the timetable, without taking into consideration their origin. While providing health care services, no discrimination has been noticed towards minorities or various racial groups.

*The principle of non-discrimination and the fundamental human rights in the pre-university education legislation in the Republic of Albania*

1354. The respectful approach towards the fundamental human rights and elimination of all forms of discrimination towards any population category has been reflected in the Constitution of the Republic of Albania and in the Albanian educational legislation. Article 57 of the Constitution defines the right to education, juridical definition of the compulsory education at a certain level; defines the open character of the general secondary public education; defines the conditionality of the professional vocational secondary education based on the qualification, etc.

1355. Albanian Constitution provides specific provisions in favour of the rights of national minorities, trying to eliminate the arising possibilities of any form of discrimination towards them. This is clearly defined at article 20 of the Constitution, which guarantees the education at the mother tongue for the national minorities.

1356. Under article 122 of the Constitution of the Republic of Albania, any international agreement that has been ratified constitutes part of the internal juridical system, and has superiority over the laws of the country. Under article 1 of the Law “On the Pre-university Education System”, “Education in the Republic of Albania is a national priority. Education is administered in a manner consistent with the international agreements and treaties ratified by the Republic of Albania, and respects the rights of the child and adults sanctioned in these instruments.”

1357. The legal provisions on compulsory education are set forth in Law no. 7952, dated 21 June 1995, “On the Pre-university Education System”. The present law sanctions the requirements, principles and standards contained in the international agreements on the human rights in general, and the rights of the child in particular, in the area of education.

1358. The said law sanctions:

- the equal right of the citizens in the Republic of Albania to receive instruction at all the levels of pre-university education, irrespective of the social status, nationality, language, sex, religion, race, political views, health condition and economic standards (article 3);
- the right of national minorities to be taught in the mother tongue, and learn about their national history and culture (article 10);
- the right of children aged 3-6 to pre-school public education (articles 17-19);
- compulsory public education in the Republic of Albania is unified and general (8-year education is broken down into two four-year long cycles: primary and senior cycles) (articles 20 and 22);
- the obligation of parents to ensure children aged 6-16 years pursue compulsory education (article 24), and the rendering of parents whose children skip compulsory education without any reason liable to administrative contravention punishable by fine (article 59);

- the prohibition of employing children who, instead, should be pursuing compulsory education, and if the contrary is the case, the punishment of public or private employer for administrative contravention punishable by fine (article 60);
- the rights of citizens to receiving education in general and vocational secondary public schools following the completion of compulsory education (articles 26-28 and 33-37);
- the right of students to receive training in subjects of their choice while pursuing secondary public education (article 31);
- the right of children with special educational needs to be introduced into special public schools free of charge, and the duty of the State to gradually provide the necessary conditions for this purpose (article 40);
- the right of children, considered special cases, to pursue compulsory education privately while staying with their families (article 49);
- the right of public education staff to training (articles 14 and 41);
- the right of Albanian and foreign citizens to attend private, secular and religious schools (articles 43-48), and to leave public schools and go to private schools (article 45);
- the right of citizens to attend supplementary educational courses (article 50);
- the duty of the State to guarantee the right to safety of life and the activity of the teachers and students, as well as the inviolability of the educational institutions and their compounds (article 66);
- the aim and mission of the Albanian pre-university education directed to: the spiritual emancipation; the material progress and the social development of the individual (article 2); the development of the intellectual, creative, practical and physical abilities and the personality of the pupils going to compulsory public schools (article 21); the development of the personality of the students attending secondary public schools in the fullest and most harmonious way possible (article 26).

1359. The above mentioned aspects on the Albanian Pre-University Education System reflect requirements of a series of international agreements ratified by the Albanian Government, including the requirements of the International Convention for the Elimination of All Forms of Racial Discrimination (article 7); including the requirements of the Convention against discrimination in the area of education (articles 2 - 5), and the requirements of the Convention for the elimination of all forms of discrimination against women (article 10), etc.

*The principle of non-discrimination and the human fundamental rights to education and training within the Albanian legislation on University & Scientific education in the Republic of Albania*

1360. The Law 'On the University education in the Republic of Albania' no. 8461, dated 25.2.1999 defines every basis for non-discrimination in accordance with the fundamental human rights in the area of university education, in compliance with international agreements ratified by the Albanian government, including the International Convention on Elimination of All forms of Racial Discrimination.

1361. This law defines:

- the right of Albanian (and foreign) citizens to university education in Albania, be it public or non-public (articles 31, 1); for the diploma in more than one study area (article 42), as well as to the acknowledgement and equivalence of the diplomas, certificates and grades, received at universities out of Albania (article 43); to the post-university education and training for scientific qualifications (articles 37 - 39);
- the right to be accepted in public universities through competitions (as per their skills) (article 31);
- the right of students to make use of the schools facilities for educational and scientific purposes, to participate in elections at school councils, to acquire grants for studies (article 32), to participate in non-political students associations (article 33), to information (article 34);
- the right to academic freedom in teachings and scientific studies at universities (article 6);
- the right to have independent institutions of high education (article 7);
- the right to be elected in the managerial entities for the universities (article 17);

*Elimination of all Forms of Discrimination and Respect of Human Rights during the education and training*

1362. The Ministry of Education and Science and its dependent entities are responsible that no elements of discrimination are recognised in relation with the various social zones and categories in the education system of the country. During the school year 2000 - 2001, 80,443 students were enrolled in the pre-school system at 2002 pre-school institutions (kindergartens) with 3,749 pre-school teachers. Whereas the number of pre-school pupils in 1999-2000 was 80,337 (an increase of 5,000 pupils enrolled). The number of the enrolled students in the 8-years compulsory education in 2000-2001 was 535,238 (259,931 of them being females) at 1,820 8-years schools and 1,395 dependent schools, with 28,321 teachers.

1363. 63% of students completing the 8-years compulsory education were enrolled in the secondary education during 2000-2001 school year, or 2% more than the number of students enrolled in 1999-2000, respectively 102,971 students enrolled in 388 comprehensive secondary schools, with an increase of 4,500 enrolments compared with the school year 1999-2000.

1364. The Ministry of Education and Science has made continuous attempts to enrol street children in schools, especially the ones who have abandoned the schools. Thus in 2001 the number of children abandoning schools decreased in 1.8% compared to the 2.5% of the prior year. In the meantime, special programmes have been formulated and implemented offering education homes for children who are obliged to stay in the houses due to the phenomenon of revenge (blood feud), especially in Northern Albania.

1365. An important indicator, which speaks in favour of the non-discriminatory approach in education and of the right to education, is the ratio between male and female students at the pre-university system. Within the total of 725,046 pre-university students, 345,384 are females, or otherwise 48% of the total. The percentage of the female teachers is higher. Thus, out of the total number of 36,939 teachers in the pre-university system, 23,333 are females, or 63%. The admission of students at universities has been based in no discrimination on the skills of the students themselves. These skills have been tested through competitions, which have increased the number of admissions with 1,000 per year.

1366. Teachers' training respects their rights, avoiding cases of discrimination because of various reasons, thus increasing the number of academic staff acquiring degrees and scientific titles every year. In 2001, 1,716 staff worked in university education system as the teaching staff, and 689 of them were females. Approximately half of these academic staff was qualified by acquiring scientific grades and titles.

*Elimination of all Forms of Discrimination and respect towards minority's rights in the area of education*

1367. In Albania, special attention has been devoted to the education of the national minorities. Under article 20, paragraphs 1 and 2, of the Constitution of the Republic of Albania, "Persons who belong to national minorities exercise in full equality before the law the human rights and freedoms. They have the right to freely express, without prohibition or compulsion, their ethnic, cultural, religious and linguistic belonging. They have the right to preserve and develop it, to study and to be taught in their mother tongue."

1368. Article 10, point 1 of law no. 7952, dated 21.06.1995 'On Pre-University Education System' points that individuals belonging to the national minorities are offered the possibilities to teach and be taught in their mother tongue, to be taught about their history and culture within the educational curriculum and plans.

1369. As is the case with Albanians, the national minorities have access to three levels of education: pre-school, 8-year, and general education. Education for the Greek minority: there are 18 8-years schools and 14 dependent schools of the elementary system (I-IV years) and 2 comprehensive secondary schools in the region of Gjirokastra; there are 17 8-years schools and 4 dependent ones in the region of Saranda, there are 7 8-years schools and 7 dependent ones in the region of Delvina, there are 2 dependent elementary (I-IV) schools in the regions of Permeti.

1370. Education for the Macedonian minority: there are 2 8-years schools and 7 dependent ones on the regions of Korca, and only one dependent elementary school in the regions of Devolli. These schools function in areas that national minorities live traditionally.



1371. Under the care of the Albanian Government and based on the legislation mentioned above, since September 1996 classes for minority children have been established, in the cities of Gjirokastra, Saranda and Delvina, where Greek minority citizens live and enjoy the right to education in their mother tongue. The classes develop the same way as the lessons are conducted in all other schools for national minorities.

1372. In the town of Gjirokastra, the Secondary Pedagogical School has incorporated a special branch for the 'Teacher of the Minorities'. This is the only branch in Albania, which trains teachers for the Greek minority. In addition, the University 'Eqerem Cabej' in Gjirokastra incorporates a branch for the Greek Language. The Greek Language Branch was opened at the University of Tirana, at the Faculty of Foreign Languages, in 1995. Numerous children of minorities attend studies at secondary schools and universities all over Albania and in all the branches, as well as post-university studies.

1373. In the academic year 2000-2001, 1,845 pupils attended the 8-year schools of the two national minorities, comprising 0.37 per cent of the total number of pupils pursuing 8-year education. Out of a total of 297 teachers, 267 are members of the national minorities. In addition, 35 kindergartens with 628 children function in the area where the two minorities, the Greek and Macedonian one, live. 43 caretakers look after these children.

1374. The ratio children - teachers for the two minorities is 6 students for every teacher, at a time when this ratio at the Albanian 8-years system the ratio is 19 students for every teacher. The education Directorates of these areas where minorities live, continuously try to retain the number of enrolments with the objective that these schools remain opened.

1375. So far in Albania, no non-public education institution has been established for the minority children. However, there has been established non-public 8-years education system where minority children are enrolled. The Education Non-Public Institute "ARSAKEIO" has been established where other subjects are developed in Greek, like Greek language; Environment Studies / Geography; Health Education; Mythology - History; Theatre Play; Folk Tradition.

1376. The Ministry of Education and Science and the regional Education Directorates covering the regions where schools for the minority are established, show continuous attention for ensuring the education institutions of the minorities with the relevant education and qualified staff.

1377. Attention has been shown for the scientific and educational qualification of the teachers and managers of the schools of the minorities. Their qualification has been one of the priorities of the regional education directorates of these regions. Under the care of the Ministry of Education and Science and the Pedagogical Studies Institute, a series of training seminars have been developed as per the areas where all minority teachers of the group-regions have participated.

1378. Part of the training activities has been organised in co-operation with the homologue educational institutions of the Greek and Macedonian government, not only in the regions where the minority schools are located, but also in the neighbouring countries. In addition, specialists and teachers from Greek and Macedonian education institutions have paid visits to Albania in

order to co-operate with the Albanian specialists and teachers of minorities with the objective of organising the training seminars and workshops. Foundations, associations and institutions in and out of Albania, who are interested in the qualitative education system for the minorities, have offered their assistance in furnishing the schools with the educational facilities.

1379. Ministry of Education and Science shows great interest in further enhancing the efficiency and quality of the education level in the minority schools, stressing the continuous enhancement of the curriculum and education textbooks, further training of the teachers, refurbishment of schools with required facilities, etc.

1380. In order to protect the individuals that may be targets of threats, violence or other discrimination acts, because of their ethnic, cultural, religious and linguistic identity, the Criminal Code of the Republic of Albania, article 73, points that 'Implementation of a predefined plan that aims at completely or partially destroy a national, ethnic, racial or religious group, which is followed by acts such as: intentional offences towards members of these groups, serious physical and psychological damages, placement into difficult living conditions which lead to physical destruction, and the plans for avoiding births and obligatory transfer of children of a group to another group, are convicted with imprisonment no less than 10 years of life-imprisonment'.

1381. Article 74 of this law states that, offences, elimination, slavery and transfers as well as any form of inhumane torture or violence committed for political, ideological, racial, ethnical and religious reasons are convicted with no less that fifteen years of imprisonment of life-imprisonment (Note that with the ratification of Protocol 6, death sentence has been abolished in Albania).

1382. The Criminal Procedural Code, point 2 of article 2, envisages that during every stage of the court proceedings 'Individuals that do not know Albanian can use their language and use an interpreter. They are entitled to speak and get information on the proofs and acts, as well as on the proceedings.'

1383. In addition, article 2, point 2 envisages that 'the individual who does not speak Albanian is asked questions in his / her mother tongue and the minutes of the proceedings are recorded in this language. All procedural acts are translated in that language and are delivered to the individual upon his / her request.' The right to complain in his / her language has been accepted for the witness during the process.

1384. The right to use their language or receive the act's proceedings in the mother tongue has been accepted for all individuals who do not know the Albanian language even during the civil court proceedings. Article 2, paragraph 2 of the Civil Procedural Code envisage that; individuals that do not know Albanian can use their language. They are informed on the proofs and the proceedings of the court through an interpreter'.

1385. Article 116, the second paragraph, states that 'the Court should invite an interpreter while questioning individuals who do not know the Albanian language, or when there is need to translate written documents in foreign language'.

1386. Law no. 8410, dated 30.09.1998 'On Public and Private Radio and Television in the Republic of Albania' guarantees access to electronic media for all national minorities. The Law proclaims the freedom of the radio-television activities and their editorial independence (article 4 and 5).

1387. Article 39 of this law prohibits the transmission of programmes which promote violence, aggressive fights, national and racial hatred, etc. Whereas article 36 states that 'television and radio programmes respect the personal dignity and fundamental human rights, the completeness and pluralism of information, the children's and adolescents' rights, public order and national security, Albanian language and culture, constitutional rights of citizens, national minorities in accordance with the international conventions that have been ratified by the Republic of Albania.

1388. Article 37 of this Law points out that: 'Use of Albanian language is compulsory for all programmes, with the exception of musical works with texts in foreign language, programmes for teaching foreign languages, programmes specifically addressed to national minorities, and programmes of local radio-television entities licensed for transmitting programmes in the national minorities' language.

1389. The law on Printed Media no. 7756, dated 11.10.1993, amended by law no. 8239, dated 3.9.1997, guarantees to the members of national minorities, and also all Albanian citizens, the right to establish their own written media on their mother tongue language. The printed media of the national minorities, as well as the printed media in Albania are not preliminary censored.

## **Article 27**

### **Rights of minorities**

1390. The Government of Albania takes serious consideration over the provisions of the Framework Convention on the Protection of the National Minorities and the Covenant on Civil and Political Rights. The Government considers these conventions not only as an obligation towards the implementation of the legal internal norms, but also as an important challenge to be undertaken within the framework of the European Union Stability-Association.

1391. The Albanian Government considers the protection of the national minorities as an obligation deriving from the fundamental orientations for the protection of fundamental human rights and freedoms. These rights and freedoms have been incorporated in the Constitution and the legislation in power, and have been formulated in accordance with the recognised international standards.

1392. At the same time, Albanian government considers the protection of national minorities as a fundamental element serving to building friendly bridges between neighbouring peoples and countries, as well as to its complete integration in Europe. Within this framework the Albanian government policy has been established on the two main fundamental pillars that have been defined by the international instruments in favour of the national minority protections:

- legal warranty and implementation of the rights to non-discrimination treatment of individuals belonging to the national minorities while enjoying their full human rights as well as their political and civil freedoms which have been acknowledged by the Constitution and the legislation to all Albanian citizens;
- legal warranty and concrete measures taken to protect the rights of individuals belonging to national minority, such as: the freedom to free expression of their national origin; the right to maintain their identity, while freely exercising special elements characteristic to their community as a minority; education in the mother tongue; participation in the cultural activities and religious celebrations, etc.

1393. Albanian Constitution envisages a special status for the international instruments, where the Republic of Albania has been signed up as a party. We can mention here articles 121 and 122 of the Constitution, which point out that every international agreement ratified by law is considered as part of the internal juridical system.

1394. These instruments are directly implemented with the exception of cases when they cannot be implemented and when their implementation requires the endorsement of a special law. International agreements have priority in comparison with the local laws that do not agree with them. When the norms established by an International organisation and when the agreement states that the implementation of these norms should be direct, the international norms have priority over the local laws in case of conflict.

1395. Within this framework, while endorsing the international documents, Albania engages in respecting and implementing the human rights, without any form of discrimination for all the Albanian citizens, including individuals belonging to the national minorities.

*Main provisions of the Albanian legislation for the protection of minority rights in Albania*

- Law no. 8417, dated 21.10.1998 “Constitution of the Republic of Albania”
- Law no.8485, dated 12.05.1999 “Administrative Procedural Code of the Republic of Albania”
- Law no.8145, dated 11.9.1996 “On the Right of Assembly and Gatherings”
- Law no.8580, dated 17.2.2000 “On Political Parties”
- Law no.8609, dated 8.5.2000 “Electoral Law of the Republic of Albania”
- Law no.8410, dated 30.9.1998 “On the Public and Private Radio and Television in the Republic of Albania”
- Law no.7952, dated 21.6.1995 “On the Pre-University Education System”
- Decision no. 396, dated 22.8.1994 “On the 8-years education system in the mother tongue for the Minority population”

- Decision no. 502, dated 5.8.1996 “An Annex in the Council’s of Ministers Decision no. 396, dated 22.08.1994 “On the 8-years education system in the mother tongue for the Minority population”
- Decision no. 548, dated 26.8.1996 “On the Continuation of Lessons delivered in Greek Language in some of the Secondary Schools”
- Law no.7895, dated 27.1.1995 “Criminal Code in the Republic of Albania”
- Law no.8116, dated 29.3.1996 “Civil Procedural Code in the Republic of Albania”
- Law no. 8239, dated 3.9.1997 ‘On some amendments to the Law no. 7756, dated 11.10.1993 ‘On Press’.

1396. The Constitution of the Republic of Albania of the year 1998 defines that the recognised universal human rights and ‘pluralism, national identity and national heritages, religious co-existence and co-existence of the national minorities’ (article 3) form the basis of the Albanian Government.

1397. The Constitution considers the fundamental human rights and freedoms as sustainable and they form the basis of the juridical order’ (article 15), thus confirming the equality without any discrimination towards all citizens living in the territory of Albania, towards national minorities, foreigners and individuals with no citizenship, not only in the area of fundamental rights and freedoms but also in the implementation of obligations deriving from the Constitution and other laws. Principles related to the political, economic, social and cultural rights and freedoms, confirmed by various legal international acts are part of the Albanian Constitution and legislation.

1398. The Constitution of the Republic of Albania considers the national minorities as an integral part of the Albanian society. It guarantees them with the full equality in front of the Law while implementing their rights and freedoms and acknowledges to them the freedom ‘to express freely their ethnical, cultural, religious and linguistic pertinence’ as well as the right to ‘retain and develop these pertinence and teach and be taught in the mother tongue, and be assembled in associations for the protection of their interests and origin’.

1399. According to the Constitution, article 20, paragraph 2, individuals belonging to the national minorities ‘are entitled to express freely on their ethnical, cultural, legal and linguistic origin’. The right to express freely (or not) on their ethnical origin and the choice to be treated or not as a member of minorities, is ensured to individuals who belong to national minorities regardless whether they live or not in community, their traditional lodgings or somewhere else in the territory of the Republic of Albania.

1400. The rights of every individual belonging to the national minorities, to express freely on their ethnical origin and to be treated as a member of the national minorities, do not provide any disadvantage - as quoted in paragraph two of article 18 of the Constitution ‘No one can be unfairly discriminated for reasons such as gender, race, religion, ethnicity, language, political

and religious beliefs, economic and education and social status or parental origin' Albanian legislation prevents all policies and practices that would establish disadvantages towards national minorities in every aspect'.

1401. According to the Constitution of the Republic of Albania, the fundamental human rights and freedoms are consistent, sustainable and remain as the foundations of the juridical order (article 15). They have the same power, not only regarding the national minorities as Albanian citizens, but also regarding the foreigners and individuals with no citizenship residing in the territory of the Republic of Albania, with the exception of cases while exercising certain rights and freedoms.

1402. All individuals belonging to national minorities that live in Albania are entitled to fair and equal treatment in front of the law, with no form of discrimination towards all rights and freedoms guaranteed to Albanian citizens, individually or in groups. They are entitled to assemble in associations; to elect and be elected in the local or central government institutions; the right to propose laws if they make up a total of 20 thousands voters; freely exercise their religious feasts; to teach and be taught in their mother tongue, as well as specific rights deriving from the Framework Convention 'On the Protection of National Minorities'.

1403. The Constitution of the Republic of Albania guarantees the equality to all in front of the law (article 18, paragraph 1) and prohibits any unfair discrimination for reasons such as gender, race, religion, language, political beliefs, economic status, education status, social status and parental origin (article 18, paragraph 2). The fair equal legal protection is based on these principles.

1404. Paragraph 3 of article 20 quotes that 'No one can be discriminated for reasons mentioned above if there is no reasonable and objective proof'. This creates the possibility for implementing the positive discrimination for taking necessary favourable measures, thus providing special treatment and support to certain individuals and categories or groups, when a legal reasonable and objective proof is in place.

1405. Every individual, who is a victim of ethnic or racial discrimination, be that open or hidden, may address the court for juridical protection. At the same time, everyone is entitled to be rehabilitated and / or be compensated in accordance with the law, if the individual has suffered losses as a result of an illegal act or activity of state entities.

1406. Besides, with regard to the protection of national minorities that live in Albania or the denouncement of the discrimination acts towards them, there exist a series of legal provisions. In order to protect individuals that may become targets of these threats and discrimination acts because of their ethnic, cultural, linguistic and religious identity, the Criminal Code of the Republic of Albania, article 73, refers to genocide as a penal violation.

1407. Whereas article 74 of this law quotes 'Homicide, destruction, slavery, transfers as well as any form of torture or violence for political, ideological, racial, ethnic and religious reasons' as a penal offence. Criminal Code, article 265 expresses against 'promotion of racial, national or religious hatred and disagreements. It expresses against the preparation, distribution and

retention with the distribution objective of written materials with this content. Article 266 expresses against 'placing the public peace at risk, while appealing for hatred against parts of the population, causing offence while using violence or other arbitrary acts against them', etc.

1408. In addition, articles 131 and 132 stand against the destruction of religious cults, establishment of hindrances towards religious organisations and their free activities. Point f of article 131 of the Constitution envisages that Constitutional Court offers the final decision towards individual claims for violation of constitutional rights, for a fair legal process, after all juridical means for the protection of these rights have been used.

1409. Albanian Criminal Code also considers crime as a form of discrimination in the public sphere. Article 253 of this law states the conviction with up to 5 years against any governmental official at public services who, while implementing his / her tasks, differentiates on the basis of origin, sex, health status, political and religious beliefs, trade union participation or on the basis of ethnic, national, racial or religious origin. This discrimination may consist in providing unfair privileges or refusal of rights deriving from the law'.

1410. Another warranty for the protection of legal rights of national minority members is the establishment of the institution of the 'People's Advocate (Ombudsman - elected by the Parliament in February 2000). According to law no. 8454, dated 04.02.1999 "On the Ombudsman', this institution protects the legal rights, freedoms and interests of the individual against illegal acts of the public administration entities, as well as against third parties acting on its behalf.

1411. The Ombudsman is led by the principles of fairness, confidentiality, professionalism, and independence while exercising its activities for the protection of human rights and freedoms, envisaged by the constitutional and legal provisions.

1412. Article 11 of the Administrative Procedural Code guarantees the national minorities fair treatment in the aspect of relations with the public administration. Paragraph one quotes: 'In relations with the private individuals, public administration is led by the equality principle, with the understanding that no one should be privileged or discriminated because of gender, race, political beliefs, religion, economic, educational, social status and parental origin'.

1413. The protection against discrimination acts towards national minorities has been incorporated in the area of labour and social insurance. Article 9 of the Labour Code prohibits any form of discrimination in employment or professional life. The legislation on social insurance, including insurance for the old age (invalidity or old age) offers equal rights to all, regardless of their nationality or race.

### **Participation in the political and social life**

1414. Participation of individuals belonging to national minorities, in the cultural, social and economic activities and public issues, can be implemented through participation of their representatives in the legislation and executive entities in the country, as well as in the local or central government.

1415. They are entitled to assemble in organisations and associations; to be elected or elect their representatives in the central and local government entities; to propose laws if they make up a total of 20 thousands voters.

1416. According to article 46 of the Constitution 'everyone has the right to be organised in any form of legal gathering'. Law no. 8580, dated 17.02.2000 'On Political Parties' based on this constitutional law of citizens, provides room for the establishment of political parties on ethnical bases.

1417. Article 7 of this law prohibits the registration of parties in cases when their gatherings within the country are against the democratic principles, when the establishments of these groups come against the constitutional provisions, or promote racial, religious, regional or ethnical hatred or are based on the totalitarian methods, etc. One of the conditions set by the Law on the establishment of political parties is that the requests for the registration of these parties should be endorsed by at least 500 citizens, members of this party and residing in the Republic of Albania.

1418. The national minorities in Albania do not have their political parties. However, their political, economic and social interests are generally protected by all the Albanian political parties where a considerable number of individuals from these groups adhere. Human Rights Union, which has its representatives in the Parliament, is a political party established mainly by Greek minority individuals. However, other Albanians or members of other minorities are members of this party. The representatives of Greek national minorities have established their association 'Omonia', which is a political - social organisation.

1419. When speaking of the political representation of the minorities in the Parliament, worth mentioning is the fact that a number of individuals belonging to national minorities are members of other political parties present in the Parliament. There is an average number of 5 - 10 members of the Parliament who have been elected as MPs through the lists of other political parties (especially Greek minority).

1420. The Party of Human Rights Union chairs the Special Parliamentary Commissions on human and minority rights. In this aspect, the review of the Electoral Law and the Role of the Central Commission will positively affect the situation. During the general electoral elections of June 2001, the Party on the Human Rights Union acquired 3 seats in the Albanian Parliament, based on the law according to which the electoral representational limit is 2% of the general ballots.

1421. The effective participation of the participants from the national minorities in the decision-making level has been realised through their participation in the local government entities. With reference to their representation at the local level, one can say that the Greek minority has its representatives at the local administration level. These representatives are heads of the communes, a total of 8 representatives of this minority, where 3 of them are in the region of Gjirokastra, 3 in Saranda and 2 in Delvina. In addition, there are 160 councillors at the communes and municipality councils from the Greek minority, elected based on the Electoral Law.



1422. All the representatives of the local government in the commune of Liqenas, Korca region inhabited by Macedonian minority, are representatives of the Macedonian minority. The representatives of the Macedonian minority are members of the Regional Council of Korca. With reference to the level of representation of individuals belonging to the minorities at the public administration entities, we can stress that the selection procedures and criteria for the public administration are based on Law no. 8549, dated 11.11.1999 'On the Civil Servant Status'.

1423. From the legal perspective, we can say that the Administrative Fundamental Law in the Republic of Albania (article 1, point 2) stresses the obligation of the public administration to insure the participation of private individuals and / or associations in their decision-making process, when the interests of the groups they represent are affected by these decisions.

1424. The Constitution also guarantees the freedom of manifestation and peaceful demonstrations, as well as the participation in them (article 47). In addition, law no. 8145, dated 11.9.1996 'On Gatherings', article 1, defines that all citizens in the Republic of Albania, with no differentiation because of sex, race, colour, belief, nationality, economic and financial status, educational or social status, political beliefs and parental origin, are entitled to public manifestations'.

### **The right to property**

1425. The freedom of property is guaranteed by one of the articles of the Albanian Constitution. This right is not related to the notion of nationality, but with the notion of citizens and individuals. Law no. 7698, dated 15.04.1993 'On return and compensation of property to the former owners' guarantees equal rights to all citizens in the process of property return of compensation.

1426. Currently, in accordance with article 181/1 of the Constitution, a draft law has been formulated on the property return and compensation. This draft law has been passed to the parliament for its endorsement. The law is expected to be endorsed at the end of July 2003.

### **Freedom of conscience and religion**

1427. Democratic changes led to the possibility for re-establishing freedom of consciousness and religious belief. Article 24 of the Constitution has guaranteed freedom of consciousness and religious belief in Albania to all Albanian citizens and to all members of national minorities. According to this article, 'everyone is free to select or change religion or beliefs, as well as express the above individually or collectively, in public or privately, through the cult or education or practices. Everyone is free to participate in the religious feasts or its ritual feasts, as well as make his / her own beliefs public'.

1428. In this framework, all religious institutions re-opened and people were free to practice their religion and rituals. Individuals are free to participate in religious rituals and gatherings and its practices. They are also free to make their beliefs known to the public. All religious practices in the institutional cults are delivered in the mother tongue.

1429. Although there is no official religion in the Republic of Albania, and the State is neutral in terms of beliefs and consciousness, the State accepts the religious equality and guarantees the freedom of their public expression (article 10 of the Constitution). Discrimination because of religious beliefs is unconstitutional (article 8 of the Constitution, article 253 of the Criminal Code).

1430. Promotion of religious disputes and disagreements is considered an illegal violation and is convicted by a fine or imprisonment up to 10 years (Criminal Code, article 265). In addition, the Criminal Code (articles 131, 132 and 133 considers acts such as destruction of religious cults and institutions, hindrances to religious ceremonies as Legal violations which are convicted.

1431. The Council of Ministers' Decision No. 341, dated 07.07.2000 exempts from all customs duties all 'materials and equipment used for the construction and re-construction of religious cults and institutions of religious character; materials to be used by these institutions, with the objective of assisting in the development of religious activities'. In addition, the Council of Ministers' Decision No. 248, dated 28.05.1999 has facilitated the licensing of the religious schools of any kind.

1432. The State Committee of Cults has been established under the Council of Ministers' entity, and is responsible for dealing with problems related to the freedom of religious beliefs and exercising these beliefs.

### **Use of mother tongue**

1433. Although according to the Constitution (article 14) Albanian language is the official language, national minorities (in accordance with article 20 of the Constitution) are entitled 'to teach and be taught in their mother tongue'. Thus, the right to use the mother tongue privately and in public has been guaranteed in practice.

1434. Members of the national minorities freely use their language in the daily life with one another and in public meetings, in meetings of their association, during electoral campaigns, in publishing documents and periodicals and during the religious ceremonies.

1435. As mentioned above (article 14) Albanian is the official language. Consequently, all the documentation in the central and local government institutions and administrative units of local government should be written in Albanian. The verbal communication amongst members of national minorities and authorities of local government administration in the regional inhabited by the minorities, may be in the mother tongue of the minorities, taking into consideration the fact that these authorities in the majority of cases, are from the minority, based on their free elections.

1436. Members of the national minorities living in Albania are free to decide and retain their names and family names in accordance with their tradition and language. They are entitled to be acknowledged officially. Registration of their names is handled by the Civil Status Offices of the Municipalities and Communes where they live. According to the Law, registration in the Civil Status Offices is made by the official of this office based on their phonetic pronunciation, but always in accordance with the Latin alphabet orthography (as the Albanian language is written, Albanian being the official language).

1437. With reference to the special private signs / symbols, members of the national minorities are free to choose and decide even on the public use of their names. All indicators and names of the villages, areas where national minorities live, within Albania, retain the original name put by the minorities and used by them traditionally in their mother tongue.

1438. Nomination and use of traditional local names in public, names of the streets and other topographic signs, has not been regulated by any special law. However, de facto, there has been no hindrance in naming and using these names be they in the minority language. Whenever reasonable or requested, local authorities of the minority zones are free to decide, taking into consideration the limitations that derive due to the urban managerial regulations.

### **Freedom to free choice of residence and freedom of movement**

1439. Albanian Government is against any policies that may lead to changes in the national and ethnic population in the zones inhabited by minorities, changes that aim to limit their rights and freedoms. Freedom to choose the living location and freedom to move at any part of the Albanian territory or to freely leave Albania, are foreseen in article 38 of the Constitution. These freedoms are ensured to all Albanians as well as to all members of national minorities. According to the Council of Ministers' Decision No. 14, dated 24.1.1994 'On Changes to the Residence by Albanian citizens', all citizens are free to choose their residence location within the territory of Albania.

### **Use of mother tongue during court proceedings**

1440. Although Albania has not adhered in the 'European Charter on Regional or Minority Languages', its Constitution has been based on the standards and principles stated in the Charter. Point 1 of article 28 of the Constitution quotes that 'everyone deprived of his / her freedom is entitled to be informed immediately in the language s/he understands. S/he should be informed on the reasons of this decision and the accuse against him / her'. Point C, article 31 of the Constitution quotes that during the legal proceedings everyone is entitled to 'receive free interpretation services, when not able to speak or understand Albanian language'. These principles have been reflected in the Criminal Procedural Code and Civil Procedural Code.

1441. Criminal Procedural Code, point 2 of article 8, points out that during every phase of the court proceedings 'persons who do not understand or use Albanian language, are entitled to speak through an interpreter, and provide and receive information and proofs'. In addition, point 2 of article 98 which is related to the formulation of penal procedural acts, points that 'the individual who does not speak Albanian, can ask questions in the mother tongue and the minutes are kept in this language. All procedural acts are then translated in the same language and are delivered to the individual upon his / her request'. The witness to a process is also entitled to speak in his / her mother tongue.

1442. The right to use the mother tongue or formulate the acts in the mother tongue is acknowledged to persons who do not know Albanian language and are involved in civil court procedures. Paragraph 2, article 27 of the Civil Procedural Code states that 'individuals who do

not know Albanian can use their own language. They are informed on the provided proofs and on the courts proceedings through an interpreter'. Paragraph 2 of article 116 points out that 'The Court should ask for an interpreter when interrogating individuals who do not speak Albanian and when translating written documents'.

1443. Lastly, according to article 5 of law no. 8328, dated 16.04.1998 'On the rights and treatment of prisoners' 'treatment of prisoners should bear no discrimination elements due to gender, nationality, race, economic or social status, political or religious beliefs'.

### **Education in the mother tongue**

1444. Special and continuous attention has been shown in Albania for the education of national minorities. This attention is reflected in the concrete achievements of our legislation, especially in the education area. Priority has been given to the protection, encouragement and development of a fundamental element of national minority identity that of the rights to education in the mother tongue.

1445. Albanian Constitution, article 20, paragraphs 1 and 2, when addressing national minorities points out that 'individuals belonging to national minorities are equally entitled towards their rights and freedoms provided by law. They are free to free expression, regardless of their ethnic, cultural, religious and linguistic origin. They are free to retain and develop them, to teach and be taught in their mother tongue'.

1446. Legislation in the area of education offers equal rights to every one. Article 3 of law no. 7952, dated 21.06.1995 'On pre-University education System' guarantees equal rights to all citizens 'to be educated at all levels of education system defined by this law, regardless of their social, national, linguistic, gender, religion, race or political and health origin and status'.

1447. Point 1, article 10 of this law defines that 'Individuals belonging to national minorities are ensured possibilities to teach and be taught in their mother tongue, to learn their history and culture within the framework of schools curriculum and educational programmes'

1448. With the objective to ensure an active and equal participation in the economic, social, political and cultural life of the Republic of Albania, the State establish appropriate conditions that school children learn Albanian in schools, learn about Albanian history and culture. Educational curriculum and programmes, as well as the ration of using mother tongue versus official language are defined by special acts released by the Ministry of Education and Science.

1449. Education for the minority children is delivered at educational institutions and at schools, whose establishment and functionality are in accordance with procedures already defined by the Council of Ministers. The Council of Ministers' Decision no. 396, dated 22.08.1994 'On the 8-years education in the Mother Tongue for the Minority Students' and the Guidelines no. 14, dated 03.09.1994 of the Ministry of Education and Science, clearly define the criteria of establishing and functionality of education units used by the minorities; the ration of the languages used. The education programme and curriculum create possibilities for school children of minorities to learn about the history, traditions and culture of their minority.

1450. The students belonging to the Greek or Macedonian national minorities, in addition to education in the official language, they learn their mother tongue, as per the special programme of their schools and curriculum approved by the Ministry of Education and Science. Literature in mother tongue and in Albanian as well as linguistic lessons in mother tongue and Albanian are special schools subjects. Within the school programme, minority students are offered the possibilities to study their history, tradition and culture.

1451. The ratio of subjects developed in the 8-years school system for the minorities are 40% in Albanian and 60% in their mother tongue. Whereas this ratio in the elementary cycle is 90% in their mother tongue, and 10% in Albanian.

1452. During the recent years, special attention has been showed towards improving the quality of programmes and textbooks. New textbooks have been published in Greek and Macedonian. Special attention has been shown in publishing the new text books 'Language and Literature' in their mother tongue (Greek and Macedonian), 'Albanian Language and Literature' as well as other text books in the mother tongue or Albanian, specifically published for the minority schools.

1453. Textbooks of Albanian language literature are specifically designed for the minority schools. New and improved programmes are being implemented in both minority schools. New textbooks have been published in Greek and Macedonian. In addition, new textbooks have been prepared in Albanian language. Other textbooks are in the process of being newly published.

1454. So far, no education non-public institution has been opened for the minority children in Albania. However, non-public 8-year schools have been established where minority children go. In Tirana there is a non-public education Institution "ARSAKEIO". This non-public education institution of the 8-years system has been approved by the Council of Ministers' Decision no. 404, dated 1.7.1998. In addition to the compulsory subjects and curriculum in Albanian Language, other subjects are developed in Greek language. This school is not only for the minority children as numerous Albanian children have been enrolled there.

1455. Education Directorates in Regions where minority schools are established are showing sustainable attention for ensuring professional staff deliver lessons at these schools. Special care is shown while selecting the staff delivering the subject of the minority mother tongue (Greek or Macedonian) and of Albanian language, as well as the qualifications of other teachers and the managerial staff. Their training has focused in two directions:

- General training on the basis of the national school programmes and curriculum;
- Specific training on special programmes and relevant textbooks used by the national minority schools.

### **Freedom of media and press**

1456. With the objective of retaining and enhancing the cultural identity of national minorities and of putting them in continuous contact with the political, economic and social development in and out of the country, Albanian legislation supports the full access at their mother tongue, for the written and electronic media.

1457. Freedom of expression, as stated in the Framework Convention, forms a constitutional fundamental right in Albania. Article 22 of Constitution guarantees freedom of expressions and of the press, radio and television to all, including national minorities. It also prohibits the preliminary censure to the communication means.

1458. Law no. 7765 dated 11.10.1993 'On Press', amended by law no. 8239, dated 3.9.1997, and especially one of the articles specifies that 'Press is free. Freedom of press is protected by law'. In accordance with this law, members of the national minorities as well as all other Albanian citizens are free to establish their own written media in their mother tongue. Minority press as the Albanian press is not censored preliminarily.

1459. Currently Greek minority that lives in the regions of Gjirokastra, Saranda, Delvina, etc. publishes these newspapers and magazines: weekly newspapers - 'Lajko Vima', 'I Foni tsi Omonias (Zeri i Omonias)'; newspaper '2000' published in three languages, Greek, English and Albanian; illustrated magazines - 'Oaz' and 'Progress'. The above-mentioned newspapers and magazines are distributed for free at every village. Besides, 15 additional newspapers and magazine titles in Greek language are distributed in this territory entering from Greek boarder.

1460. Macedonian and Montenegrin press is freely distributed without problems to the Macedonian and Montenegrin minorities in Albania.

1461. The Aromanians have their own newspaper 'Fratia - Brotherhood', which is published once a month in Albanian and Arumanian languages.

1462. Law no. 8410, dated 30.09.1998 'On Public and Private Radio and Television in the Republic of Albania' guarantees to national minorities full access to electronic media. This law proclaims the freedom of radio-television activities and their editorial independence (article 4 and 5).

1463. Article 39 of this Law prohibits the transmission of programmes that promote violence, aggressive disputes, national or racial hatred etc. Article 36 requests that radio and television programmes should respect the personal dignity and fundamental human rights, fairness, completeness and pluralism of information, the children's and adolescents rights, public order and national security, Albanian language and culture, constitutional and human rights of citizens, national minorities in accordance with international conventions endorsed by the Republic of Albania, and the religion diversity.

1464. Article 37 quotes that 'Use of Albanian language is compulsory for all programmes, except musical works with texts in foreign languages, or programmes for language lessons, or programmes specifically addressed to national minorities and programmes of local radio-television entities licensed for transmissions in the minority languages'.

1465. On this basis, the establishment of local radio or television stations by members of minorities in the mother tongue has been guaranteed. The National Council on Radio and Television handles their licensing. The licensing requirements are based on law, which is supported on the international recognised Laws.

1466. One of the 15 representative at the Managing Council of the Albanian Radio and Television, is elected by the Parliament and is a representative of the national minorities - this in accordance with the Law on Electronic Media (article 88). This representative should observe the relations established in respect of volume and time that information on minorities in the overall programme of the ART.

1467. According article 69 of law no. 8410, dated 30.09.1998 'On Public and Private Radio and Television in the Republic of Albania', the programme of Albanian Radio and Television (ART) while transmitting through the central or regional studios, should provide informative transmission on national minorities. Although this obligation of the ART is clearly defined, the law does not provide concrete ratios or nominate values or percentages with respect to volume and time these programmes should occupy.

1468. Currently, in addition to the programme in Greek language transmitted twice a day for 30 minutes by Radio Tirana, Radio Gjirokastra has been established, which transmits daily programmes in Greek language for 45 minutes (from 17 - 17: 45) for the Greek minority.

1469. Worth mentioning that the state has installed with its own resources, television repetitors within the territory of Albania, which retrieve Greek TV programmes for the Greek minority.

1470. With reference to Macedonian minority, the local radio Radio Korca) transmits news in Macedonian language three times a week. In addition, the local TV transmits special programmes from this zone. The public and private Macedonian radios or televisions are easily retrieved to be watched, with no need to place television repetitors. The same can be said with reference to the Montenegrin minority. In addition, the local Shkodra radio transmits programmes in Montenegrin.

1471. A new development has been recognised amongst the cultural and artistic activities of national minorities. Every minority has established organisations and associations. These associations play an importance role in making the history, culture and traditions of minorities known to their own population.

1472. The Association 'of Minority Artists' exercises its activity in Dropull, Prefecture of Gjirokastra. Writers, poets, painters and other well-known minority artists are members of this association. This association has organised a series of activities such as painting exhibitions, photo exhibitions, exhibitions of folk cultural objects, etc. The folk Ensemble 'Dropulli' has participated in the cultural life within the country but also out of the country and has received full and direct support from the Ministry of Culture, Youth and Sports, from the Municipality, from the Cultural Centre and from various sponsors.

1473. The representatives of the Macedonian culture have established a series of associations where one can mention: 'Albanian Macedonian Union', Association 'Druzhiba Prespa' at the Commune of Liqenas, Korca Prefecture. The later leads and manages the activities of folk groups in the Macedonian minority villages. This association has organised the Liqenas Festival and a series of tours in Albania and in the neighbouring regions of the Former Yugoslav Republic of Macedonia. The values of folk traditions, culture and customs have been demonstrated during these shows.

1474. The cultural association of Montenegrin minority 'Moraca Rozafa' develops its activities in the Commune of Vrakë, Shkodra Prefecture. It has organised a series of activities, retaining and promoting the language, culture and traditions of Montenegrin minority.

1475. The Roma minority has been organised in associations such as 'Amaro-Drom', 'Amaro Divas', 'Romani Baxt', etc.

1476. The Aromanians have established their association 'Armeni-Alban' (Aromanians of Albania), 'The Vlleha Voskopoja Association'. The main objective of these associations is to retain their language, culture and traditions.

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