



REPUBLIC OF ALBANIA

PEOPLE'S ADVOCATE

**National Prevention Mechanism
ALBANIA**

**Activity of the Albanian People's Advocate
on the Role of the National Mechanism
on the Prevention of Torture**

ANNUAL REPORT

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People's Advocate Office

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CHAPTER I

Implementation of duties and competencies of National Mechanism for Prevention of Torture (NMPT) in 2012

1.1. Introduction of OPCAT and the NMPT functions in Albania

The institution of the People's Advocate has had in its past a significant activity concerning the identification and prevention of cases of torture, inhuman and degrading treatment. The adoption of such approach in this area was a result of the implementation of proper competences attributed to this institution by virtue of the Constitution and law no. 8454, dated 04.02.1999 "On People's Advocate", (as amended).

The activity of the People's Advocate Institution has been often referred in a series of international reports underlying the importance of the identification and elimination of cases of violence.

As a result of the achievements of our work in this area, in June 2007, the People's Advocate in cooperation with other Albanian authorities, including the Ministry of Justice, Parliament and civil society (Albanian Centre for the Rehabilitation of the Victims of Torture being the most prominent supporter at the time) conducted a roundtable with the topic "Albania without Torture". The purpose of the seminar was to discuss ideas and give proposals on how to better implement the law no. 9094, dated 03.07.2003 "On Ratification of the Optional Protocol of the Convention against Torture and other Inhuman and Degrading Punishments (OPCAT)".

This international act ratified by Albanian Parliament imposed the binding obligation on the signatory members to create a national structure for the prevention of torture or to attach such an activity to an institution with similar work profile.

According to OPCAT, the aim of the activity of the National Mechanism for Prevention of Torture (NMPT) is the implementation of regular visits in all premises of public institutions where the individual's freedom is restricted or their release from the premises is made on the basis of a court decision or an administrative order. With this understanding, institutions such as prisons, pre-trial detention centres, police stations, psychiatric hospitals, military units, etc. will be subject to regular inspections. Furthermore, the problems identified from this inspection visits will be translated into recommendations and periodic national and international progress reports in order to promote continuous respect and improvement of standards of training of individual personnel serving in these premises.

After a long professional discussion on the subject/authority that would better play the role of NMPT, the parties agreed that the institution of the People's Advocate, being an independent institution with special focus on human rights, satisfying most of the "Paris Principles" would be authority/subject that would better guarantee the professional and independent functioning of the obligations/duties of the NMPT, as specified in OPCAT.

In order to formalize this proposal, the People's Advocate addressed a recommendation to the Albanian Parliament and the Prime Minister explaining the reasons why it was the best choice for playing the NMPT role, together with an additional request of 5 new positions to exercise this function.

Following this recommendation, with the approval of the budget of the People's Advocate Institution for 2008, the government approved 5 additional staff on People's Advocate in order to be part of the new NPMT-Albania. This event marks the *de facto* initiation of the work of People's Advocate in the role of the NMPT on January 3, 2008. The legal acknowledgment of the NPMT-Albanian, as a separate structure within the Albanian People's Advocate, became effective when the law no. 9888, date 10.03.2008 "On some amendments and changes to the law "On the rights and treatment of the Detained Persons" was enacted by the Albanian Parliament.

Despite the above, following the recommendation of the UN Subcommittee Against Torture, the People's Advocate has requested for amendments and changes to the law no. 8454, dated

04.02.1999 “On People’s Advocate” which would better specify the right of the institution in order to fully meet the “Paris Principles”, including promotion of human rights, independence and “pro active” status. On the legal draft prepared by EURALIUS mission in cooperation with People’s Advocate there is a provision that acknowledges and confirms the NPMT as part of the structure of People’s Advocate Institution Albania. The draft proposal has been sent to the Albanian Government and after formal discussion shall be sent for approval to the Parliament.

1.2. Internal organization of the Albanian NMPT

In order to decide on the form of the Albanian NMPT, a number of legal acts, manuals, and experiences made available by the Association for Prevention of Torture (APT), the Committee for Prevention of Torture of the Council of Europe, and the from other NMPT partners in the region have been consulted.

During the period April-May 2008, the People’s Advocate carried out the competition procedures, in conformity with the law “On Status of Civil Servant”, in order to select the specialist that would become part of the Unit for Prevention of Torture. By the end of May, after a repeated legal procedure, 5 new employees of the NMPT unit were finally assigned. For their assignment, the People’s Advocate respected the principle of gender equality according to OPCAT principles and Albanian legislation as well as the specifics of the job so that each of the persons selected was an expert in one of the fields of activities that NMPT covers. The organizational structure of NMPT is composed of the Head of NMPT and four specialists, each of them specialized in and covering at least one of the specific areas, respectively police, prisons, armed forces and healthcare, illicit emigrants, etc. During their activity, they cooperate and coordinate their actions with other sections of the People’s Advocate Institution, whenever requested by the specifics of the case.

1.3. NMPT activities, co-operations with authorities and other entities

During 2012, the Albanian NMPT conducted 125 inspections, re-inspections, thematic controls

and visits in all the penitentiary facilities and other institutions mentioned above. In addition, this structure handled about 181 individual complaints received during direct contacts in the course of the inspections. In relation to the whole activity, 54 recommendations were issued.

The above-mentioned recommendations and interventions focused mainly on the measures that had to be undertaken in order to respect and improve the rights of the prisoners and pre-detainees in terms of fulfilling their vital, health and educational needs.

In addition to these recommendations, a series of other measures were suggested with regard to internal infrastructural investments, increase of the staff. Joint work has been completed with the Prison Administration aiming to promote activities on the prisoner's rights.

In specific cases of inspection visits, the NMPT has found evidence of physical violence (torture and arbitrary actions) and therefore according to the legal obligations it sent all evidence to the Prosecutor's Office recommending the initiation of a criminal investigation for the alleged perpetrators in public functions. More details on these cases are given through the report in the specific areas.

In order to provide qualitative inspection visits, the People's Advocate has periodically drafted specific action plans and programs with regard to the centres to be visited by the NMPT. For each specific inspection premises, specific sample questionnaires are prepared, which are based on a list of required standards to be fulfilled, and then to be particularly inspected and monitored by the specific area expert of the Office.

Inspections, visits and any other controls at the institutions of state police, institutions of enforcement of criminal judgments (prisons or detention facilities), psychiatric and infective hospitals, in military stations and wards, regional border and migration directorates, as well as in other shelters for accommodation of illegal migrants and trafficked people, aimed to ensure a full monitoring coverage of the situation of human rights in such institutions, preventing violations and articulating a realistic official stance on the situation in the ground.

1.3.1. Promotion of the NMPT activity

With the consideration that the NMPT role and activity is very important and must be promoted, the People's Advocate has organized and conducted a number of meetings , co-chaired a number of conferences focused on the prevention of torture with the intention to advocated the work and the progress made by the NMPT.

3 round tables were organized in 2012 with participation of representatives from the Ministry of Justice, State Police, General Directorate of Prisons, Civil Society organizations, etc.

Another three-lateral meeting of the representatives of NMPT-s from Slovenia, Serbia and Macedonia took place in Albania on 4-7th of June 2012, in the premises of the People's Advocate Institution (for more details see Annex 1). The focus of the meeting was exchanging of experience and sharing of the methodology of work in relation to monitoring Psychiatric Hospitals.

The meeting was opened by the Albanian People's Advocate, Mr. Igli Totozani, who welcomed the delegations from Slovenia, Serbia and Macedonia, shortly stressed the importance of the undertaken preventive role by the People's Advocate institution, the significance of monitoring the state's authority to deprive persons of liberty and their treatment and the need to continuously increase the professional level of the NMPTs work.

During Day 1, the representatives of NMPTs, each separately, discussed the best approaches and methods, sharing good practices and lessons learnt when it comes to conducting preventive visits to Psychiatric Hospitals. The NMPT's discussed the APT's manuals and recommendations on methodologies on monitoring psychiatric hospitals and provided joint comments, the structure and data contained in the separate reports on the visits with focus of drafting the recommendations issued to the authorities. During the final part of the day, the NMPTs prepared for the on-site visit - the Albanian NMPT provided the Slovenian, Serbian and Macedonian colleagues with information on the Psychiatric Hospital no. 5 in Tirana- inspection site of the Monitoring Group.

During Day 2, the NMPT's conducted a joint on-site visit to the psychiatric hospital No. 5 Tirana, following the agenda prepared by the Albanian NMPT. The total duration of the visit was 5 hours (between 10.00 and 15.00hrs) and all the visit steps were followed accordingly by the respective NMPTs. The visit concluded with a short conclusive meeting with the Medical Doctor in Chef of the hospital.

During Day 3, the NMPT's discussed the on-site visit, their impressions, general findings, compared the Albanian NMPT's visit methodology with the way in which their respective NMPT conducts the inspections to their psychiatric hospitals. Finally, the NMPT's shared their conclusions and recommendations from the on-site visit and their impressions from the inter-NMPT meeting in general.

In the area of the cooperation and promotion of the work of NMPT in the international arena, members of the NMPT have participated in 2 international meetings organized by the Council of Europe, concerning the respect of human rights in prisons and police premises. In these meetings, NMPT participants acquainted their colleagues with their expertise and experience while learning the experience and expertise of other countries with regard to the application of best practices for the prevention of tortures in these premises.

It is also worth mentioning the very good work regarding the promotion of the NMPT activity, through proper use of the official website of the People's Advocate, TV and written media, etc. It is thank to this persistent promotion campaign and the cooperation with the TV and written media, that the knowledge of the public regarding the work of the NMPT has increased making thus possible to increase the number of complains addressing the field of activity of NMPT and to increase impact of the recommendations and recommendations issued by the NMPT.

1.3.2. Legal recommendations

One of the functional activities of NMPT has been related to the recommendations concerning

legislative aspects, through proposals for the amendment of laws and bylaws, aiming at the improvement of the existing legal framework on prevention of torture and the respect of individual rights.

Through the inspections made and complaints examined by the People's Advocate in 2012, the NMPT has found several violations of the legal and constitutional rights by penitentiary institutions, state police, and mental health institutions. Cases of violations of rights of people deprived of liberty are identified by the People's Advocate, including either physical or psychological violation. The infrastructure of detention facilities and prisons safety remains problematic. Often such facilities do not meet the legal standards and do not provide for the minimal living conditions for the detainees. Complaints focus on the fact that state police has deprived the personal freedom of the individuals while accompanying people to the police, by detaining them without any legal bases, by not accurately registering the time of detention or arrest of the citizen/s. Likewise, there are cases when the state police did not take administrative steps and follow criminal requests and/or complains addressed by the citizens.

It is worth mentioning that the Director General of State Police has approved his work programme in order to insure the implementation of the Recommendations of the People's Advocate regarding conformity of the detention and security facilities with the legal standards as well as training of the police staff serving in such facilities. In addition, the People's Advocate acknowledges that in 2012 the state police have improved its cooperation with several civil society organizations. They have reached and signed several cooperation agreements for the monitoring of human rights issues and the training of the police staff.

In the meantime, acceptance of the People's Advocate recommendations submitted to the Director of State Police and Minister of Health on adoption of the necessary measures for the familiarization of the state police staff with the international and regional acts covering issues related to hunger strike, should be acknowledged and appraised.

The same should be said regarding the acceptance of the recommendations regarding problems identified in some of the penitentiary institutions. Following that acceptance and the relevant measures taken by the authorities, the overpopulation in some important prisons, Elbasan prison

being one of them, has been greatly reduced. People's Advocate acknowledges also the good performance on 2012 of the probation service of which the reduction of overpopulation in the penitentiary institutions is a direct effect. There is also a continuing good cooperation with the General Prison Directorate and many different NGOs, as a result of which it has been possible to organize numerous joint inspections and other joint activities, such as: provision of psychological services for the inmates and training for the prisons directorate.

In the meantime, issues such as treatment of health issues and their diagnoses in due time, lacking psycho-social, psychiatric staff, nurses and insufficient number of rehabilitating programs, especially in institutions involving children, remains problematic.

The psychiatric hospital centres remain overpopulated (especially the hospital in Vlora and Elbasan) and there are difficulties in the de-institutionalization of chronic patients, as the rehabilitating centres lack proper capacities and staff proportionate to the number of patients. As a consequence, a considerable number of patients are hospitalized in psychiatric hospitals. Their long hospitalization impairs possibilities of improvement or rehabilitation of such people. In the meantime, the health service in the psychiatric hospital centres is not up to the required standards as they lack staff (general practitioners, psychiatrists, dentists) and there is a lack of materials, medical appliances and instruments. The psycho-social service, particularly for minors, is short of staff and lacks rehabilitating programs. Failure to find a proper solution for the hospitalization outside the penitentiary system of persons that, according to the court need to undergo compulsory treatment remains an issue.

However, the People's Advocate believes that the approval of the new law no. 44/2012 "On Mental Health", which complies with the international standards, and the drafting and issuance of the by-laws for its implementation¹, shall finally settle most of the problems. It should be highlighted that the Law provides for the involvement of the People's Advocate through the NMPT and the NGOs, as external monitoring stakeholders of mental health institutions.

¹ The People's Advocate Office is part of the working group for the preparation of the by-laws on law no. 44/2012 "On Mental Health", to be issued in order to ensure full enforcement of the newly-approved Law.

1.3.3. Reports, international cooperation and membership

Immediately after the establishment of the NMPT it established formal relations with representatives of the UN Subcommittee against Torture, the UN Committee against Torture, as well as the Committee for the Prevention of Torture of the Council of Europe.

Members of the NMPT are members of the working groups of the Albanian Ministry of Foreign Affairs, concerning the drafting of the reports to the Council of Europe, and the UN Committee against Torture (CAT). The People's Advocate, in capacity of the NMPT, has provided to the latter, a special fact-finding report on prison conditions in Albania for 2011.

Furthermore, exchange of information is being held with the UN Subcommittee against Torture regarding the information they periodically request on the NMPT work activities. A full report of activities of NMPT was submitted for 2008-2010 and 2012 report will be sent to UN Subcommittee in due time.

In March 2013 Albanian NMPT was one of the NMPT that lobbied for and founded/establishment of the South-East Europe NPM Network (SEE NPM Network). The initiative is also supported by OSCE and the Council of Europe. This initiative was materialized and the South East European network of torture prevention units was established in Belgrade (Serbia). The main purpose of the SEE NPM Network is to establish greater cooperation and to exchange experiences, to create synergy between members, to provide support and to create conditions for effective fulfilment of the NPM mandate specified in the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). Taking in consideration the experience of the NMPT and its experts, a representative of Albanian NMPT was selected to head the permanent jurisprudence group of this regional organization.

The UNO's Sub-committee on Prevention of Torture and NMPT Albania have a 5 years old extensive cooperation experience either through the Ministry of Foreign Affairs in Albania or through direct communications. Such cooperation serves the purpose of informing this

international organization on the possible cases of torture, inhuman and degrading treatment as well as on the activity undertaken by our organization and the Albanian authorities aiming to prevent any such activity and promote human rights.

It is for that purpose that the People's Advocate, under which authority acts the NMPT, was called in June 2010 to report in a special session of the Sub-Committee on Prevention of Torture, headquartered in Geneva. This was the second high level reporting reserved to those countries that have already started to consolidate their monitoring activity, according to OPCAT. At this meeting, the People's Advocate conveyed information on the situation of human rights in Albania, as described in the annual report submitted to the Albanian Parliament.

Members of Sub-Committee asked several questions and gave opinions on various issues, which were afterwards debated by both parties. In the end, the People's Advocate received very positive assessment on the work done so far as well as open support on strengthening of professional and organizational capacities by UNO structures.

In this reporting session, the Albanian state took several positive assessments on the seriousness and operation within a short period of time of an independent and functional structure, as the NMPT. In his concluding words, Mr. Victor Rescia, Chair of the Sub-Committee on Prevention of Torture, stated, inter alia, that *“from such a small country like Albania, we manage to get such big messages on the seriousness and resoluteness to respect international acts, freedoms and rights of the individual”*.. Via this reporting meeting, the People's Advocate managed to fulfil one of the most important objectives and obligations as the NMPT at the international plan.

In the context of international cooperation, representatives from the People's Advocate office have taken part in many international meetings held by the Council of Europe, in the context of “Peer to Peer” project. This project aimed at training and offering experience vis-à-vis respect of human rights in prisons, police and other places where liberty of the individual is limited. In these meetings, our experts have given opinions and have received expertise and information on a number of inspection practices, also providing input on the running of our activity in general. Stemming from the above, in June 2010, the Council of Europe organized in cooperation with

the People's Advocate in Tirana, the international conference with the participation of 23 European countries that have already established a NMPT.

During 2010-2012, People's Advocate continued its cooperation with several foreign partners acting in Albania and having a priority role in strengthening standards of human rights. In not a few cases, the NMPT has held contacts and meetings with representatives from the OSCE Office in Albania, and it has exchanged information and reports with them on the situation observed in the penitentiary institutions. In the beginning of 2010, the People's Advocate, together with the PAMECA Mission, organized a workshop for identifying problems in the community services of the state police and for its infrastructure capacities in the isolation venues. This workshop was accompanied by a final report addressed to state police authorities, recommending several amendments and updated in its work.

Another very important partner in the Albanian NMPT work for 2010-2012 has been the EU Delegation Office in Tirana, that helped the NMPT to organize several meetings and exchange constant information, sharing information from the inspections of respect of human rights in the penitentiary institutions. In the framework of fulfilling the tasks foreseen in the Progress Report of the European Union, this office has appraised the work of the People's Advocate in the context of the NMPT, and has shown a special interest in getting to know the recommendations issued by our office and related to implementation of tasks coming from the Progress Report. Fruit of this interest has also been inclusion in the country's integration agenda of Item 12 of the Association and Stabilization Report, according to which Albania should examine and implement the People's Advocate's recommendations related to the situation in prisons, police and other venues where liberty of people is limited.

1.3.4. Bilateral activity

The People's Advocate of Albania has established and maintains direct bilateral contacts with the Ombudsmen of the region including those of Kosovo, Montenegro, Serbia, Greece and Macedonia as well as with Ombudsmen and NMPT's from Denmark, France, Germany, Spain etc.

The bilateral cooperation agreements always provide for the exchange of experience and study tours of the specialists of the NMPT from the countries. It is because of these agreements that the specialists of NMPT Albania have had study visits in almost all countries mentioned above.

1.4. Challenges to the effective execution of the NMPT's mandate

Being a relatively new activity with a very sensitive and difficult object "the prevention of torture by means of periodic inspection visits" the NMPT activity has been faced with many challenges and difficulties. The challenges may be divided in two groups:

1. Challenges related to the lack of resources (number of staff/machinery/funds/expertise).
2. Challenges related to the lack of cooperation by the state institutions.

While highly successful, the activity of NMPT has and is still facing difficulties related with the tendency to decrease of funds it receives from the government. On the last 4 years the funds received from the People's Advocate institution, and as a result even those provided for the NMPT, have decreased constantly arriving to almost 20% less. As a direct effect it has been impossible for the NMPT to hire specialist (mostly doctors/psychiatrist and engineers) that would help increase the quality of reports/recommendations following inspections.

With regard to the transport, the means of transport used by the NMPT are problematic and far from providing a quality transport which in returned reflect both the number and the quality of the inspections undertaken. Without the help of the other sections of People's Advocate institution with staff/machinery/stationery and expertise, it would have been very difficult for the NMPT to meet its objectives and keep a high performance.

Regarding the second kind of challenge, lack of cooperation with state institutions, it must be accepted that after almost 5 years of activity and a strong and persistent campaign of information by part of the People's Advocate, the state official know and recognize the rights and duties of NMPT and therefore their refusal to cooperate has dramatically decreased and if existent it is

resolved immediately without any consequence Whenever existing, the lack of cooperation by state institutions, is reflected in the form of non compliance with the recommendations of the NMPT (People's Advocate). The reasons of noncompliance are mostly referred to as "lack of funds" but there are cases that the evidence has shown that that excuse was not sufficiently acceptable. Especially when compliance means changes/improvements that do not need big funds, the persistence of noncompliance with the recommendations even after 2-3 years may not be excused on the bases of "lack of funds" but that of "lack of will", "severe negligence "and/or "lack of vision".

1.5. Plans for the future

The People's Advocate has approved for 2013 a new inspection visit plan which includes 118 inspection visits all over the country with special focus on institutions such as Police Stations, Prisons, Pre-trial Detention Centres, Hospitals, Military Units, etc that had persistent and unresolved problematic, resulting from the prior visits/inspections of the NMPT.

In addition to the new institutions to be inspected this year, NMPT has planned to make inspection visits to the institutions it has previously inspected, in order to assess and identify the changes made after the recommendations of the People's Advocate.

NMPT has always supported the idea of strengthening the cooperation with the NGOs through common efforts to establish joint inspection teams, which might have experts of the required areas, such as in the area of Psychology, Sociology, Forensic Evidence, Engineering, etc.

In the framework of cooperation with public administration, meetings will be held with the Ministry of Health, the Psychiatric Hospitals and the Infective Diseases' Hospitals with regard to the respect of the rights of patients and the conditions of their treatment in the light of the implementation of the new law on Mental Health. The same meetings will be organized with the Ministry of Labor, Social Affairs and Equal Opportunities on the treatment of illicit immigrants and asylum seekers in our country. Furthermore the training of the NMPT staff regarding the development of the human rights issues with special focus on their object of activity, will

continue.

CHAPTER II

Functioning and operation of the NMPT in 2012

2.1. Legal mandate and monitoring activity

During 2012, in its capacity of the NMPT, the People's Advocate Office has established and enhanced an effective structure that works in a highly professional manner to examine each and every phenomenon that results into the violation of the human rights in the form of torture, inhuman and degrading treatment. Such improvements have led to a qualitative increase in the prevention of the above phenomena, to the promotion of good practices and boosting of the dialogue with state authorities.

The NMPT acts on the basis of a series of national and international acts, of which the main are the Constitution of the Republic of Albania and the Optional Protocol of the Convention against Torture and other Inhuman and Degrading Treatments (OPCAT)", ratified by law no. 9094, dated 03.07.2003.

These provisions foresee the basic principles underlying the inspections in the penitentiary institutions and guarantee an operation in conformity with the relevant international standards in the area. On the other hand, Article 19/1 of the law no. 8454, dated 04.02.1999 "On the People's Advocate, as amended, authorizes the conduct of an independent monitoring and investigative activity, which is complete and comprehensive for every case of torture, inhuman and degrading treatment, thus, guaranteeing greater access to every premise or office, to every official without immunity and to all the documents, including those classified ones, and to the public administration bodies.

Additionally, the amendments made by the law no. 9888, dated 10.03.2008 to law no. 8328, dated 02.04.1998, “*On the Rights and Treatment of Prisoners and Pre-detainees*”, create more room for the People’s Advocate to exercise its duty as a NMPT in the course of inspections of penitentiary services. Article 74/1 of the law recognizes the right of the People’s Advocate, in its capacity of NMPT, as a special subject in terms of the supervision of the implementation and enforcement of the law on the detainees and pre-detainees. The People’s Advocate Office has been conferred with competencies to conduct regular monitoring of the treatment of the individuals who have been deprived of their freedom in the detention, arrest or prison facilities, in order to strengthen, where required, the protection of individuals from torture or the cruel, inhuman or humiliating treatment. According to this provision, the Office is entitled to issue specific reports and recommendations for the relevant authorities, with the purpose of improving the treatment or conditions of the individuals who have been deprived of their freedom and in order to prevent torture and a cruel, inhuman or humiliating treatment or punishment.

The inspections visits and any other form of control in the State Police Institutions, Penitentiaries (prisons and pre-detention facilities), in Psychiatric and Infectious Disease Hospitals, in military bases and cantonments, in the Regional Border and Migration Directorates and in the other reception centres for illegal migrants and trafficked persons have all focused on ensuring full coverage of the monitoring of the state of human rights in these bodies, prevent violations and come up with an official stance on the identified issues.

During 2012, the People’s Advocate Office, in its capacity of the NMPT, conducted 125 inspections, re-inspections, thematic controls and visits in all the penitentiary facilities and the other institutions mentioned above. In addition, this structure handled about 181 individual complaints received during direct contacts in the course of the inspections. In relation to the whole activity, 54 recommendations were issued.

The above-mentioned recommendations and interventions were mainly focused on the measures that had to be taken to respect and improve the rights of the prisoners and pre-detainees in terms

of fulfilling their vital, health and educational needs.

In addition to these recommendations, a series of other measures were suggested with regard to internal infrastructural investments, increase of the staff. Joint work has been done with the administration of prisons to encourage and promote activities that aim the protection of the human rights with special focus on the rights of prisoners.

The People's Advocate was quite attentive to keeping a constant communication with individuals whose freedom has been deprived, through a telephone number free of charge at the institution and by means of the complaints sent to special postal boxes that only the People's Advocate staff is allowed to open in every penitentiary or pre-detention facility.

Via the NMPT, the People's Advocate continued the activity of inspection in the premises of the State Police, with a view of monitoring and controlling the lawfulness and application of regular procedures for the accompanying or arrest of the individuals, their treatment within the premises of the police station, the conditions thereof, etc.

Further, the People's Advocate, in his capacity of the NMPT, focused on the monitoring of the human rights standards in the Armed Forces of the Republic of Albania during 2012. The activity in question aimed at monitoring the respect of the rights of the militaries, as provided by the status of the military, the disciplinary measures and the conditions in the isolation chambers for disciplinary purposes. For this purpose, a series of inspections and visits were conducted in the military bases and detachments, including meetings with the military from where information was obtained in relation to the respect of their legal rights guaranteed by the respective normative acts.

2.2. Inspections of penitentiaries and pre-detention facilities in 2012

A total of 152 complaints and requests coming from prisoners, relatives of prisoners or staff of the prison administration were received during 2012. They involved matters related to the

administration and treatment of the pre-detainees and prisoners in the penitentiary institutions.

The People's Advocate issued 31 recommendations for detention and pre-detention institutions, of which, 18 followed the monitoring and visits in the penitentiary institutions and addressed issues relevant to the improvement of the conditions and treatment of the prisoners and pre-detainees and 13 other recommendations were of generic nature and involved the streamline of the conditions of the treatment of people who are deprived of their freedom and the respect of their rights by the penitentiary institution administration.

Considering the contents of the 31 recommendations and the inspections by the People's Advocate (NMPT) to monitor their implementation, a series of issues were identified which need immediate review and improvement. The process has to go through the decision-making of high state structures, given that the majority of obstacles come from the lack of funds and non approval of sub-legal acts.

Specifically, below are listed some of the yet unaddressed issues, which, in practical terms, should be viewed as priorities. Although some of them were identified since 2011 and were subject of the recommendations issued by the People's Advocate, they have not yet been addressed, despite their direct impact on the extent of respect/enjoyment of the fundamental rights and freedoms of the citizens who have been deprived of their freedom.

Content-wise, the 31 following recommendations and the following NMPT inspections for their implementation highlighted a set of issues that should be addressed without further delay.

2.2.1. Pre-trial detention Institution 313 in Tirana, doc. no. 201202629

Upon inspection in the institution, the following recommendations were issued:

1. Improvement of the premises, by making the relevant repairing of the bathrooms, in particular, to eliminate humidity, mend the broken tubes, shower sets, lighters and electric connections, according to technical safety standards.

2. Increase of the food portion for the pre-detainees.
3. Immediate measures should be taken to use uniforms, gloves during the distribution of the food to the pre-detainees and constant control should be exercised on the food portion per meal by the responsible staff.
4. Measures should be taken to provide the required amount of the basic personal hygiene products (including the toothpaste, tooth brush, shampoo, etc.), and with other adequate materials to clean their cells.
5. Training of the psycho-social staff on the psychic diagnosis, on the intervention plans and the notes on the detainee's file.
6. Training of the staff for the treatment of individuals who are addicted of narcotic substances.
7. A better coordination with the NGOs that offer psychological services, in order to reflect the delivered interventions in the files.
8. Offering of emotional support services for all the pre-detainees.
9. Implementation of the existing agreement on the mandatory education and courses against illiteracy.
10. Application of accelerated procedures in terms of medical consultations and examinations.
11. A better and speedy functioning of the dental care.
12. Recruitment of a physician and assistant physician.
13. Supply of the medical room with a bed or portative equipment (ECHO, Ro-Grafi) to enable a swifter examination of the pre-detainees.

14. The laboratory should be made operational and the dental and nursing room should be reconstructed.

15. Re-evaluation of the diagnoses of the mentally ill individuals, to establish the type of disorder. Revision of their treatment to add AD (antidepressants) to their therapy or other mood stabilizers, as well as establishment of a more adequate treatment for substance addiction.

16. Revision of the organizational structure to include a psychiatric doctor on a full-time basis.

From the feedback, the People's Advocate in the role of NMPT learned that the recommendations were accepted and that all the measures will be undertaken for their implementation.

2.2.2. Pre-trial detention Institution 302 in Tirana, doc. no. 201203868

Inspections in this institution found a series of problems, for which the following recommendations were issued:

1. Measures should be taken to eliminate humidity, mainly in sector 3, in order to enhance infrastructural conditions in the rundown parts of the building.

2. It is necessary to reconstruct the isolation, observation and transiting premises and to address all the shortcomings in such spaces, natural light and air should be increased through the enlargement of the cell windows, without affecting the institution's security elements, in order to respect the rights of the pre-detainees and eliminate the consequences on their health due to lack of air during the stay in this institution.

3. Measures should be taken for regular disinfestations of the institution to get rid of insects, in order to avoid any potential epidemics that might result from untimely disinfestations.

4. Supply with hygiene and sanitation products, in quantity and quality, painting of the

oxidized beds and replacement of the food distribution items, in order to improve conditions and ensure that the hygiene is kept within the contemporary parameters.

5. Measures should be taken to create a meeting space for the pre-detainees with their minor children, in order to offer premises that are acceptable for minor children during their meeting with parents and that is psychologically appropriate.

6. The telephone apparatus should be placed outside the area of the officer post, in order to ensure privacy of communication for the pre-detainees.

7. There should be an improvement of the infrastructure in the health and dental service premises, in order to meet the required standards and enhance the service provided to this category.

From the feedback, the People's Advocate in the role of NMPT was informed that recommendations were accepted and that all the necessary measures would be taken for their implementation.

2.2.3. Berat Pre-trial detention Institution, doc. no. 201203709

In a series of inspections and controls, the People's Advocate in the role of NMPT found a range of issues and issued the following recommendations:

1. Measures should be taken to complete the construction of the new building, in order to move pre-detainees to the new premises as soon as possible, considering that the premise and infrastructural conditions of the former are out of any standard.

2. Measures should be taken to repair showers, paint the premises, to supply various hygiene and sanitation products, put covered dustbins in the cells, and insulate the electric boxes, in line with safety parameters and placement of the electric wires at the proper height, in order to improve conditions and the protection of the pre-detainees from unwanted situations, in accordance with the legislation into force.

3. Measures should be taken to establish proper premises for the provision of the socio-educational service, to update the library and its relevant filing system as well as to increase re-integration programmes, in order to improve the service itself and the positive influence in the rehabilitation of the pre-detainees.
4. Measures should be taken to increase the staff with nurses and a dental doctor for the health service, to create a medical room, speed up procedures for the implementation of the tripartite agreement on the list of reimbursable drugs and retrieval of the medicines, in order to provide an efficient health service to this category.
5. Implementation of the Agreement between the Ministry of Education and Ministry of Justice on education and continuation of educational programmes for the pre-detainees of the penitentiary institute of Berat.

The People's Advocate in the role of NMPT *had a positive feedback that informed him that the recommendations were well-received and all the relevant measures would be undertaken for their implementation.*

2.2.4. Korca Penitentiary Institution, doc. no. 201203949

Upon inspection in this institution, the following recommendations were issued:

1. Measures should be taken for repairing, maintenance, elimination of humidity and sewerage regulation.
2. Conditions should be set and improvements should be made to the showering procedure by providing hot water for the prisoners and pre-detainees in the common showering premises, at least once a week.
3. Measures should be taken to improve the water supply in all units and extend the time of supply for the detainees.
4. Immediate measures should be taken to improve the quality of cooking for the detainees.

5. Immediate measures should be taken to repair the rooms, bathrooms and to furnish the observation premises with new linens, in order to bring them within the living standards provided for by the General Regulation of Prisons.
6. Measures should be taken to make sure that all the detainees are provided in an adequate amount of basic personal hygiene products (including the toothpaste, toothbrush, shampoo, etc.), as well as all the needed materials to clean their cells.
7. A full-time psychologist should be recruited on a full-time basis.
8. Heating should be ensured in all units, in line with the standards provided by the General Regulation of Prisons.
9. Premises and conditions for special meetings should be improved and a separate space should be created for the meetings with minor children.
10. Measures should be taken to enable telephone communications with families for those who require doing so even after 16.00 hrs.
11. Psychological services should improve and files should reflect the interventions offered to those individuals who have no contact with their relatives.

2.2.5. Fushe Kruja Penitentiary Institution, doc. no. 20120309

Upon the conclusion of inspections, the following recommendations were issued:

1. Measures should be undertaken to eliminate the humidity in all the building, a heating system should be installed during all winter and the premises should be painted (bathrooms, cells, corridors, observation and isolation premises, etc.), in order to improve the conditions of citizens who are kept in this institution, in line with the required standards.
2. Measures should be undertaken to provide electric energy supply, drinking water, hot water and to avoid that hot water is obtained by the pre-detainees in primitive and dangerous ways, in

order to respect and apply their rights in accordance with the legislation into force and to avoid undesirable situations.

3. Measures should be taken to hire as permanent staff a general medical practitioner, to carry out all the administrative and pharmaceutical procedures to implement the new scheme in the health service and retrieve the reimbursable medicines from the respective depot in time, in order to provide a health service that respects the terms and conditions set out in the Agreement between the Regional Directorate of Health Insurance, General Directorate of Prisons and Distribution Depots.

4. Measures should be taken to disinfect all the premises, to provide the pre-detainees with sanitation and hygiene products, in range and quantity, to put covered dustbins in cells, in order to prevent potential epidemics and to establish a state of hygiene that is in line with the contemporary parameters.

5. Measures should be taken to separate the pre-detainees who fall in the age group of 18-21 years and put them in the respective premises, in order to respect the law on this category.

The Directorate General of Prisons informed us of its constant efforts to reduce problems related to the living conditions of the detainees and their treatment, by establishing a continuous cooperation with various institutions and non-governmental organizations to address these issues.

2.2.6. Prison Hospital in Tirana, doc. no. 201203869

Upon conclusion of the periodic inspection in this institution, the People's Advocate in the role of NMPT issued the following recommendations for the Director General of Prisons:

1. Measures should be taken to provide patients and premises with sanitation and hygiene products for all the units of the centre, in order to enhance the personal hygiene of the individuals and of the premises where they spend most of the time during their treatment.

2. Measures should be taken to change items such as sheets and towels, to paint oxidized beds, repair shower sets in order to improve conditions and ensure a service that meets the required standards.
3. A special observation room should be established for diagnosed mental health cases entailing isolation measures.
4. Measures should be taken to extend the telephone set cable and increase of ramps in these premises, in order to improve conditions and reduce physical efforts of the tetraplegic patients in this centre.
5. Measures should be taken for the rehabilitation and, mainly, for the training of the psycho-social staff, in order to enhance quality of all the relevant programmes (rehabilitating, re-integrating) and of the service for the patients with mental health issues. Educational premises should be extended and the library should be supplemented with literary materials. All relevant means should be provided to enable the conduct of activities within these premises, in order to improve rehabilitation conditions and exercise a positive psycho-social influence on the detainees and pre-detainees, especially for those cases of forced medication.
6. Measures should be taken to implement the Memorandum of Cooperation between the Ministry of Health and Ministry of Justice, in order to make sure that all medical examinations of specific profiles are conducted in a timely manner by the hospital institutions party to this Memorandum for the individuals who have been deprived of their freedom, as well as to avoid undesired situations that would result from failure to identify health issues in time.
7. Measures should be taken to review the food menu offered to the patients and to create a meeting space for the patients and their relatives, in line with the contemporary conditions and parameters, in order to enhance the quality of services for this category.
8. Measures should be taken for the conservation of drugs in the nurseries of this centre, in accordance with the pharmaceutical parameters, to supply the missing drugs and adjust alternative medications with the variety of the psychiatric prophylactic range, in accordance

with the specificities and diagnoses treated in this institution, in order to enable a most efficient treatment and an effective medical service to the benefit of this category.

9. Measures should be taken to conserve the food sample in conformity with the general institutional regulation, to ensure an ambulance vehicle according to the medical parameters and required standards, and avoid exhibition of the means of, restraint by the security officers during the stay in the internal premises of this centre.

The Directorate General of Prisons accepted our recommendations and has started the implementation.

2.2.7. Saranda Pre-trial detention Institution, doc. no. 201202050

Upon the inspection of this institution, the following recommendations were issued:

1. Measures should be taken to recruit service staff according to the required standards.
2. A part-time dental doctor should be recruited to complete the medical staff.
3. Measures should be taken to have some rooms or proper premises for the practice of religious rituals in this institution.
4. Measures should be taken to enlarge the premises to make them appropriate for the ventilation of the pre-detainees.
5. Funds should be allocated for the overall reconstruction of the main premises of this facility in the future.

The People's Advocate in the role of NMPT *was informed that his recommendations were taken into account.*

2.2.8. Tepelena Penitentiary Institution, doc. no. 201203950

Upon conclusion of the inspection of this institution, the People's Advocate in the role of NMPT issued the following recommendations:

1. Measures should be taken to reduce the overcrowding at the institution and respect the living space for each detainee, in m² and m³.
2. Enhancement of the living premises, making the required repairing works to eliminate humidity, fix the shower faucets, lamps and electric connections, which need to meet technical safety standards.
3. Observation of food norms and enhancement of the quality of cooking for the detainees and pre-detainees, as well as continuous control of the food norms during the meals by the staff.
4. Measures should be taken to make sure that all the detainees and pre-detainees have been provided with the adequate amount of the basic personal hygiene products (including the toothpaste, tooth brush, shampoo, etc.), as well as with adequate products to clean their cells.
5. Immediate measures should be taken to put dividing doors in the bathrooms of the inmate cells.
6. Measures should be taken to ensure heating for detainees and pre-detainees during winter.
7. Measures should be taken so that the medical staff offers timely medical examinations and check-ups.
8. Measures should be taken to enable full and timely operation of the dental care.
9. The organizational structure should be reviewed, in order to include a full-time physician and dental doctor in the institution.
10. Measures should be taken to put protection tents in the airing space to protect it from atmospheric conditions and to enlarge them, in order to be used for sports activities.
11. Measures should be taken to increase the number of books in the library of this institution.

12. Measures should be taken to have in place an efficient system of complaints and requests of the detainees and pre-detainees.

2.2.9. Vlora Pre-trial detention Institution, doc. no. 201203951

Upon conclusion of the inspection in this institution, the People's Advocate in the role of NMPT issued the following recommendations:

1. The institution should possibly be provided with an ambulance, with the latter being indispensable for the transportation of the sick people who should be sent for emergency treatment at the Hospital.
2. The organizational structure of the institution should be reviewed to include a psychiatric doctor.
3. Cooperation with the local government bodies should be strengthened in terms of asphaltting the urban road, the segment from the road from Narta to this institution.

2.2.10. Tropoja Pre-trial detention Institution, doc. no. 201202391

Upon conclusion of the inspection in this institution, the following recommendations were issued:

1. Immediate measures should be taken to furnish the new building, the construction of which was finished, in order to transfer the pre-detainees in this facility.
2. The Minister of Justice should consider the re-categorization of the newly reconstructed Tropoja pre-detention facility to become also a detention centre in order to accommodate the prisoners whose place of residence is in or close to this region, with special focus to the elderly and women, as provided by the fifth paragraph of Article 31 of the Law "*On the Rights and Treatment of Prisoners and Pre-detainees*".

2.2.11. Kukes Pre-trial detention Institution, doc. no. 201203858

Upon conclusion of the inspection in this institution, the following recommendations were issued:

1. Measures should be taken to ensure the safety and adjustment according to the required standards and CPT recommendation of the meeting premises between the pre-detainees and their relatives at the institution.
2. Measures should be taken to create a special space for the meeting of the pre-detainees with their minor children accompanied by their relatives.
3. Measures should be taken to supply the kitchen with the required cooking appliances and to have the responsible staff to exercise constant control on the norms of food during the meals.
4. Measures should be taken to ensure heating in the facility, in line with the standards set out in the regulation of prisons.
5. Measures should be taken to ensure privacy of telephone conversations in the facility, by changing telephone spot.
6. Immediate measures should be taken to install security cameras in the premises of the pre-detention area.

2.2.12. Burrel Penitentiary Institution, doc. no. 201203859

Upon conclusion of the inspection in this institution, the following recommendations were issued:

1. Measures should be taken towards repairing, maintenance, elimination of humidity and painting of the cells of the detainees.
2. Common living spaces should be improved, by undertaking immediate repairing in the bathrooms in the high security arm. Work should be done to eliminate humidity, repair damaged pipes, shower faucets, lamps and the electric grid, which needs to follow the technical safety

standards.

3. Improvements should be made to the drinking water supply of this institution.
4. Immediate measures should be taken to ensure the use of uniforms and gloves during the distribution of food for prisoners and a constant control of the food rate during the meals by the responsible staff.
5. Measures should be taken to ensure that all detainees receive the adequate amount of the basic personal hygiene products (including the toothpaste, tooth brush, shampoo, etc.) and with the required means to clean their cells.
6. Measures should be taken for the implementation of the current agreement on the mandatory education of illiterate individuals and those who have not completed the mandatory education.
7. Measures should be taken to ensure non-stop medical treatment within the institution.
8. Relevant measures should be taken towards a better dental care service.
9. A full-time physician should be included in the staff of the institution, as soon as possible.
10. Heating of all the areas should be ensured, in line with the standards provided in the regulation of prisons.
11. Creation and use of a space for the practice of religious rituals by the detainees.
12. Improvements should be made to the meeting spaces of the detainees with their relatives and a special room should be established for the meetings with minor children.
13. Measures should be taken to place telephone sets within the premises, in addition to those in the recreational area.
14. Measures should be taken to allow telephone calls to family members for those individuals who ask for it even after 14.00 hrs.

15. The communication between the police officers and the prisoners should be improved and there should be established a regulation and practice that provides for the normal control of the cell during the day and only on extraordinary circumstances the control should be exercised during the night.

16. Psychological services should be improved and the offered interventions should be reflected in the file.

From the feedback the People's Advocate in the role of NMPT received, he was informed that the recommendations were accepted and measures taken for their implementation. As for the humidity issue, funds for the insulation would be made available together with the funds allocated for 2013.

2.3. The categorization of pre-detention facilities and a summary of issues addressed by NMPT in 2012 recommendations for the pre-detention system

The following institutions are exclusive pre-detention facilities:

- Pre-detention Institute in Jordan Misja Street in Tirana
- Pre-detention Institute in Mine Peza Street in Tirana
- Pre-detention Institute in Vlora
- Pre-detention Institute in Durres
- Pre-detention Institute in Saranda
- Pre-detention Institute Berat
- Pre-detention Institute Tropoja
- Pre-detention Institute Kukes
- Pre-detention Institute Elbasan

Penitentiary institutions with pre-detention divisions:

The following are penitentiary institutions with pre-detention divisions:

- Ali Demi Penitentiary has a unit for pre-detained women with children up to three years of age.
- Fushe Kruja Penitentiary
- Burrel Penitentiary
- Tepelene Penitentiary
- Rrogozhine Penitentiary
- Peqin Penitentiary
- Lezha Penitentiary
- Korça Penitentiary

Further, a summary the issues addressed by the 2012 recommendations for the pre-detention system is provided below:

- Completion of the construction of the new premises before winter.
- Provision of transportation means with contemporary parameters.
- Addition of staff for the laundry unit and sanitation workers.
- Creation of a meeting space with the relatives.
- Instalment of the telephone set in a place that guarantees privacy.
- Preparation of a health manual to the kitchen staff.
- Strict keeping of the medical files.
- Doors should be put in the bathroom and shower spaces.
- A refrigerator should be brought in for the pre-detainees.
- Protective tents should be placed in the outdoor yard.
- A heating and ventilation system should be installed in cells.
- Meal samples should be labelled.
- The medical staff should be completed with full-time practitioners.
- There should be a daily notification and update of the list of prices for the food items sold in their shops.
- Gloves and a uniform should be used during the distribution of meals.
- Purchase of a refrigerator to conserve meal.

- Provision of an ambulance.
- Regular disinfection of the premises.
- Completion of the pharmacy inventory with both generic and emergency drugs.
- Recruitment of a dental doctor on a full-time basis.
- Provision of the required equipment and material for the dental unit.
- Provision of dental doctors with polymerization lamp.
- Enlargement and creation of additional spaces to increase the number of showers and bathrooms.
- Proper spaces should be created for the practice of religious rituals and cultural activities.
- Improvement of the conditions in the isolation rooms.
- Elimination of humidity.
- Repairing of shower sets, electric connections, water leakage.
- Repairing of the central heating boiler.
- Furnishing of the transiting and isolation cells with mattresses, sheets, pillows, blankets and painting of their premises.
- Enlargement of airing premises.
- Cells should be painted.
- Adjustment of the meeting room of the pre-detainees with their relatives, in order that conversations may be seen but not heard.

2.4. Issues of the penitentiary system as identified by the complaints and findings of the inspections in 2012

Regardless of the People's Advocate insistence, issues with an identified need for immediate changes remained unaddressed even during 2012. Consequently, the NMPT has to reiterate once more the issues raised in the Annual Report 2011 of the People's Advocate, as following:

"1. Even during 2012, many of the prisons and pre-detention facilities in the country continue to suffer from problems of amortization and improper conditions, in particular the humidity (Prisons 325 in Tirana, Rrogozhina, Tepelena, Lezha, Kosova in Lushnja, Burrel, Pre-detention

Institute in Berat, Saranda, 313 and 302 in Tirana), shortage of water supply, especially, during summer (Prisons of Rrogozhina, Kruja), conditions out of standards of the bathrooms, showers, waiting spaces, isolation rooms, shortage of education premises, practice of religious rituals, sports activities, etc. (Prisons of Burrel, Lezha, Tepelena, Kosova in Lushnje and Pre-detention Institutions in Saranda, Berat, Penitentiary Institutions no. 313 and 302 in Tirana). The People's Advocate insists on the recommendation for Burrel Penitentiary to be closed down and to continue transferring of the patients with mental health issues from Kruja Penitentiary, etc. into specialized health facilities, as the former lacks all the required standards. During the inspections and re-inspections conducted during 2012, we repeated the immediate need for mainly partial investments that would bring dramatic improvement to the existing conditions. These issues have been reported to the Ministry of Justice and the Directorate General of Prisons.

2. One of the key issues that remains a concern for the People's Advocate Office is the failure to find a definitive solution to the accommodation in hospital facilities outside the system of prisons of the individuals for whom the court has ordered forced medication, although a special division has been opened in the Durres pre-detention facility. The People's Advocate has raised the issue on a regular basis, in years, has not come to terms with the situation in which these individuals are treated within the system of prisons. In 2012, we were informed that the Ministry of Health is making efforts to take over the administration of Kruja Prison or build a separate institution that would treat these individuals according to the law, and in line with the People's Advocate recommendations. The legal solution to this matter would be the construction of a new institution that would respect international standards².

3. Another serious issue that keeps surfacing in confidential communications with the prisoners and pre-detainees is the corruption in some segments of the prison administration. That has given way to claims of serious rights violation in the treatment of the individuals in these institutions. Regardless of the People's Advocate efforts to verify some of the reported cases of corruptions, shedding light on the truth has been very difficult. Identification of forbidden items

² Following the approval of the new law no. 44/2012, "On Mental Health", which respects contemporary standards, and the drafting and issuance of the sublegal acts by virtue of and for the implementation of the law, we are confident that this issue will be addressed definitively.

found in some inmate cells on a regular basis, or the unequal treatment of the prisoners and pre-detainees, immediately imply that corruption is present in the penitentiary system and constitutes a threat to the application and protection of the rights of prisoners and pre-detainees.

4. No improvements of the health service in the penitentiary system were marked during 2012. There were many cases of shortcomings, mainly involving medicines, treatment of the uncommon pathologies, lack of transportation means (ambulances) in some prisons, lack of a full-time medical doctor at the institution, failure of adding specialized medical staff, failure to establish optimum health facilities, etc.

5. Although new penitentiary institutions were established and the probation service was consolidated, the overcrowding of prisons remains a key concern, especially in the pre-detention facilities. The People's Advocate has often insisted on the importance of reducing the number of inmates in these institutions, in respect of the living space standards, which is a requisite mentioned in the CPT reports on Albania.

6. It has been found that detention and pre-detention facilities in the country fail to meet the minimum conditions for the accommodation and treatment of people with disabilities. An exception to the rule is the conditions offered at the Penitentiary Hospital Centre in Tirana, and, recently, the special section of Durres pre-detention facility. This is a conclusion drawn from the findings that there is no staff to meet all the needs of this category of individuals and there is lack of proper equipment to enable a more suitable treatment of their disability. Under these conditions, it is the immediate duty of the Directorate General of Prisons to enable the purchase of special equipment and increase the staff that would ensure the proper treatment of this category, in line with the standards" (p. 159-160).

2.4.1. Complaints and requests filed by the prisoners and pre-detainees

Of a total of 152 reviewed complaints and requests, 142 were finalized (decided) and other 10 are still in process. Of the finalized complaints, 55 were settled in favour of the complainant, for

53 cases the claims were found ungrounded, 30 fell out of scope and jurisdiction and in 4 cases the complainants withdrew.

Complaints reviewed during 2012 focused mainly on the violation of the rights of the prisoners during the detention period in the penitentiary institutions and claims involving the prison administration or the General Directorate of Prisons. Among the mentioned issues was the improvement of conditions in penitentiaries, ungrounded refusal of the requests for leave, application of unfair disciplinary measures, unlawful actions of the police officers (physical or psychological violence, humiliating actions, violation of the privacy, etc.), and rejection of the request to be transferred into another penitentiary and complaints on the health service. Additionally, there were complaints also against the Ministry of Justice on grounds of not answering to their requests for pardon and also against the prosecution body for not calculating the pre-detention period as part of the sentence and against the courts and unfair judgments. On the other hand, there were requests for obtaining free legal counselling.

2.4.2. Recommendations in relation to the individual complaints within the prisons system

Case no. 201202003: The case was investigated following the complaints filed by a citizen, who claimed that her two sons, who were being kept as pre-detainees in Jordan Misja Penitentiary, had been subject to ill-treatment by police officers.

Upon the conclusion of the investigation, the People's Advocate concluded that the two pre-detained citizens had truly been subject to physical violence exercised by the Prison Police officers. One of them had been subjected to physical violence by two police officers in the medical assistant room, whereas the other had been ill-treated in the isolation room by five police officers. The two individuals had been kicked, punched and hit in different parts of the body. One of them, in particular, had been subjected to extreme behaviour, after being ordered to take off his sports shoes and socks and being forcibly kept on the floor by two officers with his arms behind, with another blocking his feet. He was hit on the foot soles and on the palms of his hands. That constitutes an inhuman and humiliating treatment. As a result of this violence, the complainants had suffered severe physical and mental pain and suffering.

The inhuman treatment reserved to the two pre-detainees by the police officers had been a deliberate punishment, due to the suspects of the latter that one of them was faking sick. The other one had been punished after allegedly insulting the pre-detention staff.

In relation to the case, the People's Advocate recommended the District Prosecutor's Office to start criminal proceedings against the five Prison Police officers 5 who worked at Jordan Misja Penitentiary in Tirana, on grounds of having committed the criminal offence of torture in association, provided for by Article 86 and 25 of the Criminal Code, as amended.

The Prosecutor's Office informed us that our recommendation had been accepted and that proceedings on the criminal offence of torture had started, but the investigation could not prove the purported violence.

Case no. 201203488: The complainant was a pre-detainee in Durres Pre-trial detention Institution. He filed a complaint via telephone over physical ill-treatment by an officer of the Pre-trial detention Institution. Upon conclusion of this investigation and the examination of the evidence, including film footages from the monitoring system, testimonies and the act of forensic expertise, the People's Advocate reached the conclusion that claims on the exercise of violence were grounded. The violent actions by the penitentiary police officer contained elements of the criminal offence of "Commission of arbitrary actions", as provided for by Article 250 of the Criminal Code.

With regard to the above, the People's Advocate recommended the Durres District Prosecutor's Office to start proceedings against the Durres penitentiary police officer who had committed the unlawful actions, on grounds of criminal offence of "*Committing arbitrary actions*", provided by Article 250 of the Criminal Code, as amended.

Durres District Prosecutor's Office informed the People's Advocate that they had accepted the recommendation and had started investigation proceedings on the criminal offence of "Committing arbitrary actions," provided for by Article 250 of the Criminal Code.

Case no. 201200104: The case was recorded on the basis of a complaint lodged by a citizen who claimed that his son was unjustly kept detained in the Prison Hospital Centre by the prosecution.

Upon the ascertainment of the case, the People's Advocate found that the son of the complainant had committed a criminal offence and was caught in the act by the police. Kavaja District Court had issued an order on 20.04.2011, whereby it had imposed a *restraint measure with "Confinement in the psychiatric hospital"*. Further, the court issued an order on 29.06.2011 turning down the motion of the prosecutor, who asked for forced medication against the defendant, but the prosecutor had failed to order the enforcement of such judgment and to take the defendant out of the Penitentiary Hospital Centre in Tirana.

Keeping this citizen confined in the Prison Hospital from 29.06.2011 to 25.01.2012, for a period of 7 months, was unlawful. This act is in full contradiction with the provisions of the Criminal Procedure Code, namely with articles 24/1, 417/2, 462/2, 463/1, and 464/3 and 4, as well as with law no. 8331, dated 21.04.1998 "On the Enforcement of Criminal Judgments", articles 2; 9; 22 etc., which stipulate that the activity of the prosecution body shall be based on the principle of legality that does not allow infringement of the freedom of the citizens, which is protected by the criminal laws from the unlawful actions of omissions. In this case, however, the omissions of the prosecutor have resulted into a serious infringement of this legal relation, given that the normal activity of the prosecution office was violated, leading to the serious violation of the freedom of the citizen in question, as enshrined by article 27 of the Constitution and the criminal procedural provisions referred to above.

The omitting actions of Kavaja District Prosecutor, who represented the case, were proved for two important legal issues:

1. Failure to drop the criminal prosecution while the circumstances to do so were in place, considering that on the basis of the psychiatric-legal act of evaluation no. 107, dated 08.06.2011 presented by the Forensic Institute, the citizen did not result to be legally liable for the committed criminal offence and at the moment of its commission. Article 290/b of the Criminal Procedure Code provides that, *no criminal proceedings can be started against an individual*

who is not legally liable, and even if they have already started they should be dropped at any stage.” Under the said circumstances, the prosecutor had to act in respect of the law and drop the criminal proceeding, stopping short from continuing with investigations on no grounds and filing continuous motions with the court. If the prosecutor had dropped the criminal proceeding, the security measure established against this citizen, in line with Article 261/1/a of the Code of Criminal Procedure, would have been lifted. We underline that Kavaja District Court had identified such procedural violation in the course of investigation of the case in its decision of 22.12.2011.

2. Failure to issue the execution order for court judgments, both in relation to Kavaja District Court Judgment no. 61009-00373-12-2011 of 29.06.2011 and to Durres Court of Appeals Judgment no. 173, dated 26.07.2011, which was final. The obligation of the prosecutor to ensure the enforcement of court judgments is provided by articles 24/1, 462/2, 463/1, 464/3, 463/4 of the Criminal Procedure Code.

The omitting actions of the prosecutor resulted to be a deliberate failure to act fall against the law and constitute failure to meet the obligations conferred to the prosecutor by virtue of law and they contain elements of the criminal offence of “Abuse of duty”, provided for by Article 248 of the Criminal Code.

Considering the above reason, the People’s Advocate recommended the Prosecutor General to start investigations against this prosecutor on the grounds of the criminal offence of abuse with duty. However, the People’s Advocate, recommendation was not taken into account and the actions of the prosecutor were considered to be in accordance with the law.

Considering the attitude of the Prosecutor General as incorrect and subjective, the People’s Advocate repeated his recommendation and provided arguments in relation to the unlawful actions of the prosecutor in the case.

In the People’s Advocate’s judgment, in view of the Kavaja District Court decision of 29.06.2011 that rejected the motion of the prosecutor to establish the measure of forced medication, which is a form of criminal “punishment”, the prosecutor should have ordered the

enforcement of the judgment and make sure that the citizen were taken out of the Prison Hospital, in line with Article 462/2 of the Criminal Procedure Code. If that was not the case, why would the same prosecutor order on 24.01.2012 the enforcement of Judgment no. 12-2011-1572 of 22.12.2011 of Kavaja District Court, although it was not final?

In the meantime, in its Judgment no. 12-2011-1572 of 22.12.2011, Kavaja District Court stated that, *the restrictive measure, "Confinement in the psychiatric hospital," was effective.* Therefore, this court came up with the same decision, turning down the motion filed by the prosecutor to establish the measure of "forced medication," upholding the court judgment of 26.07.2011, for which the execution order was issued. The People's Advocate would like to clarify that even in its last judgment of 22.12.2011, the court did not revoke the restrictive measure established against this citizen by the judgment of 20.04.2011. Nevertheless, the prosecutor ordered the execution of this judgment. However, even the second recommendation was not taken into account, by being rejected.

2.5. Visits to psychiatric hospitals, prison hospitals, women and minors penitentiary divisions in light of Recommendation 12 of European Commission on Albania

In the course of 2012, the NMPT conducted 18 inspections and thematic controls at the Psychiatric Hospital Centres in Tirana, Vlora, Shkodra and Elbasan, at the Prison Hospital in Tirana, at Pre-trial detention Institution 313 in the Women and Juveniles sectors, Pre-trial detention Institution 302 in Tirana, Berat Pre-trial detention Institution, Durres Pre-trial detention Institution, Fushe Kruja Penitentiary Institution. Inspections at the Hospital Centres, Social Centres and Penitentiaries and Pre-detention facilities for men, women and juveniles play a key role in identifying the issues relevant to these institutions in terms of the conditions and treatment of the citizens, in line with the legal acts.

The monitoring of these institutions is of high importance, not only to assess the observation and implementation of the law in relation to the human rights and freedoms of the individuals held in these institutions, but also to examine the infrastructural conditions of their premises. Likewise, a key role in assessing the level of respect and enforcement of the individual rights of

the people who are kept in these institutions has been played by the strict review of the complaints filed by the citizens or their relatives.

NMPT exercises its activity to ensure observation of legal provisions by institutions based on the law “On the People’s Advocate,” the law “*On Mental Health*”, the law “*On the Health Care in the Republic of Albania*”, law no. 9888, dated 10.03.2008 “*On Some Amendments and Additions to law no. 8328, dated 16.04.1998, On the Rights and Treatment of Prisoners*”.

Inspection *ex officio* of Shkodra Psychiatric Hospital, recorded as **doc. no. 201202139**. Upon conclusion of the inspection, the following recommendations were issued:

- Acceleration of the works that were mainly depending on the funds allocated for 2011-2012, in order for the patients to move to the new facility within the foreseen timeline.
- Ensuring of all the required drugs that were in shortage, and the improvement of the quality of sanitation detergents for this hospital, in order to keep the hygiene by the standards, due to the very specific nature of the patients treated in this institution.
- Organization of regular training sessions for the staff in relation to the important role it plays in the service provided to this category, in order to ensure further enhancement and continuous professional qualification to exercise their duties in line with the required standards.

Inspection *ex officio* of Vlora Psychiatric Hospital, recorded as **doc. no. 201202138**. Upon conclusion of the inspection in this institution, the following recommendations were issued:

- Funds should be released for the construction of the new building, given that the conditions of the old one, where the majority of the patients have been accommodated are poor.
- Increase of the number of doctors and the introduction of the task-force staff that would handle specific cases in the emergency room of the institution, in order to deliver a service that is in line with the required standards for the patients.
- Continuous long-term training of the nursing and custodial staff, in order to enhance their

professional skills and enable the delivery of qualified performance in taking care of the patients of the institution.

Inspection *ex officio* of Elbasan Psychiatric Hospital, recorded as **doc. no. 201202140**. Upon the conclusion of inspection in this institution, the following recommendations were issued:

- Increase of the number of nurses in the staff of institution, in line with the required standards and needs.
- Ensuring the operation of the heating system in all the premises, in order to improve the living conditions of the patients with mental health issues and to avoid undesirable situations during the winter season that would negatively affect their health conditions.
- Insulation from water of the building terrace, in order to avoid the spread of humidity in the units and reconstruction of the drinking water supply network, aimed at improving conditions for patients.
- New professional laundry equipment should be purchased to meet the needs of patients.
- The staff of the institution should increase with medical staff, according to the required standards and the demands of this institution, and there should be an increase of the number of the custodial and socio-educational staff in the special service, given the specific functions it is designated to fulfil.

Inspection *ex officio* of the Penitentiary Hospital Centre, recorded as **doc. no. 201202137**. Upon conclusion of the inspection in this institution, the following recommendations were issued:

- Patient rooms should be painted in the section of men and women, in order to improve the conditions of the hygiene in the premises where they mostly stay during their treatment.
- Reconstruction as soon as possible of the rooms in the section of women, as the long stay in premises with significant humidity puts their health at serious risk.
- Immediate establishment of a special observation room for the diagnosed cases of mental

illness entailing isolation, as its lack constitutes a serious problem for the medical staff which does not avail due means of restraint, according to the required standards.

- Increase of the staff with rehabilitation specialists and wardens, in order to improve the quality of the service towards the patients with mental health issues, as well as enlargement of the educational premises and provision of all the means required for the development of activities therein, aimed at improving the conditions for the rehabilitation of and positive psycho-social influence on the detainees and pre-detainees, in particular, for the cases on forced medication.

- Measures should be taken to protect the medical staff from the infectious diseases and to implement the Cooperation Memorandum between the Ministry of Health and Ministry of Justice, in order that all the hospital facilities party to this Memorandum ensure timely of medical examinations of specific profile for individuals with restricted freedom.

Inspections *ex officio* of the Penitentiary 313, Women and Minors Division, recorded with as **doc. no. 201202133** and **doc. no. 201202132**.

Upon conclusion of the inspection in these two divisions, the following recommendations were issued:

- Cells and other premises in the division of minors and women at the Pre-detention Facility 313 should be painted, showers should be repaired and every cell should be equipped with a dustbin and sanitation products, in order to improve the life quality and personal hygiene of the people who are kept in this facility.

- The women division should be restored and humidity should be eliminated from cells, showers, and bathrooms.

- There should be efforts to furnish the cells of minors with new accommodation items as soon as possible. A central ventilation system should be established in this division, in order to protect individuals from the high temperatures of summer, whereas the dental service should be

provided with the required products for dental medication, in order to enhance the quality of such service for the minors.

In relation to the penitentiary institutions and Psychiatric Hospitals the People's Advocate in the role of NMPT found the following issues:

- The infrastructure in some of these institutions was subject to amortization and did not meet any standards;
- Health issues and diagnosing of the citizens are not addressed in timely manner;
- Staff shortages were found in the psycho-social and medical service (general practitioner and, especially, psychiatric doctor);
- There is lack of ventilation equipment;
- There is lack of the heating system;
- There is shortage of rehabilitation programmes, mainly in the institutions where minors are kept;
- There is no continuous training of the health staff;
- The Psychiatric Hospitals of Vlora and Elbasan are overcrowded;

There is shortage of contemporary constrictive means, of premises that meet specific requirements for intensive therapies, lack of task-force personnel for cases of emergency, shortcomings in the relationship between doctors and patients and wardens and patients, lack of rehabilitation and re-integration programmes in the Psychiatric Hospitals and Hospital Centre of Prisons

2.6. Scheduled and *ad-hoc* inspections division of juveniles, woman and prison hospital
Inspection *ex officio* of the Pre-trial detention Institution 313 (juveniles' division), recorded with

doc. no. 201202266. Upon the conclusion of inspection in this institution, the following recommendations were issued:

- Measures should be taken to repair shower faucets, replace garbage cans in the cells, in line with some environmental parameters, to paint some of the cells and replacement of the damaged tiles in the showers and bathrooms.
- Measures should be undertaken to install ventilation equipment in every cell or put in place a central ventilation system, in order to avoid high temperatures during summer. The electric boxes should be isolated according to the safety parameters, in order to enhance the conditions of protection for the minors, in conformity with the legislation in to force.
- Measures should be taken to operate the computer equipment in the premises of the social and educational service as soon as possible, update the library, label them, in order to enhance the social and educational service, as well as its positive influence in the rehabilitation of minors into the social life.
- Measures should be taken by the health service to address in time the minor's complaints related to their health concerns and treatments, to provide the required means for dental treatment, provide the variety and amount of analgesic medicines as per the diagnosing specificities, in order to offer an efficient health service to this category.
- Implement the Agreement between the Ministry of Education and Ministry of Justice on the education and to continue educational programmes for the minors of Prison 313 in Tirana.

Inspection *ex officio* of Pre-trial detention Institution 313 (women division), recorded as **doc. no. 201202265.**

Upon conclusion of inspection in this institution, the following recommendations were issued:

- Measures should be taken to avoid humidity in the cell no.10 and pre-detainees should be removed from the cell as soon as possible, in order to avoid any serious health consequences on the individuals who have been deprived of their freedom, and offer care in accordance with the

applicable legislation.

- Measures should be taken to enact a plan of measures for all the elements that may risk the life of the pre-detainees in the premises of this division, to address infrastructural issues (repairing of wall plaster, works to improve bathrooms, eliminate the non-insulated, and replace broken tiles).
- Measures should be taken to install internal ventilators that would help to reduce high temperatures and improve air quality during the hot summer period.
- Washing equipment should be included in this division.
- Provision of all the required material for the dental service, in order to enable dental works.

Inspection *ex officio* in Pre-trial detention Institution 302, recorded as **doc. no. 201203868**. Upon conclusion of the inspection in this institution, the following recommendations were issued:

- Measures should be taken to eliminate humidity, mainly in sector 3, in order to improve the conditions of infrastructure in the rundown parts of the facility.
- Reconstruction of the isolation, observation and transiting facilities should be made to address all the shortcomings in these premises, and it should be made possible that they have natural lighting and ventilation by enlarging the cell windows without affecting the security elements of the institution, in order to respect the rights of the pre-detainees, in accordance with the law and avoid any consequences on their health due to the lack of air during their stay in this institution.
- Measures should be taken to make regular disinfestations of the institution to get rid of insects, in order to prevent potential epidemics.

- Provision of sanitation and hygiene products, in quantity and quality, painting of the oxidized beds and substitution of the food items, in order to improve conditions and ensure a state of hygiene in line with the contemporary parameters.
- Measures should be taken to create a meeting facility for minors, in order to offer an environment that is acceptable for minor children during their meeting with parents and that is appropriate from the psychological perspective.
- Creation of a separate space for the telephone set, outside the guards separate corridor.
- The health and dental service infrastructure should be improved, in order to meet the required standards and enhance the service delivered to this category.

Ad-hoc inspection of the Prison Hospital in Tirana, recorded as **doc. no. 201202181**.

Upon conclusion of the inspection in this institution, the following recommendations were issued:

- Measures should be taken to provide patients and premises with sanitation and hygiene products for all the units of the centre, in order to enhance the personal hygiene of the individuals and of the premises where they spend most of the time during their treatment.
- Measures should be taken to change sheets and towels, to paint oxidized beds, repair shower sets in order to improve conditions and ensure a service that meets the required standards.
- A special observation room should be established for diagnosed mental health cases entailing isolation measures, as its lack constitutes a serious problem for the medical staff, and to provide the required physical constraint means, in range and quantity.
- Measures should be taken to extend the telephone set cable and increase of ramps in these premises, in order to improve conditions and reduce physical efforts of the tetraplegic patients in this centre.

- Measures should be taken for the rehabilitation and, mainly, psycho-social staff, in order to enhance quality of all the relevant programmes (rehabilitating, re-integrating) and of the service for the patients with mental health issues. Educational premises should be extended and the library should be supplemented with literary materials. All relevant means should be provided to enable the conduct of activities within these premises, in order to improve rehabilitation conditions and exercise a positive psycho-social influence on the detainees and pre-detainees, especially for those cases on forced medication.
- Measures should be taken to implement the Memorandum of Cooperation between the Ministry of Health and Ministry of Justice, in order to make sure that all medical examinations of specific profiles are conducted in a timely manner by the hospital institutions party to this Memorandum for the individuals who have been deprived of their freedom, as well as to avoid undesired situations that would result from failure to identify health issues in time.
- Measures should be taken to review the food menu offered to the patients and to create a meeting space for the patients and their relatives, in line with the contemporary conditions and parameters, in order to enhance the quality of services for this category.
- Measures should be taken for the conservation of drugs in the nursing premises of this centre, in accordance with the pharmaceutical parameters, to supply the missing drugs and adjust alternative medications with the variety of the psychiatric prophylactic range, in accordance with the specificities and diagnoses treated in this institution, in order to enable a most efficient treatment and an effective medical service to the benefit of this category.

Inspection *ex officio* of Tirana Psychiatric Hospital, recorded as **doc. no. 201202632**.

Upon the conclusion of the inspection in this institution, the following recommendations were issued:

- Measures should be taken to change window panes, sheets and towels, to furnish all the units with tables and chairs, to paint the walls, and address all infrastructural shortcomings, in order to respect their privacy and enhance conditions to provide a service according to the required standards.

- Measures should be taken to put the missing doors in the bathrooms of each unit, to provide sanitation and hygiene products and ensure non-stop water supply, in function of improving the conditions of their treatment.
- The eating space should be improved, a comfortable space should be created for the meetings with their relatives in every unit, the alarm system for civil emergencies should be functional and elevators should be operational for every unit, in order to enhance the quality of service in the premises.
- Measures should be taken with regard to the rehabilitation staff, mainly of the psycho-social personnel, in order to obtain an improved quality by including all the rehabilitating and re-integrating programmes and reflecting them in an agenda. A complaint form should be created for every patient and the premises should be supplied with all the relevant materials for conducting the activities.
- Measures should be taken to increase the staff with nursing personnel, to select a task-force staff in line with professional requirements, to provide continued training to the nursing-warden and psycho-social staff and to give an internal technical staff that would tend to the repairing of all the infrastructural defects, in order to enhance the professional performance with specific profile in this institution.
- Measures should be taken to improve the observation and isolation premises with all the up-to-date parameters, to do everything possible to avoid situations that could have unwanted consequences, to take the patients in the outdoors ventilation space and to avoid keeping them in closed premises and lying on beds.
- Measures should be taken to conserve the drugs in the nursing premises of the hospital, in line with the pharmaceutical parameters, supply the units with the medicines that are in shortage and the immediate supply with safety belts.
- Measures should be taken to have a functional yard in the minors unit, to create lounge premises for the parents, to supply linens and towels, and look for an opportunity to enlarge the unit, considering that it is the only of its kind that treats exclusively the minors.

2.6.1. Complaints handled by the NMPT upon inspections of juveniles and woman divisions as well as the prison hospital during 2012

A total of 42 complaints were handled during 2012 in relation to the above-mentioned institutions, with complainants claiming violation of rights due to the actions or omissions of the public administration and asking for the re-establishment of such infringed rights. The review process of these complaints has been finalized and it resulted on the following numbers: 23 were settled in favour of the complainants; 4 were ungrounded and 15 fell out of scope. The object of these complaints and requests included claims in relation to: failure to provide specialized treatment by the health centres that avail of all the necessary means to handle diseases that cannot be treated in Penitentiary Institutions; shortage of medicines; complaints on the negation of leaves for good behaviour; for not allowing meetings with relatives; claims for failure to transfer prisoners near their places of residence; requests for legal counselling in courts; mediation with the respective institutions to ensure free legal representation, etc.

The complaints were reviewed in a highly professional and objective manner. It is worth mentioning, though, that the officials of the institutions that were focus of the complaints were open to collaborate.

2.7. Legal recommendation: Implementation of the People's Advocate recommendations on the identified issues

Upon issuing recommendations in relation to all the above-mentioned findings, the People's Advocate Office, in its capacity of the NMPT, monitored closely the efforts to improve the shortcomings and kept a constant communication and cooperation, aimed at their implementation.

All the involved institutions accepted and approved the issued recommendations and confirmed their commitment to their implementation. The People's Advocate reiterates that, although the People's Advocate recommendations were accepted by the respective institutions, only in few

cases has their implementation been complete, whereas in most of the cases there has been partial implementation or the situation has remained unchanged.

2.8. People's Advocate recommendations for the Penitentiary and Pre-detention Institutions in light of Recommendation No. 12 of the European Commission Opinion on Albania's application for membership of the European Union

The Pre-detention System in Albania is composed of institutions that function exclusively as pre-detention facilities and by pre-detention sections within penitentiary institutions that are mainly facilities for the individuals detained upon a final court order. The People's Advocate has monitored with priority the implementation of the recommendations issued for the prisons and pre-detention facilities in the last two years, beside his legal obligations in order to ensure also the compliance with the European Commission Recommendation 12, being one of the conditions Albania should meet in its process of EU integration. With reference to the Recommendation No. 12, the Albanian State would have to take additional measures to improve the treatment of the individuals who have been deprived of their freedom in police stations, pre-detention facilities and prisons, as well as to enhance the implementation of the People's Advocate recommendations in this area. A working group was established for this purpose, which, on May 2012, made *in situ* verifications for the implementation of the recommendations issued in 2011 and during 2012 for the prisons, pre-detention facilities and police stations.

CHAPTER III:

Visits to Police stations and the activity of State Police examined by NMPT in 2012

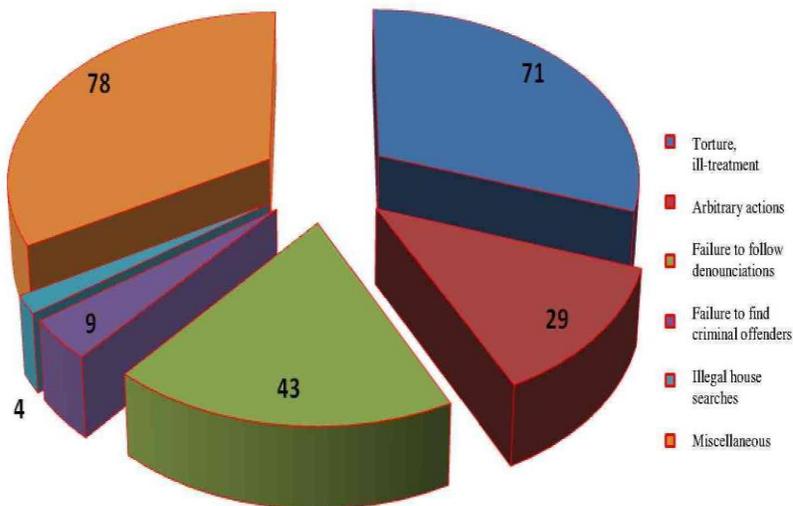
3.1. Overview of police activity related to respecting of human rights and fundamental freedoms

The State Police, as part of the public administration, is the structure representing state's coercive power. Its main task is to maintain the public order and ensure public security. In doing its job, the state police is directly related to respecting human rights and fundamental freedoms. In 2012, the People's Advocate in the role of NMPT has administrated 234 complaints for illegal actions or omissions of the State Police. The main alleged violations were related to: torture, ill-treatment, unfair detention/arrests, arbitrary actions, failure to receive or follow denunciations, illegal house searches, failure to discover criminal offenders, unfair fines, failure to access information, etc. Compared to 2011, in 2012 the overall number of complaints falling in this category increased drastically from 119 to 234. It is worth mentioning that over 50 percent of the allegations on illegal actions of the state police staff are directly related to physical maltreatment of citizens and the way their denunciations were followed. More specifically, 71 complaints were filed for alleged torture or physical maltreatment, while we received 29 cases of arbitrary actions, 43 cases of failure to follow denunciations, 9 cases for failure to find criminal offenders, 4 cases for illegal house searches, and 78 other miscellaneous cases. Regarding the above, the People's Advocate has submitted 26 recommendations for launch of proceedings and disciplinary proceedings for 77 police staff. Of these, 16 recommendations focused on initiation of investigative proceedings against 55 police staff holding different positions and degrees, of the leading and enforcement level, who have committed different criminal offences, such as: seven

recommendations for the criminal offence of “torture”, 8 recommendations for the criminal offence of “arbitrary actions”, and one recommendation for the “abuse of office”.

In function of the NMPT, the People’s Advocate has conducted 70 inspections, re-inspections and thematic controls in all the State Police structures all over the country. Fourteen recommendations are drafted and submitted on the improvement of standards or the rights and treatment of the individuals kept in the State Police facilities (police commissariats).

Complaints for the State Police



Regarding the State Police during 2012 the People’s Advocate in the role of NMPT has focused on the following:

- Building or reconstruction of all the detention or security facilities in all the State Police Commissariats, as per the requirements of law no. 9749, dated 04.06.2007 “On State Police”, of the Manual “On Rules of Treatment of Detainees and Arrestees in the Security Facilities of Police Units”, Rogatory Letter of the General State Police Director no. 703, dated 07.08.2008 “On the Preliminary Evaluation Report of the CPT delegation and Adoption of Measures for

Meeting its Recommendations”, as well as based on the action plan of the General State Police Directorate on compliance with the Recommendation no. 12 of the European Commission, in pursuance to the People’s Advocate recommendations on building security facilities meetings the legal standards and on training the police staff serving in the security facilities.

- Familiarization with the law “On State Police” and enforcement of the legal criteria on cases of accompanying of citizens to the state bodies, as well as their dignified treatment.
- Continuous and periodical training of the police staff, so as to eliminate all forms of maltreatment of people accompanied and detained by the police, as unacceptable and condemnable actions. In addition, a great importance has to be given to modern and scientific methods of criminal investigation through investments and training of staff, so as to augment the number and kind of evidence collected in charge of the defendants, minimizing the importance of his/her admission or objection of the criminal offence in the investigation process.
- Adoption of the appropriate measures to make sure that each person accompanied, detained or arrested by the police, for whatever purpose, is immediately informed in the moment he/she is halted by the police on his rights and, afterwards, in the place he/she is to undergo direct examination, or where other procedure actions shall be performed, and make sure that he/she is provided with short informative materials in a language he/she understands, listing the rights of the person who is either accompanied, detained or arrested by the police. It is the duty of the State Police to make sure this legal obligation is met.
- Adoption of measures for correcting the shortcomings identified in the register of people detained/arrested by the police, in order to standardize this procedure in line with the requirements laid down in law no. 9749, dated 04.06.2007 “On State Police” and the Manual “On the Rules of Treatment of Detainees and Arrestees in the Security Facilities of State Police”. The register should contain all the state police activities, such as time and reason of detention or arrest, traces of injuries, name of the official, when was the person informed of his/her rights, when is he/she examined, how and when did he contact a family member, a lawyer or a doctor.

- Application of the legal requirement for notifying the family members, or a trusted person, time of notification, name of the notified person and his/her telephone number.
- Provision of legal aid at the moment the person is deprived of liberty. Further steps should be taken to ensure free legal aid (representation) for all the ones who cannot afford paying for a defence representation.
- Provision of (compulsory) legal and psychological in case of detention of arrest of a minor, and the immediate notification of his family members.
- Adoption of measures by the State Police to make sure that minors are not kept in the same room/cell with the adults.
- Adoption of immediate measures to apply in real life the provisions outlined in the manual “On the Rules of Treatment and Security of the Detainees and Arrestees in the Police Facilities” related to access to be visited by a doctor in the first moments of deprivation of liberty, but not later than within the 24 first hours.
- Enforcement of the legal provisions of the Criminal Procedure Code related to recording of the exact time of arrest or detention of the nationals.
- Removal of objects reflecting violence in the offices of the judicial police officers and in the facilities the detained or arrested people.
- The transfer from the police facilities to the pre-detention and penitentiary institutions depending on the General Directorate of Prisons of all the pre-detainees already receiving the security measure of “arrest in prison” and of the detainees due to enforcement of a criminal judgment on “imprisonment” in absentia, taken against them by a court of law.
- Posting in the police facilities, and in the security and accompaniment facilities, of posters containing information on the rights of the arrested, detained and accompanied people.

- Consolidation of the Police Centre Training Programme with full knowledge on human rights and individual freedoms.
- Instalment of the security camera in the accompaniment venues, in the security and investigation venues of the state police units.

During its activity, the NMPT, while focusing on the above-referred-to thematic work, has identified some positive developments of the Albanian State Police, which follow below:

- Cooperation of police structures and opening with civil society; several cooperation agreements have been signed with civil society;
- Adoption of concrete measures for implementing recommendation 12 of the European Commission on application of the People’s Advocate recommendations;
- Approval of the Action Plan by the State Police Director following Recommendation no 12 of the European Commission on application of the People’s Advocate Recommendation on building the accompaniment and security facilities according to legal standards and treatment of the police staff serving in the accompaniment and security venues;
- Approval of the action plan by Police Directorates in Regions for the structures answerable to them for the application of the action plan, as mentioned above;
- Launch of training for the police staff working in the accompaniment and security facilities;
- Introduction of the complaint book for the nationals accompanied, detained or arrested by the police in most of the state police facilities;
- A positive reaction on the People’s Advocate recommendations of previous years on amendments and improvement of law no. 9749, dated 04.06.2007 “On State Police”;
- Building of new accompaniment and security facilities of contemporary standards in some police units, such as in Korca and in Durrës.

However, despite numerous achievements, a considerable number of problems have also been identified related mainly to conditions in the detention facilities and the manner of enforcement of laws by the State Police staff during detention and arrest procedures, violation of human rights

and freedoms. These problems have been addressed by the People's Advocate in continuum, even in the Annual People's Advocate Report of 2011, asking for their continuous and constant solution. In the conditions of lacking measures for such types of problems, the People's Advocate in the role of NMPT should underline the following:

“**About the detention facilities** where the detainees are held, the People's Advocate sees that: in most of the commissariats or police stations in the country there are no separate detention facilities for men and for women, as laid down in law no. 9749, dated 04.06.2007 “On State Police”. Only the Police Commissariats of Korça, Kukës, Gjirokastra, Lezha, Fier, Kavaja and the Police Commissariat no 5 in Tirana have detention facilities compliant to standards of the law. In the Police Commissariat of Gjirokastra and Kukes the technical tracing rooms and the room of appearance of people released on parole are found in-between the detention rooms. This internal design project should have not been approved by the State Police as the presence of such rooms does highly compromise the detention facility and the quality of life of the detainees. For these reasons, the People's Advocate has recommended displacement of these rooms to another venue, but these recommendations have not been followed so far”³.

Work for the reconstruction of the detention facility in the Regional Police Directorate of Tirana has already been launched, given that it hosts the biggest influx of detainees, but the facility has not yet become operational.

Furthermore, the situation is unchanged, as already highlighted in the 2011 Report. In the Police Commissariats of Kruja, Elbasan, Burrel, Pogradec, Berat and Mallakashtra, the detention facilities are in a separate building in a one-floor facility, which is cold in winter time and hot in summer, thus rendering it impossible for the detainees to stay there. These facilities are humid, with no natural lighting and with no bathroom. The police staff informed us that in winter the detainees are left in corridors as it is impossible for them to stay inside of the rooms.

In the Police Commissariats of Permet, Shijak, Peqin, Tepelene, the detention facilities are reconstructed upon the initiative of the police commissars. Even though such commissariats have

³ Excerpt from the 2011 Annual Report, p. 35.

separate venues for men, women and minors, they do not yet meet the standards set in law, as there are no chairs, tables, or other similar necessary objects.

In some police commissariats, like in Burrel, Bulqiza, Saranda and Vlora, the doors of detention rooms are made of iron bars. The risk to the lives of detainees is very high, as it is easier for the detainees to commit suicide, as was the case in the past in the Police Commissariats of Lezha and Durres.

It is worth highlighting that the Regional Police Commissariat of Vlora has been reconstructed recently. Despite the People's Advocate's special recommendation on the reconstruction of detention facilities, it is a pity that it has not been taken into account while the reconstruction was realized. This shows of the inconsideration of our recommendations on the rights of the nationals by the State Police.

From consultations with all the Police Commissariats, the People's Advocate has come to the conclusion that the plan of action for the order police staff, approved by the heads of commissariats, is not realistic as the police staff charged with the task of supervising the detainees or arrestees are not able to perform such job, because they are overburdened with many other tasks. According to the operational plan, the service in detention facilities lasts from 07:00 o'clock of the first day until 07:00 o'clock of the next day. Such duration makes it impossible for the police staff to supervise all the detainees, keep the situation under control and make sure that their lives are not endangered. Such occurrences have happened in some commissariat (where, for instance, detainees have committed suicide) that do not meet the legal obligations for respecting the rights of the people accompanied, detained or arrested, according to the law-binding parameters.

Because of the variety of tasks one has to perform when having such a job, and because of the long uninterrupted working time of 24 hours, the People's Advocate is confident of the fact that the operational plan of the order police service is only drafted formally, without studying the situation in depth and with no consideration to the real capacity of a human being. It is impossible both physically and psychologically for a police staff to carry out all the tasks assigned in the operational plan, even if the service was planned for 8 working hours, let alone

24 working hours. The failure to verify the reliability and applicability of the operational plan of the order police service shows of a lack of control by the Police Directorates in Regions and of the General Directorate of State Police on the local police staff, as defined in law, in the rogatory letters, the Manual, Orders, Instructions, Recommendations, laws and different by-laws.

The People's Advocate, in the role of the NMPT, has drafted ad-hoc recommendations for each inspection, depending on the types of problems identified and asking for reconstruction of police detention facilities in line with the provisions of Law no 4 June 2007 "On the State Police". Despite the interest shown by the Ministry of Interior on this matter, there are still deficiencies mainly related with the lack of funds in the budget of this Ministry.

3.2. Treatment of detained nationals at police stations

Regarding treatment of the detained nationals, after direct contacts with detainees, and following comparison of the practice of the police work with the accompaniment registers of the detained nationals, the People's Advocate sees that in many cases people are accompanied to the police in breach of the criteria laid down in article 11.6, 101/1" a" and " b" and 106 of law no. 9749, dated 04.06.2007 "On State Police". People having committed, or suspected of committing such criminal offences as: homicide, robbery, objection of the police staff, people declared wanted, persons being involved in conflicts, persons disrupting public order, domestic violence, violation of traffic rules, etc. continue being considered as accompanied people, although the reason of their "accompaniment" is identified.

The people illegally accompanied to the police might be grouped as follows:

- Persons committing or suspected of committing such offences as: homicide, objecting the police staff, disruption of public order, violation, domestic violence, etc. (Police Commissariats of Peshkopi, Vlora, Fier, Korca, Erseka, Shkodra, Kruja and the Police Commissariats no. 1, 2, 5 and 6 in Tirana); in these cases the police has to act according to the provisions of Article 253 of the Criminal Procedure Code.

- Persons, who need to be examined in order to get information for preventing a risk, for identifying persons aware of the risk, or the incident, or for identifying a potential offender.

Under such circumstances, the police officer needs to apply the legal right on “notification for appearance to the police”, as provided for in article 100 of the law “On State Police”, and not accompany them to the police (The Police Commissariats of Durres, Elbasan, Peqin, Pogradec, Librazhd, Burrel, Shkoder, Puke and the Police Commissariats no. 2 and 5 in Tirana).

- The persons declared wanted are also treated as accompanied by the police. It is worth mentioning that for this category of people against whom an execution order of a criminal judgment has been issued by relevant authorities, and in the cases when a person has committed a criminal offence in the past, or suspected as a potential author of a criminal offence (in the conditions of *flagrantia*), he/she should be halted compliant to the legal provisions laid down in Article 464 of the Criminal Procedure Code. This is something happening in all the state police structures in the country.

- The persons accompanied due to a conflict, an action which is not stipulated in the Law “On State Police”; as a matter of fact conflicts are the main ground of accompaniment of individuals to the Police Commissariats, but given that the purpose of accompaniment by the police is to prevent potential crimes, the People’s Advocate in the role of NMPT is of the opinion that this case has to be regulated by law. Such cases of accompaniment are frequent in all the state police structures.

- The persons caught in *flagrante delicto*; - it is known that such action is undertaken for the offenders caught in the process of commission of a criminal offence, or immediately after it, and this is the reason why the arrest procedure has to be carried out according to the stipulation of Article 251 of the Criminal Procedure Code, not having him/her in the accompaniment situation for 10 years (the Police Commissariats of Saranda, Shkodra, Gjirokastra, Tepelena and Korca).

- Persons showing useful circumstances for the investigation. In such case, the police staff should apply the legal provisions provided for in Article 312 of the Criminal Procedure Code, sending a warrant or a notification letter, and warning them that if they fail to appear, a compulsory accompaniment order shall be issued against them. Police Commissariat of Tepelena, Vlora, Fier, Lezha, Kurbin, Librazhd and the Police Commissariat no. 1, 2, 3, 4, 5 and 6 in Tirana.

- In most of the cases, the reason of accompanying somebody to the police is still “*for verification*”. Such type of reason is very broad and needs to be specified, providing details on the type of the specification. The verifications made in the accompaniment books and from asking the police staff the People’s Advocate in the role of NMPT came up to the conclusion that “for verification” is also the note recorded when in fact a person is accompanied for all the cases mentioned above⁴.

From the examination of the above-referred-to cases and examination of the police staff, who have ordered accompaniment of the nationals to the police, the People’s Advocate in the role of NMPT came up with the conclusion that these violations were due to the failure to be aware of the legal concepts of *accompaniment* laid down in law no. 9749, dated 04.06.2007 “On State Police”.

The detained or arrested persons should not be registered in the accompaniment register, as is often the case, but in the book of the arrested and detained people.

The registers of accompaniment, detention and arrest of nationals are modelled according to the provisions of law no. 9749, dated 04.06.2007 “On State Police” and the Manual “On Rules of Treatment and Security of the Detainees and Arrestees in the Security Facilities of the Police Units”, but there are cases when the accompanied nationals are not recorded in the accompaniment register, or its sections are not filled out according to the requirements of the Law.

More specifically, the sections of notification of the family members are not again filled out accordingly, as all is written there is that “the family was notified” and there are no specific and complete data of the person who was notified. Notification of the family members of the accompanied person, his/her accompaniment to the police and the legal reasons leading to it, is a legal obligation for the police staff, provided for in article 107 of the law “On State Police”. The police staff claimed notification of the family members was done, but the fact that such action is not appropriately reflected in the register leaves space for suspicion.

⁴ 2011 Annual Report, p. 36-37.

All the people accompanied to the police undergo a personal control. All personal belongings are taken from them, which is in violation to Article 106, item 3 of law no. 9749, dated 04.06.2007 “On State Police”, which provides that “the police staff carries the control and physical observation, so as to take protective measures against the mentally sick, drunk, drug addicted or contagious deceased person”. Regarding personal belongings, article 108 of law “On State Police” lays down that “personal belongings can be blocked only if the avoidance of the risk they impose to order and public safety is inevitable”.

Also, when personal belongings of nationals are taken by the police, no recording procedure is followed. This action is in breach of article 108, paragraph 2 of law no. 9749, dated 04.06.2007 “On State Police”, which reads that: “The police staff in service, drafts a minute on received belongings, and gives it to the owner of the belongings to get acquainted with it”; article 37/3 of the Constitution reads that “*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 leaving of it, or to avoid a risk that threatens public security*”. Article 20 and onwards of the Criminal Procedure Code provide that: “*when there are reasonable grounds to think that somebody hides in his person material evidence of the criminal offence, or objects belonging to the criminal offence, the court takes a decision on the personal search of ...*”. In the *flagrante delicto* cases, or in case of pursuing a person who is leaving the country, when there are no possibilities of issuing a search decision, the judicial police officers search on the person in the place, complaint to the procedures of article 299 of the Criminal Procedure Code.

During inspections, the People’s Advocate in the role of NMPT found out that fingerprints are taken from the persons accompanied to the police. The police staff justify themselves with the fact that the fingerprints are used as a means of identification, pursuant to article 103, item 5 of law no. 9749, dated 04.06.2007 “On State Police”. This action is not reasonable, as all the persons whose fingerprints are taken are left free before a reply from the Scientific Police Institute. This shows that fingerprints are not used as a means of identification, but for comparative purposes for the criminal activities whose offenders are not yet found. Such actions are in breach of article 3 and 16 of law no. 9887, dated 10.03.2008 “On the Personal Data Protection”.

In some police stations, the NMPT sees that the accompaniment facilities have no posters containing the legal rights of the accompanied persons. The violation of lawful rights of the accompanied, detained and arrested citizens are mainly due to the fact that the police staff have no full understanding of the knowledge gained in implementation of law no. 9749, dated 04.06.2007 “On State Police”, of the activity of independent institutions for the protection of human rights, on the law “On the People’s Advocate” and its role in the NMPT, of the Optional Protocol of the Convention Against Torture and other Inhuman and Degrading Treatments (OPCAT) and of the International Conventions on Human Rights.

Such limited level of knowledge is reflected in the law performance of the State Police staff, especially of the ones in the grassroots. However, in special cases the superficial understanding of the law has been the main source of serious events and violations that have ended up in disciplinary measures for the State Police or submissions for criminal offences.

The People’s Advocate in the role of NMPT is of the opinion that prevention of the above-referred-to-cases caused due to failure to be familiar with the law, is a task charging responsibility on several state administration bodies and the State Police, where a special role is played by the educational and training institutions of the state police.

At a meeting held with leaders of the Police Training Center in Sauk, Tirana, the People’s Advocate and NMPT experts highlighted that, despite efforts for a better teaching methodology and more productive programmes, in the verge of application of the constant recommendations of the People’s Advocate Office, the educational and training programmes for special state police staff continue being poor regarding the knowledge they provide on human rights, and national and international institutions in this field. Consequently, improvement of the academic curricula continues to be a priority of the education police units, involving issues and topics on human rights.

In this context, the People’s Advocate expresses his awareness for and dedication to provide the necessary assistance and training to the state police, making use of all the expertise the Office possesses, aiming at raising the awareness of relevant structures.

About the problems the NMPT has identified during its observation, it has recommended the immediate solution of such concerns. With regard to the above, the People's Advocate in the role of NMPT has recommended to the Police Education Center to cooperate with the purpose of promoting human rights in this Education Center⁵.

Regarding pre-detention facilities where detainees and arrestees are kept, the inspections carried out in 2012 in all the Police Directorates and Commissariats show that it is only in the Police Commissariats of Kukes, Korca, Gjirokastra, Lezha, Fier, Kavaja and in the Police Commissariat no. 5 in Tirana that the security cells meet all standards of the law on the surface of rooms and conditions of detention (law no. 9749, dated 04.06.2007 "On State Police" and the Manual "On Treatment of the detainees and Arrestees in the Security Cells in the Police Units"). The rooms meet the technical norms and parameters for the detained or arrested persons, because the overall surface is 10 square meters, divided in a room space of six square meters and a hall space of four square meters.

All the rooms and the corridor walls had posted posters containing information on the rights of detainees and inmates. The rooms contain the necessary objects for a living, such as beds, tables, chairs, etc. The room had installed cameras for the surveillance of the situation of the detained or imprisoned individual.

The detained persons could read the press, which they bought with own expenses. They could take care of their personal hygiene, could have a letter and pen to write with, toothpaste and a brush, shaving paste and plastic shaving razors. They were entitled to have telephone communications, letter correspondence, etc. Also, they got soap from the Police Commissariat, detergent, hygienic paper, paper tower or towel and other items necessary to maintain personal hygiene and cleanliness of their rooms. The room windows enabled a sufficient circulation of air. It should however be highlighted that, even in the newly-constructed security cells, there are not separate outdoor spaces either planned or constructed, consequently, the inmates and/or detainees were not eligible to outdoor space, as laid down in laws, not less than two hours per

⁵ 2011 Annual Report, p. 38-40.

day. In addition, the rooms had no special space for religious practice, or for other activities. There are many technical elements not compliant to the parameters referred to in the Manual.

The inmates and detainees got food three times in a day, pursuant to the norms of food/meals as instructed in the joint order no. 432, dated 10.03.2008 of the Minister of Interior and of the Minister of Health. Food was outsourced and was served in compliance with all the parameters referred to in the Law. For the detainees and inmates sick of contagious disease there were separate venues planned, isolated from the rest of their peers.

The rooms in most of the police directorates and commissariats that should have security facilities are the same as the detention cells of before the 90s, are not painted, with no lighting, with no showers, with no beds, mattress, sheets and with no other necessary pieces of equipment, such as chairs, tables, etc.

In the Police Commissariat of Tirana, even though the reconstruction of the security facilities has already been launched, the newly refurbished areas have not yet been put in use. Concerning is the situation in the police directorate of the Region of Berat, as there is no security cell. All the detained and arrested persons stay in the pre-detention facilities of the penitentiary institution of Berat. In some Police Commissariats, the security cells are underground and, consequently, have problems with humidity. Often times they are entirely depreciated, such as is the case in the Police Commissariat of Lushnje.

The People's Advocate has identified no cases when detained minors are kept together with adults.

In the Police Commissariats of Shkoder, Saranda, Tropoja, Puka there are no informative posters containing information on the rights of the detained, accompanied or arrested individuals.

For all the problems identified during inspections, the People's Advocate has submitted recommendations asking for the solution of the relevant concerns in the security cells.

The People's Advocate remarks that although his recommendations are considered as grounded and are accepted by the heads of police directorates in the regions of the country, the General State Police Directorate and the Ministry of Interior, they are not respected in most of the cases upon claims that they lack necessary funds to make all the changes recommended.

Regarding treatment of the accompanied, detained and arrested nationals, it is worth mentioning that the People's Advocate follows the complaints of citizens claiming that physical violence is exercised on them by the state police staff, in the security and investigation venues with priority. During this year, there have been more frequent cases of physical and psychological violence exercised by the state police staff. On these cases, the People's Advocate in the role of NMPT has proposed launch of criminal proceedings against them.

Treatment of nationals in these venues should be done in full compliance with the requirements and standards laid down in the Constitution, the international acts on human rights, the Criminal Procedure Code, as well as following all the other laws and by-laws against the individuals deprived of liberty. The use of torture, violence, degrading, discriminatory, inhuman treatment, including verbal violence, such as threatening, offences leading to the feeling of intimidated and insecurity for the life and health of the detainees and arrested people, or of their family members are condemned acts and should be prohibited by any public administration institution.

The hither-to practice shows that: in a considerable number of cases, it is impossible to prove the claim for exercise of violence, because the security facilities where the detainee and/or the arrestee is kept are not monitored by camera.

The People's Advocate considered the camera monitoring process of the accompaniment, security and investigation venues as a primary measure for preventing cases of torture. Consequently, the camera monitoring process is indispensable for the following reasons:

- 1) Camera surveillance has a preventive effect for the violent and condemnable acts by the accompanied, arrested and detained people and by the state police staff.

- 2) Camera surveillance documents most of the activities within the accompaniment and security venues and provides safeguards for an objective and impartial judgment on the disciplinary or criminal measures to be taken against responsible persons.
- 3) The film footage is an element serving as a basis for consultation for many data, or claims for treatment of detainees, inmates, and helps in coming up with valuable conclusions and objectives in the recommendations, or relevant reports of the independent monitoring institutions.
- 4) Camera surveillance during the examination stage is an advantage to avoid the claims of individuals on violent extraction of testimonials and declarations, which put in doubt the whole professionalism of the police and of the entire investigation process.

In this context, the People's Advocate, hailing the latest initiative of the state police on instalment of surveillance cameras in public venues, is of the opinion that instalment of camera within the State Police facilities is an immediate need, considering this process as closely related to prevention of violent cases, documentation of violence and avoidance of ungrounded accuses against the state police staff.

In 2012, again the People's Advocate in the role of NMPT found that most of the police commissariats of the country did not obey the specifications of law no. 9749, dated 04.06.2007 "On State Police" and of the Criminal Procedure Code on detention and arrest of individuals, after treating as accompanied even those persons who have committed, or are suspected of having committed criminal offences. The Police Commissariat no. 5 for a time of only two months detained and arrested fifteen nationals suspected as criminal offenders. These nationals were first treated as individuals accompanied to the police for over six hours each, while procedure acts for their detention were applied afterwards.

By putting in the arrest and detention minutes the time of preparation of such minutes, not the time when individuals are deprived of liberty, or the time the individuals are accompanied to the police, the police staff lead to a miscalculation of the detention or arrest time, although they might have used as much as up to ten hours for several procedure acts before they write the minutes. Pursuant to article 144 and 250 of the Criminal Procedure Code, recording of the exact

time of arrest or detention of individuals is an important element, and it is based on this time that pre-detention (time) is calculated. While pursuant to article 258 of the Criminal Procedure Code, the calculation of the deadline of 48 hours starts from the time of arrest or detention. It is within this time that the prosecutor asks for the validation of the security measure in the Court of the place of arrest or detention.

Such poor record-taking is explained by the police staff by saying that “if we arrest the individuals since the first moment, than we can carry out no procedure act for providing proofs for the act committed”. This justification is not based on law; on the contrary, it is made against the Criminal Procedure Code provisions. According to Article 30 and 294 of the Criminal Procedure Code, the judicial police, which attributions are also assigned to the state police staff, (even after referring the criminal offence to the prosecution office) can *ex-ufficio* carry out similar legal actions as: prohibit further consequences of the criminal offence, search for crime offenders, investigate and collect everything that serves enforcement of the law, etc.

This phenomenon continues to exist, although a recommendation has been issued on this matter since 2009. Based on this recommendation, the General State Police Director issued the rogatory letter no. 1328, of 23 November 2009 “On Enforcement and Safeguards of the Fundamental Human Rights of Individuals during the State Police Activity”. Item 2 of the Letter specifies that the individuals suspected as criminal offenders and the ones condemned by a final court judgment in prison in absentia should not be treated and kept as accompanied by the police, but instead be subject of the arrest in *flagrante delicto*.

Again, in 2012 the People’s Advocate Office has identified cases, such as in the Police Commissariat no 3 and the Police Commissariat in Lushnje, when minors are not provided with a counsel of defense and psychological assistance, as provided for in Article 35 and 49 of the Criminal Procedure Code.

The police justify the lack of a psychologist in the police facilities with the rational that this function is not included in the organizational structure of police commissariats, but only in the organizational structure of the Police Directorates in Regions. In some cases, the considerable

distance between commissariats and the Regional Police Directorates renders the presence of a psychologist impossible. After having a close-look at the situation, the People's Advocate in the role of NMPT has found that there are Police Directorates that have not yet included a psychologist in their organizational structure as there are not interests for this job.

The People's Advocate has recommended to the General State Police Directorate to adopt all measures necessary to ensure the presence of a psychologist and of a lawyer at any case procedure actions are carried out with minors, because all actions carried out in the absence of these professionals are in breach of the provisions of the Criminal Procedure Code, stipulated in article 35, 37, 48 and 296/1.

The People's Advocate has identified cases of pre-detainees kept in security cells, although a security measure of detention in prison was issued against them by the relevant authority, and of detainees serving execution of final court judgment on imprisonment, issued in absentia. They are not sent to pre-detention facilities and to prisons, which are answerable to the General Prisons Directorate, because of the constant obstacles created by this Directorate. The time they spent in the police venues after the security measure is taken against them varied from 1 to 5 days.

The detainees and arrestees, within the first 24 hours of detention or arrest time, have to undergo a compulsory medical check in the police venues, to find out deceases they might suffer from, especially contagious deceases that are a danger for them for the others.

Some police commissariats/directorates lack informative posters in the English language on the rights to people accompanied, detained and arrested by the police, when they are foreigners. However, posters on the rights of the people accompanied, detained or arrested by the police in the Albanian language have been identified in most of the police commissariats and directorates in the country.

Some police commissariats have no separate registers for the detainees and arrested people, as they are first registered in the "accompaniment" registers, treated as people accompanied to the police.

Again, for all the problems encountered this year, the People's Advocate, in function of the NMPT, has issued several recommendations to the General State Police Directorate and to the Ministry of Interior, for preventing torture, ill-treatment, violation of law by the state police staff and satisfaction of standards in the accompaniment process and in the security facilities the individuals deprived of liberty stay into"⁶.

3.3. Illustrated specific cases and recommendations for cases of ill-treatment at police stations

The application registered as **doc. 201200056**: this case is registered after receiving a telephone complaint from the counsel of defense of three nationals, who, according to the former, were physically violated by the Police Commissariat of Shkodra. After appropriate consideration of the case, the People's Advocate in the role of NMPT found out that the complainants were inhumanly treated and violated by the police staff. The police staff claims that the complainants had violently responded to them and had attacked the police vehicle, were not convincing. None of the police staff did show to our experts any consequence (like injuries or traces) of a violent objection by the complainants, or of hits against them, or against the police vehicle. Also, the People's Advocate in the role of NMPT found out that the arrest of one of the complainants for the criminal offence of "exercise of violence because of office" was made in breach of the law, as there was no evidence supporting it. This fact was identified even by the Prosecution Office, which decided to immediately release him from office.

Also, the People's Advocate in the role of NMPT found out that the State Police staff had not applied the obligations deriving from article 118 of the law "On State Police" on delivery of medical aid to the injured individuals. Considered from the viewpoint of intensity and severity of violence, this occurrence was inhuman, and from the criminal point of view, was criminal as it contained elements of the criminal offence of "torture". For these reasons, the People's Advocate in the role of NMPT recommended to the Prosecution Office of Shkodra to initiate criminal proceedings against nine officers of the Police Commissariat of Shkodra for the **criminal**

⁶ 2011 Annual Report, p. 40-46.

offence of “torture”, in accomplice, as provided for in Article 86 and 25 of the Criminal Code, as amended.

The Prosecution Office of Shkodra informed us that it accepted our recommendation and registered the criminal proceeding on “commission of arbitrary acts”, as provide for in Article 250 of the Criminal Code.

In addition, the People’s Advocate in the role of NMPT recommended to the Prosecution Office of Shkodra to initiate disciplinary proceeding against the judicial police officers for **the illicit arrest of one of the complainants. For this recommendation** the People’s Advocate in the role of NMPT **was informed that the Prosecution Office would have to come up with a position on this matter at the end of investigations.** As of now the People’s Advocate in the role of NMPT has not received a final answer on the above.

- Application registered as **doc. 201202913**: this case was registered pursuant to the complaint coming from a national claiming that on 24 June 2012 the Police Commissariat staff of Durres had physically mal-treated her husband. Because of the serious injuries caused by the police staff he was hospitalized in the surgery ward of the Regional Hospital of Durres for examination.

From the evidence administrated during the investigation the People’s Advocate in the role of NMPT came to the conclusion that the complainant was physically violated and threatened with a weapon by a criminal police officer, causing serious injuries and, consequently, grave physical and psychological pain.

During the investigation the People’s Advocate in the role of NMPT found out that the police commissariat staff kept the complainant tied in cuffs in the bed. Although the complainant was in a problematic health situation and under medication, most of the time the police officers kept him tied in cuffs. According to the police officers of a high and normal hierarchy, cuffing him behind the bed was something provided for in the Manual “On Enforcement and Safeguards of the Fundamental Human Rights of Individuals during the State Police Activity”. In addition,

they declared that the Manual foresees that when rooms are not secure, the detainee is kept hand-cuffed behind the bed, in order to make sure he does not leave the place.

The People's Advocate in the role of NMPT referred to the legal framework in force and saw that the procedure of hand-cuffing of the detained or arrested individuals from the state police in hospital conditions is not based on the normative acts in force and does seriously affect the fundamental rights of the individuals. Such a procedure was expressively referred to in the Manual "On the Rules of Treatment, Security of the Detainees and Arrestees in Police Units", approved by Order no. 64, dated 25.01.2010 of the General State Police Director. In 2011, the People's Advocate recommended to the General State Police Director to abrogate item 2, paragraph 5 of the Manual, "On the Rules of Treatment, Security of the Detainees and Arrestees in Police Units", approved upon Order no. 64, of 25 January 2011 by the General State Police Director. The recommendation was accepted and the General State Police Director, at his Order no. 736, dated 27.09.2011 approved the Manual "On Standard Rules and Procedures on Treatment and Security of the Arrestees and Detainees in Police Units". In its Chapter 7, item 5.2 provides that: "*in case the room/hospital venue does not meet the security conditions laid down in item 1 of this Article, other additional measures are taken to protect and secure the arrestee/detainee*".

Such measures are planned and applied depending on and proportionate to the degree of risk imposed by the person, criminal precedents, the health status, the level of physical damages, his time of treatment, etc.

Therefore, in the new manual, referred to above, there is no longer a provision entitling the police to the right to hand-cuff the detainee/arrestee against the bed when he/she is sick. The new Manual provision "*...in case the room/hospital venue do not meet the security conditions laid down in item 1 of this Article, other additional measures are taken to protect and secure the arrestee/detainee*" does not mean that the detainee has to be hand-cuffed against the bed, as understood by the police. This provision means that in such case, the police management has to add the police staff to control and secure the detained individual.

Hand-cuffing against the iron bars of the bed was an act amounting to inhuman and degrading treatment, running contrary to human rights and freedoms, on which there is a consolidated approach by the Court of Human Rights through some judgments it has issued over years.

The People's Advocate in the role of NMPT would also like to highlight that in more than one case, the CPT (Committee for Prevention of Torture) of the Council of Europe stated that the practice of hand-cuffed detainees in hospital conditions is a degrading act against individuals and should be replaced by other security measures. This stance was highlighted in the second general report of the CPT (CPT/inf (92)3), where, inter alia, the report reads: "*the inmates sent to hospital for treatment should not be physically tied to the hospital beds, or other places for reasons of security. There is a need and a must to find other remedies for having satisfactory security results*". This CPT conclusion has derived from several observations during visits in the Council of Europe member states focusing on the persons, whose liberty is confined.

At the end of the investigation of this case, the People's Advocate in the role of NMPT came up with the conclusion that the applicant was deprived of his fundamental right and was subject to torture, inhuman or degrading treatment, in violation with Article 5 of the Constitution and Article 5 of the European Convention on the Protection of Fundamental Rights and Freedoms.

About this case, the People's Advocate in the role of NMPT recommended to the Prosecution Office of Durres to institute criminal proceedings against the 21 officers of the Police Commissariat of Durres for the criminal offence of "torture, in accomplice", provided for in article 86 and 25 of the Criminal Code, as amended. The prosecution office informed us that it has instituted criminal proceedings on "arbitrary actions", but no additional information is submitted about the end of investigations.

- The *ex-ufficio* case initiated following media's coverage of an occurrence, registered as **doc. 201200930**, related to the inhuman treatment of four nationals by the Police Commissariat no. 2 in Tirana. After observing the case in the entirety, the People's Advocate in the role of NMPT found out that on 18 February 2012, at about 02:45, after the applicants had left a bar, in vicinity of the place called "Makuba", they were physically maltreated by police staff of the general patrol, composed of police officers of the Police Commissariat no. 2, in Tirana. Because

of the injuries suffered, the detainees were sent to the Military Hospital of Tirana for medical treatment. The circumstances of violence were also tried by the forensic expert act, provided upon our request.

The justification of the police staff that the applicants had objected them making use of violent acts was not convincing. This claim was dropped even by the fact that none of the police officers showed any sign of violence (in their bodies) caused by the violent acts of the detained individuals. The police staff had injuries only in the hands (such as swollen parts and bruises), but such traces did indirectly show that the police acts against the applicants were violent.

At the end of examination of this case, the People's Advocate in the role of NMPT came up with the conclusion that the applicants were physically mal-treated with no reason by the police, undergoing serious physical injuries, up to loss of conscience.

The applicants' fundamental right, guaranteed by article 25 of the Constitution, was violated. According to this provision: *"No one shall be subjected to torture or to inhuman or degrading treatment or punishment"*. Article 3 of the European Convention on Human Rights and Fundamental Freedoms, providing that *"No one shall be subjected to torture or to inhuman or degrading treatment or punishment"*, is violated, as are the rights referred to in the law "On State Police", which article 1 reads: *"The mission of the police is to protect public order and security compliant to law and in respect of human rights and freedoms"*.

For this violation of the state police, the People's Advocate recommended to the Prosecution Office of Tirana to initiate criminal proceedings against the police staff for the criminal offence of "torture", in accomplice, as provided for in article 86 and 25 of the Criminal Procedure Code, as amended. The recommendation was accepted and the prosecution office started investigations.

- The application registered as **doc. 201203387**: the applicant claimed that on 4 September 2012 at 23:15, as he was walking in the street, heading for this house, he was immediately stopped by police officers of the Regional Police Directorate of Tirana, who, without voicing any single word, had a personal search on him, but found no prohibited item with the former. Afterwards, they accompanied the applicant to the Regional Police Commissariat of Tirana,

without providing any reason at all. In the police, the citizen was forced to give his fingertips. A photo of him was also taken, and general information asked from him and examined in the quality of person being aware of the circumstances of investigations. When the applicant said he had no information on what the police staff were asking him for, he was violated physically by the police, who hit him in different parts of the body with harsh objects to force him to disclose information. The consequences or traces of violence were also identified by the forensic act, realized upon our request. After being kept in the police facility for several hours, the applicant was released, but, again, even in this moment he was not provided with the legal cause or reason for his accompaniment to the police. At the end of the examination process the People's Advocate in the role of NMPT came up with the conclusion that the accompaniment act was illegal. Such action does not fall under any law or normative act related to accompaniment of nationals to the police. More specifically, it does not fall under the ambit of article 11, item 6 and article 101, item 1 of law no. 9749, dated 04.06.2007 "On State Police"; Order of the General State Police no. 711, dated 11.10.2007 "On Enforcement of the Requirements of the law "On State Police" on Use of Force and Treatment of the Accompanied Persons, the Rogatory Letter of the General State Police Director no. 1328, dated 23.11.2009 "On Enforcement and Safeguards of the Fundamental Human Rights of Individuals during the State Police Activity", etc.

The search on the person was in breach of the law. It is a flagrant violation of the constitutional right of Article 37/3, according to which no one may be subjected to a personal search outside a criminal proceeding, and of Article 202 - onwards of the Criminal Procedure code, Article 106, item 3, and article 109, item 4 of the Law "On State Police".

The applicant's examination at the quality of a person being aware of the circumstances of investigation and everything related to what had happened was not based on law and was in breach of article 297 of the Criminal Procedure Code and article 100 of the Law "On State Police".

In addition, his fingerprints were taken in violation to article 103, item 5 of the law "On State Police". This act is also in full and open violation of article 6 of law no. 9887, dated 10.03.2008 "On Personal Data Protection". Such action is not based even in the laws and by-laws, such as in

the Order of the General State Police Director no. 777, dated 22.04.2007 “On the Procedures for the Registration and Administration of the Personal Data of the Accompanied or Detained/Arrested Individuals”.

These actions run contrary to Article 6/1 of the Rules of Discipline of the State Police. Pursuant to article 11 and 12 of the above-mentioned rules, such actions by the police are serious administrative violations, because they have violated the legal competencies of State Police.

On the other hand, the violation exercised on the applicant has infringed his fundamental right, stipulated in article 25 of the Constitution and article 3 of the European Convention On the Protection of Human Rights and Fundamental Freedoms”, and article 1 of the Law “On State Police”.

For all the violations of law referred above, the People’s Advocate in the role of NMPT addressed the Prosecution Office of Tirana, to initiate criminal proceedings against the police staff on the criminal offence of “torture”, in accomplice, provided for by Article 86 and 25 of the Criminal Code, as amended. *The recommendation was welcomed and the prosecution office started proceedings against the police officers.*

- The Application registered as **doc. no. 201202899**: the case was initiated ex-officio by the People's Advocate Office, after the media coverage of the murder of two brothers and of injuries of four other people in the neighbourhood of Marrnaq, the village of Qela, District of Puka, on 29 June 2012. According to media, this happened because of the omission of police to follow the conflicts between two families, according to the stipulations of the law.

The administrative investigation of the case showed that the crime had happened due to the failure of the Police Commissariat of Puka to exercise its legal tasks. Despite of being informed of two criminal occurrences some days before the tragic event happened, they took no legal measure for the administration and investigation of the testimonials provided by the family members of victims and for referring the case to the prosecution body. So, the actions of police staff - who in this case are the Chief of Commissariat and the zone police inspector, with their intentional actions and omissions, were in breach of the law and mount to failure to comply with

their tasks and obligations, as provided for in the provisions of the Criminal Procedure Code and in the Law “On State Police”, one at the quality of the head of the Police Commissariat, and the other at the quality of the judicial police officer. Such actions have led to serious consequences on the lawful interests of citizens, ending up in the loss of life of two nationals and the injury of two others. With their actions and omissions they have consumed the elements of the criminal offence of abuse of power, in accomplice, provided for in article 248 and 25 of the Criminal Code, as amended.

Three recommendations were drafted on this case:

1. A recommendation addressed to the Prosecution Office of Puka to start a criminal proceeding for police officers of the Police Commissariat of Puka on charges of “abuse of power”, in accomplice, provided for in article 248 and 25 of the Criminal Code. ***The recommendation was accepted and the Prosecution Office started proceedings for the criminal offence of “abuse of office” in accomplice, as laid down in Articles 248 and 25 of the Criminal Code, against four police officers including the Chief of the Police Commissariat of Puka, the Chief of Prevention of Minor Crimes in the same Commissariat, the Inspector of Serious Crimes and the Zone Inspector.*** Furthermore, an injunction was filed asking for “suspension from office” against all the above police officers.

Pursuant to the Prosecution’s request, the First Instance Court of Puka decided to suspend from office all police officers until finalization of investigations.

2. The recommendation addressed to the Police Commissariat of Puka requiring an immediate reference to the Prosecution Office of Puka of the criminal offences submitted by one of the members of the victim family. ***The recommendation was accepted and the relevant submission was addressed to the Prosecution Office.***

3. The recommendation addressed to the General Police Director asking for:

- a) Adoption of all relevant measures to detain the suspects of this crime, because being free and armed they continue imposing a risk to the public order and security;

- b) An analysis with objectivism, transparency and loyalty of the reasons leading to the massacre in the village of Qelez of the District of Puka on 26 June 2012 and adoption of administrative measures;
- c) Disciplinary proceedings against the police staff violating the law, but having on criminal responsibility;
- d) Discussion of the specific of this case to all the State Police bodies so as to limit other similar behaviours of non-reference of criminal offences to the prosecution office and failure to handle the testimonials of citizens according to provisions of the law in the future.

The recommendation was accepted, including suspension from office for four police staff until the end of investigations.

- The application initiative ex-officio by the People's Advocate Office, recorded as **doc. no. 201203243** focuses on the event of 15 August 2012, where a national being under house arrest, was killed. The house arrest of this national was being executed under the protection of two police officers of the Elbasan Police Commissariat, but this security measures did not ban the offenders from entering into the house of the victim and from killing him.

The Police Commissariat of Elbasan should have applied Decision no. 635/83 of the act of 12 April 2011 of the Judicial District Court of Elbasan, which charged this police commissariat with the obligation to protect the house of the defendant and to enable a smooth execution of this security measure, assigning police staff for constantly protecting the house. The police staff should have not allowed communication of the defendant with other people, except for the cases when they had a court decision to do so.

After inquiries on the case the People's Advocate in the role of NMPT identified that the Police Commissariat of Elbasan had no detailed action plan, or a strategy to resolve problems emerging from similar situations. Instructions were verbally provided by the Information Specialist of the Police Commissariat, as he considered it fit, to the police officers. The Service Plan Book showed that instructions for the police staff were made in writing by the General Patrol Specialist, but not in conformity with the section "on tasks assigned during instruction", as this

section was not specific (in actions/activities) and with clear and specific tasks for each service location. These actions were in breach of Article 25, item 5 of the Internal Rules of State Police and procedures, standards and norms on planning of the police service, which define that *“the action or operational plans are drafted by each police structure, according to the scope of work, with the aim of implementing a strategy or programme, containing specific solutions of certain issues of isolated situations”*.

The failure to take a family certificate of the person subjected to the security measure of house arrest led to a situation in which the police staff allowed for about a year and a half people to get in and out of the house of the victim, based only on the relations with the members of the victim family, but not on official grounds. The lack of an operational plan of police forces and of a scheme for protecting the facility showed of extreme negligence of the police staff, leading to the violation of the most fundamental human right – of the right to life.

The above actions run openly contrary to article 4, item 10 and 12 of the Internal Rules of Operation of State Police and of the procedures and standards for planning the police service, which do expressly read that the title holder should: *“deliver orders/clear instructions related to the duties and, being in the position of the leader, should make sure that the depending staff have fully understood the orders given by him, and that they complete the task/service appropriately”*.

At the end of the investigation the People’s Advocate in the role of NMPT came up with the conclusion that the actions of the Regional Police Commissariat of Elbasan were not compliant to the laws in force, leading to the murder of the defendant in the conditions of house arrest, as ruled in a court judgment, at a time when he was under the protection of police forces.

Given that the Prosecution Office had started a criminal proceeding for this event and had issued an order for the two police staff on duty at the time of commission of the crime on charges of “murder in other qualified circumstances”, in accomplice, as provided for in Article 79/dh and 25 of the Criminal Code, referred to article 14 of the law “On the People's Advocate”, the People’s Advocate in the role of NMPT recommended to the General State Police Directorate to institute

a disciplinary proceeding for the responsible persons. The recommendation was accepted and disciplinary measures were taken for ten police staff.

- The application registered as **doc. no. 2012000795**; this case was registered following a complaint coming from a national, who claimed that on 13 February 2012, police officers from the Police Commissariat no. 1 in Tirana had gone to her house and had taken her two sons accompanying them to the police. According to the applicant, the police accompaniment had happened because of an act of theft in the neighbourhood. In addition, she claimed that any time thefts happen in their neighbourhood; the police go and accompany her sons to the police examining them as suspects of the crime.

The verifications made showed that the accompaniment of the two applicant's sons by the police was made after some preliminary operational information on their potential involvement in some acts of theft happening in the area of Shkoza. According to the police, they had a criminal precedent and their accompaniment was done in conformity with the laws and by-laws in force, without affecting their rights.

The police staff stressed that their accompaniment was done in conformity with the laws and by-laws in force, but they did not refer to legal act in force to support their claims. After examining the case, the People's Advocate in the role of NMPT came to the conclusion that the accompaniment to the Police Commissariat no. 1 in Tirana of the two nationals by the police was illegal, as the accompaniment was done in breach of the provisions of law no. 9749, dated 04.06.2007 "On State Police" and of the by-laws issued based on it and for its enforcement; more specifically article 11, item 6 and article 101, item 1 of law no. 9749, dated 04/06.2007 "On State Police"; the order of the General State Police Director no. 711, dated 11.10.2007 "On the implementation of requirements of the law "On State Police" on the use of force and treatment of the accompanied persons"; and the Rogatory Letter of the General State Police Director no. 1328, dated 23.11.2009 "On Enforcement and Safeguards of the Fundamental Human Rights of Individuals during the State Police Activity".

From the examination of this case, and of other cases as well, the People's Advocate in the role of NMPT found out that although five years have passed from the adoption of the Law "On State

Police” in force, its stipulations on the accompaniment of individuals to the police as well as the stipulations of other by-laws serving a better and more complete implementation of this law, are not fully known by the police staff.

Failure of awareness on the provisions of the law leads to serious consequences to constitutional and legal rights of nationals, affected by the arbitrary actions of state police, and increases the possibility of repetition of violations. In its turn, such lack of awareness does seriously harm the public image of the police and its relations with other constitutional institutions and the courts.

For the case in question, The People’s Advocate in the role of NMPT recommended to the Regional Police Directorate and to the Chief of the Police Commissariat no. 1 in Tirana to:

1. Initiate disciplinary proceedings and issue relevant disciplinary measures against the police officers accompanying the two nationals to the police;
2. Discuss the specifics of the case about this case, treating it as a case study, so as to put a ban to similar legal violations in the future;
3. Adopt appropriate and immediate measures for the recognition and implementation of the law “On State Police” and of other by-laws in its implementation, especially of the acts of the General State Police Director dealing with accompaniment of nationals in the police, by the police management and staff.

The recommendation was accepted in its entirety.

- The application recorded as **doc. no. 201203770** and **201203807**. In the period of September - October 2012, a group of persons, former politically persecuted individuals from the communist regime, organized a hunger strike in an improvised ground in umbrellas in vicinity of “Medar Shtylla” street, Tirana.

The hunger strike became public by media, which constantly reflected their problems and concerns. *Inter alia*, the media spoke of the lack of the medical service in the hunger strike venues in the first days of the strike. After this news, appropriate measures were taken by the health institutions, providing round-the-clock services to hunger strikers.

The hunger strikers were constantly asking for the presence and assistance of the People's Advocate for resolving their issues.

The People's Advocate is of the opinion that the appropriate instrument for treating and resolving problems of concern for citizens, or for certain interest groups, is social dialogue between public administration and the citizens. It is because of this vision and in enforcement of its constitutional mission that the People's Advocate ordered establishment of a working group, which visited the hunger strikers, listened to their concerns and noted down their complaints, and constantly monitored progression of the hunger strike. Complaint to the obligations recognized by Law, the People's Advocate visited and met several times with the hunger strikers and with their coordinators at the hunger strike venue/place, in the hospital and in his office.

As in other sensible issues for the Albanian society, the People's Advocate held a wide consultation with all the parties and the interest groups, in the context of finding legal and accepted solutions by all parties. In a constant and repeated manner, the People's Advocate encouraged parties, especially the Government, to dialogue and to identify short-term and long-term solutions on the issue of payment of compensation for the persecuted people.

A working group was suggested to be established to identify and treat this issue. In addition, the People's Advocate Office highlighted the need for a "cool-blooded" treatment of the case, without any prejudice, which would not only calm the situation down, but would also lead to a positive example of the management of such a delicate case.

However, another element that should be highlighted is the fact that the atmosphere accompanying the hunger strike was not very conducive for encouraging dialogue. In addition, despite of the public opinion, or of the opinion of a certain group of citizens, the public administration should in no case avoid dialogue, for whatever reason or possible circumstance.

The public administration representatives were not part of the "meeting with citizens". The complaints addressed to the People's Advocate Office were related to the lack of legal compensation for this category of nationals and for violation of their rights in the context of the hunger strike from the State Police staff.

On the requests having an economic nature, the People's Advocate sent a written document to the Minister of Justice, Minister of Finance, Minister of Labor, Social Affairs and Equal Opportunities and to the Minister of Health, while also informing the Prime Minister, on 15 October 2012, providing an overview of all the problems identified in the requests submitted by the interest group, the complexity and possibilities of solution of their concerns and of the tasks emerging for state institutions, being part of the public administration.

After examining the hunger strikers' claims on violation of their human rights by the State Police staff through such actions as: visiting the hunger strike venue, searching within the venue and seizure of some belonging like bottles of tea, glucoses, sugar packages, coffee, interruption of meetings with the family members, with hunger strike coordinators and with the media, the People's Advocate Office remarks as follows:

1. The normative acts in force do not contain special provisions on the right and manner of organization of a hunger strike. On this matter, the People's Advocate in the role of NMPT recommended to the Ministry of Justice to review the possibility of preparation of a draft-law and for submitting it for approval to the Assembly so as to fill this legal gap.
2. The police actions searching on hunger strikers and seizing their personal belongings posing potential threats to their lives and health were considered by us as fair and proportionate since the beginning. The mere fact that precedents of self-firing of two strikers and another tentative act of self-firing of the person shocked us all and made us think that our assessment was fair, as was our recommendation that the presence of police forces in the hunger strike was necessary to first and foremost protect the life and health of hunger strikers from any malicious action.
3. Seizing and confiscation by the police of sugar, trisol, and coffee found in the hunger strike venue was considered as an unfair and non-proportionate act, while banning the entry of drinks (tea), or of sugar, trisol and coffee in the hunger strike venue was considered by us an illegal and inhuman act.
4. The former politically persecuted people were on a hunger strike, not in a drinking strike. Their decision to protest in this way is a personal choice and should be respected as such

by any state administration body. Putting a ban to entry of drinks and, consequently, non-use of drinks, led to a serious risk for their life, because water and drinks are the basic element of life. This action does not justify the police aim – that is security and protection of the right to life and protection from internal or external risks. This action of the police was considered by us as a serious violation of human rights guaranteed by the constitution, international conventions and national laws. Article 21 of the Constitution provides that the life of any individual is protected by law. Thus, the Constitution is clear when it comes to protection of the right to life and to safeguarding this fundamental and most important right first and foremost by the public administration, part of which is the State Police. According to Article 1/2 of Law no. 9749, dated 04.06.2007 “On State Police” “*The police mission is to protect the public order and security, complaint to the law and in respect of human rights and freedoms*”, whereas according to Article 4/1 of this Law “*it is the task (obligation) of the police to protect the lives of people ...*”. Through their actions, the police did not contribute to safeguarding the life and health of hunger strikers, but, on the contrary, put it in more risk.

The police claimed that the ban from entry of drinks in the hunger strike place, brought by either the strikers’ family members, or other people related to the hunger strike, was related to the suspicion on the type of drinks and the potential risks they might cause to the hunger strikers’ health. In our opinion, this solution was not relevant and not proportionate. A solution to this situation that would ensure provision of drinks to the hunger strikers without putting a risk to their life, also recommended to the police, was buying of such drinks in a nearby pharmacy at the presence of a police officer and of a doctor.

5. The suspension of meetings of the individuals entering in a hunger a strike with the strike coordinators, or with their family members was considered irrelevant by the People's Advocate Office. Given their health and psychological situation, the strikers needed to be in touch with the strike coordinators and with their family members. It was because of this fact that the police were asked to lift this suspension, as it would lead to a better mental health of the hunger strikers.

6. The People's Advocate in the role of NMPT considered the interruption of media communication with the hunger strikers as not legal and incorrect. Journalists were not allowed to get somewhere close to the hunger strike facility, or to enter within the venue. Through this act, the police infringed the right to freedom of expression of the hunger strikers, provided for in article 22/1 of the Constitution. The People's Advocate in the role of NMPT also identified that this police action affected the freedom of press, radio and television, provided for in article 22/2 of the Constitution.
7. The People's Advocate in the role of NMPT did not consider as fair and proportionate the hunger strikers' request on removing police forces from the hunger strike facility. Taking into account the precedents occurring there, more specifically two cases of self-firing and one attempted case of self-firing, The People's Advocate in the role of NMPT was of the opinion that a police service in the strike facility was necessary. However, the purpose of the police presence needed to be protection of the life and health of hunger strikers from internal and external risks and prevention of criminal acts related to their life and health.

Despite the legal gap in the national law for treating procedures and progress of hunger strike, there are numerous international acts and agreements setting down rules of behavior for the persons entering into a hunger strike and the persons supervising or guaranteeing the hunger strike. Amongst the most important international acts related to hunger strike are:

1. "The Hunger Strike Declaration (The Malta Declaration of 1991, reviewed in 1992), approved by the 43rd World Medical Association, held in Malta, in November 1991, reviewed by the 44th World Medical Association, held in Marbella, Spain, in September 1992 and by the 57th World Medical Association, held in Pilanesberg, South Africa, in October of 2006.

According to Article 1 of this Declaration "... *hunger strikes are often a form of protest from the people who have no other forms of ensuring recognition of their requests*".

The part dealing with instructions for managing the hunger strike says that “*the doctors should assess the mental capacity of individuals*” this involves the verification of mental capacity of individuals, with the purpose of not *allowing mentally unfit individuals to stage a hunger strike*.

The doctors need to speak with hunger strikers in privacy, in far reach from being heard from others, and should respect the principle of confidentiality. They need to perform a full examination of the hunger strike at its beginning and should explain consequences and medical implications deriving from it.

Doctors should be convinced that the refusal of food and treatment is a voluntary choice of the individual. Individuals entering into a hunger strike should be protected from coercion. Doctors can often help to achieve this and should be aware that coercion can come from the group of colleagues, authorities, or others. Doctors or other health care practitioners cannot exercise undue pressure of any type to an individual entering a hunger strike to suspend the strike. The care or treatment of the hunger striker cannot be conditioned to the suspension of the hunger strike.

Artificial nutrition might be suitable from the ethical point of view, if hunger strikers accept it conscientiously. It can also be acceptable if the individuals have left a preliminary note to accept it.

Forceful feeding is neither ethical nor acceptable. Even if aimed at benefitting the individual, feeding accompanied by threats, or use of physical limitations is an inhuman and degrading treatment.

2. *Tokyo Declaration* - instructions for medical doctors concerning torture and other cruel, inhuman, and degrading treatment or punishment, approved at the 29th Medical Assembly, held in Tokyo, Japan, in October 1975, reviewed at the 170th session of the Council of the World Medical Association, held in Divonne-Les-Bains, France, in May 2005. In its item 6 it reiterates that: “*Where a prisoner refuses nourishment and is considered by the physician as capable of forming an unimpaired and rational judgment concerning the consequences of such a voluntary refusal of nourishment, he or she shall not be fed artificially. The decision as to the capacity of the prisoner to form such a judgment should be confirmed by at least one other independent physician. The consequences of the refusal of nourishment shall be explained by the physician to the prisoner*”.

3. Recommendation R (96) 11 of the Committee of Ministers of the Council of Europe, which in its item 60 describes the refusal of medical treatment by hunger strikers. More specifically, it provides that: *“in case of refusal of treatment, the medical doctor shall ask for a written declaration by the patient, in the presence of a witness. The medical doctor shall provide full information to the patient on the potential benefits of medication, possible therapeutic alternatives and warn him on risks caused by refusal of medical treatment. In any case, the patient should understand his situation in the fullest way possible. If communication is impaired by such factors as the language spoken by the patient, the help of an experienced translator should be required”*.

From what referred above, it is clear that the hunger strike conditions are decided upon by the strikers themselves, not by the police officers, or by any other state authority. According to the above-referred acts, it is clear that the hunger strikers have to decide themselves on artificial nutrition, but forced feeding is absolutely prohibited. However, it is again clear that hunger strikers cannot be banned from using liquids containing sugar, such as tea, glucoses, coffee, or water. Intimidating or threatening actions, physical limitations and other interventions by doctors, or any other state authority aiming at interrupting or suspending the strike is not allowed either.

As reported above, in the case in question, the police got in the role of “managing the hunger strike”. It unfairly decided to not allow tea, coffee, sugar and other similar things enter the hunger strike facility.

The People’s Advocate in the role of NMPT would like to highlight that despite of the fact that such actions happened in the presence of doctors, the doctors and health institutions kept silent in face of this situation. As described above, the international and regional acts charge doctors, not the police, with the task of managing the hunger strike.

Regarding restitution of the rights and freedoms of hunger strikers and the media by the People's Advocate, the People’s Advocate in the role of NMPT submitted the following

recommendations:

1. A recommendation to the Director-General of State Police, asking him:

“to take relevant measures at the quality of the supervisory authority for an immediate suspension of the illicit actions of the Police Commissariat no. 2, in Tirana, against the hunger strikers, more specifically:

- i. *to allow liquids, sugar, coffee, etc. for the hunger strikers;*
- ii. *to allow hunger strikers to meet with their family members and relatives/friends;*
- iii. *to allow strike coordinators to meet with hunger strikers;*
- iv. *to allow the strikers to exercise their constitutional right of access to press, radio and television;*
- v. *to allow the press, radio and television to exercise their constitutional right of public information”.*

It is important to highlight that this recommendation was immediately applied by the police officers serving at the strike venue.

2. A recommendation addressed to the Director-General State Police Director, asking him:

- a) to analyze the case of violation of strikers’ rights by the State Police staff and to identify the administrative responsibilities;
- b) to familiarize the State Police staff with international and regional acts dealing with the hunger strike, described above, and to train them on how to act in cases of a hunger strike”.

3. A recommendation for the Minister of Health, asking him:

- a) to analyze the irregular performance of the emergency doctors in managing the hunger strike, organized by some politically persecuted people during communism;
- b) to adopt appropriate measures for introducing the medical staff with international and regional acts dealing with the hunger strike, described above, and to train them on how to act in cases of a hunger strike.

The People's Advocate in the role of NMPT *highly appreciated the acceptance of his recommendation on the familiarization of the police and medical staff with international and regional acts dealing with the hunger strike, described above, and on training of relevant staff in cases of hunger strikers by both, the General State Police Director and the Minister of Health. In this spirit, the People's Advocate Office organized an activity "On the Role of Medical Doctors, State Police Officers and Penitentiary Institutions in Monitoring and Management of Hunger Strikes", attended by the doctors and staff administration of the penitentiary institutions. International experts were also present in the Conference.*

CHAPTER IV:

Recommendations for change

4.1. Implementation of monitoring activity. Special report on implementation of NMPT recommendations for 2011 by relevant authorities

Special Report *“On the People's Advocate activity and the level of implementation of Recommendation no. 12 of the Opinion of the European Commission on Albania”*

Submitted to the authorities on 23.04.2012

The content of the Recommendation no. 12 of the Opinion of the European Commission requires the People's Advocate and NMPT to play an active role in influencing the improvement of the treatment of the individuals who have been deprived of their freedom in prisons, pre-detention facilities and police stations, as well as to investigate into the cases of mistreatment. Additionally, this recommendation is imperative on the need to monitor the mental health in the above facilities and in psychiatric hospitals.

The compilation of a special report is aimed at highlighting the independent inspection conducted by the People's Advocate Office in order to clarify the level of implementation of the recommendations by the public administration, with focus on Recommendation 12 of the European Commission.

Inspections conducted in all penitentiaries and detention facilities and the recommendations issued by the People's Advocate Office indicate a series of problems that need to be addressed and improved immediately. More specifically, some of the issues that remain unaddressed and that, in practical terms, should be considered as a priority for the performance of our public administration in the framework of EU integration, as well as in view of respecting the fundamental human rights and freedoms, are listed below:

- 1) A final solution should be provided to the accommodation of the mentally ill people, who are subject to forced isolation in a special institution outside the penitentiaries and pre-detention facilities.
- 2) A special sub-legal act should be issued to determine the model of construction of penitentiaries and health centres for detainees and pre-detained individuals.
- 3) Further clarification of the definition of the terms “arrest” and “security rooms/premises at the police stations” should be made, in order to bring them in line with the requirements provided by the applicable legislation.
- 4) A clear definition of the means and methods of physical restraint of individuals, as well as publication of every manual or standard practice that applies to such cases.
- 5) Abolishment of the abusive practices of entrapment of the suspects for criminal offences, conduct of controls according to a manual that respects human dignity and interruption of the practice where the police relies on a group testimony where reports of violence are made by the damaged party.
- 6) Improvement of the conditions in some of the facilities of the psychiatric hospitals by provision of new furniture, personal equipment and improvement of food for the sick.
- 7) Continuation of the de-hospitalization of the individual with chronic mental illness into the community centres and application of the procedures for their forced insertion into such facilities.

4.2. NMPT legislative recommendations

NMPT recommendations for amendments of legislation on police matters

During the last year, there has been an intense and fruitful cooperation with the State Police on the protection of physical integrity of the detained persons (accompanied and arrested) by the State

Police, because, as already highlighted above, it is the task of the State Police to protect and provide certain rights for the detainees until a security measure is taken by the court, as laid down in law no. 9749, dated 04.06.2007 “*On State Police*”. The State Police responsibilities for maintaining the integrity of these individuals have been specified in no provision of this law, including article 4. This issue was also raised in the 2011 People’s Advocate Annual Report, where the People’s Advocate highlighted that:

“This service, as per the legislation in force, is assigned to the General Directorate of Prisons and to its depending structures. The State Police is carrying out this task (without being provided by the relevant legislation) in violation of legal provisions. Furthermore, drafting by the General State Police Directorate of a manual on the organization and operation of this service, is agued by us with legal arguments, as such act is not authorized by the Law “On State Police”. In order to resolve this legal issue, we have recommended the amendment of Article 4 of Law “On State Police”.

From the experience of previous years, we have identified that conflicts are the main ground of accompaniment of individuals at the Police Commissariats, but given that the purpose of accompaniment by the police is to prevent potential crimes, we are of the opinion that this case has to be regulated by law. To this end we have recommended for the amendment of Law “On State Police”, so as to add more items in the list of the causes of police accompaniment in Article 101 of the current law”⁷.

Regarding the above, the General State Police Director drafted an action plan to follow and apply the People's Advocate recommendations.

The action plan contained measures and concrete tasks in service to putting to light these recommendations. Deadlines were also attached to some of the actions. The working group established by the General State Police Directorate for implementing the plan, cooperated closely with experts from the People's Advocate Office. Initially the group was familiarized with the ad-hoc report “*On the Implementation of Recommendations by the People's Advocate*

⁷ 2011 Annual Report.

Office". A final draft action-plan was prepared in cooperation with experts from the People's Advocate Office and other stakeholders from civil society before it was submitted to the Assembly for approval.

The State Police continues to show problems related to violation of human rights and fundamental freedoms, affecting the physical integrity of individual, engaging in torture, physical and psychological ill-treatment during police and procedure actions, deprivation of liberty because of accompaniment to police without legal reasons, or failure to register the exact time of detention or arrest of the individuals.

The People's Advocate in the role of NMPT has identified cases when police staff do not receive, administrate or follow criminal complaints or requests addressed by citizens in conformity with the law.

The infrastructure of the accompaniment and security facilities, in most of the police commissariats is out of the legal standards and does not even meet the minimal living conditions. The deadlines for building or reconstructing the accompaniment and security facilities, according to the specifications in the work programme, are approved by the General State Police Director, pursuant to Recommendation no. 12 of the European Union. The work programme hasn't been observed, since the construction and reconstruction of these facilities hasn't finished.

Training of all the police staff serving in the accompaniment and security facilities has not finished yet.

The use of the registers for administration of complaints of the accompanied, detailed or arrested people remains problematic.

The camera surveillance process in the accompaniment, detention, and investigation facilities remains problematic.

Not all Police Commissariats have posters containing the rights of the accompanied/detained or arrested people.

With regard to the abovementioned issues, the People's Advocate Institution has made the following recommendations:

- Continuous training of the police staff for familiarizing them with the relevant legislation; in addition to courses organized in the Police Training Center, conferences, seminars, meetings with the participation of civil society, is still needed;
- Cooperation with civil society, with the purpose of monitoring the human rights situation by the police should continue;
- Provision of the necessary financial means for the purpose of building or reconstruction of the accompaniment or detention venues/enters in all the police commissariats, according to the approved programme, should continue and intensify;
- Posters containing the rights of nationals should be provided in all police facilities ;

CHAPTER V:

Conventions and Protocols

5.1. CPT General Report, 2011-2012

Relations between the CPT and National Preventive Mechanisms (NPMs)

Preliminary remarks

A system of independent oversight of places where persons are deprived of their liberty is a fundamental safeguard against ill-treatment. Consequently, as from the outset of its activities, the CPT has been recommending the establishment of independent national structures able to carry out visits on a regular basis to prisons, police establishments and the like. Indeed, provided they possess the necessary knowledge and powers and are adequately resourced, monitoring mechanisms at national level – be they visiting boards, People’s Advocate offices or similar entities – can intervene more frequently, and more rapidly, than any international body.

The entry into force, in June 2006, of the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) created a fresh perspective regarding the monitoring of places of detention and the prevention of torture. First, this treaty established a new independent international monitoring mechanism, the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), with very similar powers to the CPT but at universal level. It is incumbent on the CPT and the SPT to seize all opportunities for cooperation and the sharing of know-how, and in this regard there are regular exchanges of views between the two bodies and their respective secretariats.

However, another aspect of the OPCAT, the so-called “second pillar”, is arguably even more significant. States adhering to the Optional Protocol are obliged to provide at the domestic level for national preventive mechanisms (NPMs) possessing extensive monitoring powers in relation to places of detention. In the European context, 31 member States of the Council of Europe have already ratified the OPCAT and to date 25 countries have set up or designated an NPM, a development which is in line with the CPT’s long-standing recommendation referred to above. And it is now standard practice for the Committee to expressly encourage those States which have not already done so to ratify the OPCAT and set up an NPM. The NPMs are natural partners for the CPT. In fact, the effectiveness of efforts to assist States in Europe to prevent torture and other forms of ill-treatment will in future depend to a large extent on the quality of the interaction between the Committee and these mechanisms.

In the following paragraphs, the CPT sets out some provisional thoughts on how it sees its future relations with NPMs and, more specifically, on the means of promoting synergy between the

Committee and these emerging actors at national level. The CPT would welcome comments on this section of its General Report.

Types of NPMs and key requirements

From the observation of NPMs already operating within Europe, three main models can be identified:

- People's Advocate/People's Advocate plus: in countries following this approach (e.g. Albania, Estonia, Georgia, Spain), the pre-existing functions of the People's Advocate institution are extended to encompass the NPM mandate.

In certain countries (e.g. Republic of Moldova, Slovenia), the NPM mandate is carried out by the People's Advocate office together with civil society actors (NGOs).

- Stand-alone single body model: that is the establishment of a specific body exclusively devoted to carrying out the NPM mandate. Examples of this approach are the mechanisms established in France, Liechtenstein and Switzerland.

- Multi-body model: in certain countries (e.g., the Netherlands and the United Kingdom), several existing inspectorates and/or specialised independent institutions have been jointly designated as the NPM, with one institution having a coordinating role.

NPM structures inevitably reflect the specific characteristics of each country, which no doubt explains why they are often quite different in terms of organisational make-up, budgetary means, and even powers and competences. It is certainly not for the CPT to promote one particular model over another.

However, the Committee is attentive to whether a given mechanism, whatever its form, meets the key requirements as laid down in the OPCAT and subsequently elaborated upon by the SPT in its Guidelines on NPMs. Those requirements include the functional independence of the mechanism and of its personnel, adequate resources, experienced and diversified membership, as well as a mandate and powers which are in accordance with the OPCAT (Articles 19 and 20) and clearly set out in a constitutional or legislative text. It should be noted in this regard that the degree of interaction between the CPT and a given NPM will inevitably depend to a large extent on the Committee's perception of that mechanism's real level of independence.

When the CPT encounters situations in which the above-mentioned requirements do not appear to be met, it will raise the matter with the national authorities. For example, the Committee has commented in several visit reports on the apparent inadequacy of the resources placed at the disposal of the NPM in the country concerned. Similarly, in one report the CPT highlighted a specific case in which an NPM did not enjoy ready access to police holding facilities and/or custody registers (in clear contravention of Article 20 of the OPCAT), and made recommendations designed to avoid any repetition of such a situation. By acting in this way the CPT hopes to provide concrete support to NPMs, many of which are still at an early stage of their development and trying to make their mark.

Of course, the mere fact of an NPM being OPCAT-compliant is not a guarantee of success. Possessing the relevant powers and adequate resources is one thing, making the most effective use of them quite another.

Exchange of knowledge

In recent years, the CPT has taken an active part in a number of events aimed at fostering among the different monitoring bodies mandated to prevent ill-treatment a coherent approach in terms of both standards and working methods. This has occurred in particular in the framework of the European NPM Project, which comprised both thematic workshops and onsite exchanges of experience. The Committee has also participated in conferences on the establishment of NPMs at national level. Additionally, CPT members have been involved in their private capacity in training activities in their own country and in third countries. All this has resulted in valuable experience-sharing on prevention of torture and other forms of ill-treatment, and more specifically on the most effective methods of conducting visits to places of deprivation of liberty.

The CPT will continue to participate in such events, which beyond the knowledge exchanged serve more generally to promote synergy between the national and international partners in the field of prevention of ill-treatment. In

this context, the Committee is envisaging the organisation of regular exchanges of views on topical issues with representatives of established and operational NPMs.

On substantive issues, the CPT has gradually developed its own set of “measuring rods”. This has been done not only on the basis of the Committee’s empirical findings during visits, but also in the light of some key reference points, such as Council of Europe recommendations relating to the deprivation of liberty and the case law of the European Court of Human Rights, as well as relevant UN human rights instruments and related jurisprudence. These general criteria provide a basis for assessment and the recommendations contained in CPT reports.

A similar process of standards development can be expected in countries which have ratified the OPCAT, as the NPMs gradually develop their activities, and this brings with it the risk of diverging approaches and interpretations vis-à-vis given situations. Regular exchanges of views of the kind just referred to will help to counter this risk. It may well not be possible to arrive at common standards in all areas, but everything should be done to facilitate the coherence of action proposed. If the CPT and NPMs issue contradictory recommendations, this can only undermine their respective efforts to prevent ill-treatment.

Equally, the precise manner in which one goes about the business of visiting the different types of places of deprivation of liberty should be the subject of a continuous sharing of experience and knowledge, so as to promote as far as possible consistent methodologies. The CPT could make available internal tools it has developed in this area. To borrow a phrase used at the November 2009 Strasbourg Conference on new partnerships for torture prevention in Europe, organised jointly by the CPT and the Association for the Prevention of Torture, the aim should be to “support and inspire each other”. Entered into in this spirit of building on each other’s accumulated experience, the exchange of knowledge can only deepen the impact of monitoring bodies, be they national, regional or universal.

CPT/NPM interaction in the context of visits

A visit by the CPT, whether periodic or ad hoc, is a key moment for relations and more specifically cooperation – between the Committee and the NPM in the country concerned.

Before and during the visit

Before a periodic visit gets underway, the information gathered by the relevant NPM and its conclusions and annual reports can be invaluable to the CPT for the purposes of identifying the main themes of the visit and the particular places that should be visited. There needs to be continuous communication between the Committee's secretariat and NPMs, increasing in intensity in the months preceding the visit. The publication by the CPT, at the end of each year, of the list of countries in which a periodic visit will take place in the following year should facilitate this process. Of course, information received from an NPM might also trigger an ad hoc visit by the CPT.

A meeting between the CPT's delegation and representatives of the NPM should be organised at the outset of a visit. In this way, the delegation can be updated on the most recent information at the NPM's disposal. In return, the delegation could indicate the places of deprivation of liberty it intends to visit, thereby reducing the risk of unnecessary duplication of work while the delegation is in the country (it being understood, of course, that the delegation may decide during the visit to alter its programme and go to other places). This meeting can also provide the occasion for a general discussion of the NPM's work in the country in question and of any difficulties it may be encountering. Based on this discussion, the delegation may raise certain areas of concern with the national authorities, at the end-of-visit talks and/or in the visit report.

During the visit, the CPT's delegation acts autonomously according to its defined priorities and the needs encountered on the ground. However, the Committee welcomes the presence of a representative of the NPM during its delegation's meetings with the national authorities. Representation of the NPM is particularly useful at the end-of-visit talks, when the delegation will provide its preliminary remarks as well as any observations of an urgent nature. In this way, NPMs can be directly informed, without delay, of the CPT's concerns and as appropriate take prompt action. Consequently, the CPT hopes that States Parties will give favourable consideration to requests from the NPM to be present at such meetings.

Relations between the CPT and National Preventive Mechanisms (NPMs)

After the visit

It is axiomatic that an NPM is ideally placed to ensure follow-up to a CPT visit and, more specifically, to monitor the implementation of recommendations made by the Committee. However, the rule of confidentiality which applies to the CPT's visit reports until such time as they are authorised for publication by the State concerned can act as a brake on exploiting this obvious avenue for synergy. At the same time, a State which has ratified both the Convention establishing the CPT and the OPCAT surely has every interest in seeing the CPT and NPM work hand in hand. For this reason, the CPT believes that serious consideration should be given by States to the possibility of transmitting to the NPM without delay the Committee's visit report, on the condition that it is treated as confidential until such time as the State has agreed to its publication (a similar proviso could be applied vis-à-vis the presence of an NPM at end-of-visit talks).

Once the NPM is in possession of the full visit report, whether upon the report's publication or, hopefully, at an earlier stage, the CPT intends to consult with the mechanism on how it can best help the Committee take forward its recommendations. A meeting between CPT representatives and the NPM could be organised on this subject in the country concerned (and as soon as the

visit report is in the public domain, other relevant actors could be associated with these discussions). In fact, in a number of countries, NPMs are already taking the initiative and pursuing the implementation of the CPT's recommendations; the CPT encourages all NPMs to proceed in this way and to provide relevant follow-up information to the Committee.

Reference must also be made to the risk of reprisals against detained persons who have been interviewed by a CPT delegation, a risk which on occasion is all too real. By virtue of their powers and capacity to ensure an immediate presence, NPMs are well placed to counter that risk, and the CPT will when necessary provide the NPM in the country concerned with the relevant information.

Some specific issues

Individual communications addressed to the CPT

The CPT receives a considerable number of communications from detained persons, or their relatives or friends, raising issues about their treatment and conditions of detention. These communications help the Committee to obtain an accurate picture of the overall situation in a given country and to identify any worrying trends. However, the CPT generally does not seek to intervene in individual cases; the Committee's role is not that of an Ombudsperson, nor does it have the resources to perform such an activity.

Publication highlights

When appropriate, the attention of the persons who sent the communication is drawn to an independent body at national level which could examine the matter raised, and that body might be an NPM. The question has been raised whether the CPT should not itself take the initiative to transmit individual communications to the relevant NPM (save for those cases when from the content of the communication, it is clear that this would be contrary to the wishes of the person concerned). This question will most likely be answered on a country by country basis, in the light, inter alia, of the relationship that is gradually developed between the CPT and each NPM.

Simultaneous membership of the CPT and an NPM

Within the CPT, there are now several members who are members of and even heading the NPM in their country. The question has been raised whether this does not involve a conflict of interest. For its part, the CPT does not see this situation as problematic, provided that the NPM concerned is OPCAT-compliant and, in particular, enjoys functional independence. It should be emphasised in this regard that a CPT member does not play an active role in relation to the Committee's activities in the country in respect of which he/she has been elected.

More specifically, a CPT member never takes part in a visit by the Committee to that country, and he/she does not intervene in the subsequent discussion of the draft visit report.

In addition, the CPT derives considerable benefit from the expertise of members with NPM experience when assessing the situation in other European countries. Their presence enriches the diversity of views within the Committee and provides for a larger spectrum of professionals with direct knowledge of on-site monitoring.

Joint participation in visits

The possibility has been mooted of NPM members joining the CPT's delegation during a visit to their country, or of CPT members being invited to participate in an NPM visit. The CPT is not in favour of such scenarios. To begin with, the rule of confidentiality which applies to the Committee's activities would pose significant problems as regards the participation of NPM members in one of its visits. More fundamentally, the Committee considers that to mix up the functions of national and international preventive mechanisms could prove to the detriment of both. The strength of the tripartite monitoring system (NPMs, CPT, SPT) now in place – the assistance and support that each part can provide to the others – lies precisely in the mechanisms remaining, and being seen to remain, quite separate. "United in our goals, distinct in our roles" should be the motto to adopt.

5.2. UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁸.

The States Parties to this Convention,
Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,
Recognizing that those rights derive from the inherent dignity of the human person,
Considering the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,
Having regard to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment,
Having regard also to the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1975 (resolution 3452 (XXX)),
Desiring to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world,
Have agreed as follows:

PART I

Article 1

1. For the purposes of this Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the

⁸ United Nations, Treaty Series, vol. 1465, p. 85.

consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
2. No exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency, may be invoked as a justification of torture.
3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

Article 3

1. No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.
2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Article 4

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.
2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

Article 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:
 1. When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;
 2. When the alleged offender is a national of that State;
 3. When the victim was a national of that State if that State considers it appropriate.
2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in Paragraph 1 of this article.
3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 6

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present, shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.
2. Such State shall immediately make a preliminary inquiry into the facts.
3. Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, to the representative of the State where he usually resides.
4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said State and shall indicate whether it intends to exercise jurisdiction.

Article 7

1. The State Party in territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found, shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.
2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.
3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

Article 8

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.
2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested state.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

Article 9

1. States Parties shall afford one another the greatest measure of assistance in connection with civil proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.
2. States Parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

Article 10

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.
2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such persons.

Article 11

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

Article 12

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

Article 13

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to and to have his case promptly and impartially examined by its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

Article 14

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation.
2. Nothing in this article shall affect any right of the victim or other person to compensation which may exist under national law.

Article 15

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

Article 16

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture or references to other forms of cruel, inhuman or degrading treatment or punishment.
2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibit cruel, inhuman or degrading treatment or punishment or which relate to extradition or expulsion.

Article 17

1. There shall be established a Committee against Torture (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided. The Committee shall consist of 10 experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.
2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals. States Parties shall bear in mind the usefulness of nominating persons who are also members of the Human Rights Committee established under the International Covenant on Civil and Political Rights and are willing to serve on the Committee against Torture.
3. Elections of the members of the Committee shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
4. The initial election shall be held no later than six months after the date of the entry into force of this Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.
5. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if re-nominated. However, the term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 3.

6. If a member of the Committee dies or resigns or for any other cause can no longer perform his Committee duties, the State Party which nominated him shall appoint another expert from among its nationals to serve for the remainder of his term, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.
7. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

Article 18

1. The Committee shall elect its officers for a term of two years. They may be re-elected.
2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that
 1. Six members shall constitute a quorum;
 2. Decisions of the Committee shall be made by a majority vote of the members present.
3. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under this Convention.
4. The Secretary-General of the United Nations shall convene the initial meeting of the Committee. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.
5. The State Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement of the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 3 above.

Article 19

1. The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of this Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken, and such other reports as the Committee may request.
2. The Secretary-General shall transmit the reports to all States Parties.
3. [Each report shall be considered by the Committee which may make such comments or suggestions on the report as it considers appropriate, and shall forward these to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.
4. The Committee may, at its discretion, decide to include any comments or suggestions made by it in accordance with paragraph 3, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article 24. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph 1.]

Article 20

1. If the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party, the Committee shall invite that State Party to co-operate in the examination of the information and to this end to submit observations with regard to the information concerned.
2. Taking into account any observations which may have been submitted by the State Party concerned as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently.
3. If an inquiry is made in accordance with paragraph 2, the Committee shall seek the co-operation of the State Party concerned. In agreement with that State Party, such an inquiry may include a visit to its territory.
4. After examining the findings of its member or members submitted in accordance with paragraph 2, the Committee shall transmit these findings to the State Party concerned together with any comments or suggestions which seem appropriate in view of the situation.
5. All the proceedings of the Committee referred to in paragraphs 1 to 4 of this article shall be confidential, and at all stages of the proceedings the co-operation of the State Party shall be sought. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report made in accordance with article 24.

Article 21

1. A State Party to this Convention may at any time declare under this article 3 that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention. Such communications may be received and considered according to the procedures laid down in this article only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be dealt with by the Committee under this article if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:
 1. If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, references to domestic procedures and remedies taken, pending, or available in the matter.
 2. If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee by notice given to the Committee and to the other State.

3. The Committee shall deal with a matter referred to it under this article only after it has ascertained that all domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.
4. The Committee shall hold closed meetings when examining communications under this article.
5. Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for the obligations provided for in the present Convention. For this purpose, the Committee may, when appropriate, set up an ad hoc conciliation commission.
6. In any matter referred to it under this article, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information.
7. The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing.
8. The Committee shall, within 12 months after the date of receipt of notice under subparagraph (b), submit a report.
 1. If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached.
 2. If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 22

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall

be received by the Committee if it concerns a State Party to the Convention which has not made such a declaration.

2. The Committee shall consider inadmissible any communication under this article which is anonymous, or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of this Convention.
3. Subject to the provisions of paragraph 2, the Committee shall bring any communication submitted to it under this article to the attention of the State Party to this Convention which has made a declaration under paragraph 1 and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.
4. The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned.
5. The Committee shall not consider any communication from an individual under this article unless it has ascertained that:
 1. The same matter has not been, and is not being examined under another procedure of international investigation or settlement;
 2. The individual has exhausted all available domestic remedies; this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.
6. The Committee shall hold closed meetings when examining communications under this article.
7. The Committee shall forward its views to the State Party concerned and to the individual.
8. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit parties thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by or on behalf of an individual shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 23

The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under article 21, paragraph 1 (e), shall be entitled to the facilities, privileges and immunities of experts on missions for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 24

The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.

PART III

Article 25

1. This Convention is open for signature by all States.
2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 26

This Convention is open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 27

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying this Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not recognize the competence of the Committee provided for in article 20.
2. Any State Party having made a reservation in accordance with paragraph 1 of this article may, at any time, withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 29

1. Any State Party to this Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to this Convention with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the State Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted by the Secretary-General to all the States Parties for acceptance.
2. An amendment adopted in accordance with paragraph 1 shall enter into force when two thirds of the States Parties to this Convention have notified the Secretary-General of the United Nations that they have accepted it in accordance with their respective constitutional processes.
3. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted.

Article 30

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State may at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by the preceding paragraph. The other States Parties shall not be bound by the preceding paragraph with respect to any State Party having made such a reservation.
3. Any State Party having made a reservation in accordance with the preceding paragraph may at any time withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 31

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.
2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes effective. Nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.
3. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

Article 32

The Secretary-General of the United Nations shall inform all members of the United Nations and all States which have signed this Convention or acceded to it, of the following particulars:

1. Signatures, ratifications and accessions under articles 25 and 26;
2. The date of entry into force of this Convention under article 27, and the date of the entry into force of any amendments under article 29;
3. Denunciations under article 31.

Article 33

1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States.

5.3. Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment⁹.

PREAMBLE

The States Parties to the present Protocol,
Reaffirming that torture and other cruel, inhuman or degrading treatment or punishment are prohibited and constitute serious violations of human rights,
Convinced that further measures are necessary to achieve the purposes of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Convention) and to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment,
Recalling that articles 2 and 16 of the Convention oblige each State Party to take effective measures to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction,
Recognizing that States have the primary responsibility for implementing those articles, that strengthening the protection of people deprived of their liberty and the full respect for their human rights is a common responsibility shared by all and that international implementing bodies complement and strengthen national measures,
Recalling that the effective prevention of torture and other cruel, inhuman or degrading treatment or punishment requires education and a combination of various legislative, administrative, judicial and other measures,
Recalling also that the World Conference on Human Rights firmly declared that efforts to eradicate torture should first and foremost be concentrated on prevention and called for the adoption of an optional protocol to the Convention, intended to establish a preventive system of regular visits to places of detention,
Convinced that the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment can be strengthened by non-judicial means of a preventive nature, based on regular visits to places of detention, Have agreed as follows:

PART I

General principles

Article 1

The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

Article 2

1. A Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (hereinafter referred to as the Subcommittee on

⁹ United Nations, Treaty Series, vol. 2375, p. 237.

Prevention) shall be established and shall carry out the functions laid down in the present Protocol.

2. The Subcommittee on Prevention shall carry out its work within the framework of the Charter of the United Nations and shall be guided by the purposes and principles thereof, as well as the norms of the United Nations concerning the treatment of people deprived of their liberty.

3. Equally, the Subcommittee on Prevention shall be guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity.

4. The Subcommittee on Prevention and the States Parties shall cooperate in the implementation of the present Protocol.

Article 3

Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism).

Article 4

1. Each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in articles 2 and 3 to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as places of detention). These visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment.

2. For the purposes of the present Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.

PART II

Subcommittee on Prevention

Article 5

1. The Subcommittee on Prevention shall consist of ten members. After the fiftieth ratification of or accession to the present Protocol, the number of the members of the Subcommittee on Prevention shall increase to twenty-five.

2. The members of the Subcommittee on Prevention shall be chosen from among persons of high moral character, having proven professional experience in the field of the administration of justice, in particular criminal law, prison or police administration, or in the various fields relevant to the treatment of persons deprived of their liberty.

3. In the composition of the Subcommittee on Prevention due consideration shall be given to equitable geographic distribution and to the representation of different forms of civilization and legal systems of the States Parties.

4. In this composition consideration shall also be given to balanced gender representation on the basis of the principles of equality and non-discrimination.

5. No two members of the Subcommittee on Prevention may be nationals of the same State.

6. The members of the Subcommittee on Prevention shall serve in their individual capacity, shall be independent and impartial and shall be available to serve the Subcommittee on Prevention efficiently.

Article 6

1. Each State Party may nominate, in accordance with paragraph 2 of the present article, up to two candidates possessing the qualifications and meeting the requirements set out in article 5, and in doing so shall provide detailed information on the qualifications of the nominees.

2.

(a) The nominees shall have the nationality of a State Party to the present Protocol;

(b) At least one of the two candidates shall have the nationality of the nominating State Party;

(c) No more than two nationals of a State Party shall be nominated;

(d) Before a State Party nominates a national of another State Party, it shall seek and obtain the consent of that State Party.

3. At least five months before the date of the meeting of the States Parties during which the elections will be held, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall submit a list, in alphabetical order, of all persons thus nominated, indicating the States Parties that have nominated them.

Article 7

1. The members of the Subcommittee on Prevention shall be elected in the following manner:

(a) Primary consideration shall be given to the fulfilment of the requirements and criteria of article 5 of the present Protocol;

(b) The initial election shall be held no later than six months after the entry into force of the present Protocol;

(c) The States Parties shall elect the members of the Subcommittee on Prevention by secret ballot;

(d) Elections of the members of the Subcommittee on Prevention shall be held at biennial meetings of the States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Subcommittee on Prevention shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties present and voting.

2. If during the election process two nationals of a State Party have become eligible to serve as members of the Subcommittee on Prevention, the candidate receiving the higher number of votes shall serve as the member of the Subcommittee on Prevention. Where nationals have received the same number of votes, the following procedure applies:

(a) Where only one has been nominated by the State Party of which he or she is a national, that national shall serve as the member of the Subcommittee on Prevention;

(b) Where both candidates have been nominated by the State Party of which they are nationals, a separate vote by secret ballot shall be held to determine which national shall become the member;

(c) Where neither candidate has been nominated by the State Party of which he or she is a national, a separate vote by secret ballot shall be held to determine which candidate shall be the member.

Article 8

If a member of the Subcommittee on Prevention dies or resigns, or for any cause can no longer perform his or her duties, the State Party that nominated the member shall nominate another eligible person possessing the qualifications and meeting the requirements set out in article 5,

taking into account the need for a proper balance among the various fields of competence, to serve until the next meeting of the States Parties, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

Article 9

The members of the Subcommittee on Prevention shall be elected for a term of four years. They shall be eligible for re-election once if renominated. The term of half the members elected at the first election shall expire at the end of two years; immediately after the first election the names of those members shall be chosen by lot by the Chairman of the meeting referred to in article 7, paragraph 1 (d).

Article 10

1. The Subcommittee on Prevention shall elect its officers for a term of two years. They may be re-elected.
2. The Subcommittee on Prevention shall establish its own rules of procedure. These rules shall provide, inter alia, that:
 - (a) Half the members plus one shall constitute a quorum;
 - (b) Decisions of the Subcommittee on Prevention shall be made by a majority vote of the members present;
 - (c) The Subcommittee on Prevention shall meet in camera.
3. The Secretary-General of the United Nations shall convene the initial meeting of the Subcommittee on Prevention. After its initial meeting, the Subcommittee on Prevention shall meet at such times as shall be provided by its rules of procedure. The Subcommittee on Prevention and the Committee against Torture shall hold their sessions simultaneously at least once a year.

PART III

Mandate of the Subcommittee on Prevention

Article 11

1. The Subcommittee on Prevention shall:
 - (a) Visit the places referred to in article 4 and make recommendations to States Parties concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
 - (b) In regard to the national preventive mechanisms:
 - (i) Advise and assist States Parties, when necessary, in their establishment;
 - (ii) Maintain direct, and if necessary confidential, contact with the national preventive mechanisms and offer them training and technical assistance with a view to strengthening their capacities;
 - (iii) Advise and assist them in the evaluation of the needs and the means necessary to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
 - (iv) Make recommendations and observations to the States Parties with a view to strengthening the capacity and the mandate of the national preventive mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;

(c) Cooperate, for the prevention of torture in general, with the relevant United Nations organs and mechanisms as well as with the international, regional and national institutions or organizations working towards the strengthening of the protection of all persons against torture and other cruel, inhuman or degrading treatment or punishment.

Article 12

In order to enable the Subcommittee on Prevention to comply with its mandate as laid down in article 11, the States Parties undertake:

- (a) To receive the Subcommittee on Prevention in their territory and grant it access to the places of detention as defined in article 4 of the present Protocol;
- (b) To provide all relevant information the Subcommittee on Prevention may request to evaluate the needs and measures that should be adopted to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
- (c) To encourage and facilitate contacts between the Subcommittee on Prevention and the national preventive mechanisms;
- (d) To examine the recommendations of the Subcommittee on Prevention and enter into dialogue with it on possible implementation measures.

Article 13

1. The Subcommittee on Prevention shall establish, at first by lot, a programme of regular visits to the States Parties in order to fulfil its mandate as established in article 11.
2. After consultations, the Subcommittee on Prevention shall notify the States Parties of its programme in order that they may, without delay, make the necessary practical arrangements for the visits to be conducted.
3. The visits shall be conducted by at least two members of the Subcommittee on Prevention. These members may be accompanied, if needed, by experts of demonstrated professional experience and knowledge in the fields covered by the present Protocol who shall be selected from a roster of experts prepared on the basis of proposals made by the States Parties, the Office of the United Nations High Commissioner for Human Rights and the United Nations Centre for International Crime Prevention. In preparing the roster, the States Parties concerned shall propose no more than five national experts. The State Party concerned may oppose the inclusion of a specific expert in the visit, whereupon the Subcommittee on Prevention shall propose another expert.
4. If the Subcommittee on Prevention considers it appropriate, it may propose a short follow-up visit after a regular visit.

Article 14

1. In order to enable the Subcommittee on Prevention to fulfil its mandate, the States Parties to the present Protocol undertake to grant it:
 - (a) Unrestricted access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;
 - (b) Unrestricted access to all information referring to the treatment of those persons as well as their conditions of detention;
 - (c) Subject to paragraph 2 below, unrestricted access to all places of detention and their installations and facilities;

(d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the Subcommittee on Prevention believes may supply relevant information;

(e) The liberty to choose the places it wants to visit and the persons it wants to interview.

2. Objection to a visit to a particular place of detention may be made only on urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder in the place to be visited that temporarily prevent the carrying out of such a visit. The existence of a declared state of emergency as such shall not be invoked by a State Party as a reason to object to a visit.

Article 15

No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the Subcommittee on Prevention or to its delegates any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

Article 16

1. The Subcommittee on Prevention shall communicate its recommendations and observations confidentially to the State Party and, if relevant, to the national preventive mechanism.

2. The Subcommittee on Prevention shall publish its report, together with any comments of the State Party concerned, whenever requested to do so by that State Party. If the State Party makes part of the report public, the Subcommittee on Prevention may publish the report in whole or in part. However, no personal data shall be published without the express consent of the person concerned.

3. The Subcommittee on Prevention shall present a public annual report on its activities to the Committee against Torture.

4. If the State Party refuses to cooperate with the Subcommittee on Prevention according to articles 12 and 14, or to take steps to improve the situation in the light of the recommendations of the Subcommittee on Prevention, the Committee against Torture may, at the request of the Subcommittee on Prevention, decide, by a majority of its members, after the State Party has had an opportunity to make its views known, to make a public statement on the matter or to publish the report of the Subcommittee on Prevention.

ANNEX 1:

Co-operation agreement

On the institutionalization of the relations between the institution of the People's Advocate and the Albanian Helsinki Committee

Introduction

With the aim of realizing a common activity in respecting, guaranteeing, strengthening and advancing human rights in Albania; in order to increase the co-operation aiming at the increase of legislature implementation, new policies aiming at increasing the quality of services, prevention arbitrary cases and activity by the bodies of public administration, as well as to request, if need be, the positive intervention of the state to stop violence, discrimination, or prejudice, this agreement is signed as follows:

The Parties,

1. **The People's Advocate, Mr. Igli Totozani**, with premises situated in Bul. "Zhan D'Ark", Nr. 2, Tirana.
2. **Albanian Helsinki Committee (AHC)**, with premises in Str. "Gjin Bue Shpata", pall.5/1, ap.4 Tirana, represented Ms. Vjollca Mecaj, Executive Director,

have agreed on the signing the agreement, with the content as follows:

Article 1

The Objective of the Agreement

This agreement aims the institutionalization of co-operation of the institution of the People's Advocate with AHC, in the frame work of common work guarantying the realisation of common observing missions in prisons, pre-detentions centres, police stations, psychiatric hospitals and institutions of local and central authorities, development of policies and laws in favour of human rights, the fight for eliminating discrimination due to age, status, gender, religions, as well as for the advancement of human rights in Albania, including, among other things, the advancement of gender equality and participation of women in decision taking, the rights of minorities and human rights in general.

Article 2

Field of Implementation

1. The agreement with be implemented by the abovementioned parties, in the field of this agreement in order to achieve the abovementioned objective.
2. This agreement will consist in:

- a) the undertaking of common initiatives for proposal aiming at the improvement and change of the legislation focusing on sanctions and better implementation of human rights, in compliance with the Constitution of the Republic of Albania and the conventions ratified by the Albanian State, paying particular attention to the strata and groups of people in need.
- b) Reference to concrete cases, according to the needs of the complainant, including reciprocal reference between the HAC and the People's Advocate.
- c) Undertaking joint initiatives to address refer and solve concrete cases at competent institutions and national courts, Constitutional Court, as well as relevant international bodies.
- d) The commitment of the organization to inform the People's Advocate for the issues and problems, as well as the generalizations emerging from the monitoring reports regarding issues of the implementation and respect of human rights.
- e) The exchange of information on regular basis through periodic meetings, exchange of information, joints site visits, reciprocal notification for different cases which ask for intervention and support.
- f) Organization of common awareness-raising activities at a national level, including the organization of awareness-raising campaigns.

Article 3 **Co-ordination between Parties**

1. The parties will appoint a contact person that will be responsible for the concrete and operational implementation of the Co-operation Agreement, as well as for the exchange of information related to it.
2. The communication between the parties should be in a written form. In cases when the parties need important and urgent information, it can be conveyed electronically and verbally, but in every instance through the contact persons.

Article 4 **Last dispositions**

1. This agreement will enter into force on the date it is signed by the parties and will remain in force for a undefined period.
2. Changes can be done through agreement of the parties. This can be done through written communication, specifying the date of the entrance into power.
3. Any misunderstanding on the interpretation or implementation of this Agreement shall be solved through understanding between the two parties.
4. Besides provision of paragraph 1 of this article, this Agreement may be terminated at any time by one of the parties, notifying the other party in a written form 60 days in advance.
5. The Agreement in drafted in Albanian, prepared and signed in two original copies, one copy for the HAC and the other for the People's Advocate.

People's Advocate

Igli Totozani

**Non-profit Organization
Helsinki Albanian Committee**

Vjollca Mecaj
Executive Director

ANNEX 2:

Co-operation agreement

between

The People's Advocate

and

The European Institute of Tirana

Introduction

This agreement constitutes the legal basis for the co-operation between the institution of the People's Advocate of the Republic of Albanian (hereinafter PA) and the European Institute of Tirana (hereinafter EIT) in the frame of the common engagement for the implementation of the project "The Increase of Access in the Justice System in Albania: Protection of Human Rights in the Pre-detention System", financed by the European Union and the co-financing of the Institute of Open Society, for the effective respect of basic rights of pre-detainees and the law in pre-detention institutions in Albania.

This agreement is in compliance with article 30, paragraph I of the law no. 8454, dated 4.2.1999, "On the People's Advocate", amended, law no. 9888, dated 10.3.2008, "On some amendments and addenda to law no. 8328, dated 16.4.1998, "On the rights and treatment of the people sentenced to imprisonment" amended, and enters into force after signing of the representatives of the above-mentioned subjects.

Section I

General Dispositions

Article 1

Aim

This agreement aims at the co-operation between the two institutions for the protection of pre-detainees rights, as provided by the legal framework mentioned above, and also in compliance with the international standards regarding respect of human rights and prevention of ill-treatment and torture for the people deprived of their liberty.

Article 2

Definitions

For the purposes of this agreement:

- a. monitoring is the process of collection, observation and evaluation of data, results, functions, and the process of implementation of the legal and international framework;
- b. the monitoring team is the joint group of experts of the People's Advocate and the EIT that carry out the monitoring visits. This group is composed of lawyers, psychologists, social workers/educators, and physicians, in accordance with the requirements of the OPCAT;
- c. monitoring reports are the administrative and documenting acts that reflect the fulfilment of the mission of the evaluation team, according to the standard monitoring instrument.

Section II

Co-operation and mutual assistance

Article 3

The field of co-operation

In compliance with the aim of this Agreement, the fields of co-operation and reciprocal assistance will focus on:

- a) undertaking joint monitoring visits in all the institutions of pre-detention;
- b) offering mutual assistance through expertise as well as legal, medical and psychological staff for the progress of the periodic monitoring of the pre-detention system;
- c) proposals for amendments to legislation;
- d) proposals for changes in the organizing/institutional structures of the pre-detention system;
- e) respect of ethics standards and the rights of pre-detained;
- f) effective implementation of EC legislation and the UN standards.

Article 4

Periodic monitoring of the national penitentiary system

- a) The National Unit for the Prevention of Torture at the PA in co-operation with EIT will observe in regular basis the treatment of individuals in the pre-detention institutions, aiming at the reinforcement, when need be, of the protection of individuals from torture and the cruel, inhumane and degrading treatment;
- b) The National Unit for the Prevention of Torture at PA and the EIT co-operate in presenting recommendations for the relevant bodies, aiming the improvement of treatment and conditions of individuals deprived of their liberty and prevent degrading, inhumane and humiliating treatment;

- c) The programme is drafted taking into consideration a certain time and geographic distribution, which allows for the accurate realization of activities in the frame of the implementation of the project “Increase of Access in the Justice System in Albania: Protection of Human Rights in the Pre-detention System, as well as by combining the annual plans of inspection adopted by PA.
- d) The monitoring programme is implemented after it has been discussed in the work group and has taken its final shape, after it has been signed by the Head of the Unit of the National Mechanism for the Prevention of Torture at the PA, Mr. Ervin Karamuco, and the Executive Director of EIT, Ms. Marta Onorato, and after it has been officially registered.

Article 5
Other forms of assistance

- a) For the joint activities based on this Agreement, any kind of assistance/counselling offered, the EIT is committed to respect the most contemporary standards and methods, that are applied in EU countries and/or are obligation of Albania from instruments of international justice;
- b) For the realisation of the monitoring programme, EIT engages experts (Lawyers, psychologists, psychiatrists) who offer the fulfilment of international criteria and the well-functioning of the Pre-detention System in Albania;
- c) The professional assistance and co-operation is offered on the basis of the needs identified during the monitoring visits and evidenced cases, in full respect of the principle of lawfulness, impartiality, and confidentiality. Consequently the parties are committed to exchange information and reciprocal assistance in specific cases evidenced during monitoring visits.

Section III

The continuous monitoring process according to the national and international legislation

Article 6
Calendar of monitoring visits

- a) As constituent par of the mandate, field of activity and international standards that require monitoring and reporting from civil society regarding the standard of human rights in the pre-detention institutions in Albania, the EIT carries out monitoring activities according to a preliminary calendar adopted by the executive director. For as much as possible, in compliance with the circumstances of implementation and the obligations deriving from the project, this calendar will be adapted with the monitoring programme adopted by the PA.

Article 7

Standards for monitoring, reporting and preventing

- a) The standards to be implemented by the EIT during the monitoring and reporting process in respect of the International Conventions ratified by the Republic of Albania are as follows:
- i. United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
 - ii. European Convention for Prevention of Torture;
 - iii. Respective minimal European and UN standards for prisons;
 - iv. OPCAT;
 - v. European Convention for the protection of fundamental human rights, ratified through Law nr. 8137, dated 1996 and the depositing of the ratification instruments at the Secretary General of the Council of Europe on 2 October 1996.

Section IV Sources and means

Article 8 Means and logistic equipment

- a) For the implementation of the programme preliminary adopted, the staff of EIT will be at disposal.
- b) The PA is committed to include in its recommendations the necessary expertise offered by EIT and will facilitate addressing them with the aim of improving the treatment of people in pre-detention centres.

Section V Last dispositions

Article 9 Entry into force and implementation

This agreement enters into force after being signed by the signatory parties on 02.03.2012 and is valid for a 2-year-mandate (may be renovated)

The signatory parties appoint respectively:

Mr. Ervin Karamuco, Head of the Unit of the National Mechanism for the Prevention of Torture at the PA, and

Ms. Marta Onorato, Executive Director of EIT

to follow and implement this agreement.

Article 11
Amendments

This agreement may be revised and amended based on the consensus of the signatory parties.

People's Advocate

European Institute of Tirana

Ervin Karamuco

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ANNEX 3:

Co-operation agreement

between

The People's Advocate

and

The Albanian Rehabilitation Centre for Trauma & Torture

Introduction

This agreement constitutes the legal basis for the co-operation between the institution of the People's Advocate of the Republic of Albanian (hereinafter PA) and the Albanian Rehabilitation Centre for Trauma & Torture (hereinafter ARCT) in the frame of the common engagement for the implementation of the National Campaign against Torture, for the observation of fundamental rights, the law and torture prevention.

This agreement is in compliance with article 30, paragraph I of the law no. 8454, dated 4.2.1999, "On the People's Advocate", amended, law no. 9888, dated 10.3.2008, "On some amendments and addenda to law no. 8328, dated 16.4.1998, "On the rights and treatment of the people sentenced to imprisonment" amended, and enters into force after signing of the representatives of the above-mentioned subjects.

Section I

General Dispositions

Article 1

Aim

This agreement aims at the co-operation between the two institutions for the protection of pre-detainees rights, as provided by the legal framework mentioned above, and also in compliance with the international standards regarding respect of human rights and prevention of ill-treatment and torture for the people deprived of their liberty.

Article 2

Definitions

For the purposes of this agreement:

- a. monitoring is the process of collection, observation and evaluation of data, results, functions, and the process of implementation of the legal and international framework;
- b. the monitoring team is composed of lawyers, psychologists, social workers/educators, and physicians, in accordance with the requirements of the OPCAT;
- c. monitoring reports are the administrative and documenting acts that reflect the fulfilment of the mission of the evaluation team, according to the standard monitoring instrument.

Section II

Co-operation and mutual assistance

Article 3

The field of co-operation

In compliance with the aim of this Agreement, the fields of co-operation and reciprocal assistance will focus on:

- a) undertaking joint monitoring visits in all the institutions of detention (prisons, pre-detentions, police commissariats etc.);
- b) preparation of joint reports on the monitoring visits;
- c) offering mutual assistance through expertise as well as legal, medical and psychological staff for the progress of the periodic monitoring of the pre-detention system;
- d) proposals for amendments to legislation;
- e) proposals for changes in the organizing/institutional structures;
- f) respect of ethics standards and the rights of pre-detained;
- g) effective implementation of EC legislation and the UN standards.

Article 4

Periodic monitoring of the national penitentiary system

- a) The National Unit for the Prevention of Torture at the PA in co-operation with ARCT will observe in regular basis the treatment of individuals deprived of their liberty, aiming at the reinforcement, when need be, of the protection of individuals from torture and the cruel, inhumane and degrading treatment;
- b) The National Unit for the Prevention of Torture at PA and the ARCT co-operate in presenting recommendations for the relevant bodies, aiming the improvement of treatment and conditions of individuals deprived of their liberty and prevent degrading, inhumane and humiliating treatment;

- c) The programme is drafted taking into consideration a certain time and geographic distribution, which allows for the accurate realization of activities in the frame of the national campaign against torture, as well as by combining the annual plans of inspection adopted by PA.
- d) The monitoring programme is implemented after it has been discussed in the work group and has taken its final shape, after it has been signed by the People's Advocate, Mr. Igli Totozani and the Executive Director of ARCT, Mr. Adrian Kati, and after it has been officially registered.

Article 5 **Other forms of assistance**

- d) For the joint activities based on this Agreement, any kind of assistance/counselling offered, the ARCT is committed to respect the most contemporary standards and methods, that are applied in EU countries and/or are obligation of Albania from instruments of international justice;
- e) For the realisation of the monitoring programme, ARCT engages experts (Lawyers, psychologists, psychiatrists) who offer the fulfilment of international criteria and the well-functioning of the Pre-detention System in Albania;
- f) The professional assistance and co-operation is offered on the basis of the needs identified during the monitoring visits and evidenced cases, in full respect of the principle of lawfulness, impartiality, and confidentiality. Consequently the parties are committed to exchange information and reciprocal assistance in specific cases evidenced during monitoring visits.

Section III

The continuous monitoring process according to the national and international legislation

Article 6 **Calendar of monitoring visits**

As constituent part of the mandate, field of activity and international standards that require monitoring and reporting from civil society regarding the standard of human rights in the pre-detention institutions in Albania, the ARCT carries out monitoring activities according to a preliminary calendar adopted by the executive director.

Article 7

Standards for monitoring, reporting and preventing

- a) The standards to be implemented by the ARCT during the monitoring and reporting process in respect of the International Conventions ratified by the Republic of Albania are as follows:
- i. United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
 - ii. European Convention for Prevention of Torture;
 - iii. Respective minimal European and UN standards for prisons;
 - iv. OPCAT;
 - v. European Convention for the protection of fundamental human rights, ratified through Law nr. 8137, dated 1996 and the depositing of the ratification instruments at the Secretary General of the Council of Europe on 2 October 1996.

Section IV

Sources and means

Article 8

Means and logistic equipment

- a) For the implementation of the programme preliminary adopted, the staff and logistical means of ARCT will be at disposal.
- b) The PA is committed to include in its recommendations the necessary expertise offered by ARCT and will facilitate addressing them with the aim of improving the treatment of people deprived of their liberty, by guaranteeing fundamental rights.

Section V

Last dispositions

Article 9

Entry into force and implementation

This agreement enters into force after being signed by the signatory parties and is valid for a 3-year-mandate (may be renovated)

The signatory parties appoint respectively:

Mr. Ervin Karamuco, Head of the Unit of the National Mechanism for the Prevention of Torture at the PA, and

Ms. Erinda Bllaca, expert of ARCT

to follow and implement this agreement.

Article 11
Amendments

This agreement may be revised and amended based on the consensus of the signatory parties.

Igli Totozani

People's Advocate

Adrian Kati

ARCT Executive Director