



**REPUBLIC OF ALBANIA**

**PEOPLE'S ADVOCATE**

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# **ANNUAL REPORT**

**On the activity of the People's Advocate**

**1<sup>st</sup> January - 31<sup>st</sup> December**

**2012**

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**People's Advocate Office**

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Honorable Mrs. Speaker of Assembly of the Republic of the Albania,  
Honorable Members of the Assembly,

Pursuant to Article 63, paragraph 1 of the Constitution of the Republic of Albania and Article 26 of Law no. 8454, dated 04.02.1999 “On the Peoples Advocate”, as amended by Law no. 8600, dated 10.04.2000 and Law no. 9398, dated 12.05.2005, I have the honor, on behalf of the People's Advocate Institution, to submit the report on the activity of the People's Advocate for 2012.

Sincerely,  
The People's Advocate  
Igli TOTOZANI

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## **Brief presentation of the structure of the Annual Report 2012**

In preparation of this Annual Report on the activities of the People's Advocate, we are based on our performance in 2012. Our work is driven by the vision of a society governed by the principles of human rights, in which state institutions act in a transparent, fair, accountable and effective way.

We hope that this Report and the information contained in it, on the situation of fundamental freedoms and human rights in Albania, would be valid for the members of Assembly and the public administration, as well as for national and international organizations working in the field of human rights, counterpart institutions in the region and beyond, educational institutions, media and the public.

Some parts of the report may interest you more than others, and therefore we suggest reading this introduction to help you to understand in which part you will find exactly the information required. Thus, the report is divided into four chapters, as follows:

In the **first chapter**, through opinions and recommendations we intend to reflect on the most important issues presented in 2012 in the work of the Institution through complaints, meetings with citizens, inspections, etc., and present our recommendations for interventions and improvements of human rights standards in Albania.

A comprehensive presentation is made to the seven special reports prepared by the Institution of the People's Advocate in 2012, which aimed to bring to the attention of the Assembly and Executive emergent problems and topics that are judged by the Institution that need to be better addressed by state authorities, through the improvement of the legal framework or improvement of work of the bodies responsible for handling and resolving them.

Besides the protection of the rights of citizens from unlawful acts or omissions of public administration and the promotion of improved human rights standards, the People's Advocate has an essential role in the European integration process in the country. With this regard, it is presented an analysis of the contribution of the People's Advocate to the European integration process.

An innovation of this year, based as well on the request of the Albanian Assembly Resolution “On the evaluation of the activity of the People's Advocate for 2011”, dated 14.06.2012, has

been the development of a study by independent experts with regard to the monitoring of the level of implementation of the recommendations of the People's Advocate received from institutions of public administration.

**The second chapter** is a more detailed presentation of the issues and of the work of the People's Advocate Institution in handling and resolving complaints - divided according to the rights and freedoms guaranteed by the Constitution and other legal acts. This section provides specific case studies, the treatment given and relative solution and also introduces the work of the Institution for the restoration of denied and infringed rights through concrete recommendations to the state institutions.

Contributing to the creation of a culture of human rights in Albania requires an active participation in the further development of the human rights agenda, increase of public knowledge and awareness on human rights, and close cooperation with media, civil society and international institutions within or out of the country.

Based on this conviction, the **third chapter** presents an overview of the interaction with the public, as well as the cooperation of the Institution with different partners of civil society, the media and international partners dedicated to human rights standards.

The **last chapter** includes statistical information on the activity during 2012, but also information on the new institutional structure and financial costs.

## **CHAPTER 1:**

### **1.1. Opinions and recommendations on the human rights situation in Albania**

The People's Advocate is the only national institution having a constitutional status on protecting the human rights and fundamental freedoms in Albania. The People's Advocate is conceptualized as the institution acting in protection of citizens in their relations with the public administration bodies. The People's Advocate does also aim at establishing and creating a proper culture in the administration, transparency and accountability of the state administration vis-à-vis the Albanian nationals and a general strengthening of the rule of law, considering them all as important elements for a proper functioning of democracy and Albania's integration in the EU.

In our work we have found out that the establishment of the culture of human rights in Albania asks for an active participation and for a close cooperation with the public administration, civil society, international institutions in the country and abroad, the academia and media as well as for building knowledge and awareness-raising actions on the rights of the public. We have close cooperation with several partners, central and local government structures, civil society, media and the international partners, who, like us, are dedicated and committed in achieving the human rights standards.

The fundamental and irreplaceable role of the civil society in the country has to be highlighted and appreciated, especially when it comes to the identification of problems, protection and promotion of the citizens' rights and freedoms. The intervention of such actors during 2012 has been important in addressing numerous issues related to Roma minority, gender issues, children in need, the LGBTs, people with special needs, families and individuals affected by blood feud, prisons, police, etc. For this reason, we consider strengthening of cooperation with these partners as fundamental as the establishment of new relations with other stakeholders. We are convinced that only through joint work and by being the most open and inclusive possible for all the various groups of the society, that our voice and the voice of the citizens we serve to shall become more convincing and more powerful, thus encouraging the developing the human rights agenda in Albania.



In this context, this Chapter of the Annual Report shall aim at reflecting the main issues presented during 2012 in the work of the institution through complains, meetings with citizens, inspections and others, and at showing how we have submitted our recommendations for improving the situation of the human rights standards in Albania. We are of the opinion that such information on the human rights situation in the country will be valuable for the Members of Parliament and the public administration bodies, as well as for the national and international bodies dealing with the human rights field in the country, media and the public. The People's Advocate is an independent and impartial institution. Its task is to provide a real and transparent overview of the situation and of the findings. In addition, part of the tasks of the People's Advocate is issuing of recommendations and opinions on the improvement of the situation of human rights in the country.

According to the Constitution of the Republic of Albania and to the legal framework in force, the public bodies, while meeting their obligations, need to respect the fundamental rights and freedoms of the individual and to contribute in their fulfillment. Often times drafting, approval and existence of laws is not sufficient, as it is the real implementation of the legal obligations deriving from such acts that guarantee the rule of law and enjoyment of the fundamental rights and freedoms of the individual. Thus, in 2012, the People's Advocate has dealt with cases of violation of the right to equality of arms and prohibition of discrimination, violation of the right to information, violation of human rights by the police, violation of the rights of prisoners, prolongation of court and administrative procedures, violation of the property rights, of the labour-related, refusal of requests of aliens for accommodation, problems in getting social insurance and the economic assistance, problems in the free and effective exercise of the right for education and health case, etc.

The People's Advocate does not resolve himself a situation due to a violation of a certain right of a complaining citizen, but instead issues recommendations for restitution of the violated right to the public administration body, which, according to the People's Advocate, has caused such violation. For all the cases covered, all appropriate interventions are made by the People's Advocate through submissions of the relevant recommendations. Issuance of recommendations in cases when violations of the human rights of the complainants by the public administration are identified, dealing with the consideration and investigation of relevant complains, is just only one side of the medal. But, the other side of the medal is related to giving life to these recommendations by the public administration bodies and

institutions. Issuance of the recommendations is not an aim in itself. Their enforcement should be appreciated as it is in the interest of the complainants and of the public administration, which legal task is to apply and respect the rights and freedoms of the individual.

Hence, it is worth mentioning that in 2012, the public administration bodies have accepted 1368 cases, which make up for 76 percent of the complaints already treated within the jurisdiction and competence of the People's Advocate. In the meantime, according to an independent study on monitoring of the effectiveness of the People's Advocate work for 2012, 58 percent of the complaints are accepted by the public administration in favor of the citizens.

But, the hitherto practice shows that there are cases when recommendations are not applied, or when replies to the recommendations do not come according to the legally-defined term. In such situation, we either repeat the recommendations, or ask for a reply by the relevant institutions. There are cases when, the People's Advocate recommendations, although containing a proper rationale, are not accepted for application, especially in the case of court judgments, restitutions to work, start of investigations on criminal offences, etc. It also happens that the People's Advocate recommendations are left unanswered by the public administration bodies, although they represent a legal obligation, pursuant to Article 22 of law no. 8454, dated 04.02.1999 "On People's Advocate", as amended. Thus, as of 11 January, 2013, the People's Advocate counts 55 unanswered<sup>1</sup> recommendations by the public administration bodies, although legal deadlines are well surpassed. We are in service of the citizens, fully committed and engaged to mediate and to give a solution to every complaint coming from them, on a case-by-case basis, because this is the way on how we can substitute a negated or violated right. In our practice, solution of an individual case often identifies a problem in the human rights field. As a consequence, it aims to establish a new practice in the work of the public administration bodies. In this context, even in cases when the relevant body has not reacted on our recommendations, the People's Advocate has gradually addressed the highest ranking bodies, including the Assembly of the Republic of Albania and the Council of Ministers. In the last year, the People's Advocate has reached the conclusion that a number of practices, phenomena, and concerning situations for the Albanian society

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<sup>1</sup> The overall number of the recommendations addressed to the public administration bodies in 2012 was 402, of which 75 were refused, 238 were fully accepted, 34 are still in the implementation process, while no answer has not been received for 55 recommendations.

have not been in line with the national or international standards on human rights, negatively affecting the full enjoyment of the rights of the individuals. With the purpose of improving the situation and harmonizing it with the best human rights standards, the People's Advocate, in consultation with the relevant public administration bodies, civil society and the international institutions has prepared several special reports for a number of serious and current concerns of the society. Such reports, which shall be treated in more details in the following sessions, include several recommendations on legislative amendments as well as tangible measures addressed to the Assembly of the Republic of Albania, or to institutions of public administration, so as to restitute the violated rights of citizens. We are unhappy with the fact that such reports, focusing on serious problems of the people in need, have not been deliberated by the Assembly so far, thus making it impossible to make them public (according to Article 28 of the Law no. 8454, dated 04.02.1999 "On the People's Advocate", as amended). Likewise, pursuant to the problems identified from the examined cases and from the legal analysis developed by the institutions, during 2012, 17 recommendations were prepared by the Office for approval, amendment or supplements of laws by the Assembly, by-laws of the Council of Ministers, or relevant ministries and have addressed the Constitutional Court with the purpose of abrogating the legal or statutory acts that, in our opinion, infringe the human rights and fundamental freedoms. For a full list of recommendations for legal amendments and cases addressed to the Constitutional Court, please refer to Annex 1 at the end of the report.

In 2012, the People's Advocate has cast a special attention to the complaints coming from the vulnerable groups, who are mostly at risk from discrimination. Although these citizens complain about violation of a certain right, in essence, the relevant cases contain elements of discrimination and violation of the principle of equality, which has served as a cause for violating other rights.

In this context, attention is focused on respecting the rights of the Roma minority, who generally live in very difficult economic conditions. Fulfillment of obligations deriving from the national strategy for improving the living conditions of the Roma minority asks for an inter-institutional coordination. Assessing the current problems of the Roma minority, the People's Advocate Office has prepared and submitted several legal recommendations for the relevant ministries. Thus, with the purpose of ensuring social integration of this minority, the People's Advocate submitted a recommendation to the Minister of Interior asking for

appropriate measures for the registration of members of the Roma minority in the civil registers in the local government units they are currently living in. In such recommendation, we have proposed amendment of Law no. 10129, dated 11.05.2009 “On the Civil Status”, as amended, in order for it to contain special provisions, limited in time for this minority, leaving out the provisions requiring either ownership or a lease contract of an apartment as part of requirements for the procedure of registration and transfer of the civil status of a Roma family from one local government unit to another.

In addition, one of the complaints submitted to the People’s Advocate from the Roma community members, non-for-profit organizations dealing with such community, or organizations focusing on the protection or promotion of the Roma rights, is related to some Roma families that had their previous place of residence in a village, but were registered in a city, or those Roma families changing their place of domicile from a city to another city after 1 August 1991. These categories of Roma families find it difficult to get a social aid because of what explained above. For this purpose, the People’s Advocate has recommended to the Minister of Labour, Social Affairs and Equal Opportunities to undertake an initiative to amend the Decision of the Council of Ministers no. 787/2005 “On Setting the Criteria, Procedures and Amount of the Economic Aid” as amended, proposing such changes so as to allow the Roma community members to be entitled to benefitting the economic aid. In answer to such recommendation, the Minister of Labour, Social Affairs and Equal Opportunities, on 18 February 2013 has notified the People’s Advocate Office that a joint working group shall be established to identify appropriate ways and instruments to apply the People’s Advocate Recommendation.

Taking into consideration the very difficult situation of this minority and their non-inclusion in the housing schemes, the People’s Advocate recommended to the Minister of Public Works, Transport and Telecommunication to launch procedures for amending the Law no. 9232/2004 “On Social Programmes for Housing of Inhabitants from Urban Areas”, as amended, suggesting addition of definitions that would cover the Roma nationals. More specifically, the People’s Advocate suggested the definition of the Roma minority as a priority category for housing. Although in answer to such recommendation, the ministry of question informed us that the conditions on benefiting housing social programmes are provided for in the latest amendments in Law no. 9232, the People’s Advocate holds that

these amendments and failure to expressively define the Roma people as a priority category does not put them in a favorable position.

Speaking of the recommendations focusing on the legislative amendments the People's Advocate has proposed to the relevant ministries on the Roma community, we have also addressed the Prime Minister of the country with a request to provide his support for these recommendations.

In addition, in cooperation with Roma organizations and other human rights organizations, we have submitted numerous recommendations containing tangible measures on: a) adoption of measures for registration of the Roma people in the civil registers and facilitation of procedures for the Roma minority to transfer their data to the civil registry the local government units of their new domicile; b) adoption of measures for the preparatory classes for pre-school education, to enable Roma children to learn the Albanian language, to assure their participation in all the education system levels and to coordinate the work with the Regional Educational Directorates to raise the awareness of the Roma community on the child needs to attend school; and c) adoption of measures to include in continuum and with priority the Roma minority members at a working age in the vocational education and employability programmes, so as to integrate them in the social life and to improve the socio-economic conditions for this minority, so that they do not feel discriminated against.

In the meantime, the People's Advocate has recommended to the Minister of Labour, Social Affair and Equal Opportunities to finally resolve the issue of housing and to help in meeting the minimal living conditions for a proper living of some Roma households staying in the venues of the Military Ward in Sharra, Kombinat, Tirana, pursuant to the Decision of the Council of Ministers no. 51, dated 02.02.2012. In answer to this recommendation, The Ministry of Labour, Social Affairs and Equal Opportunities notified us on 18 February 2013 that it has planned a fund of Albanian Lek (ALL) 8,000,000 for the initial reconstruction, which shall be followed by another fund of ALL 22,000,000 as investments for further reconstruction work.

Also, in July 2012, the People's Advocate submitted to the Assembly of the Republic of Albania a special report on "Problems of the Roma Community", which is still not yet deliberated upon.

It is with special attention that the Tirana Municipal Police activity was monitored by the People's Advocate Office, because of the fact that for a certain time it blocked the daily activity and working equipment of the Roma people. The People's Advocate, with no prejudice on the intervention and the legal background of such action by the Municipality of Tirana, which might as well be performed in the public interest, undertook legal initiatives to verify such situation, asking for explanations and for submission of the administrative act that led to such behavior of the Municipal Police against the Roma people. More specifically, the People's Advocate Office asked for the relevant documentation, according to which the Municipal Police blocked the activity of Roma people and seized their working tools. Not having an answer by the Municipal Police and referring to the complains of this community, the People's Advocate recommended: - interruption of arbitrary and denigrating actions against the Roma community, who dealt with the recyclable waste collection for making a living out of it; - start of a joint consultation on the socio-economic impact of this Municipal Order, including transitional measures, or provision of other alternative measures for ensuring necessary incomes for the Roma and for improving the economic situation of the Roma minority involved in recyclable waste collection; - involvement of the Roma community not only as stakeholders, but as active participants in the decision-making process; - participation of the civil society and of the Roma minority members in drafting of local policies of the Municipality of Tirana on their employability, complaint to the legislation and policies in force.

While speaking of the *ex-ufficio* cases initiated by the People's Advocate, it is worth mentioning the recommendation on an amendment of the Law no. 7961, dated 12.07.1995 "The Labour Code of the Republic of Albania" as amended, addressed to the Minister of Labour, Social Affairs and Equal Opportunities. Article 9 of the Labour Code (as amended), reads that any type of discrimination in employment is prohibited, but there is no reference to prohibition because of the sexual orientation, or gender identity. Such a gap in the Labour legislation can be a cause for a non-equal treatment of the LGBT people for exercising their right to employment and vocational education. In order to establish this right to the LGBT people, the People's Advocate has recommended to the Minister of Labour, Social Affairs and Equal Opportunities to include in item 2 of Article 9 of the Law no. 7961/1995 "Labour Code of the Republic of Albania" as a cause for discrimination "sexual orientation and gender identity" and to add a new paragraph at the end of Article 9 specifying which of the parties

carries the burden of proof at alleged cases of discrimination. Such paragraph has to be fully complaint to Article 10 of the Directive 2000/78/EC, thus putting the burden of proof on the employer. In the meantime, we are informed from the Minister of Labour, Social Affairs and Equal Opportunities that these recommendations are reflected on the draft-law on the amendment of “The Labour Code”. For this community, the People’s Advocate has addressed the Ministry of Education and Science for including in school curricula and programmes knowledge and information on the LGBT community, with the purpose of ensuring education at a safe and non-violent environment, free of social exclusion or inhuman treatment. The People’s Advocate has asked for training of the academic staff not to allow any form of discrimination, assuring protection and discipline in education institutions. Likewise, in the verge of Recommendation No. 11 of the European Commission, and pursuant to the proposals coming from the LGBT community, the People’s Advocate has done a comparative study of the criminal legislation on the protection for this community. Pursuant to such assessment, the People’s Advocate has submitted a recommendation to the Minister of Justice, proposing amendment of Article 50, letter j, of the Criminal Code, adding as an aggravating circumstance the commission of a criminal offence because of reasons related to sexual orientation. This recommendation has been taken into consideration by the Ministry of Justice. The above-mentioned recommendation shall be reflected in the first occasion of the review of the Criminal Code. The People’s Advocate has set to the Assembly of the Republic of Albania a special report on the LGBT problems, but it has not yet been deliberated by the Assembly.

**The right to information** is one of the fundamental rights, which effective exercise serves as a success indicator of good governance. The issues treated in 2012 by the People’s Advocate on the right to information have put to the fore the fact that the legislation on the right to information on legal documents from the central and local government institutions is not applied, thus avoiding the responsibility of these bodies to provide the required documentation to the public. In addition, the administration, both at the central government and local government level, is not very much aware of such legislation, thus paving the way to difficulties and obstacles in the normal and transparent management of public administration and its relations with the public. Often times the reasons of failure to apply the right to information are related to shortcomings in the infrastructural capacities of institutions, weaknesses of administrative capacities, especially in the communes of the

country, still characterized of autocratic tendencies of the officials of local government. In a number of cases, the right to information is limited to the lack of a full legal framework of the right to information, which has not been amended since 1999. In this context, a priority is the amendments of the Law “On the Right to Information for Official Documents”, deriving as well as a need to approximate the national legislation with the *acquis communautaire*. The People’s Advocate, being in the role of the safeguard institution for the respect of the right to information, highlights that its recommendations for amending the existing legal framework, for guaranteeing the right to information have not yet been taken into consideration. We keep highlighting the importance of such changes so as to enable the efficient exercise of this right by the individuals. In addition, we would like to highlight that the good practice established in some institutions of public administration of central or local government, which already have information and public relations offices, should be extended and be fully operational in all the other public administration bodies, with the ultimate purpose of having the law be fully applicable, so that the citizens enjoy their right to information in full when they address public institutions.

Through the inspections made and complaints examined by the People’s Advocate in 2012, we have found several problems in violation 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 torturing or violation of people both physically and psychologically. The infrastructure of detention facilities and of safety in prisons keeps being problematic. Often such facilities do not meet the legal standards and do not even 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 not grounded on legal acts, or by not accurately registering the time of detention or arrest of the citizen/s. Likewise, there are cases when the state police do not take, administrate and follow criminal denunciations, requests or complaints addressed by the citizens. The process of having registers for administrating complaints of detained or arrested individuals is still pending. The camera surveillance process is still ongoing, while posters containing the right of the detained and arrested people are yet present in all the relevant facilities.

But, it is worth mentioning that the Director General of State Police has adopted the work programme for **meeting Recommendation 12 for implementing the Recommendations of**



**the People's Advocate** regarding conformity of the detention and security facilities with the legal standards and training of the police staff serving in such facilities. In addition, the People's Advocate has found out that the state police bodies have in 2012 closely cooperated with several civil society organizations. They have reached several cooperation agreements on monitoring human rights and 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 is to be appreciated. Thus, at the end of February 2013, a Conference was organized by the People's Advocate Office on the role of the medical staff, state police staff and penitentiary institutions on monitoring and managing hunger strikes, attended by the medical staff, state police staff and staff of the administration of the penitentiary institutions. Attending the conference were also renowned international experts of the field.

Regarding the problems identified in the penitentiary institutions, some of the recommended actions have already been applied. One of the achievements attained is reduction of the population in prisons, building of the prison of Elbasan, etc. Also, the probation service work is to be appreciated. Its work has intensified in 2012, serving not only to the persons benefiting from it, but also to the reduction of overpopulation in the penitentiary institutions. The People's Advocate Office has a very good cooperation with the General Prison Directorate. In cooperation with different NGOs, in 2012, we have organized 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, such issues as treatment of health issues and their diagnoses in due time, lacking psycho-social, psychiatric staff, nurses and insufficient number of rehabilitating programmes, especially in institutions involving children, keep being problematic.

The psychiatric hospital centers are currently overpopulated (the hospital of Vlora and Elbasan) and there are difficulties in the de-institutionalization of chronic patients, as the rehabilitating centers 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 centers 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 programmes. Failure to find a final solution for the hospitalization outside the penitentiary system of persons that, according to the court, need to undergo compulsory treatment, is still problematic. But, upon the approval of the new Law no. 44/2012 “On Mental Health”, which is compliant to the international standards, and issuance of the by-laws in its implementation<sup>2</sup>, we think that this long lasting concern shall finally be settled. It should be highlighted that the Law provides for the involvement of the People’s Advocate through the National Mechanism on Prevention of Torture and the NGOs as external monitoring stakeholders of mental health.

Despite the repeated recommendations of the People’s Advocate addressed to the relevant bodies, the above-referred-to concerns, which need to be considered as priorities even for the public administration performance, in the context of country’s integration process, are not yet resolved. Such problems need to be handled even by higher ranking institutions, because, as already highlighted above, such problems are often times connected with the lack of funds and issuance of by-laws in order to generate substantial improvements of the system. In addition, for some issues, there is a need for a constant training of the public administration staff (of the State Police, Prisons Directorate, other staff from the penitentiary institutions and psychiatric hospitals) in order to ensure the exercise of the rights of citizens despite their legal position. Likewise, extension of cooperation of the State Police structures and of the penitentiary institutions with civil society, with the purpose of monitoring and improving the situation of human rights by these bodies, is of a paramount importance and should be carried further.

Considering the **right to life** as the most fundamental and important right of individual protected by law and recognizing the risk of **blood feud** on affecting this right (homicides, house confinements and deprivation of other rights and freedoms), in 2012 the People’s Advocate took the initiative to raise the awareness of state institutions, civil society and the individuals regarding this sensible issue. According to statistics of the General State Directorate, during the first nine months of 2012, five murders occurred because of blood feud, whereas the People’s Advocate finds out that there was a positive movement in 2012 by

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<sup>2</sup> 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.

the state bodies in this regard. In addition to the public acceptance of such phenomenon, state bodies have started to take concrete measures such as: establishment of the inter-ministerial working group for the preparation and approval by the Council of Ministers of three legal acts pursuant to and in implementation of Law no. 9389, dated 04.05.2005 “On the Establishment and Operation of the Coordinating Council in the Fight against Blood Feud”. But, in addition to such measures, there is a need for the immediate enforcement of the relevant law and for a close cooperation and coordination between the central and local government structures to face such complicated phenomenon.

Another issue submitted to the People’s Advocate Office through numerous complaints was the wrong calculation of the retirement **pensions of the former military staff**. Some former military officers have gained the right to receive supplementary pensions by final court judgments. They have filed complaints to the People’s Advocate, claiming that the Social Insurance Institute is wrongly calculating their retirement pension, in breach of the Constitutional Court judgment. Because of such reason, the People’s Advocate, in January of 2012, recommended to the Minister of Finance to incur a legal act so as to make sure that Article 29 of the above-referred-to law is applied in line with the Constitutional Court judgment. The People’s Advocate recommendation has not yet been answered. Consequently, the issue has not yet been legally resolved.

2012 has been a dynamic year for resolving the concerns of **the formerly prosecuted people**. Their requests or complains are related with claims on: failure to get compensation in the conditions qualified by Law no. 9831, dated 12.11.2007 “On Compensation of the Formerly Politically Prosecuted People in the Communist Regime”, as amended; failure to find the graves of the formally persecute people, dying while they were serving their sentences; failure to receive installments of compensations for being politically persecuted during communism; non regular calculation of the compensation amount by the Ministry of Justice; delay of procedures for setting the compensation amount; failure to find real possibilities to use the bonds gained because of their status as politically persecuted people; the failure to receive the full amount of compensation immediately, not in installments; delays in the compensation process for the interned individuals, as per the stipulations of the law; allocation of state social aid for this category.

An event that is well known by the public opinion in 2012 was the hunger strike of a group of former politically persecuted people, held in an open venue in Tirana during September-October 2012. A group of hunger strike protesters submitted a request for intervention to the People's Advocate Office containing the following concerns: - full and immediate compensation of the former political inmates in the amount specified by the relevant law; - benefits from state social services for all the politically persecuted people, who are currently lonely and not having any support; - safeguarding of the overall free health service for all such category of people; - use of the bonds they have received by the state in their real value; - undertaking of immediate measures for enabling employability of the formerly persecuted people; - intervention for approval by the Assembly of the draft-law dealing with treatment of belated files of the politically persecuted/imprisoned individuals not getting any compensation so far, and the amendment of some definitions in the current draft-law.

The hunger striker protesters asked as well for an intervention for amending or for proposing a new law on: a) the addition of 30 percent of the respective nominal value calculated as a compensation for each formally persecuted person due to the inflation in the country during the period from 2007 to 2012; b) provision of a special pension for all the politically imprisoned individuals who are still living, as already provided for in Law no. 7703, dated 11.09.1993, Article 5/c and in the Decision of the Council of Ministers no. 429, dated 12.09.2002; c) amendment of the legislation in force, because there are formally imprisoned people, who, because of various reasons, have not had possibilities to submit their documents for getting the compensation within the law-defined deadlines.

The People's Advocate is of the opinion that the right instrument to resolve the issues and concerns of the citizens, or of certain interest groups is the social dialogue through the public administration and the citizens. It should be highlighted that the atmosphere accompanying hunger strike for encouraging social dialogue was not the appropriate one. Whatever the reason or circumstance, the public administration should at no moment try to do away with this dialogue.

Pursuant to the above-referred-to problems, which entail a complexity of requests and solutions, and following a careful analysis of the legislation in force, which resolves tangible legal issues and relations mentioned in the petition of hunger strike protesters, we have

submitted a written notice to the Minister of Justice, Minister of Finance, Minister of Labour, Social Affairs and Equal Opportunities, as the Minister of Health.

In this official notice, the People's Advocate has provided a summary of all the problems and potential legal remedies, highlighting the importance of finding a solution that is accepted by all parties, through a negotiation process between relevant institutions of public institution and hunger strike protesters, despite the difficulties and differences between parties.

Considering the requirements by the hunger strike protesters as substantial, examination of such requirements is seen from a very broad perspective, based on the examination of cases on the compensation of the politically persecuted individuals by the communist regime, complaint to the provisions of Law no. 9831, dated 12.11.2007, "On the Compensation of the Politically Persecuted People during the Communist Regime", as amended. After full consideration we have found out that the content of the basic law, of its amendments, of the by-laws issued in its implementation (this parts refers to the Decision of the Council of Ministers no. 419, dated 14.04.2011) have created ambiguity and confusion in the progress of the compensation process and have consequently led to the prolongation of the compensation process without establishing a clear deadline.

This element affects the principle of legal certainty, as an important component of the rule of law, which, in this case, deals with the administrative treatment within the legal deadlines, satisfying the expectation of interested parties directly. These deadlines have been changed, aggravating the element of time for treating and fulfilling the individual rights. Such rights were covered by a previous normative act, which was more favorable for the former persecuted people. Due to this situation, pursuant to item 1 of Article 81 of the Constitution of the Republic of Albania, the People's Advocate has issued a Recommendation to the Minister of Justice to enact its legislative initiative to amend the Decision of the Council of Ministers no. 419, dated 14.04.2011 "For Approving the Deadlines and Scheme of Compensation Funds for the Former Politically Persecuted Individuals during Communism" with the ultimate purpose for having a reasonable deadline for concluding the compensation process for this category of former persecuted individuals under communism.

From the examination of individual requests falling in this field, we see that the compensation of the category of the individuals **interned** during communism has not yet started, although it is so stipulated in the Law. As clearly shown in the request, although the interested

individuals have since long submitted all the relevant official documentation to the Ministry of Justice, their compensation has not started yet. This fact is confirmed in the official notice 2709/2, of 8 January 2013 of the Ministry of Justice, which, inter alia, reads: "... the Law no. 9831, dated 12.11.2007, Article 6, refers to an amount of compensation for the interned or expelled individuals in the communist regime through a pension scheme that shall be governed in a Decision of the Council of Ministers that is not yet approved".

Despite the early requests for compensation by the representatives of the interned individuals, or of expelled individuals by the communist regime, the Council of Ministers has not yet approved a pension scheme through a relevant Decision, a scheme that would enable compensation for this category of politically persecuted people.

In light of the above, the People's Advocate has recommended to the Minister of Labour, Social Affairs and Equal Opportunities and to the Minister of Justice submission in the shortest time possible to the Council of Ministers of proposals for the approval of the pension scheme for the category of the interned or expelled individuals from the communist regime, with the ultimate purpose of issuing relevant legal acts paving the way for the allocation of compensation funds for such categories.

In 2012, the People's Advocate Office has received a considerable number of complaints regarding the judiciary. They are mainly related to violation of the administration of the judiciary and with the unfair delays of trials and court proceedings. The complains are treated on a case-by-cases basis and relevant interventions are made, with the ultimate purpose of identifying the causes of such violations and submitting appropriate recommendations for either correcting or for putting ban to repetition of such violations in the future.

Also, complains are addressed to the People's Advocate Office against the **Prosecution Office**, claiming procedure violations during preliminary trial and asking for the People's Advocate intervention for abrogating such acts as void. During this year, complains are addressed on the violations by the institutions of execution of criminal court judgments (the penitentiary institutions), claiming that in certain cases individuals have already suffered their sentence, but the prosecution office has not sent any execution orders outlining the final term of the sentence.

Another group of complains were targeted at the claims that certain judges are involved in corrupt acts, or have been partial while ruling on certain cases. Complains have been submitted against notaries and lawyers, claiming violation of laws for the latter in the exercise of their duties. However, in all cases the People's Advocate has submitted all complains to the Ministry of Justice or to the High Council of Justice for verification, or for disciplinary measures either to the Bar Chamber, or the Notary Chamber (depending on the case).

An important achievement of the People's Advocate Office was signing of the Memorandum of Understanding between the People's Advocate, the High Council of Justice and the Ministry of Justice in the beginning of 2013, based even in the request of the Assembly of the Republic of Albania on the Resolution "On Assessment of the Activity of the People's Advocate Office in 2011", of 14 June 2012. Signing of this inter-institutional Memorandum of Understanding followed a negotiation process lasting for several months, and was realized in cooperation with the EU's EURALIUS programme. It is aimed at referring the cases obtained by the People's Advocate to either of the two institutions and at adoption of administrative measures against the justice practitioners, according to the field of competence, when violations of law are identified. In addition, such cooperation with these institutions is aimed at establishing a mechanism through which the citizens shall be provided with more safeguards against arbitrary actions of the justice system to guarantee their right for access to justice, and to ensure transparency and lawfulness of the activity of the judiciary.

Relations with the Prosecution Office have generally been correct and good when it comes to the competence and professional treatment of the requests submitted by the People's Advocate to the Investigation Directorate at the Prosecutor's General Office. However, although the requests of the People's Advocate are generally properly accepted by the General Prosecutor's Office, we have received no replies to some of the letters sent to district prosecution offices, especially related to the criminal proceedings launched based on the People's Advocate recommendation.

A considerable number of complains addressed to the People's Advocate in 2012 were focused on **the failure of enforcement of final court judgment** by the state and private bailiff service and other entities involved in the execution of such executive titles. This

situation is problematic especially when the highest-ranking state bodies, with no legal ground, refuse fulfillment of the obligations deriving from the final court judgments issued in 2012 and in the previous years.

As a result, there is a need for the public administration to be more accountable and responsible for the execution of obligations deriving from final court judgments, as well as for improving the work relations between the prosecution office, the judicial police, the courts and other law enforcement institutions within a reasonable time. Enforcement of final court judgments would serve to better standards of protection of rights and lawful interests of the individuals in Albania and would lead to a substantial improvement on the public perception on courts and state administration. Regarding the above, the People's Advocate has drafted and has submitted to the Assembly of the Republic of Albania a special report "On the Situation Created due to the Failure of Enforcement of Final Court Judgments", which is not yet deliberated in the Assembly.

**The property restitution and compensation process** as well as the legislation on dealing on such process was on the focus of the People's Advocate activities in 2012. From direct meetings of the People's Advocate staff with the complainants, we have found out that the nationals are not received by the public central or local government institutions in frequent cases. Thus, it is impossible for them to communicate their concerns and to receive the appropriate information and clarification on relevant matters.

Hence, in 2012 individuals and groups of individuals have addressed property-related complains and different problems, which, despite the body they are addressed to (such as the Agency of Property Restitution and Compensation, Real Estate Registration Office, communes and municipalities, Commissions for Verifying the Lawfulness of Property Titles at the Prefecture level) share joint concerns, such as the protection of immovable and movable properties and real rights on such property, division of the agricultural land, the property restitution and compensation process, compensation for expropriation of property due to public interests, etc.

Compared to 2011, we see that such important stakeholders in the field of protection and guarantee of private property, such as the National Agency of Property Restitution and Compensation and the Real Estate Registration Office (ZRPP) have consolidated their legal authority in the exercise of their legal functions. In addition, Law no. 33/2012 has improved



the real estate registration procedures, which abrogated Law no. 7843, dated 13.07.1994 “On the Real Estate Registration Process”, as amended, giving priority to legitimate owners and reducing the possibility of affecting of such property titles by the public administration bodies during their decision-making procedure, be it normative or individual. Such decision-making affects and prohibits entities in the free use of property.

In the meantime, there is still a lot to be done regarding the speed of treatment of complaints by the Real Estate Registration Offices, transparency, clarification of the individuals on the documents and procedures to be followed, especially vis-à-vis issues related to property overlaps. However, it should be accepted that the complains of 2012 show that overlaps do not result to have been caused due to actions or omissions of the officials of local offices. In fact, property overlaps are mainly due to “clashes” of court judgments, decisions of the Property Restitution and Compensation Commission and of the former Agricultural Land Commissions in communes and municipalities, allocating agricultural land, and construction site from all those plots covered by Law no. 9235, dated 29.07.2004 “On Property Restitution and Compensation”, as amended. These circumstances have derived from hastened actions, often non-professional, of the institutions charged with property transfer, which, with no due verifications, have recognize ownership on certain plots of land that used to be registered under the name of other owners, thus establishing a new property conflict on a certain plot of land.

Financial compensation of the expropriated individuals keeps being a problem due to lack of financial means. The People’s Advocate Office continues to receive complains on infringement of the right to property because of failure to stick to the provisions of Law no. 8651, dated 22.11.2009 “On the Expropriations and Temporary Use of Private Property due to Public Interest Purposes”. From the administrative investigation on these groups of complains, we have identified non-transparent expropriation procedures, non-compliance between real expropriation with what is declared in the by-laws, objections on the price of expropriated land and delays in compensation.

Individual complains on lacking compensation for **the houses inundated in the Region of Shkodra** at the end of 2010 have continued in 2012. The People’s Advocate has followed the situation after the floods in the Region of Shkodra and has recommended allocation of funds by KESH to a special account of the Albanian Government. Insufficiency of funds by KESH

cannot be a legal reason or cause for the delays in providing due compensation, according to the Decision of the Council of Ministers no. 842, dated 06.12.2011. In addition, claims of companies have to also be taken into consideration, as well as procedures for estimation of damages and their classification for individuals or companies not included in the current lists. In this regard, we would like to express our reserves on the General Tax Directorate in Tirana, which has not been cooperative at all on this matter. In no moment did this institution provide the People's Advocate Office with any information or documentation required through official routes. There is a need for a new Decision of the Council of Ministers to cover those entities not mentioned in the procedures for preparing the documents, so as to make sure that all farmers are entitled to compensation. Concrete investments need to be effected, so as in the future other floods in the highly at-risk areas are do not become threatening. About the floods in Shkodra, the People's Advocate drafted a special report informing the Assembly of the Republic and the Council of Ministers on the situation and measures to be taken by relevant state authorities to mitigate consequences of floods and to fulfill the legal obligations deriving from the Decision of the Council of Ministers. This report has not yet been discussed by the Assembly, and we have received no official reaction by the institutions we have addressed.

According to the EU's 2012 Progress Report for Albania, the **public administration reform** to guarantee a merit-based, efficient and transparent system keeps being one of the twelve priorities of Albania for its membership in the EU. During our work we have identified that most of the complains we have received are related with dismissals of the public administration staff with no motivation, failure to stick to the legal deadlines by the employer and a failure of a rational of court judgments, thus rendering it more difficult to have a fair labour relation between parties. In a number of cases we have identified that jobs are not yet based on a merit-selection process. All these concerns represent real obstacles for the professional development of Albania's public administration.

Despite the recommendations addressed by the People's Advocate and the legal obligations of the state administration on enforcement of court judgments, there is still no responsibility or will to enforce the court judgments. Giving an end to labour relations in breach of the law, and failing to enforce final court judgments leads to financial liabilities. The responsibility for an illegal decision-making and the financial bill it generates should not be borne on the administration, but should mostly be an individual responsibility of the title-holder of the

institution, who in charge of taking the decision, and liable to respect the law. Many of the above-mentioned problems are included in a document drafted by the People's Advocate, including proposals and recommendations on the new draft-law "On the Civil Servant Status", submitted to the Public Administration Department and the Assembly of the Republic of Albania.

In 2012, the People's Advocate has received complains on several cases of violation of the rights of citizens on various benefits from the **social insurance scheme**. More specifically, we have received numerous complaints of the citizens who have received a lower pension, or of others not getting a pension at all. Thus, upon entry into force of Law no. 10142, dated 15.05.2009 "On the Supplementary Social Insurance of the Military Staff of Armed Forces, of State Police Staff, of the Republican Guard, or the State Intelligence Service, of the Prisons Police, of the Fire Protection and Rescue Police, and of the Internal Audit of the Republic of Albania". Pursuant to item 2, Article 29 of this Law, the pension amount has been recalculated for these categories of citizens. The pension has not only reduced significantly, but the citizens receiving such pensions have been declared as debtors to the Regional Social Insurance Directorates. Considering this change of the pension fund amount as an infringement of their lawful rights, the People's Advocate Office addressed the Minister of Finance with the recommendation on providing *a supplement to Article 29* of Law no. 10142, dated 15.05.2009 "On the Supplementary Social Insurance of the Military Staff of Armed Forces, of State Police Staff, of the Republican Guard, or the State Intelligence Service, of the Prisons Police, of the Fire Protection and Rescue Police, and of the Internal Audit of the Republic of Albania".

Based on all the identification, statistics and monitoring work of the People's Advocate, we would like to underline that in order to have a more thorough assessment of the social insurance legislation, there is a need for: - reviewing the amount of the minimum pension at the national level, because the current minimum pension is insufficient for living; - restituting the violated rights of early pensions because of seniority of service and of supplementary pensions for certain categories as a consequence of the recalculation of such pensions, pursuant to Law no. 10142, dated 15.05.2009 "On the Supplementary Social Insurance of the Military Staff of Armed Forces, of State Police Staff, of the Republican Guard, or the State Intelligence Service, of the Prisons Police, of the Fire Protection and Rescue Police, and of the Internal Audit of the Republic of Albania"; - building of capacities of the people working

at the regional social insurance offices, so as to avoid abuses in calculating the retirement pensions; - amending Article 62, of Law no. 7703, dated 11.05.1993 “On Social Insurance in the Republic of Albania”, as amended, regarding the data emerging from the right to retirement pension for those individuals following a court procedure. According to the social insurance legislation, if the application is deposited within one year from the time the right to receive a retirement pension arises, the citizen submitting the application gets his/her pension from the date such right emerges, but, if the complainant sends a case to the court because of irregularities of its documentation, he/she is entitled to retirement pension upon termination of court proceedings, which last for a minimum of two years.

Despite all issues raised above, it should be highlighted that cooperation between the People’s Advocate and the Social Insurance Institute and the institutions depending on it has been productive. It has in addition ended up in the application of the recommendation provided by the People’s Advocate.

In 2012, the People’s Advocate has received and treated numerous complains focusing on the violation of the right to receive **social assistance**, suspension of social assistance, or impossibility to get social assistance because of the complainants’ change of residence.

One of the problems of economic assistance is the non-declaration of a living minimum in Albania. The People’s Advocate has received several ongoing requests in years from trade-unions, interest groups and other non-governmental bodies for the official declaration of the minimum living threshold by the relevant bodies. This is an issue awaiting solution, because the minimum living standard is not simply an indicator related to the needs of the individual to ensure his/her survival in the current conditions, but it serves as a good benchmark for the social protection schemes as well.

More specifically, on 25 June 2012, the People’s Advocate, in cooperation with the National Council of People with Disabilities, with the participation of Government institutions, representatives of international institutions, of the diplomatic corps in Albania and several human rights organizations, organized the National Conference “The Rights of People with Disabilities – An Integral Part of Human Rights”. Several recommendations were issued from this Conference for the relevant institutions in the field and for all the other important stakeholders in the process. In one of the recommendations, the People’s Advocate asks the Government to set the minimum living standard at the national level, so as to ensure

protection and guaranteeing of the economic status of **people with disabilities** as the social group mostly at risk of poverty. In the conditions of non-fulfillment of this important law obligation, which has an extraordinary impact in the lives of many citizens belonging to the less protected and more in-need population, on 6 December 2012, we again addressed the Prime Minister of Albania to reconsider the recommendation proposed by us on establishing a working group for studying and defining the minimum living standard in Albania. We are still awaiting an answer to this Recommendation.

Upon the initiative of the People's Advocate, pursuant to Article 27 of Law no. 8454/1999 "On the People's Advocate", we have drafted an Ad-hoc Report on "Poverty and Contribution of Social Assistance in Poverty Reduction" as well as the People's Advocate activity related to this matter. The report was submitted to the Assembly in July 2012, while it has not yet been deliberated in the Assembly.

The People's Advocate Office, stemming from a case covered by media on the delays of payment of the disability payment to people with disabilities, decided to start an *ex-ufficio* examination of this situation. Thus, representatives from the institution were sent to different cities to hold meetings with people with disabilities. The investigation of submitted complains showed that disabled people in some municipalities and communities had not received their disability payment from September 2012 onwards. In some other cases, the disability payment was not released since October 2012, while in some other cases this payment was not given in full. The People's Advocate recommended the soonest allocation possible of funds for the delayed payments of people with disabilities. This recommendation was submitted to the Ministry of Labour, Social Affairs and Equal Opportunities and the Ministry of Finance. The answer received by the Ministry of Labour, Social Affairs and Equal Opportunities clarified that the entire delayed claimed amount is allocated in January 2013 to all the local government units. If we analyze the situation created by the delays in disability payments, the People's Advocate holds that despite financial constrains or lack of full coordination between the central and local government units, the state institutions need to be cautious to make sure such situation is not repeated, as it has harsh effects on vulnerable people. In addition, at any circumstance, transparency to the public opinion and interested stakeholders should not be left aside in treating such situation, despite the different difficulties it contains.

At the beginning of 2012, we have submitted to the Commission of Labour, Social Affairs and Health at the Assembly of the Republic of Albania our opinion on the Law “On Some Amendments on Law no. 8098/1996 “On the Status of the Blind”, as amended, and on the draft-law “On Some Amendments on Law no. 8626/2000 “On the Paraplegic and Tetraplegic Disability Status”, as amended. After carefully reading these draft-laws, we have identified that the amendments are not very favorable for the paraplegic/tetraplegic and blind people. We appreciate the Decision of the Council of Ministers for setting clear procedures for benefits and payments to these categories of people, but, based on the principle of legal certainty, the People’s Advocate is of the opinion that the law should guarantee the kind of measure of benefit, while the mechanisms and procedures of such benefits and reimbursements to be provided to service operators can be decided upon by a Decision of the Council of Ministers.

Several complaints have reached the People’s Advocate Office after the approval of Law no. 26/2012, dated 05.04.2012 “On Some Amendments on Law no. 8098/1996 “On the Status of the Blind”, and on Law no. 27/2012 “On Some Amendments on Law no. 8626/2000 “On the Paraplegic and Tetraplegic Disability Status” concerning the impacts of such laws on the people subject to them. Based on these complaints, and in cooperation with the Association of the Blind People and the National Association of the Paraplegic and Tetraplegic People, the People’s Advocate has submitted a case to the Constitutional Court on abrogation of Law no. 26/2012, dated 05.04.2012 “On Some Amendments on Law no. 8098/1996 “On the Status of the Blind”, and on Law no. 27/2012 “On Some Amendments on Law no. 8626/2000 “On the Paraplegic and Tetraplegic Disability Status”.

**Violence against women** continues to be a widespread and problematic phenomenon for our society. The number of women victims of domestic violence in 2012 was high. In the meantime there is a growing number of individuals, mainly women, who address courts due to domestic violence. Also, there is an ever growing number of protection orders issued by courts for cases of domestic violence, but the bailiff structures do not seem to act in the same pace, and it seems that they find it difficult to enforce such decisions. Despite the fact that women make up for most of victims of sexual violence, the burden of proof lays on them too. Violence is the main element of the criminal offence. When the victim cannot show of evidence of traces of violence, the crime cannot be tried. Likewise, the compensation of a woman subject to torture, sexual violation, or other forms of maltreatment is in practice

limited. The cooperation agreements signed in 2012 between the People's Advocate and the civil society organizations for the protection of the rights of women would lead to real intervention and transmission of important messages to the state institutions regarding situation of women rights, against which there is a need for legal, administrative and other types of intervention.

In the context of the constant guarantee and monitoring of the respect of human rights of freedoms in Albania, the People's Advocate has carried out inspections in the residential centers of social care, such as in the Day Development Center of Lezha, in the Development Center of Durres, in the Orphanage of Durres, in the Development Center "*I am Like You*" in Berat, as well as in the Development Center "*Lira*" in Berat. At the end of the inspection work, we have provided recommendations to the Municipality Mayors and to the State Social Service for an effective enforcement of social services in the Social Care Residential Centers. We had an inspection in the Institute of Blind Pupils "*Ramazan Kabashi*" in Tirana, where we came up with recommendations for amelioration of conditions and treatment of children sheltered in this institution.

The protection of child rights is again one of the most important directions of social protection policies, but a considerable number of children still live in difficult conditions, often lacking their parents' support. The orphans are part of this category, as well as street children, displaced and refugee children, trafficked children, economically and sexually exploited children and the detained children. In these conditions, it is of a paramount importance to take tangible measures to improve the **social care system for the children in need**. The People's Advocate has asked the public administration to undertake a number of measures, such as: encouragement of the decentralization of services; strengthening of the quality and access in other services of residential institutions (another major element if we take into account the fact that this group of children has special psycho-social needs); encouraging children to go to residential centers, through transformation of the latter as a house-shelter facility, promotion of support services mitigating the institutionalization of children, foster care in the family, adaptation and restitution to the biological family; as well as empowering of capacities at a central and regional level of structures working with children through constant training of the social service staff, because the knowledge about the application of the child rights in the daily practice is still limited.

In verge of the institutional efforts, the People's Advocate has undertaken measures for the identification of the failures or shortcomings of the health service, as a fundamental condition, for avoiding the negative phenomena and for improving the quality of services provided in our hospital centers. The People's Advocate activity in 2012 has focused on inspections in the regional hospital centers of many districts of Albania and in the Hospital University Center "Mother Teresa" in Tirana. The incurred inspections on the cases treating and dealing with the right to health care and have come to the conclusion that in general social and health services provided to the individuals in these centers need more investments, more staff, medicaments and equipment, more speed in fulfilling projects and as well as more care for a humane treatment of patients. Inspections and visits in such institutions, for which the People's Advocate has on a case-by-case basis submitted the relevant recommendations, have played an important role in identifying the problems in these institutions, such as problems related to the conditions and manner of treatment of the nationals.

Issues related to the **right to housing** are still high in the list of concerns for Albanians. Thus, the complains registered with the People's Advocate from the unsheltered households living in the buildings that used to be properties of the expropriated entities have constantly grown after the issuance of the normative act of the Council of Ministers no. 3, dated 01.08.2012, "On Restitution of Buildings to Legal Owners by the Unsheltered Citizens Living in the Buildings that Used to be Property of the Expropriated Entities", especially after the approval by the Assembly of the normative act due to the consequences caused by its implementation. The People's Advocate is of the opinion that the normative act issued by the Council of Ministers, and its application has created serious concerns for the involved parties when it comes to its binding effects, especially for the leases in the buildings of former owners, being a potential risk to new conflicts, and leading to a growing number of the unsheltered in the country. Practically, the complaints coming from the leasing households after entry of the normative act in force, have identified several concrete problems: a) a considerable part of these leasing households complain that although they have applied to BKT to receive an interest-free loan, as already highlighted in the normative act, they have not been successful in taking it, because, according to the bank they do not meet the conditions for getting such loan; b) these households complain that even though they have applied for social housing, they have not been entitled to it and have received no answer from the relevant municipalities; and c) certain municipalities, as the Municipality of Kucova, have asked for the assistance of the



People's Advocate to help them receive loans for these households as they have no financial means or social houses to accommodate the families in need and to satisfy the obligations of the normative act.

Also, accommodation of the elderly, not capable of taking care of themselves and not having other family members to take care of them, in care centers, according to the official figures of line ministries, is estimated to not be feasible.

Based on an objective assessment of the factual situation, the People's Advocate is of the opinion that restitution of property to its lawful owners and meeting of all conditions for the later to fully enjoy their property has been and continues to be a moral and legal obligation of the Albanian state and society. We think that the solution should have been more thorough, and should have taken into account as well the proper conditions for respecting and for protecting the rights of other citizens, ensuring, for instance, such rights as the housing rights. Similar important decision-making, such as the normative act of the Council of Ministers no. 3, dated 01.08.2012, on emptying the buildings to the lawful owners living in the buildings that used to be a property of the expropriated entities, should, at any case, be preceded by relevant studies, focused on the protection of lawful rights and interests of all affected individuals.

It is understandable that the formulation of the provisions of the above-referred-to act was not based on a proper analysis of the situation and on the impact of the act. As a result, the conclusion that might be reached by the People's Advocate Office is that this formulation lays the foundation for violation of human rights. With regards to the above, the People's Advocate has submitted concrete proposals to the Prime Minister of the Republic of Albania, Mr. Sali Berisha, to amend the legal framework enabling housing in the shortest time possible for the individuals or leasing households residing in the buildings that used to be a property of the expropriated subjects.

The People's Advocate Office, in the course of its work, has paid a special importance to the right **to consumer protection**. Such right, referring to the number of complaints for 2012, was affected by the services provided by CEZ Distribution and the Water Supply and Sewage Utilities. Amongst submitted request, lack of the electricity supply in some parts of the country remains problematic, because of lack of projects for investments. Even if such projects existed, they were not applied because of the lack of funds and difficulties of CEZ

Company in the last year. In addition to areas confronted with the lack of electricity, a problem inherited from one year to another is billing of electricity. Thus, in 2012, a serious problem was penalization of the debtor citizens by energy curtailments. The investigation we have launched was mainly related to those areas claiming they were not 100 percent debtors, and claiming collective punishment.

In 2012 we have also encountered issues related to improper billing of drinking water. Another type of problem we have identified is related to high billing even if no one was living in the apartment/house for a long time. We have constantly asked for the examination, verification and consideration on a case-by-case basis of all the subscriber requests by ERRU (Water Regulatory Entity). In cases when the water-supply and sewage utilities have not answered a lawful claim of nationals, we have asked for appropriate legal measures against the utility, asking for administrative sanctions for the relevant people, who have become an obstacle in the exercise of the utility functional tasks, harming the lawful consumer rights.

In addition to the above-problems, it is worth highlighting the inter-institutional cooperation in 2012 with CEZ Distribution Company, and with the Water-Supply and Sewage Utilities and their willingness to analyze the consumer complains, as submitted in our offices, within the official deadlines.

In the complains handled in 2012, we have identified a number of issues related to **local government**. Some local government administrations have problems in drafting clear administrative acts, referring to the appropriate legal background, setting the administrative procedure, failing to apply legal deadlines, violating such principles as cooperation of the administration with private persons, lacking reliability of local government bodies and their staff, ending procedures by a decision, exercising the right to inform individuals, conflicting interests in decision-making, and in separating blood-ties between local title-holders and inhabitants, leading to subjectivism in the decision-making and in the administrative acts, or in the harm of concrete plans of local government units. All these omissions are translated in a poor service of the administration to the citizen, delays in providing solutions of problems of the citizens under their jurisdiction, and non-provision of proper standards in the interest of an individual.

Lack of cooperation of many local government units with local commissions of property titles at the prefecture level, according to Law no. 9948, dated 07.07.2008 "On the Validity of

Property Titles on Agricultural Land” still remains one of the conditions for delays in the administrative proceedings, and, later, for delays in legal proceedings. In other terms there is a low effectiveness of such commissions, which mandate according to Law “On Some Amendments and Supplements on Law no. 9948, dated 07.07.2008 “On the Validity of Property Titles on Agricultural Land”, as amended, is now postponed until 31 December 2013.

The complaints submitted to the People’s Advocate office show that the local government administrations do not respect and apply the right to information during an administrative proceeding against such subjects of administrative law having a direct or lawful interest in such proceedings. Also, the failure to respect deadlines in the complaints or submissions of the natural and legal persons by the local government structures, especially by INUVT, in municipalities and communes, has been and keeps being a sharp concern. The non-operation of the construction inspectorate at the municipality/commune or national level, in many cases is a cause and source of conflicts and disagreements between parties and of delays by either the prosecution or the court in restituting a negated right, or in suspending an alleged violation. Timely and correct application of legal provisions would lead to avoidance of bureaucracy and to a more certain legal position for the citizens and their properties.

**Healthy environment** was one of the issues treated by the People’s Advocate in 2012. The nature of complains submitted this year on this field were mainly focused on avoidance of environmental pollution by different agents and illicit or unlicensed activities, environment pollution from hazardous substances, waste concentration or collection in public places, acoustic pollution, which in their entirety impair the quality of life and health of citizens. The People’s Advocate has found out that environmental protection in Albania asks for special protection and coordination efforts between citizens and state structures. There are still problems identified with the urban waste collection, their treatment and respecting of other environmental norms, which in the first instance leave no trace, but their effects are long-term, slow and invisible, imposing serious risks on the health and lives of individuals. The Environmental Inspectorates and the Environmental Regional Agencies need to identify their tasks and responsibilities deriving from the legal acts and by-laws to ensure an efficient control on the territory on which they exercise their functions. There is a need to identify and condemn the cases when waste is collected in a public open space. Also, there is a need to adopt measures to treat construction debris since the outset, to monitor and control noises in

the urban and tourist centers, as well as to monitor and adopt measures for removing the depreciated motor vehicles, trailers and their row parts gathered in vicinity of the national roads and to performs other tasks deriving from a wide variety of acts dealing with environmental issues.

The citizens should perceive living in a clean environment as one of their rights, but, at the same time, they should as well contribute to achieving this purpose.

The People's Advocate, at a request of the civil society, has followed from close-hand, the examination from the Central Election Commission of a request submitted by a civil society organization for a general referendum on the abrogation of a part of the Law no. 10/463, dated 22.09.2011 "On the Integrated Water Management". The case is now under the examination of the Constitutional Court, which shall rule on the constitutionality of this request for a national-based referendum. The People's Advocate and the civil society are waiting for the Constitutional Court judgment.

## **1.2. Summary of ad-hoc reports addressed to the Assembly of the Republic of Albania**

In 2012, the People's Advocate Office has prepared in total seven ad-hoc reports submitted to the Assembly of the Republic of Albania as of 05 September 2012.

The preparation and submission in the Assembly of ad-hoc or special reports by the People's Advocate Office is done pursuant to the Constitution of the Republic of Albania, Article 63. Item 2, stipulates "... the People's Advocate reports to the Assembly on certain issues when so required by the later, and can asked the Assembly to be heard for issues considered as important by the former", and pursuant to Article 27, Law no. 8454, dated 04.021999 "On the People's Advocate", as amended, stipulating: "in additional to the annual report, the People's Advocate can report to the Assembly, either *ex-ufficio*, or at a written request by the Speaker of Parliament or by a group of MPs".

None of the reports submitted in the Assembly until 18 February 2013 has been deliberated by the Assembly. As a result, pursuant to Article 28, Law no. 8454, dated 04.02.1999 “On the People’s Advocate”, as amended, none of such reports has been made public.

The special reports of the People’s Advocate have tried to bring to the attention of the Assembly and to the executive power, emergent issues and problems, which are judged by this Office as needing a more detailed consideration by the state bodies, either via improvement of the legal framework, or improvement of the work of the relevant bodies for resolving and treating such issues. In each case, the problems raised have in no case come as a result of the quick reaction to a certain event, but are an outcome of a multi-year serious study, focusing on the phenomenon, showing the reasons leading to certain problems and recommending ways of finding ways to resolve them.

Below you will find a summary of the problems and of the recommendations in each of the separate reports.

### **Report 1: “*On the LGBT rights*”**

**Submitted on 05.09.2012**

In the European Progress Report for Albania in 2012, a special attention was drawn on certain issues and problems of the Albanian society on the LGBT treatment. The report highlights that “... several cases of violence and ill-treatment targeted at the LGBT community are identified, while homophobia keeps being widely present, even amongst the public officials”.

Albania has signed and ratified several international acts, in essence dealing with the protection and respect of human rights in general, and of the rights of the LGBTs in particular. Albania has endorsed national legislation as well in line with such international instruments, but the reality shows that the international conventions or the national legislation are not always enforced.

Guaranteeing of implementation of this community rights in practice has been considered as very important, therefore the rights of such community are included as part of Recommendation 11 of the EU for Albania “Fundamental Rights and Freedoms”, more specifically in the part dedicated to non-discrimination against different social groups. One of

the priorities of the People's Advocate Office, being a constitutional body focusing on human rights, is to ensure respecting of the rights of the LGBT community. Through the report we have tried to outline the major concerns of this community as well as the measures to be undertaken so as to guarantee their recognized rights, submitting the following recommendations:

1. Drafting of a National Action Plan on Measures for Protecting the LGBTs. The People's Advocate suggests a plan involving all the relevant institutions at its drafting and implementation stage, and a detailed plan when it comes to activities, measures, indicators and budgets to be programmed for realization of each measures.
2. Amendment of the Labour Code of the Republic of Albania:
  - a. adding in item 2 of Article 9 of the Law no. 7961/1995 "The Labour Code of the Republic of Albania", sexual orientation and gender identity as causes of discrimination.
  - b. adding at the end of Article 9 of the Law no. 7961/1995 "The Labour Code of the Republic of Albania" of a new paragraph laying down the obligation of the burden of proof in alleged cases of discrimination against the individual. The new paragraph needs to be in full line with the stipulations of the Directive 2000/78/EC, thus putting the burden of proof on the employer.
3. In addition, the relevant state authorities and the State Labour Inspectorate, should control the implementation of amended provisions by the employer, so as to guarantee in practice enforcement of such provision by the public or private employers.
4. Amendment of the Criminal Code of the Republic of Albania; its amendment in Article 50, letter "j", including sexual orientation as an aggravating circumstance; thus adding letter "j" in the Law no. 7895, dated 27.01.1995 "The Criminal Code of the Republic of Albania" as amended, adding the phrase "sexual orientation" after the word "gender".
5. Involvement by the Ministry of Education and Science, in teaching curricula and programmes of knowledge and in sharing information on the LGBT community, with the purpose of providing a safe and non-violent environments, free of social exclusion or

inhuman or degrading treatment when it comes to sexual orientation of gender identity issues.

6. Training by the Ministry of Education and Science of the academic staff so as not to allow any form of discrimination, providing protection and discipline in education institutions despite sexual orientation of people.

## **Report 2: “On the Situation Resulting from Non-enforcement of Final Judgments”**

**Submitted on 27.07.2012**

Enforcement of court judgments constitutes the core and most fundamental component of the rule of law. It is impossible for the latter to be functional, unless its architects fail to accomplish the main goal, that is, the material application of this right and its safeguard, both from the legal perspective and its effective protection.

The People’s Advocate has provided since years information on the situation resulting from the failure to enforce final court judgments through its annual reports as well as through special reports addressing the responsible authorities. Nevertheless, no apparent change has been observed. There is an increasing number of the complaints lodged by citizens with the People’s Advocate Office asking for the intervention of the latter, so that the competent authorities enforce their rights established by a court order. In addition to the increased number of complaints, the state is being faced with a growing financial cost in terms of what it owes to the individuals who have won a judgment in their favour (in those cases where the state is the debtor).

Through this report, the People’s Advocate has tried to explain the most concerning issues that emerge as a consequence of the failure to enforce judgments, in particular, those relating to the work reinsertion, payments due by the state administration bodies, and execution of alimonies. Therefore, the following recommendations are made:

- 1) The Council of Ministers Instruction no. 2, dated 18.08.2011, “On the Modalities of Execution of Payments by Budget Institutions in the Treasury Account” has to be amended.

- 2) Bailiff Offices should, in any case, ensure the exercise of their functions in full compliance with the substantive law and with the provisions of Articles 527, 581, 583, 589 and 606 of the Criminal Procedure Code.

**Report 3:** “*On Violence against Women and the People’s Advocate Activity*”

**Submitted on 24.07.2012**

Albania is a signatory to almost all the international conventions and agreements relating to the prevention and punishment of violence against women and it has enhanced the domestic law with legal and sub-legal acts that promote legal equality and guarantee protection for the victims of trafficking/violence or against any other form of mistreatment of women.

Regardless of these achievements, violence against women remains a wide spread phenomenon and its consequences require constant and serious addressing by all the state institutions, including the People’s Advocate. The report in question provides an analysis of the phenomenon of domestic violence, of the applicable policies and legislation, the mechanism for gender balance and domestic violence, and of the other responsible institutions, as well as of the efforts by the People’s Advocate to handle the cases on the protection and respect of the **rights of the victims of domestic violence** that have been subject of administrative investigation.

The report presents the following findings:

- 1) Women represent the majority of the victims of sexual violence and it is them who have the burden of proof in the case where the sexual abuse takes place. Evidence, however, is collected by means of a forensic report and it is frequent that no immediate and thorough investigation takes place. Moreover, psychological violence is hard to prove and, often, this leads to impunity of perpetrators.
- 2) Violence is the pivotal component of the offence, therefore, failure to show signs of such violence would make it impossible for the perpetration to be proven.



- 3) Practice has shown frequent cases where the victim has been asked to indicate whether they have triggered the reaction of the individual who has committed the perpetration/the act of violence.
- 4) The issue of compensation through a civil action in a criminal trial is generally not regarded with the due attention. Claiming such redress requires a considerable effort and financial means to pay an attorney, given that, although it is provided for in the procedural law, it is quite rare that judges accept to examine a civil lawsuit within a criminal trial.
- 5) Practically, there are no cases of reported spousal sexual abuse, although it is not rare that they lead to divorce. The Criminal Code does not contain any separate provisions on the spousal sexual abuse, but, in that case where the wife decides to report on sexual abuse by her husband, she can refer to Article 102 of this Code as grounds for defence.

Finally, the report issues the following recommendations:

1. Work should continue from all the state institutions to raise the awareness of the community on the women's rights. With that aim in mind, the cooperation agreements signed between the People's Advocate Office and civil society organizations defending the rights of women will enable the latter "to make an effective use of the People's Advocate for conveying important messages on the current state of those women's rights that require legal and administrative interventions, etc."
2. The increase in the number of protection orders issued by the Court indicates a raise in awareness, responsiveness and the confidence of the victims of violence in the protection system. However, such swift response should be corroborated by the actions of the bailiff structures, which need to step up their work for the enforcement of court judgments.
3. The State should amplify its initiatives against violence on women, while reinforcing and safeguarding the achievements made so far.
4. Interventions should be considered in relation to guaranteeing a broader application of the civil lawsuit within a criminal trial.

5. Efforts should be stepped up by police and judicial bodies in order to identify the offenders in the cases of violence against women and punish them within a short time period.
6. Policies should be applied for the participation of girls and women in the economic support schemes, active employment programmes, vocational training and retraining, with an eye of enhancing the economic situation of women.
7. Referral mechanisms for the cases of domestic violence should be established in all local government units (regions and municipalities), in line with the sub-legal acts.
8. Establishment and consolidation of gender equality mechanisms at the central and local level and, in particular, acceleration of the process of appointment of the gender equality focal points at ministerial structures and in the country's municipalities.

**Report 4:** *“Poverty, the Curbing Impact of Economic Aid Programme and the Related People’s Advocate Activity*

**Submitted on 24.07.2012**

The complaints handled by the People’s Advocate Office indicate clearly that a considerable portion of the population has to deal with very difficult living conditions.

Irrespective of how it is assessed, whether in qualitative or quantitative terms, from the economic perspective or as a social concern, poverty is quite a tangible burden for a significant number of Albanian families. Poverty does not identify solely with the unemployed or the families that face economic poverty, but also with those categories which have been negated their fundamental rights, such as provision of a shelter, adequate food, heating and clothes in winter, employment that is appropriate for their physical abilities, educational background and work experience, a school close to their residence and the necessary conditions for attendance, access to the health service, protection from assault and violence, the right and a voice to claim their rights. Thus, being a highly complex social issue, stemming from a multitude of causes and factors, poverty should be addressed more intensively and with a strong individual, social, communitarian and state commitment.

Following the identification of the most sensitive issues related to poverty and the impact of the economic aid programme to curb its effects, the People's Advocate has made the following recommendations:

- 1) Extension of the conditionality of the economic aid to include gaining of benefits through work will transform it from a passive scheme into an active social protection scheme.
- 2) Cooperation policies need to be in place between the central institutions and the local government units or even joint monitoring systems that would identify those families which do not benefit from the “work in black”, in order to provide adequate employment that fits in with the skills of the family members who are in a working age, as well as their integration in the social life.
- 3) The increase of employment and reduction of unemployment is the main way through which to ensure a growth of production and incomes that would have a direct impact on curtailing poverty.
- 4) The economic aid has a relatively negligible effect on poverty, given that its coverage (amount of benefit) is insufficient to afford a living.
- 5) Failure of coordination among the central and local institutions that are part of the social protection system has slowed down the integration of orphans in our country. An issue that requires improvement is the identification of the needs of orphans at the central level. The benefits they are actually entitled to by the status of orphan are insufficient to afford even the basic needs.
- 6) The causes that lead to forced labour among children should be sought in the social exclusion, the scarce opportunities for the family to generate incomes and the poverty. Regardless of the awareness raising campaigns organized by the local government units, schools and NPOs, the phenomenon of exploitation for labour purposes has not been prevented. A better coordination is required among institutions to address this issue and provide vocational training alternatives for youth in the working age.
- 7) Awareness needs to be raised among parents or adults in relation to education and vocational training in general, so that they become conscientious of the fact that an educated child has better opportunities to find employment and generate incomes as

compared to an uneducated child, and that employment based on a qualitative education will enable a continuous improvement of their lives.

- 8) The commitment and level of responsibility of the state institutions and of other civil society active factors, a proper information of the relevant structures and of the public opinion will lead to an increased interest of the society as a whole and will give them the possibility to have an impact on the protection of all people with disabilities, to ensure the needed economic state, enhance housing conditions, increase employment opportunities, boost their cultural, educational and vocational level with the aim to ensure their further integration into the society.
- 9) Although the Economic Aid seeks to supplement the poverty level of 2 USD a day per capita, the current mechanism fails to completely ensure this, due to many existing legal constraints placed on the process. The said restrictions prove to be discriminating for families with many members, where children are predominant.
- 10) Data from the LSMS surveys indicates that 50% of poor people live in families with six or more members, with the poverty threat being more inherent in those households where the head is uneducated or has a four or eight-year education.
- 11) Due to the existing ceiling of a monthly amount of Lek 8,000 per household, the current mechanism offers less money per capita to the households with numerous members as compared to other poor households whose number of members is smaller.
- 12) In order to ensure a fair and equal process of benefitting from EA for all the categories of individuals in all the local government units, without changing the current mechanism of calculation per household structure, an increase of the maximum ceiling of the EA benefit per household is required.
- 13) As part of the goals of social inclusion, non-discrimination of vulnerable groups and, especially, of the minorities (Roma, Egyptians), or of the large families with many children, etc., we believe that the limit (ceiling) of Lek 8,000 a month per household should be raised to Lek 10,000 a month, at least for the moment, in an effort to bring it closer to the minimum pension rate in the city.

**Report 5: “Issues of Roma Community during the First Semester of 2012 and their Handling by the People’s Advocate”**

**Submitted on 16.07.2012**

Article 15 of the Constitution of the Republic of Albania stipulates that the fundamental human rights and freedoms are “indivisible, inalienable, and inviolable and stand at the basis of the entire juridical order”, thus, enshrining equality without any form of discrimination of all the individuals who live in the territory of the Republic of Albania: Albanians, members of national minorities, foreigners or stateless persons.

Being a constitutional body, one of the priorities of the work of the People’s Advocate is the respect of the rights of the Roma Community, as a community that lives under extremely difficult conditions. Meeting of the obligations that derive from the National Strategy for Improving Roma Living Conditions, in order to ensure that this community benefits the same living conditions as the rest of the population of our country, requires inter-institutional coordination, which is of fundamental importance to enable a more effective protection of rights of the Roma Community. In this report, the People’s Advocate reiterates that, considering that the problems of this community are neither easy, nor simple or quick to be addressed, but, on the other hand, they are an integral part that is inherently linked with the whole development of Albania and the continuous economic growth, clear strategies should be applied, *which will guarantee the improvement of the living conditions for this community.*

Following the identification of issues and an analysis of the way how they should be addressed, the report comes up with the following recommendations:

1. Amendment of the Law no. 9232/2004, “On Social Housing Programmes for the Inhabitants of Urban Areas”, (as amended), in order to provide clearer and more accurate provisions on the Roma families. Moreover, we suggest for them to be considered with priority under the social conditions required to benefit housing.
2. Amendment of sub-legal acts that outline the criteria and procedures of registration and transferring of civil registry office, by exempting Roma families from the requirement of owning or renting a house.

3. Continuation of efforts to organize preparatory courses for pre-school education, Albanian language courses, aimed at ensuring the enrolment of the Roma children at all the levels of education and coordination of work with the Regional Education Directorates, in order to raise the awareness of the Roma Community members so that they do not prevent their children to attend school.
4. Measures should be taken to enrol with priority the members of Roma minority in the vocational training and continuous employment programmes, with primary focus on the working age Roma people, with a purpose of integrating them in the social life and improving their socio-economic conditions, so that this minority does not feel discriminated against.
5. All possible administrative measures should be taken to create residential areas or provisional settlements for these groups with such emergent needs, including the members of Roma community, nomads, homeless individuals or whomever is seeking assistance from local government bodies, in order to prevent situations that might result into a threat to their life or health and, in particular that of the children.
6. The Council of Ministers should endorse an action plan for the implementation of the recommendations (by Mr. Pier Mirel) of the workshop of December 2011, “On the Rights of Roma Minority,” and legal and executive measures should be undertaken for the implementation of the recommendations issued by the People’s Advocate on addressing the issues faced by the Roma citizens, including the registration, housing, employment, education, economic aid benefits, etc.

**Report 6:** *“On the Situation following Floods in Shkodra Region”*

**Submitted on 06.07.2012**

During December 2010, the region of Shkodra had to face considerable floods for a second time, affecting not only the inhabited areas of the city, mainly the neighborhoods situated in the proximity of Shkodra Lake, but also the communes and villages located along the bed of Drin and Buna rivers.

*The situation was alarming for the inhabitants of Shkodra in general, who had been affected, either directly or indirectly, by the flood that had created uncertainty and concern for the life and health of the inhabitants. The report has focused on the issues brought up by such situation and on the investigation of the People's Advocate in the inundated areas.*

Following the identification of the problems and the emergency intervention areas aimed at mitigating and eliminating flood consequences, the report has come up with the following recommendations:

- 1) Allocation of funds by AEC in a special deposit of the Government of Albania. Lack of funds by AEC cannot and should not be a motive or constitute legal grounds for delaying the compensation that should be provided in accordance with the Decision of the Council of Ministers.
- 2) It is necessary to consider the claims of commercial entities in terms of the damage assessment procedures and their exclusion from the list of beneficiaries. In this respect, we are critical as an institution of the lack of cooperation by the Tirana General Tax Directorate, which did not, in any case, make available to the People's Advocate Office any of the documents required through official channels.
- 3) A new Decision of the Council of Ministers should be issued to include those subjects which Shkodra RDAFCP failed to consider during the procedure of preparing the documentation, in order for all farmers to be subjected to equal treatment and benefit compensation like the rest.
- 4) A Decision of the Council of Ministers should be issued to stipulate the compensation of those inhabitants of the city of Shkodra who have suffered serious damages of their houses and furniture.
- 5) The Minister of Finance and Minister of Interior should issue a joint Instruction, in line with the Decision of the Council of Ministers no. 82, dated 06.12.2011, on the execution of payments to the benefitting individuals.
- 6) Specific investments should take place within a short time frame, avoiding the period of autumn and potential rains, in order to prevent further flooding of endangered areas.

**Report 7:** *“On the People’s Advocate Activity and the level of implementation of Recommendation 12 of the Opinion of the European Commission on Albania”*

**Submitted on 23.04.2012**

The content of the Recommendation 12 of the Opinion of the European Commission is one of the highly important points that requires the People’s Advocate 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, we have enlisted below 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:

- 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 standardization of the arrest and security 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.

### **1.3. Contribution of the People's Advocate in the Process of European Integration**

In addition to defending the rights of citizens from the unlawful actions or omissions of the public administration and to promoting the enhancement of the human rights standards, the People's Advocate plays a fundamental role in the process of European integration. In this context, its broad mandate includes areas, such as: the rule of law, good governance, transparency, anti-corruption, human rights, etc.

The institution of the People's Advocate considers that the reforms undertaken by the state institutions should be approximated to the best international standards, by ensuring, in this way, the application of the democratic standards of the rule of law and human rights. The equal application of the law **for all the citizens** by the central institutions and the local government units, as well as, the respect of the fundamental principles of a democratic state have a direct impact on the rights and freedoms of the citizens and on **meeting** their interests. The People's Advocate Office considers that all this can be guaranteed by a good, fair and impartial governance that is oriented towards law implementation to enable a better functioning of the society and its progress towards development.

During 2012, the institution of the People's Advocate provided continuous contribution through its initiatives, analyses and recommendations also towards undertaking measures

determined in the Action Plan for the Implementation of 12 Recommendations of the European Commission for Albania. Among them, we can mention three main contributions:

1. The report on the implementation of the measures set out in the Recommendations 6, 7, 10, 11 of EC for Albania, which are relevant to the scope of work of the People's Advocate, and on the activity of the institution in relation to such recommendations for the period January-June 2012, which has been submitted to the Ministry of Integration.
2. The Special Report on the activity of the People's Advocate and level of implementation of Recommendation 12 of the EC Opinion on Albania, submitted to the Assembly of Albania.
3. Some opinions on the draft law "On the Civil Servant" sent to the public administration structures and the Assembly of the Republic of Albania.

These reports and every step of the activity of the People's Advocate Office have been based on the constructive approach to help within its mandate and possibilities in the fulfilment of the national aspiration of integration into the EU and beyond into the Euro-Atlantic structures.

#### **A) IMPLEMENTATION OF MEASURES OUTLINED IN RECOMMENDATIONS 6, 7, 10, 11 AND 12 OF EC FOR ALBANIA, WHICH ARE RELEVANT TO THE PEOPLE'S ADVOCATE SCOPE OF ACTIVITY**

By this report, the People's Advocate provides a detailed analysis of Recommendations 6, 7, 10, 11, 12 and the foreseen measures for their implementation.

With respect to Recommendation 6, "Public Administration Reform", the People's Advocate recommends, *inter alia*: a) application of the standards established by the current legal framework, which guarantees the working relations by the public, central and local administration; b) identification of the responsibilities of the heads of institutions (extra-contractual liability), who, by their irregular and ungrounded decisions, inflate the financial bill that the state is due to pay to those who win in court; c) build the capacities of the public administration staff who is responsible for the application of dismissal procedures, in order

for them to ensure a right understanding and application of the procedure provided by the law and to guarantee the rights of the employees, etc.

The People's Advocate analysis of Recommendation 7, "Reform of the Judiciary" is focused on the measures that guarantee the *access to justice* for the vulnerable groups, as well as the effective enforcement of judgments. Among the recommendations issued by the People's Advocate Office on the provision of legal assistance are the following: I) handling with priority of the cases involving vulnerable groups, such as Roma, people with disabilities, violated women, individuals living on economic aid, etc; II) reduction of procedures and documentation required to benefit legal assistance, thus avoiding further expenses by the individual; III) the opportunity to have open attorneys' lists, in order to allow the individual to chose the attorney who will provide him with legal assistance; IV) monitoring by the Legal Assistance State Committee of the quality of the legal assistance provided by the attorneys or non-profit making organizations, as a crucial component to safeguard and bring justice to everyone who claims their rights have been violated.

In relation to the *enforcement of judgments*, the People's Advocate has written a special report on the enforcement of court decisions by the public administration bodies and on the level of enforcement of the judgments of the Constitutional Court.

At the conclusion of the proper analysis, the People's Advocate Office has issued a series of recommendations, *inter alia*,

- Enhancement of the professional capacities and ethical standards of the staff of bailiff service.
- Unification of bailiff practices.
- Improvement of the infrastructure of the State Bailiff Service.
- Drafting and approval of a sub-legal act on the modalities and maximum period of enforcement by state bodies of the executive orders in relation to financial obligations or commitment of a certain action (Article 605 of the CPC).
- Establishment of a database that would contain all bailiff practices which see budgetary institutions as debtors.

In relation to the **Council of Ministers Instruction no. 2, dated 18.08.2012, “On the Modalities of Execution of Payments by Budget Institutions in the Treasury Account,”** the People’s Advocate notes that there are provisions which are not in line with the legal requirements of the Civil Procedure Code on the mandatory enforcement of executive orders. They create the premise for failure to enforce final judgments within a reasonable timeframe and shift the burden of enforcement to the third person or the debtor party.

As part of Recommendation 10, “The Strategy and the Action Plan on Property Rights”, the People’s Advocate has constantly required from the PRCA to establish a definitive immovable property fund for the physical compensation of the expropriated owners, but such action has not been taken so far and it appears hard to be realized in the near future, considering that 20% of the building sites have not been entered the system (they have not been digitalized and registered with the Local Immovable Property Registration Offices). Under the circumstances where financial compensation is hard to take place, physical compensation would be the best solution both for the government and ex-owners.

In regard to Recommendation 11, “Reinforce the Protection of Human Rights”, among the range of the infringed rights, the People’s Advocate has focused on negative phenomena, such as the domestic violence; the compensation process of the woman who has been subject to torture, sexual abuse, or other forms of mistreatment; the rights of the LGBT community; the rights of children; the rights of people with disabilities the rights of Roma community, etc. As in the other cases, the People’s Advocate issues its recommendations to improve the situation of vulnerable groups.

## **B) SPECIAL REPORT ON THE PEOPLE’S ADVOCATE ACTIVITY AND LEVEL OF IMPLEMENTATION OF RECOMMENDATION 12 OF EUROPEAN COMMISSION OPINION ON ALBANIA**

In the analysis made in the report on the measures that are required to improve the situation in penitentiaries and pre-detention facilities, the People’s Advocate highlights a series of issues that would need immediate examination and improvement. Some of them are enlisted below:

1. A final solution should be provided to the accommodation of the mentally ill people 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 standardization of the arrest and security premises at the police stations, 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.

### **C) SOME OPINIONS ON THE DRAFT LAW “ON THE CIVIL SERVANT”**

The consolidation and deepening of the democracy in the Albanian society, the reinforcement of the institutional democracy, enhancement of governance and the full and comprehensive safeguarding of the rights, freedoms and legitimate interests of the individuals require the strengthening of the civil service, based on the principles of professionalism, independence, integrity, political impartiality, transparency and a qualitative service for the public. Relying on these principles, the draft law, “On the Civil Servant” should guarantee the observation of the constitutional principles, of the fundamental human rights and freedoms that it enshrines, and the standards of the international acts in this area.

Following a detailed analysis of the content of this law, the People's Advocate has come up with specific recommendations on how to improve some of the main articles of this law. In general, the People's Advocate suggests a re-elaboration of the law following the rules of legal writing, completion of the definitions and notions used in its contents, the use of the proper terminology in line with the applicable legal provisions, restriction of generic dispositions and a most thorough provision possible of the issues of particular importance contained within the law, in order to avoid that their regulation is delegated to the sub-legal acts. The People's Advocate believes that this draft law is an effort to address many problems that have emerged in the course of implementation of the current law and it falls within the recommendations of the 2010 EC Opinion on Albania. The latter suggests that the content of the law should be subject to consultations with the institutions that are going to be part of the civil service, in accordance with this law, with the employees that will be subject to its provisions, and with the civil society and the groups of interests, with the purpose of ensuring a proper implementation in the future.

#### **1.4. Level of implementation of the People's Advocate recommendations accepted by the public administration institutions**

##### ***Introduction***

The Institution of the People's Advocate is founded on the basis of the Constitution of the Republic of Albania, where Articles 60-63 enshrine its functioning, powers, principles of activity and status.

The activity of the People's Advocate is governed by the Law no. 8454, dated 04.02.1999, "On the People's Advocate," while, in exercising its activity, the People's Advocate relies particularly on the following legislation:

- ❖ Code of Administrative Procedures
- ❖ Law "On the Right to Information on Official Documents"

- ❖ Law “On the Rights and Treatment of Prisoners”
- ❖ Law “On Consumer Protection”
- ❖ Law “Against Discrimination”

Based on the above-mentioned legal framework, the People’s Advocate defends the rights, freedoms and legitimate interests of the individuals from the unlawful actions or omissions of the public administration bodies or the third parties acting on its behalf. Its jurisdiction covers the government, the ministries, other central institutions, such as intelligence services, the National Bank, banks where the state is a shareholder, public entities, local government bodies, including prefectures, regions, municipalities, communes, and those public institutions or authorities acting on behalf of these public administration bodies and their subordinate institutions.

This monitoring was conducted by the Centre for the Development and Democratization of Institutions, based in Tirana, which is a non-governmental and non-profit making organization that is politically unbiased. It has been operating in the field of fundamental human rights and freedoms and the integration process since 2002.

This centre has a rich CV in terms of monitoring the law implementation from state institutions at both national and local level and avails of qualified human resources for this type of activity.

The monitoring was required by the People’s Advocate Office, in order to ascertain the implementation of the People’s Advocate recommendations that have been accepted as such by the State Administration.

### ***Methodology***

This monitoring took place in a five-day period, from Monday, 11 February, to Friday, 15 February 2012. The daily duration of the work of experts was eight hours.

*The purpose of the monitoring* was to measure the level of implementation of the complaints and recommendations addressed by the People's Advocate during the 2012 calendar year that were accepted by the public administration bodies,

In 2012, the total of complaints handled by the People's Advocate staff was 3965, of which, 1795 fell within the scope and jurisdiction of the institution. Of these, 1368 complaints have been admitted as grounded by the public administration bodies, which have reported their implementation, correction of the situation and/or stopping of the infringement. In order to conduct a monitoring that would successfully meet its purpose, the possibility to monitor the following cases was ruled out:

1. Files on which the People's Advocate had started investigation *ex officio*.
2. Files that did not contain a contact number, either fix or mobile phone. That would help in contacting the complainant citizens at 100%.

Exclusion of these two types of files was supposed to lead to a more accurate monitoring outcome and, on the other hand, to avoid any type of influence.

Thus, after casting a lot on the general list of complaints filed by citizens and admitted by the public administration, a total of 400 files handled by the supporting staff and the commissioners of the People's Advocate were randomly selected. All the files contained the measures suggested by the People's Advocate staff and the fix or mobile telephone number.

The monitoring took place in the People's Advocate headquarter, where an office and two telephone lines were put at our disposal, to help with the monitoring.

The Centre for the Development and Democratization of Institutions appointed two experts, namely, Mr. Ilir Aliaj and Ms. Viola Plumbi, who are both professional lawyers and who were engaged with the monitoring on a full-time basis.

The experts had the following tasks:

- ❖ Find out whether the files contained the measures suggested by the People's Advocate.
- ❖ Find out whether the files contained contact telephone numbers (fix or mobile).



- ❖ Contact the citizens on the phone to ask whether the recommendations of the People's Advocate had been observed by the institutions where the citizen had come across the issue in the beginning.
- ❖ Write the final monitoring report.

### ***Data analysis***

The examination of the 400 files selected for the monitoring highlighted the types of problems that were more frequently subject of complaints by the public, mainly consisting of social, economic, legal issues, etc., and which they had been unable to address until the moment they had decided to go to the People's Advocate.

In order to provide a clearer picture of the variety of complaints filed by the citizens, we will group them into the following categories:

1. *Complaints on property-related issues.* This category includes complaints on issues related to non-registration of property with the Immovable Property Offices, delays in the legalization of houses, delays in the review of property files by the Property Restitution and Compensation Agency, issues related to expropriations and to the delays in delivering expropriation payments.

The total number is 59

2. *Complaints on social issues.* This category includes complaints related to pensions, with issues regarding the establishment of the amount of pension, the categorization of pensions, problems in admissions to elderly homes, problems regarding hospitals, failure to be paid social insurance, problems with the failure to receive or delays caused in providing the economic aid, problems of unfair dismissal, issues related to benefitting the status of the person with disability and the amount of compensation established as a result of this status.

The total number is 57

3. *Complaints on issues with the judiciary.* This category includes complains related to non-enforcement of judgments, issues with bailiff offices, complaints on the delays of trial or failure to obtain court decisions.

The total number is 42

4. Complaints on problems with the Prosecutor's Office and the State Police. This category includes complaints related to problems with the Prosecutor's Offices for failure to start criminal proceedings, problems with the border police, problems with the seizure of vehicles, etc.

The total number is 42

5. Complaints on problems with public entities. This category includes complaints related to issues of water supply, power supply, overbilling of these services, problems of payment of the public television tax, greening tax, reduction of noise, roads maintenance.

The total number is 103

6. Complaints on problems with the local government. This category includes complaints related to issues regarding the non-functioning of municipal councils, issues related to the housing of citizens, unauthorized constructions, issues of occupation of the private property.

The total number is 67

7. Complaints on problems with the central government. This category includes complaints mainly regarding the application of the Law on the Right to Information over Official Documents, failure to provide an answer on the approval of legal and sub-legal acts.

The total number is 30

The complaints contained within the files were mainly addressed against the various public, central and local institutions. The citizens complained of the violation of the law by these institutions, failure by them to provide information, failure to enforce court judgments and other issues that were generally related to the improper functioning of these institutions.

Thus, upon the examination of the files, the institutions subject to the citizens' complaints could be grouped as follows:

- Central government institutions, such as the President's Office, Ministry of Justice, Ministry of Interior, Ministry of Integration, Ministry of Labour and Social Affairs, Ministry of Public Works, Ministry of Health.
- Local government institutions, such as the municipalities, the communes and prefectures.
- Subordinate institutions, such as the General Social Insurance Directorate, education directorates, Construction Inspectorate, Property Registration Offices, National Property Restitution and Compensation Agency, civil registry offices, bailiff offices, General Customs Directorate, etc.
- Public entities, such as the Water Supply and Sewerage Enterprises, CEZ Distribution, etc.
- Institutions of justice, such as the courts, General Directorate of Penitentiaries, penitentiary directorates, prosecutor's offices.
- Law enforcement institutions, such as Police General Directorate, police stations.

The telephone contact of the complaining citizens with the People's Advocate was very friendly and fruitful for the conduct of this monitoring. During the telephone conversations we had no refusal whatsoever to answer to the question we raised, that is, whether the People's Advocate had presented a solution to their problem.

In all the telephone conversations, the citizens expressed respect and gratitude for the staff of the People's Advocate, regardless of the status of solution of their complaint. There were even cases where the citizens were willing to come to the People's Advocate Office to inform in details on the efforts and both the significant legal and moral support provided by the People's Advocate.

They highly appreciated the fact that they were contacted again by the People's Advocate to know whether the recommendations issued by the institution had been applied by the relevant institutions or whether the citizen had followed the instructions of the People's Advocate. It

was a novelty for the citizens that a state institution was interested in following up on the solution of their problems in time.

In the course of the telephone monitoring, every citizen responded openly in relation to their problems being addressed. We will group them in the following categories:

1. Admitted and implemented complaints and recommendations. This category includes the complaints and recommendations that had been admitted and applied by the public administration institutions.

The total number is 232

2. Partially admitted and implemented complaints and recommendations. This category includes those complaints and recommendations that contained 2 issues to address, such as cases of dismissal. In these cases, the citizen has been provided material compensation but they have not been reinserted to work.

The total number is 8

3. Admitted complaints and recommendations in process of implementation. This category includes those cases where the implementation of recommendations is pending for a Decision of the Council of Ministers, various instructions, legal amendments, decisions of municipal councils or court judgments.

The total number is 50

4. Admitted complaints and recommendations that have not been implemented by institutions. This category includes all those complaints and recommendations issued by the People's Advocate that have been admitted as such by the public administration bodies but have not been implemented. In such cases, the citizens have not found solution to their problems.

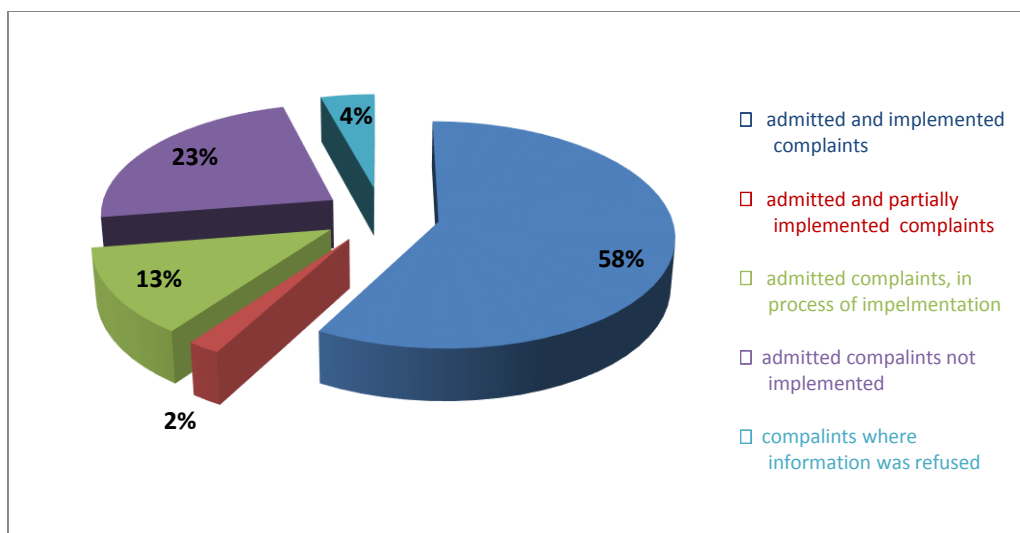
The total number is 93

5. Complaints and recommendations on which information has been refused. The total number is 17.

## ***Conclusions***

1. The People's Advocate enjoys the trust of the public as an institution that makes constant efforts to defend the rights of the citizens.
2. The institutional strengthening of the People's Advocate should be ongoing through the human capacity building and its financial empowerment.
3. The People's Advocate is an institution that enjoys respect of the other local, central institutions, public entities, etc., which have implemented its recommendations.
4. The level of implementation of the People's Advocate recommendations admitted by the public administration institutions indicates that the staff of the People's Advocate is conducting a professional, lawful and fair activity to the service of the citizens. On the other hand, this indicates also that the institutions are meeting their legal obligations in line with the People's Advocate recommendations.
5. The implementation rate of the People's Advocate Recommendations that have been admitted by the public administration institutions is highly positive. Expressed in percentage, we would have the following picture:
  - Admitted and implemented complaints and recommendations constitute 58%.
  - Admitted complaints and recommendations with partial implementation constitute 2%.
  - Complaints and recommendations on which the citizens refused to provide information constitute 4%.
  - Admitted complaints and recommendations in process of implementation constitute 13%.
  - Admitted complaints and recommendations that have not been implemented by the institutions constitute 23%.

***Implemented complaints and recommendations (of the total of the admitted complaints and recommendations)***



## **CHAPTER II:**

### **The People's Advocate Activity in Resolving Citizens' Complaints, pursuant to the rights and freedoms provided for in the Constitution and in other legal acts**

#### **2.1. Equality of individuals and prohibition of discrimination**

##### *Overview*

The equality of individuals is provided for in Article 18 of the Constitution of the Republic of Albania. The same provision prohibits unfair discrimination on grounds of gender, race, religion, ethnicity, language, political, religious, philosophical beliefs, education, the economic or social status, or parental belonging. The concept of the equality between parties is organically related to the understanding of non-discrimination. However, effectively, this provision does not put a ban to positive discrimination, thus allowing for a specific treatment or support for certain groups of individuals. In addition, Article 20 of the Constitution provides for protection for minorities, ensuring full equality of minorities before law.

As one of the most important normative acts in the context of guaranteeing and protection of human rights, the European Convention on Human Rights, in its Article 14, provides for prohibition of discrimination.

Nowadays we can talk of a detailed legislation, which guarantees and protects the right of equality of arms before law and prohibition of discrimination and which, at the same time, provides for possibilities and spaces for interaction between several stakeholders in the field of human rights' protection.

The People's Advocate, in 2012, has considered 11 complaints, which were directly targeted at alleged violation of equality, or of discrimination. Of these complaints, only one is still undergoing examination, while the ten others have already been deliberated upon. Out of the complaints already treated, three are considered as out of the jurisdiction of the People's Advocate work, one beyond the competence of the People's Advocate and six of them have been positively settled. It is worth reiterating the fact that a considerable number of complaints have been addressed to our office from individuals coming from vulnerable

groups, such as people from the Roma community (individual or group complains coming from this group are calculated at 183) and people with disabilities (163 individual or groups complains have been submitted from this group). The Roma and people with disabilities turn out to be mostly exposed to discrimination. Despite the fact that the citizens claimed violation of a certain right, the cases they have submitted are usually related to infringement of the principle of equality, or discrimination, which has served as grounds for violation of other rights, as claimed by the applicants. These cases are included and treated in the report, according to the category of the alleged violated rights.

### *Case Analysis*

The application registered as Doc. no. 201200708 filed by “The Association for the Integration of the Retired People in the Republic of Albania” deals with a complaint on the approval of the status of the third age, and on their participation in the inter-ministerial meetings focused on decision-making affecting the third age. This intervention was required, because considering themselves discriminated against, if compared to the other population groups, the complainants considered the approval of the status for the third age the appropriate measure to address their situation. After a mediation process with the Ministry of Labour, Social Affairs and Equal Opportunities on this issue, we were informed that the priorities of social policies are based on Law no. 9355, dated 10.03.2005 “On Social Aid and Services”, as amended in the Social Protection Sector Strategy, a part of which is the cross-sector policy document for the third age, together with its action-plan. One of the objectives of the action plan of the cross-sector policy document for the third age is the adoption of the status for the elderly. Upon the Order no. 820/20, dated 11.06.2010, a working group has been established for drafting the draft-law on the status of the third age, with representatives from the Ministry of Justice, Ministry of Health and Ministry of Finance, ISKSH, ISSH and others. The draft-law on the above-referred status was foreseen to be submitted for approval to the Council of Ministers at the end of 2012. Considering the work of the relevant group as a positive development, the People’s Advocate shall continue to pursue the process for drafting of this normative act to the end.

At his initiative, the People’s Advocate has submitted a recommendation for an amendment in the Law no. 7961, dated 12.07.1995 “The Labour Code of the Republic of Albania”, as



amended, to the Minister of Labour, Social Affairs and Equal Opportunities”, thus identifying the People's Advocate active role not only for the protection of the rights and freedoms of the individual from the illegal or irregular acts or omissions of the public administration, or of other third persons related to it, but even for promoting the fundamental rights and freedoms of the individual, despite of the fact whether the individual is part of a minority group, or of the majority of the society.

The LGBT community in Albania, pursuant to the laws in force, should be target to equal rights and freedoms as all the other members of the society, pursuant to the principle of equality of all the nationals before law (Article 18 of the Constitution), closely related to the principle of non-discrimination, despite their gender or sexual orientation.

In this light the provision of the fundamental rights and freedoms in the Albanian legislation on the LGBT community, as well as enforcement of such rights are very important. This is the reason why they are involved within Recommendation 11 of the European Union for Albania “The Human Rights and Freedoms”, and more specifically, in the part of non-discrimination against different social groups.

Sexual orientation includes a sustainable model/structure, emotional, romantic and sexual attraction, or a combination of such elements for the different, same, both sexes, or none of the sexes and genders. According to the American Psychology Association, sexual orientation does as well refer to the “feeling of personal and social identity” of the person, thus in itself it represents a different social relation of these individuals.

Gender identity is the way how somebody is self-identified with a gender category, such as, for instance, being a female or male, or sometimes being none of the above, that might be distinct from the biological sexes. About persons having a different gender identity from the general male/female gender, we think that the provision is all-inclusive, not explicitly referring to the different gender types. Hence, pursuant to the stipulation of Article 18 of the Constitution, sexual orientation or gender of individuals can be a cause for unequal treatment and differentiation of the LGBT community, which, for different reasons has or might have a social composition not dependent on their merits, or a gender identity different from that of both genders (female/male).

This principle stays in the heart of Article 49 of the Constitution, according to which “...Everyone has the right to earn the means of living by lawful work that he has chosen or accepted himself. He is free to choose his profession, place of work, as well as his own system of professional qualification”. The Constitutional provision provides for the right of each individual to work, despite gender, race, ethnic, linguistic, political, or religious views, etc. The right to work, according to this Constitutional definition, contains: the right to choose your professions, the job and the professional/vocation training system, so as to ensure lawful means of living. The provisions of Article 49 of the Constitution “...Everyone has the right to earn the means of living by lawful work that he has chosen or accepted himself. He is free to choose his profession, place of work, as well as his own system of professional qualification” should be taken in a double meaning. It is a positive obligation asking for state’s commitment to establish favorable conditions for ensuring this right, but entails also a negative obligation, which asks for state’s non-involvement for affecting this right”.

In this context, there is a legal basis referring to this case, such as the Constitution of the Republic of Albania, Article 15, the international conventions signed and ratified by Albania, which in essence focus on the equal treatment, non-discrimination, protection and respecting of human rights and freedoms in general, but, also the rights of the LGBTs in particular, such as the European Convention on Human Rights, the UN Declaration “On Sexual Orientation and Gender Identity”, signed by Albania on 18 December 2008, Protocol no. 12 of the Convention on the Protection of Human Fundamental Rights (on a General Prohibition of Discrimination), signed and ratified in 2010, Convention no. 111 of the International Labour Organization (ILO) “On Employment and Professional Discrimination”; item V of the Recommendation of the Council of Europe Committee of Ministers Resolution CM/Rec(2010)5, focusing on issues of employment, specifying that “the Member States should safeguard establishment and enforcement of suitable norms providing effective protection against discrimination in the public or private sector, based on sexual orientation or gender identity in employment and profession. Such measures have to provide for the conditions of access to employment and development, dismissals, salaries and other working conditions, including prevention, fight and condemnation of harassment and other forms of victimization. Special attention has to be casted to ensuring an effective protection of the intimacy of trans-gender individuals in the employment context, in special employment applications to avoid any unimportant uncovering of their gender history, or of the name of

the former employer, or of other employees; Law no. 10221, dated 04.02.2010 “On Protection Against Discrimination”, as a framework law regulating the implementation and safeguard of the principle of equality, lays down the principles, rules and general obligations on protection against discrimination, while the other laws in force deal particularly with discrimination regarding the right to employment, right to education, right to access goods and services, etc.

The special legal regulation to which this matter against discrimination is addressed in is Law no. 7961/1995 “The Labour Code of the Republic of Albania”, as amended. Article 9 of the Labour Code, as amended, provides that any type of discrimination in the employment and profession is prohibited. Item 2 of Article 9 of the Labour Code provides for non-discrimination and the reasons based on which discrimination can occur, such as: race, color, sex, age, belief, political faith, national background, social background, family relations, physical or mental disabilities.

In the reasons quoted in Article 9 of the Labour Code there is no reference to prohibition of discrimination because of sexual orientation, or gender identity. Even though there are no legal explicit restrictions on the right to employment in the Labour Code, the latter does not contain specific provisions prohibiting discrimination on the grounds of sexual orientation or gender identity in the fields of employment and vocational training. Such a gap in the Labour Code might be a cause of infringement of the rights of the LGBT community to have access to jobs equally to the remaining part of the society. Therefore, in such case, the legal gap in the special legislation might lead to problems in the implementation of the equality of individuals and of non-discrimination on the exercise of the labour law, and, consequently, to failure to meet the obligations deriving from the Law against discrimination, impunity of the discriminatory behavior and to define the responsible ministry for the implementation of the law.

In the context of Albania’s integration in the EU, Article 70 of the Stabilization and Association Agreement on Albania-EU relationship has laid down the general principle of approximation of the Albanian legislation with the EU *acquis*. According to this Article, the parties recognize the importance of the approximation of the current Albanian legislation with the EU’s *acquis* and its effective enforcement. Albania shall try to ensure its existing laws

and its future legislation be gradually in line with the EU legislation and has pledged to make sure that the current and future aligned legislation shall be enforced accordingly.

Paragraph three of the same SAA article reads that the approximation should enter into force upon entry of the agreement in force and shall gradually entail all the elements of the community *acquis*. In the first phase, as already stipulated in Article 6 of the SAA, the approximation shall focus on the main elements of the *acquis* and of the internal market, and in other important fields as competition, intellectual rights, industrial property rights, public procurement, standards and certification, financial services, land, maritime transport, focusing especially in the environmental standards and social aspects, the company law, accounting, consumer protection, data protection, occupational health and safety and equal opportunities. Furthermore, the European Commission, in its 2010 Opinion on Albania, has already highlighted that the process of the approximation the Albanian legislation with the *acquis communautaire* has already been launched in the field of labour legislation, equal treatment of women and men, and anti-discrimination, but further efforts are needed to ensure full compliance.

With regards to the above, according to the provisions of the Directive 2000/78 EC “On the Establishment of a General Framework for Equal Treatment in Employment and Occupation”, the People’s Advocate Office is of the opinion that Article 9 of the Labour Code should include sexual orientation and gender identity amongst the grounds for anti-discrimination.

Article 1 of the same Directive provides that the purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect the principle of equal treatment in the Member States. Therefore, the framework has listed sexual orientation amongst the various grounds for discrimination. Furthermore, with the purpose of guaranteeing the application of the principle of equal treatment, Article 10 of the Directive provides that “the Member States shall take such measures as deemed necessary, in accordance with their national legal systems, to ensure that, when persons who consider themselves wronged because of breach of the principle of equal treatment, can establish before a court or another competent authority facts from which it may

be presumed that they were subject to direct or indirect discrimination, and it shall be for the respondent to prove that there has been no breach of the principle of equal treatment”.

After deliberating on the matter, the People’s Advocate reached in the conclusion that Article 9 of the Labour Code does not ensure an equal treatment of the LGBTs in exercising their right to employment and occupation. It is not complaint to the constitutional principle of the equality of all citizens before law, as provided by Article 18 of the Constitution, which provides that “everybody is equal before law”, and to many international acts on human rights, as ratified by the Albanian state, quoted above in this document, including also Article 1 of the “Universal Human Rights Declaration”, approved and proclaimed from the General Assembly, at its Resolution 217 A of 10 December 1948, laying down that “ ... *all human beings are born free and equal in their dignity and rights*”.

To re-establish this right of the LGBTs, we have specifically recommended to the Minister of Labour, Social Affairs and Equal Opportunities, as follows:

1. to include in item 2 of Article 9 of Law no. 7961/1995 “The Labour Code of the Republic of Albania” sexual orientation and gender identity as grounds for discrimination.
2. to add at the end of Article 9 of Law no. 7961/1995 “The Labour Code of the Republic of Albania” of a new paragraph, stipulating the party bearing the burden of proof on alleged cases of discrimination. The new paragraph has to be fully in line with the specification of Article 10 of the Directive 2000/78 EC, thus assigning the burden of proof on the employer.

In the meantime, we are well informed by the Ministry of Labour, Social Affairs and Equal Opportunities (at the letter of 18 February 2012) that such recommendations are included in the draft-law on the amendments to the Labour Code.

## ***Conclusions***

The current legislation in Albania introduces a good background on protection from discrimination. The hierarchy of the normative acts guaranteeing equality of citizens has recognized a proper detailed coverage upon the entry into force of Law no. 10221, dated

04.02.2010 “On Protection from Discrimination”. In addition to the clarification on the notion of equality and of its elements, which failure to comply with leads to discrimination, the Law has served as the basis for establishing the Anti-Discrimination Commissioner’s Office, having broad competencies in the field, starting with advisory or recommendation competencies up to the decision-making competencies, with a jurisdiction covering the state and the private sector.

The People’s Advocate thinks that establishment of the Anti-Discrimination Commissioner’s Office is a good development and a real asset to the benefit of the work in the anti-discrimination domain. It is an asset in handling the complex discrimination problems identified thus far, not excluding the special contribution of the other specific stakeholders in this regard, serving as an umbrella institution, able to also take decisions if so required.

This approach is based on the constitutional principle that the protection of fundamental rights and freedoms is not simply a right of the individual, but a priority constitutional obligation in the activity of the public administration, of all the other stakeholders and factors in the country, providing an important contribution in this domain.

The People’s Advocate has paid a special attention to this matter and has conducted a careful analysis on the complaints alleging discrimination, providing a wider evaluation of violation of certain rights, especially of those rights alleged by the vulnerable groups, entailing negative discrimination.

## **2.2. The right to information**

### ***Overview***

The Constitution of the Republic of Albania, being the highest normative act in the country, provides for the right to information in its Article 23.

There are many international acts focusing on this right, providing for safeguards and conditions for respecting it. The ratification of these acts by the Albanian state leads to obligations of respecting the rules deriving from them, and to the need for harmonizing and

aligning the national legislation with the principles, based on which the international law regime is established. The international acts of major importance in this field are:

- a) The Universal Human Rights Declaration, approved the United Nations General Assembly on 10 December 1948, which in Article 19 affirms the right to information as one of the fundamental rights of the individual.
- b) The European Convention on Human Rights, which, in paragraph one of its Article 10 reformulates and highlights what is provided for in Article 19 of the Universal Declaration of Human Rights.
- c) The International Covenant of Civil and Political Right (December 1966).
- d) The Council of Europe Declaration on Freedom of Expression and Information, and on Access to Information of 1982, which highlights that access to information is one of the priorities of the work of the Council of Europe. This Declaration enshrines the main principles of the right to information and the role of this right to the society “as a necessary condition for the development of the society”.
- e) The Aarhus Convention “On Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters”, which is another act elaborating this right in a certain domain.

The two main Albanian laws setting the legal regime of this right are Law no. 8503, dated 30.06.1999 “On the Right to Information on Official Documents”, as well as the Administrative Procedure Code, approved by Law no. 8485, dated 12.05.1999 that provides for the right to information as one of the key principles of operation of the public administration.

The People’s Advocate, in 2012, has considered 38 complaints related to the right to information. Out of these complains, three are still under deliberation, whereas 35 other complaints have been examined. Out of all the deliberated complains, 11 fall out of the competence of the People’s Advocate, 18 complains are positively resolved, five are not grounded in Law, while the applicant resigned from one complain at the beginning of the examination process by the People’s Advocate. The complains are related to failure to respect the right to information by the central government bodies, local government bodies, public utilities and of legal persons providing public services

### ***Case analysis***

In the application registered as Doc no. 201201877, the national H.B complained about the delays in getting information, as requested by him via several official letters, by the Municipality of Tirana. The People's Advocate Office deliberated on the application. For this reason we addressed the Municipality of Tirana for finding out the applicability of the applicant claims and for providing information on dealing with such a matter. In answer of our request, we received a positive feedback by the Director General of Territorial Development and Planning at the Municipality of Tirana, who provided us with a detailed overview of the legal and factual situation related to the applicant claims. In the meantime, the applicant informed us that following the People's Advocate intervention, he received an official reply on his submissions to the Municipality. A copy of the information submitted to the applicant has also been addressed to the People's Advocate Office. In conclusion, after informing the applicant on the People's Advocate intervention and after receiving no objection from him, we suspended the case considering the complaint as resolved.

The application no. 201202397 Doc was submitted by the national A.K, who complained about the negation of his right to information, after some detailed applications he had submitted to the General Tax Directorate of Tirana. The People's Advocate started considering the case, by asking for explanations from the Director General of the General Tax Directorate of Tirana, based on the applicant claims. In answer to our Letter, we got a positive answer by the Director General of Tirana, who put at our disposal the information required by the applicant, together with extracts of the electronic system, where we get the data asked by the national A.K in such case.

In the end, after providing the applicant with a copy of the official letter by the Tax Director, together with all the relevant information, and not having further claims by the applicant, we closed the case, considering it as resolved.

### ***Conclusions***

The problems identified by the People's Advocate while examining the cases on such right identify elements related to the content of the provisions of the basic law governing the right to information – namely of the Law “On the Right to Information on Official Documents”,



and issues related to the application and recognition of such provisions in real life. In 2012, we see that the situation of 2011 continued. More specifically public administration continued to fail to apply the laws recognizing and guaranteeing the right to information on official documents. The causes of not providing official documents, or causing delays in providing such-type documents, are related with the lack of knowledge or superficial awareness of public administration on this law, and with the gaps of the law. The need for amending the law “On the Right to Information on Official Documents” remains an immediate need. Despite our constant requests for amending the law and for issuing by-laws on its implementation, in the conditions of lacking measures to improve the situation, we are obliged to bring to your attention such observations and comments, which are also referred to in the Annual Report of the People’s Advocate Activity for 2011<sup>3</sup>:

*“The People’s Advocate, being the guarantor of the right to information, has come to the conclusion that functioning of the public information regime in the country continues to have substantial problems, which leads to the need for amendments and supplements to the law “On the Right to Information on Official Documents”.*

The potential amendments of the Law should consist in:

- Extending the network of the entities obliged to give information, including the natural and legal persons providing public or administrative functions (such as for instance, the private companies having monopolies or concessions on water supply, electricity supply, etc).
- Adding exceptional criteria, more specifically provided in an exhaustive list of the criteria not allowing for delivering information. Such criteria are particularly seen as important in the case of frequent requirements, when a full and final explanation has been provided.
- Review of deadlines for provision of information: such deadlines need to be shorter and unified with the deadline for the refusal of the application, or for submitting an application.
- Liability to guide the applicant to ask for the documents he/she is interested in, because the administration has a more thorough information on the official documents

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<sup>3</sup> The Annual Report of the People's Advocate Activity for 2011.

it contains, or the liability to orient applicants, for as far as possible, to the competent body that should submit the information as provided for in the law.

- Expressive reference of facilities for providing information, if the information is sought by people with disabilities; a provision that should be added that the applicant might have access to a format of his choice, including the electronic format, except for when the electronic version is accompanied by considerable technical difficulties;
- The cost of fees in exchange to receiving a certain piece of information, for avoiding high and abusive fees, which might, in their turn, lead to obstacles to the right to information.
- Explicit reference to sanctions and compensation/remedies; sanctions for violation of the provisions of the Law “On the Right to Information on Official Documents” are not explicitly provided. In the meantime, regarding fair compensation of damage, there are no specific provisions in the law that would pave the way to a real compensation in case of infringement of the right to information.

### **2.3. The right to freedom of conscience and religion**

#### ***Overview***

The right to freedom of conscience and religion represents in itself two fundamental separate rights. Article 24 of the Constitution of the Republic of Albania provides for certain aspects of such rights, such as the right to freedom of religion and thoughts, or the manner of expression of such thoughts. Being an individual right, it entails the right not to be obligated to or prohibited from taking part in a religious community, be it from the state, or from private individuals/entities, and the right of the individual not to disclose his/her thoughts in public. The right to freedom of thought, conscience and religion represents one of the fundamental rights of a democratic society and is ranked amongst the most fundamental elements of the identity of believers and of their concept of life, but is also a precious thing for the atheists, agnostics, skeptics or indifferent.

In 2012, the People’s Advocate has received only one complaint affecting the right to freedom of religion, where the applicant alleged violation of this right because of the

omission of the relevant public administration body to eliminate a cause leading to such infringement.

The officially recognized religious communities in the country are the Muslim, Catholic, Orthodox, Bektashi and the “Albanian Evangelical Brotherhood” communities. The legal basis for recognition of religious communities are Article 10 and 24 of the Constitution and the laws approving in the Assembly the agreements signed by the Council of Ministers and the relevant religious communities. So far, the Assembly of the Republic of Albania has approved by law the agreements for common relations of the religious communities in the country, namely Law no. 8902, dated 23.05.2002 “On the Ratification of the Bilateral Agreement between the Republic of Albania and the Holy See to Regulate Mutual Relations”; Law no. 10056, dated 22.01.2009 “On the ratification of the Bilateral Agreement between the Republic of Albania and the Muslim Community of Albania to Regulate Mutual Relations”; Law no. 10057, dated 22.01.2009 “On the Ratification of the Bilateral Agreement between the Republic of Albania and the Autocephalous Orthodox Church of Albania to Regulate Mutual Relations”; Law no. 10058, dated 22.01.2009 “On the Ratification of the Bilateral Agreement between the Republic of Albania and the World Bektashi Headquarters of Albania to Regulate Mutual Relations”, and Law no. 100394, dated 10.03.2001 “On the ratification of the Bilateral Agreement between the Republic of Albania and the Evangelical Brotherhood of Albania to Regulate Mutual Relations”.

### ***Case analysis***

The application registered as Doc. no. 201202736 is related to a complaint by a senior ranking representative of one of the religious communities to the People’s Advocate Office, focusing on the failure of relevant public administration bodies to react to the complaints addressed for stopping construction work of a physical person in vicinity of the religious assembly facility, as such constructions have affected and limited the free entry of people for practicing religion, because of the blockage to the entry of the building.

Once we received the complaint, we asked for further explanations from the Chief Inspector of the Municipal Police of Tirana, from the State Committee of Cults, and from the Directorate of Cultural Monuments. In its reply to our request, the Regional Directorate of

National Culture informed us that there has been no intervention to the façade of the building, while the Chief Inspector informed us on the legal procedures and reprimanding measures taken against the physical person, who built an additional building on one of the sides of the religious community headquarter. Subsequently, we informed the complaining person on the measures undertaken by the relevant bodies and received no further complains showing persistence of the matter.

### ***Conclusions***

The People's Advocate has given a constant contribution in the context of the protection and respect of the right to the freedom of consciousness and religion in the context of drafting of the law "On Religion" and of the approval of sample agreements with the religion communities in Albania. Despite of the fact that the law "On Religion", which, according to the Constitution of Albania, governs the relations of the state with the religion communities, its implementation is still pending and we still do not have an operational law covering the religious issues. A novelty of 2012 is the approval of Law no. 69/2012 "On the Pre-University Educational System in the Republic of Albania". Different from the formulation of the initial draft-law, which prohibited religious symbols in schools, the newly-approved law does not provide for a clear reference to this matter, but just says that education is laic. In our opinion, the policy of the law, mainly in the pre-university education domain, should be aimed at accommodating every person in the most reasonable way possible, so as to establish a suitable climate, in which children can learn and live together in harmony.

In the verge of problems related to the protection and respect of the right to freedom of consciousness and religion, the People's Advocate is carefully and attentively following the rhetoric between the representatives of certain religious communities. Distancing himself from the conflicting connotations used in the rhetoric, the People's Advocate is of the opinion that the internal organization of the religious communities should not serve as a cause to distort the religious harmony existing in the country between individuals of the same belief, or of other beliefs.

## **2.4. Limitation of personal freedom**

### ***2.4.1. The Activity of State Police***

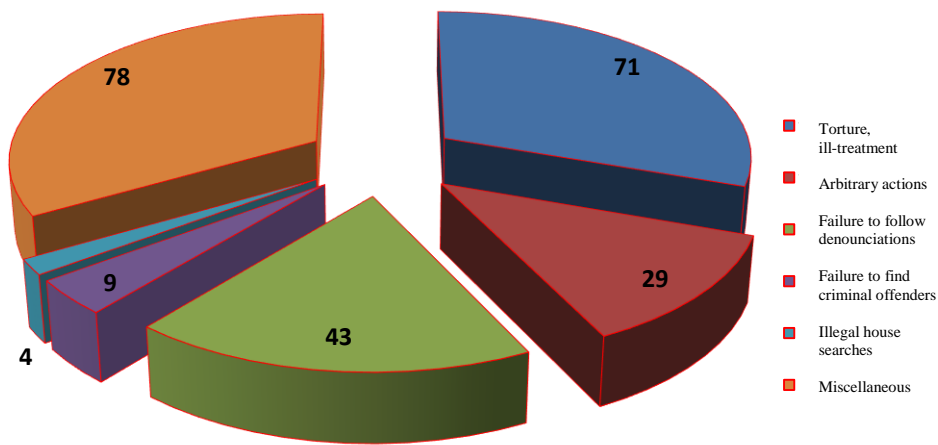
#### ***Overview***

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 her job, the state police is directly related to respecting of human rights and fundamental freedoms.

In 2012, the People's Advocate Office 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 how 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 National Mechanism on Prevention of Torture, 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, the People's Advocate has followed the following cases in 2012:

- 1) 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", Letter Rogatory 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 CE**, 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.
- 2) 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.
- 3) 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.

4) 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.

5) 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.

6) 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.

7) 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 defense representation.

8) Provision of (compulsory) legal and psychological in case of detention of arrest of a minor, and the immediate notification of his family members.

9) Adoption of measures by the State Police to make sure that minors are not kept in the same room/cell with the adults.

10) 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.

11) Enforcement of the legal provisions of the Criminal Procedure Code related to recording of the exact time of arrest or detention of the nationals.

12) Removal of objects reflecting violence in the offices of the judicial police officers and in the facilities the detained or arrested people.

13) 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.

14) 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.

15) Consolidation of the Police Center Training Programme with full knowledge on human rights and individual freedoms.

16) Installment of the security camera in the accompaniment venues, in the security and investigation venues of the state police units.

During its activity, the National Torture Prevention Mechanism, 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, we should bring to your attention the following:

**About the detention facilities** where the detainees are held, we see 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 Korca, Kukes, 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".<sup>4</sup>

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 Mallakastra, 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, Tepelena, the detention facilities are reconstructed upon the initiative of the police commissars. Even though such commissariats have 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 our 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, we have 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

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<sup>4</sup> Excerpt from the 2011 Annual Report, p. 35.

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 commissariats (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, we are 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 National Mechanism for Prevention of Torture, 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. 9749, dated 04.06.2007 "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.

**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, we see 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:

- 1- 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.
- 2- 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, Shkodra, Puka and the Police Commissariats no 2 and 5 in Tirana).
- 3- 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.
- 4- 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, we are of the opinion that this case has to be regulated by law. Such cases of accompaniment are frequent in all the state police structures.

- 5- 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).
- 6- 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.
- 7- “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 we 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 above<sup>5</sup>”.

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, we 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 modeled 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

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<sup>5</sup> 2011 Annual Report, p. 36-37.

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.

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 the 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, we 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 commissariats we see 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 National Mechanism of Prevention of Torture, 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 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 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 People's Advocate Office has identified during its observation, it has recommended the immediate solution of such concerns. With regard to the above, we have recommended to the Police Education Center to cooperate with the purpose of promoting human rights in this Education Center<sup>6</sup>.

“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.

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<sup>6</sup> 2011 Annual Report, p. 38-40.



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 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, we have 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 installment of surveillance cameras in public venues, is of the opinion that installment 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 we 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, dated 23.11.2009 “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 Lushnja, 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, we have 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 diseases they might suffer from, especially contagious diseases that are a danger for them and for the others.

Some police commissariats/directorates lack informative posters in the English language on the rights of 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 National Mechanism on Prevention of Torture, 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"<sup>7</sup>.

All what said is illustrated in specific cases and recommendations:

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<sup>7</sup> 2011 Annual Report, p. 40-46.

- The application registered as Doc. no. 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 we 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, we 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, we 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, we recommended to the Prosecution Office of Shkodra to initiate a criminal proceeding against nine officers of the Police Commissariat of Shkodra for the **criminal 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, we recommended to the Prosecution Office of Shkodra to institute a disciplinary proceeding against the judicial police officers for **the illicit arrest of one of the complainants. For this recommendation we were informed that the prosecution office would have to come up with a position on this matter at the end of investigations.** As of now we have not received a final answer on the above.

- Application registered as Doc. no. 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 we 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 we 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.

We 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 at 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, dated 25.01.2011 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 mounting 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.

We would also like to highlight that in more than one case, the CPT (Committee for Prevention of Torture) of the Council of Europe has said 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, we came up with the conclusion that the applicant was deprived of his fundamental on not being subject to torture, inhuman or degrading treatment, as provided for in Article 5 of the Constitution and Article 5 of the European Convention on the Protection of Fundamental Rights and Freedoms.

About this case, we 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. no. 201200930, related to the inhuman treatment of four nationals by the Police



Commissariat no 2 in Tirana. After observing the case in the entirety, we 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 some 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, we 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, guarantees 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 institute a criminal proceeding 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. no. 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 some 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 we 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 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, we addressed the Prosecution Office of Tirana, asking it to start 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-ufficio 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 neighborhood 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 failure of 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.
  - a) for instituting a criminal proceeding in charge of some police officers of the Police Commissariat of Puka for the criminal offence of “abuse of power”, in accomplice, provided for in Article 248 and 25 of the Criminal Code.
  - b) for the First Instance Court of Puka to open a case against the Chief of the Police Commissariat of Puka, on grounds of Article 240/1/a of the Criminal Procedure Code “suspension from a public function”, asking for the suspension of the Chief of the Police Commissariat, and against the judicial police officer, for “suspension from office” under the same ground, until the end of proceedings.

The recommendation was accepted as the Prosecution Office opened 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 and 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.

Also, pursuant to the prosecution’s request, the First Instance Court of Puka decided to suspend them from office 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) generalization of this case to all the State Police bodies so as to limit other similar behaviors 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-ufficio* by the People's Advocate Office, recorded as Doc. no. 201203243 focuses on the event of 15 August 2012, where a national having a house arrest security measures 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 we 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 expressively 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 we came up with the conclusion that the actions of the Regional Police Commissariat of Elbasan were not compliant to 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”, we 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, some 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 neighborhood. In addition, she claimed that any time thefts happen in their neighborhood, the police goes and accompanies her sons to the police examining them as suspects of the crime.

The verifications we 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, we 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 11.11.2007 "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, we found out that although it is five years now from entry 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 this case in question, we recommended to the Regional Police Directorate and to the Chief of the Police Commissariat no 1 in Tirana:

1. to institute disciplinary proceedings and issue relevant disciplinary measures against the police officers accompanying the two nationals to the police;
2. to discuss about this case, treating it as a case study, so as to put a ban to similar legal violations in the future;
3. to 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 striker.

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 in 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 circumstance possible.

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 Labour, 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: police visiting their hunger strike place, search of the venue by the police 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, we 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 such things as sugar, trisol, and coffee found in the hunger strike place was considered as an unfair and non-proportionate act, while banning of entry of drinks (tea), or of sugar, trisol and coffee in the hunger strike place 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. We 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 such 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. We also identified that this police action affected the freedom of press, radio and television, provided for in Article 22/2 of the Constitution.

7. We 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, we were 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 43<sup>rd</sup> World Medical Association, held in Malta, in November 1991, reviewed by the 44<sup>th</sup> World Medical Association, held in Marbella, Spain, in September 1992 and by the 57<sup>th</sup> 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 29<sup>th</sup> Medical Assembly, held in Tokyo, Japan, in October 1975, reviewed at the 170<sup>th</sup> 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.

We 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, we submitted the following recommendations:

1. A recommendation to the General State Police asking him:
  - a) *“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;*
  - b) *to allow liquids, sugar, coffee, etc. for the hunger strikers;*
  - c) *to allow hunger strikers to meet with their family members and relatives/friends;*
  - d) *to allow strike coordinators to meet with hunger strikers;*
  - e) *to allow the strikers to exercise their constitutional right of access to press, radio and television;*

- f) 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 in the strike facility.

2. A recommendation addressed to the 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 behave in cases of hunger strikers”.
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 behave in cases of hunger strikers.

We highly appreciated the acceptance of our 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.

### ***Amendment of legislation***

During the last year, we have cooperated a lot with the State Police on the physical integrity of the detainees halted by the State Police, because, as already highlighted above, it is the task of the State Police to protect and provide certain rights to 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 Annual Report, where we 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 are carrying out this task in breach of legal provisions. Furthermore, drafting by the General State Police Directorate of a manual on the organization and operation of this service, is refused 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 experience of previous years we have identified that 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, 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”<sup>8</sup>.*

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*

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<sup>8</sup> 2011 Annual Report.



*Advocate 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.

### ***Conclusions***

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.

We have identified cases when police staff do not receive, administrate or follow criminal testimonials, 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 conditions of living for the persons kept there.

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.

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

The process of use of the registers for administration of complaints of the accompanied, detailed or arrested people has not yet finished.

The camera surveillance process in the accompaniment, detention, and investigation facilities has not yet finished.

Not all Police Commissariats have posters containing the rights of the detained and arrested people.

The following is recommended:

- a continuous training of the police staff for familiarizing them with the need to respect human rights; in addition to courses organized in the Police Training

Center, there is a need for organizing conferences, seminars, meetings with the participation of civil society, focused on the protection of human rights;

- cooperation with civil society, with the purpose of monitoring the human rights situation by the police;
- more funds for the state police budget, with the purpose of building or reconstruction of the accompaniment or detention venues in all the police commissariats, according to the approved programme;
- posting of posters containing the rights of nationals in all police facilities, be them facilities where the accompanied, detained or arrested people are kept, or in the police staff offices, with the purpose of informing the people of their rights, and of serving as a constant recall for observance of the law.
- constant controls by superior bodies in the local police structures so as to monitor the police activity regarding application of human rights.

#### ***2.4.2. The People's Advocate activity vis-à-vis the Armed Forces***

##### ***Overview***

The activity of the Armed Forces of the Republic of Albania is governed by the Constitution, in its Article 166-176 and in the Law no. 9210, dated 2303.2004 "On the Status of the Servicemen of Armed Forces in the Republic of Albania". The verification of the rights and freedoms of the servicemen was realized through acceptance of complaints to the People's Advocate Office and through visits in some military units. The purpose of these visits is to see from first-hand how the rights and freedoms of the servicemen are respected, and to contact with them, so as to facilitate the process of submission of applications with the People's Advocate. For 2012, the People's Advocate Office registered 88 requests and complaints from people who are military staff, or former military staff. 84 cases have been examined, while four other cases are under examination. From the cases examined in 2012, 38 cases are (positively) settled, seven were held to be beyond the People's Advocate competence and 39 were not grounded in law. Most of the applications were focused on:

- failure to apply or delays in payment of the supplementary pension for the military staff of the Republic of Albania;
- lease compensations;
- delays in procedures for treatment of complaints of the nationals addressed to the Central Commission for the Status of Veterans and Martyrs of the Nation;
- failure to obey the rules on working and holiday time;
- use of uniform contrary to the approved legal norms.

### *Case Analysis*

A considerable number of applications addressed to the People's Advocate were focused on the wrong calculation of pension funds. It is a fact, that final court judgments recognize the right for supplementary pensions to some former military men. These people have filed complaints to the People's Advocate Office claiming that the Social Insurance Institute is wrongly calculating their retirement pension, in breach of the Constitutional Court judgment. Because of such reason, the People's Advocate, in January of 2012, recommended to the Minister of Finance to incur a legal act so as to make sure that Article 29 of the above-referred-to law is applied in line with the Constitutional Court judgment. The People's Advocate recommendation has not yet been answered. Consequently, the issue has not yet been legally resolved.

A problem, which, according to us affects a considerable number of servicemen, is the compensation of the house loans and food and the right to buy the buildings and the sites emptied from the reconstruction of the Armed Forces (Article 21, 38 and 39 of Law no. 9210, dated 23.03.2004 and the by-laws issued in its implementation. According to the Ministry of Defence this problem should be resolved through:

- a) Augmentation of funds for loans for houses by the state budget, which has so far been limited; for 2012 the amount allocated by the state budget was not sufficient to meet the needs of the military staff, compared to the high number of requests for housing. For this purpose we suggested allocation of more funds for the military staff of armed forces and identification of other forms, cooperating with local government bodies to enable treatment of housing concerns;

- b) Housing of the military staff in the buildings emptied by the re-structuring of the Armed Forces;
- c) Compensation of house leases and of the food of the military persons of Armed Forces, according to the Council of Minister's Decision no. 524, dated 30.07.2004, which, as far as we know, is in the review process.

Another issue we have treated even in the past is violation of rights related to working time and days off. The military staff have complained that they often work longer hours. This is the reason we have recommended to the General Staff of Armed Forces to minimize work beyond the official working hours. In reply to the recommendation, we are informed that the Armed Forces needs for professional soldiers are not met. Consequently, there has been on overburden of the existing staff, although the Operational and Training Directorate at the General Staff has changed the agenda of the training program to avoid Saturdays, passing from four to three training cycles, so as to ensure free Saturdays for the military staff. Fifteen days off are taken after each training cycle by them.

Use of uniform by the military staff is one of the rights recognized to him in Law no. 9210, dated 23/03.2004, and in the Decision of the Council of Ministers no. 464, dated 02.07.2004. In some of the cases we have examined, we have found out that the right of the military persons for the uniform norms has not been respected. In reply to our recommendation to these cases, we were informed by the General Staff of Armed Forces that appropriate measures are taken to provide training uniforms and other materials to all the staff.

### ***Conclusions***

The Ministry of Defense is one of the public administration bodies setting an example of a partner willing to have institutional cooperation with us.

Compared to previous year, there are less complains addressed on the service provided beyond working hours, while problems of the previous year such as: improvement of living and housing conditions, delays in payment of the supplementary pension, failure of respecting of the rights for training uniforms have still continued.

One of the major concerns is improvement of the living and housing conditions of the military staff. The People's Advocate has recommended for a higher loan fund and the transfer of emptied facilities because of restructuring of the Armed Forces to the military men for housing purposes.

Efforts should be made to finally resolve the problems related to improvement of the living conditions and provision of uniforms to the military staff, according to the specifications of the law. The People's Advocate recommendation on this matter is accepted by the Ministry of Defense, but first-hand verifications have shown that the measures adopted were not complete.

## **2.5. Issues of justice administration**

### ***2.5.1. The right to fair trial***

The right to fair trial is a safeguard for the nationals against irregular actions of the state bodies, on the one hand, and the obligation of the state bodies to not affect the rights and freedoms of the individual without referring to legal procedures, on the other hand. Fair trial is an inseparable part of the rule of law.

The Constitution of the Republic of Albania does specifically refer to fair trial in two of its provisions. So, Article 42 ranks fair trial alongside the rights and freedoms of the individuals, while Article 131 (letter f) determines it as an issue of jurisdiction for the Constitutional Court. This important principle appears as a constitutional safeguard for the individuals in the two constitutional provisions, against any deprivation of their fundamental rights by the state through its decision-making bodies.

Fair trial means not only prohibition of arbitrary actions that can be exerted by the state authorities on the freedom, property and other constitutional and legal rights of the individual, but even the safeguard and application of fair and honest procedures during the investigation, trial and full execution, within a reasonable time, of final court judgments.

### ***2.5.2. The People's Advocate and the judiciary***

#### ***Overview***

The applications about the judiciary, as already highlighted in Article 25 of Law no. 8454, dated 04.02.1999, "On the People's Advocate", include all cases of complaints, requests or notifications for the cases examined by the courts of all levels for violations of human rights deriving from the work of the judiciary, final court judgments and legal proceedings. The examination of the complaints by the People's Advocate does not affect the impartiality of courts in the decision-making procedure. The complaints addressed to the People's Advocate in 2012 regarding the Judiciary consist in violations by the administration of the judiciary and are more specifically related to the unfair delays of cases and to court proceedings. The complaints are investigated and relevant interventions are made aiming at identifying the causes of these violations, issuing appropriate recommendations for correcting them.

In 2012 the number of complaints related to the judiciary has risen, mounting to 685, out of which 570 are fully considered and 115 are under examination.

The analysis done shows that there have been 250 complaints on court judgments, 39 complaints for the violation of trial rights, 40 complaints for delays in court proceedings in the district courts, 21 complains for details of proceedings in the appellate courts, 29 complaint for delays of proceedings from the Supreme Court, 117 complaints for failure to execution of court judgments, and two complains for delays from the court administration.

Out of 570 complaints we have examined in 2012, 143 applications have been resolved in favor of the applicants; 250 applications focused on complaints on court judgment, 68 cases were beyond the People's Advocate jurisdiction; in 97 cases the complaints were not grounded in Law, in 12 cases the complaint were stopped because of withdrawal of complaints from the applicants.

The highest number of complaints addressed in 2012 dealt with delays of trial and violation of judicial procedures. Following the verification of complaints, when the causes of postponement of court proceedings were considered as irrelevant, recommendations have been addressed for acceleration of trial and for adoption of measures so as to ban such occurrences in the future. The complaints were due to the violations committed by the bodies in charge of execution of criminal judgments, claiming that the persons have already finished

the detention time, and that prosecution has not submitted any execution order, determining the final deadline of sentence.

Another group of complaints were targeted at the claims that certain judges are involved in corrupt acts, or have been partial while ruling on certain cases. Complaints have been submitted against notaries and lawyers, claiming violation of laws by the latter in the exercise of their duties. However, in all cases the People's Advocate has submitted all complaints to the Ministry of Justice or to the High Council of Justice for verification, or either to the Bar Chamber, or the Notary Chamber (depending on the case) for disciplinary measures.

In 2012 the People's Advocate has received complaints against the Forensic Institute, which does not allow forensic work with a group of experts, for resolving different problems. Based on the complaints and the documentation submitted, we have drafted a recommendation for the forensic expertise, with a group of experts, while the Institute has decided to perform the forensic work, based on the procedures of the Law.

In 2012 we have received not many complaints asking for objection of a court judgment, and intervention for their annulment. The complaints focusing on this matter have not been treated by us, but the applicants are immediately notified that the People's Advocate Office cannot examine complaints against court judgments, and that the only lawful means for the rejection of a court judgment is to address a higher instance court within the deadlines prescribed in law, according to the regular procedure.

Another minor group of complaints were focused on the transfer of Albanian nationals serving a judgment of imprisonment from a foreign prison to the Albanian prisons. Again, for this group of nationals we immediately informed them of the legal procedures to be followed for transferring inmates from foreign prisons to serve sentences in the Republic of Albania.

The above-referred-to cases are represented by the following cases:

- Application registered as Doc. no. 201200053, belonging to national I.S., who complains against the District Court of Tirana for delays of trial and violation of court procedures during the trial of a civil case against D.R.S.SH Tirana, dealing with the abrogation of the administration act no. 47/20, dated 30.04.2009 on the calculation of the retirement pension. After examining the case, we saw that eight court proceedings were carried out for it. Analyzing the cause of delays and that the applicant did not have

access to the retirement pension for over three years, his age (77 years), and that he lived with his pension and had no other source of income, we sent a recommendation to the District Court of Tirana for accelerating the proceedings. After giving due consideration to the recommendation, the jury took appropriate measures and ended the case within a reasonable time.

- Application registered as Doc. no. 201201522, by A.P., from Shkodra, who complained against a criminal judgment issued on 12 March 2012 by the First Instance Court of Shkodra, sentencing in absentia 53 persons for the criminal offence of cultivation of narcotics, in accomplice, pursuant to Article 283/2 of the Criminal Code with five years of imprisonment each. The applicant explains that the applicants have submitted a complaint to the Appeal Court of Shkodra and claims that the court has allowed for serious violations in the procedure in the trial by the first instance court and claim that their sentence is not fair. After making all the relevant verifications, we monitored the trial in the Court of Appeal of Shkodra, pursuant to the legal procedures and a correct implementation of trial of the criminal case was sought. At the end, the Court of Appeal of Shkodra, at its judgment, of 20 December 2012 ruled on dropping the judgment, of 12 March 2012 of the First Instance Court and to end the trial. This example signals the need for amendment of the criminal legislation. According to the criminal legislation of the EU, the minimum percentage of THC in the cannabis sativa for a criminal judgment should be at the amount of 0,2 or 0,3 percent, while legal provisions refer to 0,1 percent of THC in cannabis sativa for purposes of sentences. The People's Advocate is studying the possibilities to make the appropriate recommendations for amendments, so that the criminal legislation gets approximated to the EU's standard.
- Application registered as Doc. no. 201202306 filed by the national L.A from Tirana, complaining against the Commune of Vaqarr in the District of Tirana, deciding to abolish a mosque, illegally built in L.A's land in Vaqarr. The verifications we made show that the land claimed by the applicant was not owned by the applicant, according to the provisions of law and to requirements of Law no. 7501, dated 19.07.1991 "On Land" and that the land was not registered in the Immovable Property Office in Tirana, in breach of the laws in force. Similarly, it was found out that the applicant did not have any documents supporting his ownership claims, while, on the other hand, there was an administrative act of the Commune of Vaqarr, on 14 May 2012, showing that a case was filed with the Tirana District Court. The later had planned on a court proceeding on



19 June 2012, at 10 o'clock. Under these circumstances and pursuant to requirements of Article 14 of Law no 8454, of 04 February 1999 "On the People's Advocate", we suspended further actions given that the same case was being deliberated by the court at the same time.

- The application registered as Doc. no. 201200068 by S.H, who complained against the judgment of the First Instance Court of Durres, which is in breach of legal procedures, and asked for the People's Advocate intervention to the Court of Appeal of Durres for accelerating the trial. Thus, the applicant claims that the judgment given by the first instance is suffered by him, because the Court has given the security measure of house arrest and the sentence of 1 year and six months is fully served by him. After examining the case, we came up with the conclusion that his claim was fair. As a result, we recommended the Court of Appeal of Durres to accelerate court proceedings. This court took the applicant's claims in consideration and well as the recommendation provided by us. At the end it ruled on squashing the First Instance Court judgment and on re-submitting the case for trial by another panel of judges in the First Instance Court.
- The Application registered as Doc. no. 201203608, belonging to the national S.G, complaining against the Court of Appeal of Shkoder for unreasonable delays and violation of judicial procedures in a criminal case. The Court of Appeal of Shkodra notified us that this case is pending trial and the reason of delay is due to the fact that two judges have left the Court of Appeal of Shkodra, since two years, while the vacancies still exist. On this application, we sent a recommendation to the Ministry of Justice and to the High Council of Justice, referring also to the overload of this Court, with the purpose of adoption of appropriate measures for fulfilling the vacancies.
- The application registered as Doc. no. 201200146, related to an *ex-ufficio* reference of the People's Advocate for amending the legislation based on the cases the Court of Human Rights in Strasbourg has found a violation of the Convention of Human Right and Fundamental Freedoms, of its Protocols ratified by the Republic of Albania. Amendments were made in Article 494 of the Civil Procedure Code, adding another provisions for reviews of judgments by the Supreme Court. In a recommendation addressed to the Ministry of Justice on this matter, we have asked for an intervention in Article 450 of the Civil Procedure Code, adding another provision enabling the individual to ask for a review of judgment by the High Court, if his/her case is deliberated and declared admissible from the Strasbourg Court. This recommendation

was assessed as fair and was accepted by the Ministry of Justice, giving a green light to the necessary amendments of the Criminal Procedure Code.

- Application registered as Doc. no. 201202767 by the national Xh.M, complaining against the First Instance Court of Tirana on delays of trial and violation of judicial procedures in a criminal case against her for the offence of forgery of official documents, provided for in Article 186/1 of the Criminal Code. Pursuant to the requirement of Law no. 8454, dated 04.02.1999 “On the People’s Advocate”, we asked for observance of legal procedures”.
- Application registered as Doc. no. 20120250912 by the national Sh.A., complaining against the Mayor of the Commune of Luz i Vogel, Kavaja, who, in breach of his tasks and functions, and with no permission from the competent bodies, built new staircases without a permit, while such construction affects the private property of Sh.A., who has a café in the first floor of the building. In such circumstances, because of the illegal action of the Mayor of Luz i Vogel, the applicant has raised a civil lawsuit in the First Instance Court of Kavaja, asking for suspension of the effect on his property and demolition of the illegal staircases. In the meantime, the Court, at an injunction order of 21 June 2012 decided to suspend further work by the Commune of Luz i Vogel. For the violation in the case in question by the Mayor of Luz i Vogel, we sent a recommendation to the Chair of the High State Control to exercise control on the legal activity of the use of public funds by the Mayor of such commune.
- Application registered as Doc. no. 201201797, filed by the national E.P. complaining for unreasonable delays and violation of judicial procedures in a civil case. The national E.P had asked for recourse, asking for squashing of judgment no. 2348, dated 14.12.2010 as not being grounded in law. After appropriate examination of the application, we found out that the file in question was registered for trial in the High Court, with no. 00426/11, dated 23.02.2011 and asked for acceleration of the case, because the applicant was over 70 years, had many health issues, and many other reasons. Analyzing the causes and circumstances submitted by the applicant, we submitted a recommendation to the High Court “for acceleration of trial”, which was taken into consideration. The case was tried within a short period of time. At the end the Court ruled on dropping the request for recourse.

## ***Conclusions***

There are still cases of violation of trial procedures by court of both instances.

The work for application of the Recommendation submitted by the People's Advocate to the Ministry of Justice on the amendment of provisions of Article 450, of the Criminal Procedure Code, providing as a cause for reviewing a final court judgment the judgment of the European Court on Human Rights, finding a breach of the European Convention on Human Right and Fundamental Rights and of its Protocols has not yet been finalized, (although accepted).

The complaints filed with the People's Advocate show that there is a need to study and add a provision in the Criminal Procedure Code on the right of family members or legal heirs of victims to chose or decide on a private counsel of defense to protect the lawful rights, freedoms and interests of victims in the course of criminal proceedings in the court. Pursuant to Article 148 of the Constitution of the Republic of Albania, these rights are protected by the Prosecution Office. The presence and participation of a private counsel of defense, chosen or appointed by the family members of the victim, and the verification of his claims by the court would establish a fairer rapport between parties in a criminal case, and would lead to fighting of corruption claimed by the victims' family members. There is not any concrete work reported on the implementation of the recommendation of the People's Advocate for the Ministry of Justice (which is already accepted) for applications of the requirement of Article 46 and 52 of the Criminal Code, for opening schools for the minors below the age of 14 who have committed crimes, but are released of criminal responsibility (by the law).

### ***2.5.3. The Prosecution Office activity***

#### ***Overview***

The Prosecution Office is part of the judiciary. It is a centralized body in charge of criminal offences and is the state representative in the court. The scope of the activity of the Prosecution Office is directly related with the observance of human rights and freedoms in the criminal proceeding.

The People's Advocate, while exercising its task for handling the complaints of nationals against the Prosecution Office, has rigorously applied all legal requirements in respect of the independence of the Prosecution Office.

In 2012, the People's Advocate has received 308 complaints addressed to the Prosecution Office, of which 287 complains have been treated and 21 complaints are undergoing examination. Of the treated complaints, 21 were not grounded in law, 161 were beyond the competence, 30 beyond jurisdiction, 74 complaints resolved in favor of the applicant, and one withdrawn by the applicant.

Some of the cases treated in 2012 are:

First: **failure to apply fair trial** due to unfair actions, committed by the Prosecution Office, affecting the rights of citizens in the criminal process and to respect legal procedures. The applications falling in this remit consisted in: unreasonable delays in the investigation of criminal cases, especially when the case is rejected by the Court; cases of substitution of prosecutors, or of judicial police officers, especially in criminal cases carried out by the judicial police; delays in replies of rogatory letters of the justice authorities of foreign nations; non application of Article 287 of the Criminal Procedure Code related to registration of notifications of criminal offences, when the name of the person to whom the criminal offence is attributed is not registered, although such name is known; unfair arrest, or an unfair accusation; unfair decisions on launch of criminal proceedings or suspensions of criminal proceedings due to non-verification of the testimony, or for failure to make general investigations, especially for the criminal offence of "forgery of property documents", "violation of road traffic rules", failure to notify parties for extension of the criminal proceeding, etc.

Second: **the failure to respect the right to information**, which is seen as one of the fundamental rights of the individual. In such case, the Prosecution Office has not properly notified the nationals on how the case is settled. In other terms, the Prosecution Office either has provided no reply, or has submitted late replies to the submission of parties during investigations (that is later than after 15 days, different from what provided for in item 2, Article 110 of the Criminal Procedure Code; it has not provided copies of the required acts, especially for different expertise acts, such as auto-technical, forensic, technical-graphical

signs of signatures, etc. violating the requirements of Article 105 of the Criminal Procedure Code.

**Third: failure of prosecutors to perform appropriate actions dealing with enforcement of criminal judgments, ending up in confinement of the convicts in pre-detention or imprisonment, surpassing the sentencing time specified in the court judgment.**

According to some complaints, different convicts have complained against the Prosecutors for delays in issuance of the execution order for final criminal judgments. Such is the case with application no 201200254, started *ex-ufficio* by the People's Advocate for the former convicts M.S and E.J, who were suffering sentence in the prison of Korca. For this reason, we have recommended to the Prosecutor General "to assess, identify and adopt immediate measures for the execution of final court judgments taken by the court, especially for the persons sentenced with "arrest in prison". The recommendation was accepted, while the Prosecution Office of Korca dismissed the prosecutor O.E from the sector of enforcement of criminal judgments.

In some cases some nationals have complained for unfair hospitalization of their relatives in the prison hospital, at a time when they should have been sent to a specialized psychiatric hospital, outside the prisons system. Such applications are the ones registered as Doc 201100104 and 201102285. More specifically, the national U.S. from Tirana, complained against the district prosecution office for the unfair hospitalization of his son A.S. in the prison hospital from March of 2009, although the court had ruled on "forced treatment in a medical hospital". Based on this complaint, we submitted a recommendation to the General Prosecutor "for taking appropriate measures for amending the execution order taken by the Prosecution Office of Tirana, in pursuance of Decision no. 435, of 25 March, of the District Court of Tirana, with the purpose of transferring the national A.S. from the prisons hospital in Tirana to a specialized psychiatric institution outside the prisons service". No answer has been provided by the Prosecution Office to this Recommendation, although the health status of the convict is getting more aggravated. In his complaint, the national of H.B from Kavaja complained against the Prosecution Office for unfair confinement in the hospital prisons center in Tirana, although the court had already decided on a security measure of a "temporary hospitalization in the psychiatric hospital". The administrative investigation performed by the People's Advocate came to the conclusion that the case prosecutor D.N had not issued the execution order in pursuance to the decision of the Appeal Court of Durrës, no.

173, dated 26.07.2011. The Prosecution Office has re-submitted the case to the Court of Appeal, even though the request was not accepted, stressing the fact that “the subject of trial is already tried”. Only on 24 January 2012, the Prosecutor ordered the release of the national P.B from the prison hospital center of Tirana, after his illegal confinement for seven months in that institution. On this compliant, we have submitted a recommendation to the General Prosecutor “to institute investigations against the prosecutor D.N. for the criminal offence of abuse of office”. Our recommendation was not taken into account, considering the actions of the prosecutor as lawful. The actions or omissions of the Prosecution Office on these cases run contrary to the Universal Declaration of Human Rights, of 10 December 1948 and are in breach of Article 46, item 2 of the Criminal Procedure Code, Article 15 and 28 of the Constitution of the Republic of Albania and Article 3 of the European Convention on Human Rights. In our Recommendations addressed to the Prosecution Office, we have insisted because of the fact that the Human Court of Human Rights considers people with mental health problems as handicapped and vulnerable, consequently, an appropriate medical treatment has to be provided to them, as well as a suitable assistance and health care in a specialized psychiatric hospital, outside the prisons system. We are of the opinion that the role of the prosecutor working in the sector of enforcement of criminal judgments should be more proactive, which means that he has to fully apply the legal provisions, not only await for the final court judgments, but, instead, follow them in continuum and take appropriate measures for immediately withdrawing them from the court.

**Fourth: failure to respect procedure provisions related to possession of material evidence, provided for in Article 190 of the Criminal Procedure Code.** In such violations, the nationals have addressed the People’s Advocate regarding treatment of material evidence seized during investigations, which, in some cases, have been restituted in delay to the interested parties, or when it has been left up to the court to take a decision on their possession. Such is the case of the applicant M.B. from Delvina, who complained against the Prosecution Office of Gjirokastra for the failure to restitute a pump of 30 KG, seized as material evidence, robbed by the nationals F.M. et al. The Prosecution Office has not restituted the object to M.B in the investigation case, although it did not have a direct impact to the judgment of the case (at a time when the object was needed by the applicant), in breach of Article 190/2 of the Criminal Procedure Code.

**Fifth: violent acts of the police staff against nationals or convicts, leading to circumstances to the health of the convicts.**

During 2012 the People's Advocate started eight *ex-ufficio* cases, when the state police or prison staff committed violent actions against the nationals, or the convicts, affecting their health, for the criminal offence of torture, while in nine other cases there have been allegations "on commission of arbitrary actions". The Prosecution Office, after examining the recommendations, has accepted eleven recommendations, has refused four other recommendations, while two recommendations are pending reply. After the recommendation on start of investigations on the criminal offence of torture, the prosecution office have changed the qualification of the offence to "abuse of office", or "arbitrary actions", and, at the end, they have decided to call off the case, or to suspend investigations.

**Sixth: lack of cooperation in the drafting and filling out criminal denunciations.** In the application registered as Doc. no. 201201906, the national E.T. from Berat complained against the Prosecution Office of Fier for not admitting her denunciation because of irregularities in filing it accordingly. We familiarized the complainant E.T. with the right to submit a denunciation, according to Article 283 of the Criminal Procedure Code, quoting not only the content of the provision, but providing clarification on the form of the denunciation as required by law.

The application registered as Doc. no. 201203087, filed by the national D.K. from Rubik, focused on a complaint against the First Instance Court of Lezha for not instituting a case "on insults by A.F.". The applicant has received clarification on the right to file a case with the court, as per the stipulations of Article 291/2 of the Criminal Procedure Code, but is also familiarized with the procedure provisions on the "accusing harmed party" and on how to draft the case for the court.

The application registered as Doc. no. 201200349, the national Gj.M. from Mirdita, has asked for an appointed lawyer, but after examining the case he was informed on his position as a party declaring on circumstances useful for the investigation, not on his position of the accusing harmed party. The applicant got information on the fact that his defense at the court proceedings is done by the accusation party.

Another group of complaints are related to failure to submit answers, or delayed replies (to complaints) addressed to the General Prosecution Office. A similar case is the application registered as Doc. no. 201201818, filed by the national E.S. from Tirana, complaining against the General Prosecution Office for not getting a reply to his request, of 5 February 2012, on an unfair suspension on the criminal case for the homicide of his daughter H.S. After the communication of the Assistant People's Advocate with the prosecutor dealing with the case, the applicant E.S. met with the case prosecutor.

The application registered as Doc. no. 201202284, filed by the national H.Sh. from Lac, deals with complaints against the General Prosecution Office for failure of submitting an answer to the complaints related to delays of the investigation of the criminal case, no. 305, of 2006, dealing with the homicide of his son, B.Sh, for which investigations were suspended in 2007. While in the case of the application registered as Doc. no. 20120535, filed by the national Xh.P. from Tirana, addressed to the General Prosecution Office, the People's Advocate Office not only gave an answer after the applicant complaint, but analyzed it and recommended to the Prosecution Office of Tirana to abrogate the decision of the criminal case no. 4831, of 2010, on the criminal offence of "careless treatment" causing the death of his daughter S.P."

### ***Case analysis***

In the applications registered respectively as Doc. no. 201201030, 201203724, 201201045, 201202174, 201200504 and 201202628, etc., the nationals have complained about unreasonable delays. An example of these applications is the complaint of the national P.M from Vlora for unreasonable delays in the criminal proceeding no. 85, initiated on 8 January 2011 from the Prosecution Office of Vlora for the criminal offence of "forgery of documents". Although over one year had passed, the investigations of that criminal proceeding had not yet come to an end. As a consequence, we recommended to the prosecution office to accelerate the investigation proceedings and to end investigations, but no answer was received from it.

In the application registered as Doc. no. 201200504, the national S.D from Tirana complained against the Prosecution Office of Tirana for unreasonable delays in the criminal proceeding



no. 3661 of 2011 on the criminal offence of “illegal construction”. The national rejected in the court as unfair the prosecution decision for extending the investigation term, which was admitted. While examining the case, the Court has found that the prosecutor has acted in breach of Article 323 and 324 of the Criminal Procedure Code on extending the investigation term, because the decision contains no details on the complexity, or the objective impossibility to investigate the criminal case beyond the established terms. In its judgment, the court has also highlighted the need for strict and full respect of the person in a criminal proceedings, recognized by the Constitution of the Republic of Albania and the European Court of Human Rights, despite his/her qualification as a defendant.

In the application registered as Doc. no. 201203724, the national L.Y., from Patos, Fier, complained against the Prosecution Office for delays in the criminal proceeding no. 91, initiated on 31 January 2012 for the criminal offence of “cause of attempted suicide”. Only after six months, the Prosecution Office has concluded by suspending the investigations on 26 July 2012, which was rejected as not grounded by the accusing party.

In the application registered as Doc. no. 201201045, the national F.S from Lezha complained against the Prosecution Office of Lezha for unfair delays for the criminal proceedings no. 91/1, of 15 April 2011 on the criminal offence of homicide in other qualifying circumstance against a minor, in charge of the police staff for the homicide of his son A.S. For this case, the People’s Advocate has communicated with the Prosecution Office so as to accelerate investigatory actions and to end the proceedings.

In the application registered as Doc. no. 201202174, the national L.Xh., from Vlora, complained to the Prosecution Office of Vlora for unreasonable delays in the criminal proceeding no. 930, of 2011, for the criminal offence of “forgery of documents and abuse of office” against the national E.B., former register in the Real Estate Registration Office of Vlora.

In the application registered as Doc. no. 201202628, the national B.P., from Elbasan, complained against the Prosecution Office of Dibra for unreasonable delays in the criminal proceeding no. 245, of 2011, on the criminal offence of theft, destruction of property and abuse of office.

In the application registered as Doc. no. 20120220, the national A.M. from Elbasan complained against the Prosecution Office of Elbasan for unfair accusation for the criminal offence of “prostitution of her minor daughter, S.M.”. The case was followed by informing the prosecutor head. After objective actions, the case was dropped.

While examining the complaints of nationals during this period, we have found out that the investigations of criminal proceedings whose offender is not known go on unreasonably, without having all-sided investigations, leading to dropping of the case in a certain point in time. Likewise, there are no joint analysis by the prosecution and the criminal police on the progress of actions by the latter, with the purpose of uncovering the criminal offenders and their submission before justice. Such are the cases of application registered as Doc 201201443, of the national S.I. from Tirana, for thefts (of goods from a shop) in considerable amounts, and Doc. no. 201201454 of the national N.L from Lezha for violent theft of an amount of Albanian Lek 800,000. In some complaints, we have found out that the prosecution office was unreasonably and unfairly decided to not institute the criminal case, or to drop a criminal proceeding, especially for the criminal offence of “forgery of ownership documents”, “violation of traffic rules leading to homicides”. We have found out that not in few cases the verification of criminal denunciations by nationals, is done only formally, or beyond the deadline submitted through the Order of the Prosecutor General.

Based on the application registered as Doc. no. 201200852, we have recommended to the General Prosecutor to abrogate “The decision on non-institution of the criminal offence no 1811 of 2008 for the criminal offence of “forgery of documents” investigated by the Prosecution Office of Tirana. The recommendation was taken into consideration and accepted by the Prosecution Office by not starting a criminal proceeding.

Based on the application registered as Doc. no. 201201423, we have recommended to the Prosecutor General to abrogate “The decision on the suspension the criminal offence no. 1811 of 2008 for the criminal offence of “forgery of documents” investigated by the Prosecution Office of Tirana. The recommendation was taken into consideration and accepted by the Prosecution Office.

Based on the application registered as Doc. no. 201201641, dated 13.02.2012, we have recommended to the Prosecution Office of Elbasan to abrogate “The decision on suspension of the accusation of 08 July 2011” charged to the defendant K.Sh. for the criminal offence of

“(homo)sexual relation with persons not able to be protected”, adoption of measures for unreasonable delays and the quick ending of the investigations in the criminal proceeding no. 1433 of 2010. After being taken into consideration, the recommendation was accepted by the Prosecution Office. Other investigation acts, such as the AND test of the defendant, and others, have been performed.

The applications registered as Doc. no. 20120188, 201201384, 201203668, 201202615, 201203268 deal with the failure to inform the interested party on the process of treatment and solution of the criminal denunciation they have address to the Prosecution Office.

In the application registered as Doc. no. 201202615, the national R.B from Gjirokastra complained against the Prosecution Office of Gjirokastra for not failing to inform him on the criminal offence of 17 June 2011 on the “fake expertise”.

Based on the application registered as Doc. no. 201202668, we have recommended to the Prosecution Office of Vlora to analyze the case of the national E.P. from Tirana on failure to make the criminal procedure acts available and delayed notification of the decision on non-institution of the criminal offence no. 365, of 2011, taken by the Prosecution Office of Vlora. The applicant has not only not been provided with the acts sought, but the notification on non-institution of the criminal offence is done after ten months, in violation of Article 291/2 of the Criminal Procedure Code, which reads as follows: “... *the decision is immediately notified to the ones that have filed a denunciation or a complaint, who can object it in the court within five days from such notification*”. Despite our repetitive request, the Prosecution Office has not answered the recommendation.

In the application no. 201203268, the national A.H. from Vlora complained against the Prosecution Office of Vlora, which failed to notify him about the end of the criminal case of 29 November 2011, on the criminal offence of “disruption of property”. From verifications made at the Prosecution Office of Vlora, we found out that the Prosecution office had oriented the judicial state police to verify the denunciation, but given that this act was not realized, it again submitted the case to the Prosecution Office, without due notification to the applicant.

In the application registered as Doc. no. 201203688, the national R.R from Tirana complained against the Prosecution Office of Tirana, as, unfairly and not based on law, it

failed to reply to some written requests submitted by him during the preliminary investigation of the criminal proceeding no. 2740, of 2010 on the criminal offence of abuse of office. After objection of the decision not to institute a criminal offence, the Court admitted the applicant's request and resubmitted the case to the Prosecution Office for initiating a criminal proceeding. At the end of proceedings, the Prosecution Office decided again to suspend the criminal case.

In the other applications the nationals have addressed the People's Advocate complaining about the failure of the Prosecution Office to provide such acts as copies of the decision on suspension of the criminal offence, of the technical-graphical acts of signature, etc. The application registered as Doc. no. 201200325 falls in the same category. It is submitted by the national A.D from Elbasan, complaining against the Prosecution Office of Elbasan for not providing to him the acts related to the criminal proceeding no. 1987, of 2010, such as the decision on quitting the case of 2010, the medical forensic act no. 503, of 17 November 2011 and the minutes of examination for the cadaver of his daughter V.V. After the meeting of the Deputy Commissioner with the applicant and the case prosecutor, the national A.D received photocopies of the required acts.

In the application registered as Doc. no. 201200523, the national Xh.M. from Tirana, complained against the Prosecution Office for not performing the dactyloscopic expertise of finger prints, for their comparison with finger prints of suspects and for not being provided with a copy of the expertise act.

After suspension of the investigation and after submission of the criminal proceeding acts to the Regional Police Directorate of Tirana, we administrated the required acts and put them afterwards to the disposal of the applicant.

Based on the application registered as Doc. no. 201203056 by the national O.H, S.B, and A.L, we have recommended to the Prosecution Office of Shkodra "to institute investigations for the criminal offence of torture in charge of nine police officers of the Police Commissariat of Shkodra, E.T., H.Gj., A.R., etc.". From examinations on this case we see that the three applicants were treated inhumanly by the police officers. Two of them had visible traces of violence, which are not only recorded in the minutes and in photos, but also in the conclusions of the medical forensic act of 8 January 2012. The Prosecution Office of Shkodra

informed us that it started a criminal proceeding against the police officers for the offence of “arbitrary actions”.

The People’s Advocate started *ex-ufficio* the case no. 201203911, of the national J.J., from Barbados, Spain, accused of the criminal offence of forgery of passports, identity cards and visas. The personal search by the judiciary police of the regional border and migration police of Durres has not been appropriately administered in the minutes, not reflecting the big backpack with clothes of other foreign national, which was left in one of the offices of this directorate. The independent administrative search showed that backpacks and suitcases with clothes of other foreign nations were illegally taken in that office, a practice that was followed since years ago in that directorate. Measures were taken by sending the personal belongings of the detainees in the detention center of Durres and by informing the Prosecution Office. In addition to this, we submitted a recommendation to the General State Police Director with the purpose of adoption of measures in implementation of procedure provisions for the protection, administration and reflection of personal belonging of the detainees, or arrestees, especially for the foreign nationals.

In 2012, different citizens have submitted their complaints to the People’s Advocate on failure to follow appropriate procedures for the criminal offence of “violation of traffic rules” and “negligent medical treatment”, leading to deaths of their family members, or harm of their health. Such complaints are treated by the People’s Advocate because of composing a civic concern and serious consequences to people.

Examples of these complaints are the application registered as Doc. no. 20123190, 2012202039 and 201203704, 201203269, etc.. In his application, the national N.M from Shkodra, complained against the Prosecution Office for giving the security measure of “house arrest” for the offender of a criminal act, the driver A.D., ending in the death of a person.

The national M.K. from Fier, through his application registered as Doc no. 2012202039 complained against the Prosecution Office, which unfairly decided to not initiate a criminal proceeding on the damage caused to his son, S.K, from the criminal offence of “violation of traffic rules”. After objection in the court of the decision taken by the Prosecution Office, that later, at the end of investigations ruled on quitting investigations, because, according to the forensic act, the damage was not serious.

In the applications registered as Doc. no. 201203641, 2012203405, 201200685, 2012202254, 201202741, et al, the applicants have complained against the Prosecution Office for criminal offences putting at risk the life or health of individuals, as is the case of the national S.H. from Tirana, who has sought the intervention of the People's Advocate for careless treatment of his brother, K.H., and his eventual death. After the administrative investigation, we come to the conclusion that his request was fair. For this reason, we have recommended to the General Prosecutor "to institute proceedings for the criminal offence of "negligent treatment" against the doctor J.K". The recommendation was accepted as the Prosecution Office of Tirana has started a criminal proceeding launching the necessary investigations.

The national M.H. from Kucova, complained against the Prosecution Office of Berat for unjustified delays in the criminal proceeding no. 239 of 2012 for the criminal offence of "negligent treatment", leading to the death of her son A.H. We have carried out the appropriate verifications and are informed that after a belated medical forensic act from I.M.L Tirana, investigations are underway for the doctors dealing with the treatment and medication of the national A.H. in the emergency ward of the regional hospital of Berat.

From the applications we have found out that the prosecution offices in districts come up with hastened auto-technical expertise acts, which are not at all objective. The victims' or harmed parties' family members are not informed about these investigations, about relevant decisions on the expertise acts, or conclusions of the expert acts. In other cases, claims or requests for forensic evidence are not taken into account, following an improper first expertise, because of partiality or favoring of such offenders as drivers, doctors, other medical staff, etc.

While handling the applications, we have identified cases when prosecution offices in district have decided on the institution of a criminal proceeding, mainly for "forgery of documents" related to property, even though the criminal offence the investigation was instituted for is different and has a legal background. An application of this nature is the complaints Doc. no. 201203725, filed by the national N.R. from Fier.

On the other hand, the nationals have submitted complaints to the prosecution office for non-institution of criminal investigations, after prescription of the criminal offence. This is the case with the application registered as Doc. no. 201203725 and Doc. no. 201220111. The applicants have received information on the content of Article 66 of the Criminal Code, dealing with "*statute of limitation for criminal prosecution*", addressing them for filing a civil

case with the court. There have been cases when the Prosecution Office has started a case with photocopies, not authentic documents, as was the case with application no. 201201236 of the national P.B. from Gjirokastra.

### ***Conclusions***

The relations with the Prosecution Office have generally been correct, and cooperative. It is worth mention the competence and professional treatment of submissions of the People's Advocate Office by the Directorate of Investigation and Control of Criminal Prosecution at the General Prosecution Office.

Despite the understanding in replies to the People's Advocate requests for explanations or additional information, the prosecution offices in districts have not submitted any reply to the People's Advocate Recommendations related to conclusions of investigations on certain criminal cases.

#### ***2.5.4. The activity of State Enforcement Offices***

##### ***Overview***

Law no. 8116, dated 29.03.1996 (the Civil Procedure Code), as amended, and Law no. 7850, dated 29.07.1994 (the Civil Code) as amended, provide for procedure actions and the way of how issues of the state and private enforcement service shall be resolved. The rules of organization and operation of the Judicial Enforcement Service are laid down in Law no. 8730, dated 18.01.2011 "On the Organization and Operation of the Judicial Enforcement Service", and Law no. 10031, dated 11.12.2008 "On the Private Judicial Enforcement Service". The public administration bodies, in the process of execution of final executive titles are obligated to cooperate with the Judicial Enforcement Service, as provided for in Article 523 of the Criminal Procedure Code and in the by-laws. The problems encountered in the execution of executive titles, awareness raising of bodies which mission is to execute of such titles, observation of the principles on which the work of the Judicial Enforcement

Service is based while in the process of execution, exercise of responsibilities from the Judicial Enforcement Service, respect for the principle of lawfulness, as provided for in Article 9 of the Criminal Procedure Code by the debtor institutions and bodies, or by the third parties in the enforcement process, have been and keep being part of the People's Advocate Office work with the purpose of protection of the right to a fair trial.

Pursuant to Article 2 of Law no. 8730, dated 18.01.2001, the mission for the enforcement of executive titles is charged with the Judicial Enforcement Service, which carries out its functions through the judicial enforcement agents. The principle of lawfulness, objectivity and respect of the rights and laws guaranteed to the subjects taking part in the enforcement process serve as the background principles of the Judicial Enforcement Service, but they are not often times respected by this Service, as well as by the debtor or third persons, who, according to the execution order, or according to the law, are obligated to perform certain actions in the executive title execution process. The activity of law enforcement agents, in most of the cases examined by the People's Advocate, is not characterized by professionalism and impartiality. Such a stance by an institution which mission is to enforce the executive titles and by the persons charged by law to perform the act of enforcement of the executive titles is not complaint to the Civil Procedure Code, consequently, it leads to the violation of the right to fair trial due to failure to enforce a final court decision within a reasonable time.

The total number of complaints related to failure to execute final court decisions mounted to 199 in 2012. In 88 cases, the applicants have claimed the violation of such right by the Public Administration Bodies, while 13 complaints are addressed to violation of such rights by the private enforcement service. The situation becomes more concerning when the state/public administration bodies, having no legal cause, refuse meeting of the obligations established by a final court order, issued in 2012, but even in previous years. By state/public administration bodies we imply: the Council of Ministers, Ministry of Justice, Ministry of Interior, Ministry of Finance, Ministry of Public Works and Transports, Ministry of Economy, Trade and Energy, Ministry of Agriculture, Food and Consumer Protection, Ministry of Environment, Forests and Water Administration, Ministry of Labour, Social Affairs and Equal Opportunities, Ministry of Education and Science, Ministry of Culture, Youth and Sports, Ministry of Foreign Affairs, Ministry of Health, and such other bodies as the State Advocacy, the Regional Prefecture of Durres, the Regional Council of Gjirokastra, the Municipality of Tirana, of Pogradec, the General Tax Directorate, the General Customs Directorate, the



Property Restitution and Compensation Agency of Tirana, Fier, Mirdita, Korca, Pogradec, ALUIZNI of Vlore, Lezha, the regional Council of Kukes, INUV, the Region of Diber, INUK Tirana, the National Employment Service, the General Achieve Directorate, the Public Health Directorate of Puka, the Agricultural University of Kamza, the Government Service Directorate, the Republican Guard, the Regional Social Insurance Directorate, the Social Insurance Institute, the Central Technical Institute, Rector of the University of Tirana, the Police Directorate, the Region of Kukes, the Tax Office of Tirana, the Military Hospital Directorate, the Forests Service Directorate of Fier, the Hospital Directorate of Gjirokastra, the Municipal Police of Vlora, the Social Insurance Agency of Mat, the Social Insurance Directorate of Tirana, ZQRRPP, the Education Directorate of Pogradec, the General Prisons Directorate, the Regional Directorate of National Culture, Tirana.

Regarding the complaints on actions or omissions of the State Bailiff Service, it shows that the greatest number of treated complaints in 2012 was against the Enforcement Office of Tirana, with a total of 30 complaints. In addition, 13 complaints have been addressed against the Enforcement Office of Fier, 7 against the Enforcement Office of Vlora, 7 against the Enforcement Office of Durres, 8 against the Enforcement Office of Shkodra, 5 against the Enforcement Office of Elbasan, 4 against the Enforcement Office of Gjirokastra, 4 against the Enforcement Office of Kruja, 3 against the Enforcement Office of Lezha, 3 against the Enforcement Office of Pogradec, 2 against the Enforcement Office of Berat, 3 against the Enforcement Office of Kurbin, 2 against the Enforcement Office of Kavaja, 2 against the Enforcement Office of Tropoja, 1 against the Enforcement Office of Puke, 1 against the Enforcement Office of Mirdita, 1 against the Enforcement Office of Mat, 1 against the Enforcement Office of Dibra, 1 against the Enforcement Office of Lushnja.

In the overall number of complains, the main part of complaints are addressed against budgetary institutions for not meeting the obligation of payment of salaries, for restitution of the complainant in the same office, or the order for a body to incur certain actions, not as decided by the Civil Service Commission or the Court.

In breach of the obligation established by a court judgment or by the Civil Service Commission, the title holders of budgetary institutions have not immediately paid the salary of the complaints. Representatives of the debtor bodies have in few cases declared that they have initiated payment of salaries, handing over to the court winning parties modest amounts

of ALL 5,000 up to 10,000 per month. This “solution” provided by them, at a time when the amount represents only 1/10 or 1/15 of the monthly amount ruled by the Court is a violation of court decisions and causes further damages of personal interests of the applicants.

In a situation when the central and local government institutions fail to pay the debt to the parties winning the court proceedings, it is necessary to impose a higher responsibility to the public administration in order for it to execute final court judgments, in a proper and effective manner, within a reasonable time. This has been the driving force for the People’s Advocate to initiate drafting and approval by the Council of Ministers of a normative act, complaint to Article 658 of the Criminal Procedure Code on the execution of payments by budgetary institution in the treasury account. In reply to this request, the Council of Ministers issued Instruction no 2, dated 18.08.2011 **“On the Modalities of Execution of Payments by Budget Institutions in the Treasury Account”**. The People’s Advocate notes that there are provisions which are not in line with the legal requirements of the Civil Procedure Code on the mandatory enforcement of executive orders. They create the premise for failure to enforce final judgments within a reasonable timeframe and shift the burden of enforcement to the third person or the debtor party. For changing this situation, the People’s Advocate has recommended to the Ministry of Justice, through its official letter no K3/S8-6, protocol dated 26.03.2012, to the Ministry of Finance, sent for information to the Council of Ministers, through the official letter no. K3/S8-9, dated of protocol 28 August 2012, to amend the Instruction no. 2, dated 18.08.2012 “On the Modalities of Execution of Payments by Budget Institutions in the Treasury Account”. As we write, we have not received any official reaction on this recommendation.

It should be accepted that the amount the state has allocated to the execution of executive titles is very low, while the number of cases in charge of budgetary state institutions has increased, which means that the financial bill to be paid by the Government has gone up as well. This situation calls for establishment of working groups for identifying non-executed court decisions, with debtor parties different from public institution bodies, and for immediate measures for the soonest possible execution of such judgments (as has happened with the issuance of Order no. 98, dated 14.07.2003, by the Prime Minister). Through our recommendations, we have constantly tried to draw the attention of the Government and of the state institutions so as to provide a fair and permanent solution to the problems of non-enforcement of court judgments.

About the number of recommendations dealing with identified violations, the People's Advocate has submitted during this year 46 recommendations, 24 of which have received no answer. Even in those cases a reply is received for the recommendation, the data show that the final court judgment on restitution of the gained rights has not been complied with.

### *Case analysis*

Amongst the most typical cases reflecting the issue of failure of execution of final court judgments are:

**The application registered as Doc. no. 2012202483.** After examining this complaint, through the official note no K2/S65-2, date of protocol 18 June 2012, the People's Advocate recommended to the Minister of Justice "to adopt remedies for execution of obligations deriving from the execution title of judgment no. 2022, of 11 April 2006 of the Judicial Court of Tirana, issued in favor of the national S.M."

The recommendation was sent through the official note K2/S65-4, date of Protocol 28 September 2012, but so far we have received no answer from the Minister of Justice.

**The application registered as Doc. no. 201200094.** After examining this complaint, through the official note no. K2/D2-8, date of protocol 28 February 2012, the People's Advocate recommended to Secretary General of the Council of Ministers "to adopt remedies to enforce the obligations deriving from the final court judgment no. 3354, dated 04.05.2007, of the judicial district court of Tirana for the national D.T."

The court judgment on the case against D.T has not yet been enforced.

**The application registered as Doc. no. 201201648.** After examining this complaint, through the official note no. K2/A54-7, date of protocol 2 October 2012, the People's Advocate recommended to Secretary General of the Assembly of the Republic of Albania to take the appropriate measures to pay the amount of money decided by a court judgment of the First Instance Court of Tirana to the national A.Xh. The judgment was issued in 2007, but it is still not enforced, thus giving a non-positive example from the most senior legislative body in the country for complying with the lawful obligations.

**The application registered as Doc. no. 201201055, 201201159, 201201827, 201201828, 201201829, 192602021 and 201202429.** After examining these complaints, the People's Advocate recommended to debtor, the General Tax Directorate, to adopt measures for satisfying the obligations deriving from the executive titles, consisting in the return of the court winning party to the previous job, in paying the salary for the time he was unduly dismissed from work. In the answer provided to our recommendation, the debtor justifies its omissions with the unlawfulness of the act, not yet fully meeting the obligations recognized for an executive title.

**The application registered as Doc. no. 201201884.** After examining this complaint, through the official note no. K2/R17-2, date of protocol 28 November 2012, the People's Advocate recommended to the Director of the Property Restitution and Compensation Agency to adopt measures for enforcing the court judgment on the national R.I., requiring recognition of his property and restitution and/or compensation of the plot of 170 hectares, as ruled by the judgment of the First District Court of Tirana no. 4544, dated 03.06.2010, overruled by the Court of Appeal of Tirana at its Judgment no. 2412, dated 20.12.2012. The Property Restitution and Compensation Agency has not yet enforced the court judgment, thus in principle violating the principle of fair trial.

**The application registered as Doc. no. 201200033 and 2012200166.** After examining this complaint, through the official note no. K2/M1-5, date of protocol 16 April 2012, the People's Advocate recommended to General Directorate of Archives to adopt measures to get the applicant back to his previous job and to pay his missing salary from the undue dismissal, compliant to judgment no. 195, of 18 January 2008 of the First Instance Court of Tirana for the national M.C., and remedies for the issuance of the administrative act issued in implementation of the Decision no. 21, of 24 January 2009 of the Civil Service Council for the applicant G.K. For the case in question, for no good reason, the General Directorate of Archives fails to meet the imposed obligations, thus violating the principle of fair trial.

**The application registered as Doc. no. 201200490.** After examining this complaint, through the official note no. K2/n6-8, date of protocol 28 March 2012, the People's Advocate recommended to the Directorate of Government Services and the Republican Guard to adopt appropriate measures for enforcing the lawful right of the complainant N.K, as provide for in the final court judgment no. 544, dated 11.03.2010 of the District Court of Vlora. There is no

lawful cause mentioned and sustained for the non-restitution of the immovable property to the complainant. Also, related to this complaint, we have recommended to the Enforcement Office of Vlora, to the case enforcement officer to perform enforcement actions for the compulsory execution of the court judgment for the national N.K. The enforcement office has not exercised its functions, acting in breach of the Civil Procedure Code for enforcing a final judgment. Because of such situation, the applicant has filed an application with the European Court of Human Rights.

**The application registered as Doc. no. 201200967.** After examining this complaint, through the official note no. K2/N6-8, date of protocol 10 May 2012, the People's Advocate recommended to the debtor – which in this case was the Prefecture of Durres to enforce the final judgment no. 368, dated 13.07.2005 of the First Instance Court of Kruja on the restitution of the national G.M to his previous job and on payment of his missing salary for the time he lost his job illegally. With no reason, the debtor failed to meet the obligations deriving from the final court judgment, breaching the principle of fair trial.

### *Conclusions*

Enforcement of final court judgments keeps being an unresolved issue in Albania. Law enforcement officers keep failing to meet their obligations on sanctioning fines to debtors, or to third persons, who, at the enforcement process, refuse, irregularly apply, fail to meet deadlines or act in breach of the law and court judgments.

Despite obstacles in the failure to enforce court judgments, filing of criminal cases to the prosecution office for the criminal offence of a hindrance to enforcement a court judgment, provided by Article 320 of the Code, are very infrequent.

The General Directorate of the Enforcement Service, despite of being informed of the performance of the enforcement officers, has not exercised its competencies, as laid down in Article 31 and 35/dh of Law no. 8730, dated 18.01.2001 “On the Organization and Functioning of Enforcement Service” and has not denounced for a criminal offence the person charged with enforcement of final civil or criminal court judgments.

We recall that Law no. 8510, dated 15.07.1999 “On Non-contractual Responsibility Providing for the Responsibility and Obligation of these Bodies and their Staff”, is not applied in real life when pecuniary or non-pecuniary harm is caused to natural or physical persons, private, national or foreign persons, and has not justified the law-makers’ purpose.

Cooperation between the enforcement service and other bodies, such as the Ministry of Finance, State Police, central government or local government construction inspectorate, local government bodies, et al should be improved.

In addition to problems, there have been cases of cooperation with relevant structures to enforce the law on resolving the issues of an enforcement nature. It is worth mentioning the reaction of the Ministry of Justice, which, pursuant to the recommendations of the People’s Advocate on issuance of instructions regarding “Establishment of the Expenditure Amount and Expert and Witness Fees during Trial”, as already provided for in Article 105/a of the Criminal Procedure Code and “On Auction Procedures for Immovable Property in the Enforcement of Executive Titles by the Enforcement Service”, provided for in Article 573/4 of the Civil Procedure Code, upon Instruction no. 4 and 5, dated 12.12.2012, has resolved this situation.

#### **2.5.5. Free legal aid**

The Albania law recognizes and guarantees free legal aid for the people in need. Law no. 10039, dated 22.12.2008 “On Legal Aid” contains the conditions, kind of legal aid as well as ways and procedures to be followed for benefitting legal aid. As per the provisions of this Law, all the persons, who, due to their financial constrains cannot choose a private lawyer, or that are not represented by a lawyer, are entitled to the right of free legal aid. Part of this category are automatically the persons benefitting from the social protection programmes.

In 2012, the People’s Advocate has received a total 55 complaints and request for legal representation as the complainants claimed they could not afford a private lawyer. According to the Memorandum of Understanding, signed by our institution and the State Commission on Legal Aid, functioning under the umbrella of the Ministry of Justice, which, according to

Law no. 10039, dated 22.12.2008 “On Legal Aid”, assesses and approves the requests for free legal aid addressed by individuals, we have submitted all the complains dealing with free legal aid have been submitted to this commission. In parallel to the complaint reference, the complainants have been notified that he could address the non-for-profit organizations providing such type of legal aid. The People’s Advocate Office has a good cooperation with many of this-type organizations.

## **2.6. The right to enjoyment of property**

### ***Overview***

The property issue and its complexity is an ongoing challenge for the Albanian society. Informality in the alienation of immovable estates, in establishment of the property titles, delays of compensations in the case of expropriations for the public interest, legalization and urbanization of informal areas, the uncompleted real estate restitution process, failure to enable restitution of immovable property, delays in the financial or physical compensation of the expropriated subjects, problems emerging from the initial registration process in the local offices of immovable property *vis-à-vis* documentation and additional maps, delays in the administrative examination of validity of property titles on agricultural land from zone commissions, established at the prefecture level, as well as the legal uncertainty generated from them, are some of the issues reflected in many individual complaints addressed to the People’s Advocate.

Compared to 2011, in 2012 we see that important stakeholders in the field of protection and guarantee of private properties, such as the National Property Restitution and Compensation Agency and the Real Estate Registration Offices have consolidated their legal authority in exercising their legal functions. Albania, in addition to the national legislation, has approved all the relevant important international documents referring to human rights, starting from the International Charter of Human Rights, approved by the General UN Assembly in December of 1948, the European Convention of Human Rights and going as far as Protocol 1 of this Convention.

In all these acts, the right to enjoyment of private property and protection from its arbitrary deprivation are considered amongst the most fundamental rights of the individual in the modern society and an attribution of the rule of law.

The process of recognition, restitution and compensation of properties, as well as the legislation based on which correction of an injustice is treated has been and keeps being one of the priorities of the People's Advocate Office, in support of the lawful rights and interests of the expropriated from the irregular and/or unlawful actions or omission of the public administration.

The complains and direct contacts of our staff with affected citizens show that in many cases the public (central or local government) administration doors are not open to them to cooperate, to listen to their concerns, to provide the appropriate information and clarifications. The hitherto practice of communication, lack of awareness of the law and lack of legal culture on how to gain, protect and loose the property, makes the citizens very confused in their allegations, lacking trust on following the regular and legal ways of resolving their disputes.

The People's Advocate Office, stemming from the fact that its force emerges from the use of rational, perseverance and public support, has treated all individuals with humanism, civility and proper attitude, maintaining their confidentiality, and has tried to serve as a bridge between individuals and the public administration.

Our efforts have been targeted on impartial treatment of complaints, meaning undertaking of procedure actions based on laws and normative acts, replying in due time, with a simple and understandable language.

In 2012, individuals and groups of individuals have addressed different claims and problems, which, despite the body they are addressed to, be it against the AKKP, ZRPP, communes and municipalities, commissions of verification of lawfulness of property titles at the regional prefect or courts, have a common interest – that is the concern for the protection of property and real rights on property, benefits from the division of agricultural land, and from the property restitution and compensation process, the prior right to buy the facilities built on their land, compensation from expropriations made in the public interest, etc.. A total 515



complaints, requirements or notifications on the right to property are submitted to the People's Advocate Office. In addition, 32 other companies were inherited from 2011.

231 complaints were treated and settled in the interest of claimants, corresponding to 43 percent of the total. 32 other complains have been suspended because of case withdrawals and inactiveness for over three months, while the remaining part of complains were outside jurisdiction and competencies and not grounded in law.

The overwhelming part of complains addressed to the People's Advocate is related to the activity of local offices of real estate registration offices, of which 43 are settled in favor of the complainants, eight have been suspended because of withdrawal of individuals, while others were not grounded in law, or with problems of property overlaps that need to be settled by a court procedure.

### ***Case analysis***

For more detailed information on this matter, please refer to the following complains:

The application registered as Doc. no. 201202442, filed by a citizen, complains about the Immovable Property Registration Office of Kucova on failure to submit a building certificate, because the original final court judgment sanctioning the citizen's right to property was to be found in the Regional Police. The People's Advocate Office contacted with the Prosecution Office of Berat, which submitted the authentic court judgment to the local office of Kucova, thus giving a green light to the complaint to get a copy of the property deed.

While with the application registered as Doc. no. 201201782, the complainant complained about failure to get an answer from the ZRPP Office of Tirana on her request on removal of the order on limitation of actions on her husband's property, while the property had mistakenly become subject of judicial disputes between third parties. Our intervention was welcome by the registration specialist, who ordered removal of limitation on the immovable property.

The application registered as Doc. no. 201202608, filed by two spouses, was focused on the delays in the registration of a final court judgment obligating the defendant to recognize the applicant as the owner of a bar and of the site on which the bar was constructed and the

obligation of the ZRPP of Tirana to deregister it from the register as belonging to the defendant and to register it under the applicants' name. After relevant verifications, the registration specialist informed us that the court judgment was registered in the relevant registers in the name of the party winning the case.

The application registered as Doc. no. 201202880, filed by a citizen from the southern part of Albania, related to claims on failure of ZRPP to issue a property certificate on a building reconstructed in 1977 from his son, upon a regular construction permit, was successfully settled. The registration specialist invited the complainant to go to the local immovable property registration office to get the certificate.

It is worth to highlight that institutional cooperation with the central and local immovable property registration offices in 2012 has flown normal.

Law no. 33/2012 "On the Immovable Property Registration", which abrogated Law no. 7843, dated 13.07.1994 "On the Immovable Property Registration", as amended, has brought positive change, providing more safeguards for the legitimate owners and preventing infringements from the public administration bodies in their decision-making procedure, be it normative or individual, a decision-making affecting and causing obstacles to entities in the free use of property.

In many cases, the citizens complain about unfair or irregular actions of the staff of this office, leading to consequences on property overlaps.

The ZRPP has still a lot to do when it comes to the speed of treatment of complaints, transparency, clarification of individuals for documents and the procedure to be followed, etc.

But, in no case had the administrative treatment of complaints shown that overlaps are a product of illegal and unconscious actions or omissions of registration experts of local offices.

Property overlaps have been caused due to court judgments, decisions of the property restitution and compensation committees and of former commissions of agricultural land in communes and municipalities, transferred in the ownership of agricultural families, construction site or land subject to Law no. 9235, dated 29.06.2004 "On Property Restitution and Compensation" as amended.

These consequences are due to hasted non-professional acts of bodies charged by law to deal with the property transfer, which, with no due verifications give, restitute or divide properties that are partially or fully registered in the name of other owners, creating a new ownership conflict.

Failure to be aware of the law and to prepare the appropriate documents for the initial registration of immovable properties is a cause for many individuals to consider omissions of ZRPP offices as violation of their lawful rights and interests.

However, the complainants have been guided on a case-by-case basis and are recommended to follow appropriate actions, including going to the court, in order to resolve property conflicts in the case of property overlaps.

Another administrative shortcoming leading to delays in treatment of complaints and misunderstandings in our relations with the applicants are unjustified delays in the replies, of information, and in conveying copies of the required documents from some property immovable property offices within the legal deadlines.

Another problem of concern for certain groups of new owners is the prolongation of the initial systematic process in certain cadastra zones, such as for instance, in Uji i Ftohte, Vlora, Saranda, Korca and elsewhere, that is being carried out by “UTE –Tracasa and Inypsa” contractual authority, not enabling drafting of the ownership register and of the accompanying map. These acts do not allow the interested parties to have a property certificate.

Another part of complains related to the right to property deal with the activity of the Central Immovable Property Registration Office.

After twenty years of initiation of the property restitution and compensation process, the expropriated subjects by the laws, statutory acts, criminal court judgments or received in any other unfair way by the state after 29 November 1944, we see that there are few complaints on these matter.

An impact was also provided by the end of the Agency activity on 31 December 2012, because of the deadline set in Article 24 of the Law no. 9235, dated 29.07.2004 “On Property Registration and Compensation”, as amended.

Review of the complaints from the expropriated subjects resumed again upon entry into force of Law no. 55/2012, dated 10.05.2012 “On Some Amendments and Supplements to Law no. 9235, dated 29.07.2004 “On Property Restitution and Compensation”, as amended, which extended the deadline of AKKP activity.

The main part of complaints is covered by the individual complaints to get to know the process and delays of the administrative files, deposited in the AKKP of Tirana.

The complaints registered in the first semester of 2012, such as the one registered as Doc. no. 201201688, 201201281, 201202252, 201201830, et al. received a reply from the General Director of AKKP, who highlighted that the files were deposited in this Agency, in the sector of preliminary acceptance of files, according to regions. In addition, he added that the decision-making is expected to be taken by the Assembly of the Republic of Albania through the approval of the draft-law “On Some Amendments and Supplements in Law no. 9235, dated 29.07.2004 “On Property Restitution and Compensation”, as amended.

The applications registered as Doc. no. 201203673, 201203003, 201203210, 201202779, et al have received by the AKKP, after entry into force of legal amendments.

In the application registered as Doc. no. 201201719, the applicant complains about delays by the AKKP in the administrative examination of the request for property recognition, restitution and compensation. In his reply, the AKKP Director General explains that the decision of the former KVKPP of Tirana has become final, and attached a copy of it.

Same treatment is provided to the application registered as Doc. no. 201203580. While the application registered as Doc 201001309, inherited from the past and covered in the 2011 Annual Report, focused on complains for the unreasonable delays in the execution of Judgment no. 10508, dated 23.07.2007, of the European Court of Human Rights, ordering KKPP to issue a decision, as required by law, and restitution of a plot of construction site, while the only part of the judgment that is enforced so far is payment from the Albanian Government of the moral damage.

We hold that the stance of AKKP of Tirana *vis-à-vis* the People's Advocate recommendation on execution of Judgment no. 10508, dated 23.07.2007, of the European Court of Human Rights has not changed. The case was reported by the People’s Advocate to the Committee of

the Council of Ministers in the EU, as the responsible body to follow enforcement of ECHR judgments.

A part of the complaints object the AKKP decisions taken in years, which, at the absence of the administrative complains in the court have been transferred in executive titles.

The People's Advocate Office has also received numerous complaints from individuals who have not addressed the immovable property registration commissions within the prescribed deadlines, asking for assistance by the People's Advocate after termination of such deadlines. All these persons were informed that the only body that might decide on this matter is the court. Part of this category are the repeated request of "Bregdeti" association, of the "Qeparo" Association, representative associations of former land owners in Himara and in the surrounding villages, and of individuals from the same area. In essence such complaints ask for remedies and recognition of the property right for that category of persons who have not addressed property commissions as they do not have property documents, although they are autochthonous inhabitants and constantly and peacefully enjoy immovable property. In the absence of relevant documentation with statutory acts for application in AKKP of Tirana, we have explained to them that the solution of such problems is only through court procedures.

Other persons have complained that the court certificate of the legal fact of immovable property is not recognized by AKKP and ZRPP. They are told that after 1 November 1994, time when Law no 7850, of 29 July 1994 "The Civil Code of the Republic of Albania" entered into force, according to last paragraph of Article 193 of this Code, these types of court judgments are not registered because the principle of contradiction is missing in them.

The application no. 2011020223 on a property conflicts in vicinity of a government residence is inherited from 2011 and not yet resolved. In the conditions of a lacking government reaction, the People's Advocate has sent a recommendation to the Government Service Directorate asking for interruption of illicit actions against the owners of land as well as to enforce a final court judgment. We are waiting for a final and official judgment for a lawful solution of the civil dispute.

The repeated request of "Bregdeti" association, of the "Qeparo" Association, representative associations of former land owners in Himara and in the surrounding villages, and of individuals from the same zone keep being problematic.

In the absence of the document required by the Decision of the Council of Ministers no. 255, of 13 April 2010 “On Procedures of Collection, Processing, and Administration of Acts of Expropriated Subjects during the Property Recognition, Restitution and Compensation Process” for application in AKKP (Tirana), the applicants are informed of the possibility of sending the case to the court.

The Council of Ministers, at its Decision no. 405, dated 27.06.2012 “On the Approval of the Cross-Sector Strategy “On Property Rights 2012-2020 and of its Action-Plan”” envisages entry in the right direction for a final solution of the property restitution and compensation field, zone integration, and of informal legalized constructions, end of the initial registration process of all property and digitalization of all the systems. The strategy utilizes the findings and recommendation of the Memorandum of the Committee of Ministers of the Council of Europe, from which analysis there is a need to consider an inclusive solution of the property issues, based not only on the current challenges of the country, but also in similar experiences of other Council of Europe member countries.

Another persisting problem is the financial compensation of the expropriated subjects because of insufficiency of monetary means.

A great number of deposited complaints in 2012 from former owners from different parts of the country, possessing the decisions of former property restitution and compensation commissions, or of regional offices on final compensation were related to the objective impossibility of getting a monetary compensation due to the provisions of the Decision of the Council of Ministers no. 92, dated 09.03.2011 “On Setting the Rules and Criteria on Distribution of the Compensation Fund of Owners in Monetary Means in 2011”.

Letter dh) of item 4 of this Decision provides that one of the documents for application is the “special warrant” signed from all heirs, as a condition for the legal representative to withdraw the financial amount in the name and for the account of all the heirs of the expropriated subject.

In our opinion the provision of this Decision of the Council of Ministers regarding financial compensation runs contrary to the main principles of representation, Article 64-78 of the Civil Code, and with the provisions on solidary provisions, Article 423-435 of the same Code. The right to compensation is aimed at covering the damage of former owners due to

state appropriation, expropriation, confiscation, etc. Second, compensation should serve the restitution of justice, where the structure of compensation recognizes the restitution of the first situation of the legal relationship existing before state appropriation, expropriation, confiscation, and when the later is not possible, restitution of damage through compensation might be affected. It was the obligation of the Albanian state to restitute property not only to the expropriated entities, but to all the heirs of the predecessors.

Only after division of the wealth/property of the heirs, and after constitution of the parts of each heir, according to Article 356 of the Civil Code, the later can enter into a relation with the state to be separately compensated and in compliance with Article 16 of Law no. 7698, dated 15.04.1993 “On Recognition, Restitution and Compensation of Properties to Former Owners”, as amended.

This stance of the People’s Advocate is supported by the unified decision no. 6, of 24 January 2007 of the Joined Benches of the High Court highlighting that: *“for as long as the gained property is not divided by a decision of the KKKP, the Joined Benches of the High Court come to the conclusion that at the second decision of KKKP no. 114, dated 28.08.1997 compensating one of the heirs .... the state has met its legal obligation against all debtors (heirs) because compensation cannot be done only for one of the heirs, when the property and other component parts are not divided by the Court.*

*Given that in this case compensation is done for one of the heirs, more specifically for the defendant, the other heirs, the defendant included, can ask from the defendant to take their share of property.*

*It is not up to KKPP to decide on the parts of property and to divide property amongst heirs. The task of these Commissions is to set ways and to take measures for the restitution or compensation of properties of former owners or their heirs (Article 1 of Law no. 7698, dated 15.04.1993). The legal relationship established between the inter-court parties is the property, not an obligation relation.*

Regarding the above, the People’s Advocate, considering treatment of such problem as important and assessing that there is some incompliance to the Civil Code in effect, pursuant to the complaints no. 201203803 and 201201652, in support of Article 63 of the Constitution of the Republic of Albania, providing for the right of the People’s Advocate to issue

recommendations and to propose measures when identifying violation of human rights and freedoms from the public administration, through the official note no. K3/P30-6, of 26 June 2012, recommended to the Minister of Justice “to find an accurate and full application of the unified decision no. 6, dated 24.01.2007 of the Joined Benches of High Court and to provide the right to each heir of the expropriated person, as a sole creditor, to ask the property restitution and compensation agency to pay the entire obligation in monetary means releasing the debtor from all creditors, pursuant to paragraph 2, Article 428 of the Civil Code of the Republic of Albania”.

The reaction of the Minister of Justice, Mr. Eduart Halimi, through his letter no. 4466/1, date of protocol 10 October 2012, was positive, finding that:

*“ ... Your recommendation is reflected in the draft-law “On setting the Rules and Criteria for Distribution of the Compensation Fund for 2012”, which will be approved by the Council of Ministers, after completion of the external consultation.*

Financial compensation has started in 2005, calculating the value of compensation pursuant to the map of the property value at the level of local government units, but the methodology chosen did not appear to be accurate regarding definition of the real property values, because it contained no coherent criteria and the values generated from it do not coincide with the market value.

Article 21 of Law no. 9235, dated 29.07.2004 “On Property Restitution and Compensation” as amended, provides for establishment of the property compensation fund from the state budgetary, a process that is expected to be finished in 2015. Stemming from the hitherto rhythms of annual compensations, with beneficiaries being only some tens of expropriated subjects and from the annual changes of procedures set in the relevant decisions of the Council of Ministers, the perspective does not seem to be very bright, when tens of thousands of heirs are awaiting compensation. Even this year, the European Court of Human Rights, on 31 July 2012, following the complaints of M.P. et al vs. Albania, identified the violation of Articles 6 and 13 of the European Convention of Human Rights and of Article 1 of the Addition Protocol no 1 of the Convention. About failure to enforce the final court decisions of the property restitution and compensation committees allocating compensation to former owners, despite the overall measures suggested in the previous judgments in analogous cases, it ruled on penalties and the obligation for the Albanian state to ensure the right to



compensation to all former owners within eighteen months from the date the decision becomes final.

Violations of property rights continue to be identified through failure to obey provisions of Law no. 8651, dated 22.12.2012 “On Expropriation and Temporary Use of Private Property for Public Interest Purposes”. More specifically, violations are identified in the treatment of different cases about non-transparent expropriation procedures, with lacking coherence between real expropriation and the expropriation declared in the legal act, objection of the expropriated land price and delays in payment of compensation.

More specifically, in the application no. 201202093, 2012008003, 20120087, 201203552, groups of citizens from different villages asked for a new assessment in defining the expropriated land from the hydro power station of Banja and from the road segment of Tirana-Elbasan. They were told that pursuant to Article 4 of Law no. 8651, dated 22.12.2009 “On Expropriations and Temporary Use of Private Property for Public Interest Purposes” they should address the court.

A national submitting the application no. 201202781 asked to put an end to delays for the amount of liquidation of land for the construction of the road segment of Levan-Vlora, according to the Decision of Council of Ministers no. 269, dated 05.02.2008 and Law no. 8651, dated 22.12. “On Expropriations and Temporary Use of Private Property for Public Interest Purposes”. Following our repeated requests, the General Director of the Road Authority, via his letter no. 378/1, dated 24 September 2012, explains that the lady and the other co-owners needed to submit the legal property documents according to item 2 of the Decision of the Council of Ministers no. 156, dated 22.12.2012 to the relevant authority to withdraw the expropriation amount. The issue of expropriation of a construction site within the city through the Municipal Council decision no. 201202775 and no. 201201, was raised by us, and was considered being fair by the relevant authorities. The case is still pending in the Ministry of Interior, because the expropriation funds are paid by the municipality budget. These complaints and others like them show that the issue of expropriation, or limitation of the right to property only for public interest should be resolved in cooperation with the owners, and in exchange of fair compensation.

Individual complains on lacking compensation of damages for the houses flooded in the Region of Shkodra in 2010 are still problematic.

The Council of Ministers has approved its Decision no. 842, dated 06.12.2011 “On Approval of the Value of Damage Caused in Agriculture and in Businesses from Rainfalls and Floods, in the Region of Shkoder”, but such an act is not foreseen for the households affected by same disasters in the immovable properties.

About this case, the People’s Advocate has kept an official correspondence with all the state institutions and bodies involved in the assessment of damages and in processing the official documents, with the purpose of approval of a legal act, which would envisage and treat all the criteria and procedures of distribution of amounts for all the benefitting entities and has drafted a special report, submitted to the Council of Ministers, focusing on the problems caused by floods in Shkodra and other issues of compensation of the affected nationals.

At the initiative of the People’s Advocate, in February of 2012, we initiated a case registered as Doc. no. 2012200911, asking information from the Ministry of Agriculture, Food and Consumer Protection, the Chair of the National Dam Committee, and the Director General of the Albanian Energy Corporation on the measures taken, controls on guaranteeing the norms, technical and safety conditions of the discharge mechanisms, tunnels, waste water channels and of the hydro power plants, mainly in the north-eastern part of the country, taking into account the fact that the right of property of nationals is often affected by activities or objects composing a source of added risk, and in order to adopt measures to respond to similar weather conditions, such as floods or the immediate melt of snow.

From the official replies, we confirm that there is a need for emergent interventions in extending the Bridge of Drin, to reduce the gravel beds and to systemize the dams in the zone, to control the situation in the discharge channels, their discharges and the waste collection pipelines, investments in the rehabilitation of dams and reservoirs with the World Bank funding, work and readiness of the Drainage Boards as well as other measures to make sure that all the support infrastructure is in place and safe.

Another group of complaints received in 2012 are the ones related to the issues and procedures of alienation of agricultural land of the former agricultural cooperatives, pursuant to Law no. 7501, dated 19.07.1991 “On land”, as amended, Law no. 8853, dated 21.12.1995 “On the Transfer of Agricultural Land with no Property, as amended, Law no. 8337, dated 30.04.1998 “On the Transfer of Ownership of Agricultural Land, Forests, Meadows and Pastures”, the Decision of the Council of Ministers no. 255, dated 02.08.1991 “On the

Criteria of Division of Agriculture Land”, as amended, with the Decision of the Council of Ministers no. 306, dated 30.06.1994 “On the Measures to be Adopted for the Areas Flooded by the Hydro Power Stations in the Districts of Kukes, Has, Tropoja and Puka”, and others.

Law no. 9948, dated 07.07.2008 “On the examination of legal availability of executive titles on the agricultural Land on agriculture land” suspended its effect on 15 August 2012.

From the above-referred data until the entry of Law no. 58/2012, dated 17.05.2012 “On Some Amendments to Law no. 9948, dated 07.07.2008 “On the Examination of Legal Validity of Establishment of Property Titles on Agricultural Land”, as amended, time when the Local Commissions at the Regional level resumed their activity, the individuals’ complaints on delays for examining disputes related to land boundaries between natural and legal persons were replied by saying that the Commission is not operational until approval of a new law.

In the conditions when Law no. 9948, dated 07.07.2008 “On the Examination of Legal Validity of Establishment of Property Titles on Agricultural Land” became void, re-distribution of agricultural land stopped, thus causing stoppage of establishment of new property titles on land (which were to transfer to the physical fond for the compensation of expropriated owners) and end of functions and activity of the land commissions. There was a legal gap for the entities that had not benefited agricultural land in use or in property for various reasons, whose land was occupied by third parties, had property overlaps or could not get a Land Ownership Title or a Land Use Title.

In these circumstances, all the complaints are not grounded in law, or fall outside the competencies of the People’s Advocate jurisdiction.

However, an entirely new situation is created upon entry into force of Law no. 58/2012, dated 17.05.2012 “On Some Amendments to Law no. 9948, dated 07.07. “On the Examination of Legal Validity of Establishment of Property Titles on Agricultural Land”, as amended, and of Law no. 57/2012, dated 17.05.2012 “On the Conclusion of the Process of Transfer of Ownership of Agricultural Land of former agricultural enterprises”.

A typical case of a complaint falling in this category is the application registered as Doc. no. 201202021 filed by a group of inhabitants of a multi-floor block of apartments focusing on the failure of intervention of municipality structures in prohibiting a natural person from

scandalous interventions in the first-floor structures, and of introducing a security measure against him and on securing their life and property.

In the absence of a Municipal reaction, the People's Advocate submitted a recommendation to the Mayor asking for "exercise of legal responsibilities and competences by the Town-Planning Construction Inspectorate ... for adopting relevant inclusive organizational and technical measures for full re-establishment of technical safety measures according to construction parameters and full expertise, in the apartment of the first floor of Apartment no .... sheltering the households at risk of life and property to other facilities under termination of above-referred-to proceedings.

The Mayor replied to our Recommendation by an administrative decision for an immediate establishment of a work group, composed of construction experts to adopt all relevant technical measures in re-establishing the construction structural normality of the building in question.

Regarding the application registered as Doc. no. 2012200221 filed by a group of inhabitants from a village not allowed to freely have access to their agricultural land because of the military training of the Training Brigade, after the examination, we came up to the conclusion that it was grounded on law, and asked, through a recommendation, for suspension of the violation of their right to access their private property freely. In its reply to the case, the relevant body did partially appreciate the recommendation by saying that: "... the expropriation process is considered a priority and we shall minimize the use of plots of land outside the boundaries of the QSI property boundaries."

Another complaint related to property issues is the one related to the activity of the Agency for Legalization and Urban Planning of Informal Zones", identified as Doc. no. 201203197. In this complaint a citizen complained about the Regional Directorate for delays in the legalization process.

In answer to our Recommendation, the Director of the Regional Directorate informed us that the legalization permit was available for the citizen and he could go and take it at any moment.

In 2012, one of the major problems of about 2600 tenants living in the houses of former owners, previously expropriated, was the normative act no. 3, dated 01.08.2012 “On the homeless tenants freeing the former owner houses that were previously expropriated”.

In November 2012 we received a considerable number of complaints from the Association of “Tenants of State Buildings that are Private Property” in Tirana and Durrës and from individuals claiming the anti-constitutionality of the above-referred acts, asking for the intervention of the People’s Advocate for treatment of the homeless households.

The complaints focused on moments questioning the constitutionality of this normative act, pursuant to the case-law of the Constitutional Court of the Republic of Albania developed in years for the legal treatment of relations between lawful owners and the unsheltered living in the houses that are a former property of the expropriated subjects.

Under these conditions, the People’s Advocate submitted a memo to the Speaker of the Assembly of the Republic of Albania, Chair of the Parliamentary Committee on Legal Affairs, Public Administration and Human Rights, Chair of the Democratic Party Parliamentary Group, Chair of the Socialist Party Parliamentary Group, Chair of the Socialist Movement for Integration Parliamentary Group and to independent PMs on the normative act of the Council of Ministers no. 3, dated 01.08.2012.

It highlighted the fact that the normative act issued by the Council of Ministers creates deep problems posing a potential threat to new social conflicts.

In the opinion of the People’s Advocate Office, the procedure for the normative act of the Council of Ministers no. 3, dated 01.08.2012 and its content identifies important moments of its incompatibility with the constitutional provisions.

Pursuant to other previous decisions of the Constitutional Court, the competence for handling of relations between lawful owners and unsheltered citizens is left up with the Assembly of the Republic of Albania that had to intervene to provide relevant amendment to the law “On Property Restitution and Compensation”, as amended, which was not respected. Instead, it was the Council of Ministers that undertook a competence of the Assembly of the Republic of Albania through its normative act no. 3, dated 01.08.2012.

The People's Advocate is of the opinion that the normative act was problematic and did not provide a fair coverage of this start of tenants. Furthermore, this normative act did not account for the special and specific situations of a considerable part of persons affected by this act, such as the fact that a part of the inhabitants in the expropriated houses are legitimate owners, as they have gained the houses through formal immovable property sale contracts that are registered accordingly. Their expulsion from current houses (by the Act) is nothing more than a new expropriation for which there is no compensation envisaged.

An analysis of facts and a legal rational on the normative act issue was submitted to the Assembly, but no reaction was provided from it in response.

In addition, the Constitutional Court, after considering the submission by "The Association of tenants in State Houses that were Private Property, squashed it, thus giving a green light to the execution act.

Another recommendation still pending a reply is that one related to the application registered as Doc. no. 201203547, filed by a national from Shkodra, complaining of the failure of compensation of expropriated former properties, either nationalized or confiscated, as provided for in Article 5 of Law no. 9235, dated 29.07.2004 "On property Restitution and Compensation", as amended, which stipulates that: *"the restitution and compensation of property is made through a special law"* obligates the Government to adopt the appropriate measures for drafting the draft-law.

This draft-law would provide legal remedies to the expropriated subjects for the compensation and their immovable property and would contain specific compensation criteria to be respected by them. The People's Advocate is of the opinion that the legal gap existing in the relationship between the state and the expropriated subjects should be met in favor of meeting the property rights of the latter.

The law on immovable property compensation would give an end to the hitherto disparity before law, economic discrimination and legal uncertainty for a category of subjects expropriated from the previous regime.

The European Court of Human Rights, through its case-law and its suggestions and recommendations in examining the applications by the Albanian nationals, has played an important role in the immovable property restitution and compensation process. It has held

that this process in Albania is problematic as there are violations of the right to enjoyment of property, lack of legal safeguards that needs to be provided by the Albanian national system. As effective remedies it has suggested establishment of legal, administrative and financial mechanisms for improving the process.

Likewise, the Constitution of the Republic of Albania, through its fundamental principles, has established the appropriate conditions for guarantees the fundamental rights and freedoms of the individual.

More specifically, Article 181, item 1 of the Constitution of the Republic of Albania provides that: *“The Assembly, within two to three years of entry of this Constitution into force, issues laws for the fair treatment of various issues related to the expropriations and confiscations completed before the approval of this Constitution, guided by the criteria of Article 41”*.

The Decision of the Council of Ministers (DCM) no. 405, dated 27.06.2012 *“On the Approval of the Inter-Ministerial Strategy on “Reforms in the Property Rights Domain 2012-2020 and its Action Plan”*, in Chapter 1, Overview of Current Situation” item 1.2 highlights *“The state undertakes, by law, the obligation for the recognition, restitution and compensation of properties against all the subjects expropriated during the communist regime”*.

Pursuant to Article 1 of Protocol 1 of the European Convention on Human Rights and Fundamental Freedoms, item 3, Article 63, *“The People’s Advocate is entitled to make recommendations and propose measures in case of violations of human rights and fundamental freedoms by the public administration”*, while Article 24/a of Law no. 8454, dated 04.02.1999 *“On the People’s Advocate”*, as amended, highlights that: *“When the People’s Advocate observes that it is the content of laws or of other normative acts, not their enforcement the cause creating premises for violation of the human rights recognized by the Constitution or other laws, he can recommend relevant decision-making bodies to submit proposals for amending and improving such laws or normative acts”*. Pursuant to this legal basis, we submitted our letter K3/D59-4, dated 26.10.2012, recommending to the Minister of Justice to: *“prepare the draft-law ‘On Property Restitution and Compensation’, based on Article 5 of Law no. 9235, dated 29.07.2004 ‘On Property Restitution and Compensation’ and to submit it for approval to the Assembly of the Republic of Albania”*.

This initiative has to satisfy the obligations deriving from the Albanian organic law, to make sure that state authorities provide the lawful rights to the former owners and to approximate the Albanian legislation with the European Convention on Human Rights and the Strasbourg Court case-law.

We have received no official answer to such recommendation from the Minister of Justice so far.

### ***Conclusion***

Although in 2012 we have received less complaints related to property, its restitution and compensation, there is still a considerable amount of complaints dealing with this subject matter. In our opinion, the following actions would help in reducing property-related concerns in the future:

- issuance of a by-law for the financial compensation of the expropriated subjects for last year (2012), pursuant to Law no. 10 239, dated 25.02.2010 “On the Establishment of an Ad-Hock Property Fund”.
- public disclosure of the physical compensation fund, according to DCM no. 1077, dated 18.06.2008 “On the Establishment of a Physical Compensation Fund from the Forest and Pasture Fund”.
- public disclosure of the physical compensation fund, according to DCM no. 868 , dated 18.06.2008 “On the Establishment of a Physical Compensation Fund from the Agricultural Land Fund”.

## **2.7. The right to labour social insurance**

### ***Overview***

While carrying out its main function of protecting and promoting human rights, the People’s



Advocate has paid a special importance to the right of labour social protection and is focused on the employment policies of vulnerable groups of the society.

The Constitution, conventions ratified by the Republic of Albania, the Labour Code, Law no. 8549, dated 11.11.1999, "*On the Civil Service Status*", and other laws and by-laws are the legal basis for governing the labour relations and for protecting the employees from abusive dismissals from work.

In 2012 the People's Advocate has received about **297** complaints claiming on violations of labour relations by the public, central and local administration.

Of these, 249 complaints are fully handled. 63 complaints submitted to the People's Advocate Office were not grounded, while 111 other complaints have resulted to be beyond the jurisdiction and competence of the People's Advocate Office. 42 complaints have been resolved in favor of the complainants. Also, about the violation of labour rights for the employees we have drafted 28 recommendations, based on certain complaints, of which 6 recommendations were accepted, 22 recommendations are objected, while 5 other recommendations were suspected because of withdrawals of the administrative proceeding by the complainants. The other part of complaints (48) are under the process of examination.

In 2012 we received a considerable number of complaints from employees of the Municipality of Tirana, University Hospital Center and Regional Educational Directorate, complaining about their dismissal from work and about not getting any of the financial rights provided for in the Labour Code. In the conditions that the labour relations of these people are governed by the Labour Code and the individual labour contracts, we have seen that the variety of complaints is high, including kindergarten educators, teachers, nurses, drivers, maintenance staff, experts, up to heads of directorates.

Other complains falling in this category are related to dismissals from prefectures, different ministries, educational directorates in districts, legal entities, hospital center\,s, deans of public universities, etc.

Many problems of legal nature are identified from consideration of these complaints, which have, often times, been part of our recommendations. We have tried to include many of the problems awaiting still to be resolved in our proposals for amendments to Law no. 8549, dated 11.11.1999, "*On Civil Servants*", as amended, submitted to the Public Administration

Department and to the Ministry of Justice “*On the assessment of labour relations in the administration and manner of development of procedures by it*”.

### ***Case analysis***

From the cases considered, the People’s Advocate Office has identified as follows:

1. Because of the different interpretations of the Labour Code provisions while dealing with the citizens’ claims on restitution to their previous jobs because of termination of contracts with no good reason, our opinion is that such issues can only be resolved through court proceedings. This is the reason why such complains have not been considered in their merits by us. The recommendations issued for complaints falling in this category focus on the arguments for proving failure to respect legal elements for the amount of compensation due to termination of labour contracts, violation of the right to be heard, failure to inform employees of administrative acts against them (such as disciplinary measures) at every case, etc.

2. An evident fact from the complaints is the immediate termination of many contracts by the public administration, especially the Municipality of Tirana, without respecting the procedures and deadlines provided for in the Labour Code and the legal basis used for justifying termination of labour contracts has almost been the same. Usually the employer justifies termination of the contract as a consequence of an institutional reform, while complainants report they are replaced by other persons.

3. Regarding compensation of employees, from all the cases we have monitored we have seen no instance of observation of the obligation of seniority of working experience, although this is provided for in Article 145/152 of the Labour Code. The justification for not meeting this requirement, according to relevant authorities, is the lack of funds. More specifically, the application registered as Doc. no. **201200020**, focused on 70 workers of the Funeral Service Enterprise of Tirana, who are dismissed in breach of the provisions of the Labour Code, not gaining any financial effect from the Municipality of Tirana, or from the enterprise.

Regarding the above, the People's Advocate Office has first got informed on each specific case and on lawful requirements of the complaints, and has, afterwards, asked the Municipality of Tirana, the Funeral Service Enterprise and the General Directorate of the city to provide relevant explanations. Following relevant explanations from these bodies, we have become convinced of the truthfulness of the worker claims, blaming the Municipality of Tirana for not enforcing the Labour Code.

Under these conditions, we have recommended to the relevant public administration bodies to fully and coherently apply the provisions of Article 138, 139, 144, 145, 148, 155 of the Labour Code for terminating labour contracts of the Funeral Service Enterprise staff.

In answer to this recommendation, the General Directorate of the Municipality refused to provide arguments, but just said that the Municipal Council Decision no. 21, dated 19.11.2011, in its item 3 refers only to the transfer of functions of the budgetary part of the Funeral Service Enterprise to the General Directorate about the cemetery function.

Continuing its rational, this answer says that the later Directorate has refused to transfer the worker because of the fact that the workers have remained attached to the first employer.

At the end of the examination and treatment of the case, the People's Advocate Office has come to the conclusion that the recommendation of our office is partially applied from the Funeral Service Enterprise. The dismissed staff have received their salaries for three months, and the written acts, as an obligation of the employer sacking the worker, have been transcribed.

Regarding the recommendation on a payment for seniority of years of work, the People's Advocate observed that it was not applied by the employer because of claims of insufficiency of funds. In these conditions, we provided a copy of the recommendation to the complaint and recommended to her to file a case in the court on this matter.

4. There have been repeated cases when indefinite labour contracts of some workers have become definite-term contracts. Because of the different interpretations by the courts of the Labour Code provisions of Article 151, the workers have to go through an irregular procedure for signing new contracts, without taking into account the long working experience in the same job. An example illustrating this phenomenon is the application registered as Doc. no. **201200048**, **201200086**, et al. After receiving more information by the

complainants, we have immediately submitted our recommendations to the Municipality of Tirana to obey the provisions of the Labour Code.

More specifically we have recommended the full enforcement of Articles 94, 143, 145, 155 of the Labour Code covering manner of termination of a labour contract and its consequences in the labour relations.

In our recommendations we clarified that from the legal viewpoint, in the absence of an agreement between parties, the probation term could not be longer than three months and every contract reached for a longer term is void. Furthermore, based on the principle of trust, the worker serves his probation term only once. In other words, in the fourth month, despite the wish of the employer to have a second probation term, the parties are found in a labour contract having an indefinite term, which termination could be made according to the specificities of Article 143, 144, etc., of the Labour Code. In addition, if the employer accepts provision of the service by the worker in exchange of a salary, even after the probation, the presumption is that the parties have changed the contract and have entered into an indefinite term contract. In such case, parties continue the same contract for as long as they decide to terminate it, in line with the rules for terminating an indefinite term contract.

Regarding the above, we saw that in no case were the notifications for dismissal respected, nor were the obligations for annual leave (according to Article 94, paragraph 5 of the Labour Code) or remuneration for working seniority (Article 145 of the Labour Code).

From the arguments provided in answer to our questions, we see that the offices depending on the Municipality have taken wrong approaches, not only because of the fact that the legal arguments related to our recommendations have been very detailed and very accurate, but also because of the fact that the situations in questions are properly covered by the provisions of the Labour Code, considered as absolute rights of workers after termination of the probation period.

**5.** In some cases the procedure of termination of the labour contract from the employer has not been respected (Article 144 of the Labour Code), not giving a preliminary notification to the worker in order for the later to be informed of the reasons of dismissal and to submit his/her arguments to this end. Hence, Article 144 of the Labour Code provides for

the need to respect a certain procedure for terminating a contract by the employee. Every worker is entitled to the right of immediate written notification on the reasons of termination of the labour contract. Most of the complaints are focused on the failure of employees to provide preliminary notification of termination of the labour contract and on the fact that the workers are generally not given the opportunity to appear in an administrative process.

The procedure followed to terminate a labour contract, failure to respect the notification deadline and the wrong approach of the public administration bodies in cases of termination of the contract, as continuously brought to the attention of the public administration by the People's Advocate recommendations, leads to a financial compensation of the unduly dismissed worker for up to six months' salary.

Also, referring to the cases of failure to follow procedures for termination of labour contracts, it is worth mentioning the application registered as Doc. no. **201201900** focused on the case of a doctor in the Regional Hospital of Saranda, accused of the criminal offence of "passive corruption", against whom an administrative act of "*suspension from office up to taking of a final decision*" was issued, at a time when he was not pled guilty by a final court judgment. After identifying that dismissal of the doctor was made in breach of legal provisions in force, we recommended to the Director of the Regional Hospital of Saranda "*that we found the administrative act for suspension of J.Q. until a final court decision was taken as entirely not grounded and recommended his return to the previous job*".

In answer of this recommendation, we were informed that the Hospital Director ordered the doctor's return to office, while a month later he provided him with the order of immediate suspension of the working relations "*due to serious violation of ethics, rules of operation of the institution and for insulting the institution's director in person*". After resubmission of the complaints, we found out that the order for suspension from work was not based on evidence and facts and was, thus, irregular. The dismissed doctor was not even provided from the possibility of giving explanations according to the Labour Code, while the notification declines have not been respected.

After a repeated submission by this national, we addressed the Ministry of Health for intervening in the case and we recommended some measures to be applied by it.

**6.** Failure to observe the notification deadlines, after probation, is several times justified

by the employees that such act is in compliance with Article 153 of the Labour Code, qualified as “*an immediate termination of a labour contract*”. We are of the opinion that the provision of Article 143 of the Labour Code on the notification deadline is often not clear. In our opinion, the notification deadline enables the employer to have a transitional time until the final termination of the contract, after the notification of the decision to terminate the contract, so that the worker tries to find another work, in efforts to reduce the financial and social problems created by dismissal. This is also what the High Court has rules in its unifying decision no. 19, dated 15.11.2007, where it concludes that: “*In principle the parties have to obey the notification deadlines; immediate termination of the contract is possible, but it should be allowed only for justified reasons (Article 153); in such case the party terminating the contract is not held responsible, despite the failure to obey the deadline.*”

7. Another issue is termination of labour relations in breach of the law and failure to enforce final court judgments, which paves the way to financial consequences mounting to considerable amounts. Consequently, the responsibility for illegal decision-making and the financial bill deriving from it should not be billed to the administration, but should mainly be an individual responsibility of the title holder of the institution taking such and is entitled to apply the law. (complaints Doc. no. 201200099, 201203471, 201203505 fall under this category).

8. Another type of problem inherited from the past is related to the procedures followed for the transfers or change of jobs for teachers. Despite developments, the Educational Directorates or Educational Offices have not changed their approach of this issue.

The application registered as Doc. no. 201201516 belongs to a group of professors from a University, objecting the order taken by the Dean of Mit’hat Mema Uversity on transferring the academic staff to the university braches.

More specifically, this complaint shows of a collective transfer of eight professors in one of the University’s braches by Order no. 27 March 2012, entering in force on 02 April 2012. This decision was taken with the purpose of meeting the needs of the university, in service of improving the work and promoting the quality of teaching in this branch.

Regarding treatment of this complaint (which was as well covered by the visual media), we issued a recommendation on “*Revoking as absolutely void of order no. 27/2, of 27.03.2012*

on “*transferring the academic staff in the university branch*”.

In his answer to our recommendation, the Rector dropped our arguments, justifying himself in all ways possible that he had done nothing but respected the law, and highlighting that were partial in our recommendation. This complaint has ended up in the court. A final judgment has not yet been issued on it.

9. In addition to the complaints and problems treated above, related to respecting, fair and efficient application of the legislation in force, we have undertaken several other initiatives and recommendations proposing dismissing of some heads of educational institutions in those cases we have indentified flagrant violations of the legal provisions. More specifically (complaint no. 201201736), by his initiative, the People’s Advocate had an inspection from 10 to 14 April 2012 at the National Center of Treatment of Victims of Domestic Violence in Kmaza, Albania. The inspection followed a complaint filed by some women, sheltered in this center, as well as from a chronicle broadcast from *Fiks-Fare* programme on treatment of victims and conditions offered in this institution.

In meetings with the director of the institution, we were told that the National Center of Treatment of Victims of Domestic Violence is an institution established at Order no. 36 of the Prime Minister, dated 23.03.2010, in support of violated women having no protection. Women and children are accommodated in this institution accompanied by the State Police, after having a protection order, or an immediate protection order from courts all over the country. The institution is conceptualized as an open center, where women are free to move in day time and children can attend the school neat the center.

In interviews with women in the shelter, and referring to the interviews of women from the *Fiks-Fare* programme we hear of problems related to lack of legal assistance from the institutions because of the center not having a lawyer in its organizational structure. Also, the women confessed that they were not safe when moving around the center, as they were not accompanied by any of the staff when they went to court proceedings, or when they accompanied their children to school.

Because of this situation, the national H.B was stabbed in February by her husband in vicinity of the Center. She lost one of her eye in this “encounter”. She reported that she kept being threatened by her brother-in-law, and because of this she never left the building again. Her

psychological situation was aggravated, as she was insulted and offended several times (before the incident) the director of the Center, even in the presence of her children.

Another scandalous fact that was put at our disposal by one of the staff was related to parts of a “Board Diary”, kept regularly by the Center staff. In this diary, the staff described in general the main occurrences of the day, reflecting the advice of the Director, signing it by the educators and other staff at the end of their shift. In the minutes of 17 October 2011, the part reading “order by the Director”, item 2 contains this formulation: “Suzana is condemned to not meet her son and daughter at the meeting of 22 October 22.10.2011”. The minutes of 13 October 2011, the section on “advice for staff” read: “the women shall communicate once in a month with their family members, in the presence of the staff.”

In addition to what said above, it was accepted by the Director herself that she had banned cell phones in the facility, upon claims of better protection of women. When asked about the legal background of such limitation, she provided us with a copy of an internal order, prot. no. 54, dated 01.04.2012 – that is ten days before the inspection, which ordered “for a physical control of women any time they get back to the Center, after having left the Center before, to identify potential efforts to bring dangerous and harmful objects in the Center”.

In our opinion the Order runs contrary to Article 37/3 of the Constitution of the Republic of Albania, which provides 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 the leaving of it, or to avoid a risk that threatens public security”.

Also the DCM no. 505, dated 13.07.2011 “On approval of social care standards for victims of domestic violence in residential, public or state centers”, standard 3 provides as follows: *“the service provider has to treat them with respect and dignity. They should be protected from all forms of abuse or discrimination”. “The service providers should encourage and promote tolerance, understanding and respect of the individuals free of any discrimination...”*

In our opinion, there is an incomppliance between the need for establishing such center and the manner of its administration and management by the Center director. On the one hand, it was said that the Center is open for supporting and facilitating the sufferings of the women and mothers suffering from their spouses, while, on the other hand, drastic measures are



taken against them, such as curtailment of meals, ban of communication with their families, or ban of use of cell phones in the institution. In the People's Advocate opinion, treatment of the women interviewed by media and of some of the ones still accommodated in the center leaves much to be desired. The women were subject to psychological violence with the aim of threatening, intimidating or manipulating them by the Center director.

Stemming from the identified violations, we submitted a recommendation to the Minister of Labour, Social Affairs and Equal Opportunities proposing, inter alia, dismissal of the director of the center, immediately terminating the labour contract with her due to reasons justified in Article 153 of the Labour Code.

In answer to our recommendation, we were informed that the chief of the center, a social worker in profession, was commanded as the director of the center on 09 May 2012.

We can also mention the application registered as Doc. no. 20104183 as falling into this type of concerns as well. ORA NEWS TV channel had broadcasted as chronicle in its "Alarm" feature focusing on the dismissal of some staff from the Regional Hospital of Lushnja. On 14 December 2012, the camera operator and the journalist of this TV channel were physically and psychologically violated by the Hospital director and other persons affiliated to him.

Following this incident, the People's Advocate, pursuant to Law no. 8454, dated 04.02.1999, "*On the People's Advocate*", in line with his constitutional and legal functions in protection of lawful rights, freedoms and interests of the individuals, did immediately initiate a process for treating this case on 15 December 2012.

In this context, we established a working group, which went to Lushnja on 17 December 2012 and met with the Director of the Regional Hospital of Lushnja about the case. The director informed us that he was provoked by the TV operator, who did not accept to put off the camera, annoying the persons coming to meet and/or ask about the patients. Found in such situation, the Director said he had lost his patience and had offended the camera operator. After analyzing all the circumstances of the case, after watching the registered parts of the debate, we listened to the journalist's version of what happened and concluded that there was a violation of Law no. 9131, dated 08.09.2003 "*On Rules of Ethics in Public Administration*". In a recommendation addressed to the Minister of Health we proposed "*Disposal of Mr. A. S, by immediately terminating his labour contracts on the grounds of*

*Article 153 of the Labour Code*”. In a meeting with the Minister of Health, inter alia, the Minister said measured would be adopted for dismissing the Director of the Regional Hospital of Lushnja, but an official reply to our recommendation is still pending.

**10.** In addition to enforcement of provisions of the Labour Code on respecting the employee-worker labour relations, we have focused our efforts in encouraging employment resulting from vocational training programme for the minorities, especially for the Roma community.

A considerable part of the Roma population is unemployed. Some of them deal with humble works, which are often times seasonal. In implementation of the national strategy on improvement of conditions of the Roma minority and of its 2012-2015 action plan, employment of Roma is a priority, but in order for them to find a job, they need to be trained in the skills required from the labour market.

Vocational training would lead to a better economic situation of the Roma and their integration in the society, providing for more changes for equal opportunities. About this issue, through a recommendation addressed to the Minister of Labour, Social Affairs and Equal Opportunities, we have asked for the following:

- a) continuation of priority involvement of the Roma minority in vocational training programmes;
- b) priority employment of persons from the Roma community at a working age, so as to integrate them in the social life and to improve their socio-economic conditions, so as to have this minority not feel discriminated against.

In answer to this recommendation, we were informed that the Ministry of Labour, Social Affairs and Equal Opportunities has undertaken real measures for drafting encouraging and facilitating policies for the Roma community, in order to encourage their employability, training and integration in the labour market. This has always been a priority policy even in the context of application of the objectives for the National Strategy “*On Improving the Living Conditions of the Roma Minority*”. In 2011 the job-seekers from this minority have grown by 10 percent compared to 2010, showing their awareness raising and their application for a job, able to benefit from different services offered especially for special-

need groups, where Roma are a part of.

There are currently two programmes focused on the priority of employment of unemployed job-seekers from special groups:

- i) DCM no. 48, dated 16.01.2008 “*The programme for encouraging the unemployed job-seekers, who are in difficulty*”. According to this programme, the employees providing a one-year contract to the unemployed job-seekers who are in difficulty can get a funding of 100% of the employer’s social insurance contribution for four months (based on the minimal salary calculation). According to this programme, part of the category of unemployed job-seekers in difficulty are the Roma people as well.
- ii) DCM no. 27, dated 11.01.2012 “*On the programme of encouragement of employment of women from special groups*”. The purpose of the programme is to encourage the Albanian leaders and managers to hire unemployed women coming from special. Such support consists in payment of the binding minimum social insurance contributions for employment of women of special needs, where Roma women are part of.

The Order no. 782, dated 04.04.2006 “*On Fees of Vocational Education*”, as amended, provides for free registration of unemployed job-seekers from special groups (where the Roma are involved) wanting to attend vocational training courses offered by the Regional Public Vocational Training Directorates.

According to statistics in years, the unemployed job-seakers from the Roma and Egyptian communities registered with the Regional Employment Offices were more in number in 2011 than the ones registered in 2010. More specifically, 6970 people from this category were registered as job-seekers in 2010, compared to 7666 people in 2011. 217 persons are treated for free in 2012, compared to 62 in 2010.

## ***Conclusions***

As highlighted in EU’s 2012 Progress Report for Albania “*the public administration reform to guarantee meritocracy, efficiency and transparency is one of the 12 key priorities for Albania for its membership in the European Union. The civil service continues to suffer from*

*shortcomings related to politicisation and a lack of meritocracy in recruitment, promotion and dismissal of civil servants. In key sectors the public administration faces important challenges in fulfilling its tasks, including the management and follow-up of assistance programmes and the implementation of legislation aimed at alignment with the EU acquis”.*

Regarding the above, there is still a lot to do for:

- building the capacities of the public administration, responsible for procedures of dismissal, so as to ensure a fair application of the law-binding procedures, observing the workers’ rights, as provided for in the law;
- drafting of recommendations for encouraging employment policies for the people in need;
- monitoring the enforcement of Law no. 8549, dated 11.11.1999 “*On Civil Servants*” by Public Administration.

## **2.8. The right to benefit from the social insurance system**

### ***General overview***

The rights to benefit from the social insurance scheme are enshrined in the Constitution of the Republic of Albania, which Article 52(1) provides that: “*Everyone has the right to social security in old age or when he is unable to work, according to a system set by law*”. The relations in the social insurance area are governed by Law no. 7703, dated 11.05.1993 “*On the Social Insurance in the Republic of Albania*” as amended, and the implementing sub-legal acts.

Given the immediate importance of these rights for the citizens, they should be fulfilled in a fast and efficient way, allowing for no delays.

The People’s Advocate office received and processed 282 complaints in this area for 2012. Of this total, 262 were finalized and we found that 97 were ungrounded, 1 complaint fell out of the jurisdiction, 27 fell out of scope, 127 were settled in favour of the complainants and

there have been 10 accepted recommendations. Twenty complaints are under examination.

Various citizens have claimed infringement of their rights, as a result of the incorrect calculation of the old age retirement pensions, of the low amount of their pensions, the establishment of the beginning date of the old age pension, delays in the beginning of the old age pension or in the examination of the complaints against the benefits units at the Regional Social Insurance Offices, etc.

One of the issues addressed by our institution has been that of the citizens who are entitled to the supplementary pension and to the early retirement pension due to the completion of service years. The complaints filed against claimed discriminations in the recalculation of the pension amount indicate that claimants have benefited supplementary and early retirement pension for completion of years of service by virtue of the Law no. 8087, dated 13.03.1996 “On the Supplementary Social Insurance of the Members of Armed Forces of the Republic of Albania,” as amended and Law no. 8661, dated 18.09.2000 “On the Supplementary Insurance of the State Police Officers”. Upon the entry into force of the Law no. 10142, dated 15.05.2009 “On the Supplementary Social Insurance of the Members of Armed Forces, of the State Police, the Guard of the Republic, State Intelligence Service, Penitentiary Police, Fire and Rescue Police and the Internal Control Service of the Republic of Albania”, Article 29(2), a recalculation of the amount of these pensions has been made. That has not only reduced on a dramatic extent the amount of such pensions but has also declared these individuals as debtors to the Social Insurance Regional Offices.

After considering the change of the amount of pensions as an infringement of these legally acquired rights, our institution admitted and reviewed their complaints, in order to identify the issues deriving from the content of this Law. After conducting thorough inquiries and making an analysis of the laws governing this relationship, we issued a recommendation for the Ministry of Finance *in relation to the implementation of Article 29 of the Law no. 10142, dated 15.05.2009 “On the Supplementary Social Insurance of the Members of Armed Forces, of the State Police, the Guard of the Republic, State Intelligence Service, Penitentiary Police, Fire and Rescue Police and the Internal Control Service of the Republic of Albania”*. In the course of the year, we filed continuous requests to have an official feedback on the recommendation, but did not receive any answer. Finally, in January 2013, the Ministry of Finance sent a response whereby it reported that the issue is under

examination by the Constitutional Court. We asked for information from the Constitutional Court and learned that no application had been filed with this court in relation to Article 29 of the above law. The Court had received a request by the Sappers Association of Albania had filed an application on: Abrogation on grounds of being anti-constitutional of the Law no. 10367, dated 23.12.2010, “On endorsing the Decision of the Council of Ministers no. 5, dated 10.11.2010 “On Some Amendments and Additions to Law no. 10142, dated 15.05.2009, “On the Supplementary Social Insurance of the Members of Armed Forces, of the State Police, the Guard of the Republic, State Intelligence Service, Penitentiary Police, Fire and Rescue Police and the Internal Control Service of the Republic of Albania”, and of DCM no. 793 of 24.09.2010 “On the Implementation of Law no. 10142, dated 15.05.2009 “On the Supplementary Social Insurance of the Members of Armed Forces, of the State Police, the Guard of the Republic, State Intelligence Service, Penitentiary Police, Fire and Rescue Police and the Internal Control Service of the Republic of Albania”. The Constitutional Court has not yet deliberated on the issue.

Under these conditions, we will continue to ask for the feedback of the Ministry of Finance on our recommendation related to the denied rights of the individuals who are entitled to an early retirement after having completed the required years of service and to the supplementary pension.

Another persistent issue has been that of the low number of the pensioners who benefitted from early retirement during 1993-1994, which has been present also in the People’s Advocate Annual Reports of 2010 and 2011. We would like to mention that the People’s Advocate addressed the Minister of Finance with a recommendation in 2009. Following our continuous requests, we were informed on 15.06.2012 that our request had been delegated to the Social Insurance Institute, being the institution in charge of proposing and drafting legal and sub-legal acts in the field of social insurance, and that the latter had established a working group and had prepared a draft Decision of the Council of Ministers “On Reducing Differences in the Amount of Pensions of Budget-funded Employees Established in 1993-1994”. After reviewing this draft decision, the Ministry of Finance informed us that, following the examination of the matter with the respective institutions, draft decision results to incur significant financial costs that are impossible to afford by the state budget and, thus, the issue was put off for reconsideration at a later stage.

The People's Advocate Office will follow up on this issue until a fair and proper solution is found.

### *Analysis of specific cases*

During the complaint review process, we found cases in which the rights of the citizens entitled to various benefits from the social insurance scheme had been infringed.

Complaint with **Doculive no. 201200194**, which involved the claims from two former pilots of the State Police Helicopter Unit, who had not received the supplementary old age pension. Prior to handling this case, we found that, even though Law no. 9128, dated 29.07.2003 "On the Special Financial Treatment of the Retired Aircraft Pilots", as amended, recognizes the right of the pilots of the State Police Helicopter Unit to a special financial treatment, it could not be applied, as the specific sub-legal act intended to regulate the situation of the said category had not been issued yet.

After examining the case, we found that the rights of the subjects provided for by this law had been infringed. Under these conditions, we addressed the Ministry of Finance and the Ministry of Interior with a recommendation on: *"Issuance of a sub-legal act for the implementation of Article 8 of Law no. 9128, dated 29.07.2003 "On the Special Financial Treatment of Retired Aircraft Pilots"*. After our recommendation was accepted as proper and grounded, procedures started for the approval of the Draft Decision "On the Procedures and Amount of the Special Financial Treatment of Retired Helicopter Pilots and Technicians at the State Police Directorate General and the Guard of the Republic", endorsed by DCM no. 477, dated 25.07.2012. According to this decision, the full set of the documents to benefit from the special treatment will be prepared by the human resources and finance structures of the budgetary unit and will, afterwards, be submitted for review to the State Police Directorate General or the Guard of the Republic, respectively, with the latter sending the file to the Regional Social Insurance Directorate that covers the residence area of the beneficiary.

Complaint with **Doculive no. 201202289**, lodged by a citizen from Tirana, who claimed that the Regional Social Insurance Directorate had not calculated his family pension and had failed to pay court expenses. After having exhausted the administrative and judicial

channels, the applicant had required from the Directorate to pay the court expenses, but had been told that he was not entitled to receive such payment. Meanwhile, no answer was returned in relation to the claims of a re-calculation of the family pension benefit.

After analyzing the court decisions and considering the claims of the above-mentioned citizen as grounded, our institution recommended to the Tirana Regional Social Insurance Directorate: *“To pay the court expenses to this citizen immediately and perform a recalculation of the family pension benefit”*. The recommendation was accepted as such and the complainant had his family pension recalculated and the court expenses paid.

The complaints with **Doculive no. 201200753 and 201200751** involved two former employees of the Military Information Service, who had not been recognized as working experience their service time spent at the civil units of the Service for the period 2004-2008. We found out that the Tirana Regional Social Insurance Directorate had not taken into account the said period while calculating the amount of early retirement pension for having the required service years. Under such conditions, we submitted a recommendation on *“Recognition of the service time in civil units for the period of 01.09.2004 to 01.04.2008 in calculating the early retirement pension due to completion of the years of service”*.

Our recommendation was accepted and, upon submission of the form of net average wage and working years for purposes of calculation, the Military Information Service Directorate recalculated the amount of early retirement pension for both citizens, including the service period at the civil sectors.

Complaint with **Doculive no. 201203383** involved claims on the termination of the supplementary compensation of electricity in the family pension of a citizen resident in Durres. Our Office mediated the issue with Durres Regional Social Insurance Directorate and the complainant was restored the right to receive such subsidy included in the list of the beneficiaries for October. He obtained the subsidy for the 9-month period between February and October 2012.

Complaint with **Doculive no. 201203602** of a citizen from Burrel involved claims against Dibra Regional Social Insurance Directorate, which had failed to calculate the addition to the pension remuneration, after the recognition of the working years of the citizen. After finding that the claims of the citizen were grounded, we asked the directorate to recalculate the



amount of old age pension. Following our intervention, they made recalculation of the pension and increased the amount with 1/4.

The complaint with **Doculive no. 201200624** involved a citizen from Tirana who, even after submitting all the legal documents for the re-calculation of the early pension for completion of service years, had not been granted the amount by Tirana Regional Social Insurance Directorate. The citizen asked for our assistance under the conditions where such recalculation was being delayed and considering that he was in the middle of a court proceeding, which was required an early retirement pension. After finding that the right of this citizen had been infringed, we addressed Tirana Regional Social Insurance Directorate with a recommendation on the re-calculation of the early pension for completion of service years. Our recommendation was accepted and the Directorate recalculated the pension for the monthly amount of Lek 19,288.

### ***Conclusions***

In order to improve the situation of complaints involving social insurance scheme benefits, with special focus on pensions, we recommend that the following issues are addressed with priority:

- A revision and re-evaluation of the amount of the minimum pension at a national scale should be done, given that such subsistence is currently inadequate to afford a normal living.
- Re-establishment of the violated right to early retirement pensions for completion of service years and to supplements applicable to a determined category of militaries of the Armed Forces, employees of the State Police, Guard of the Republic, State Intelligence Service, Penitentiary Police, Fire and Rescue Police and of the employees of the Internal Control Service.
- Provision of continuous training for the responsible staff of the Regional Social Insurance Directorates, in order to avoid mistakes in terms of the calculation of the old age pension.
- Improvement of Article 62 of the Law no. 7703, dated 11.05.1993 “On the Social Insurance in the Republic of Albania”, as amended.

## **2.9. The right to education**

### ***General Overview***

Pursuant to the Constitution of the Republic of Albania, Article 59 (ç) “Social objectives”, which enshrines provision of “*education and qualification according to ability of children and the young, as well as unemployed persons*”, and, further, to the Law no. 9741, dated 21.05.2007 “On Higher Education in the Republic of Albania”, the People’s Advocate has shown maximum sensitivity in addressing the cases of identified actions that fall against the laws into force and infringe the right of the citizens to education.

Actually, we are faced with an increasingly competitive social and educational environment, which, regardless of its issues, encourages students to acquire knowledge in order to be more successful. Efforts of the last years to have a common ranking/scoring system for the universities, in addition to their accreditation, have proven quite useful, but they should apply to all the Albanian universities.

Every institution in charge of running the system should not only know the situation and the needs thereof, but also has to find the relevant solutions and design proper policies for improvement, given that the gaps of the system itself have a direct impact on the sustainability and long-term development of the country.

The awareness raising of the citizens in 2012 brought to the doors of the People’s Advocate Office the groups of interest, including teachers, students and parents’ community, all being key components for the identification of the weaknesses and shortcomings of the education system. There was a total of 83 handled complaints, of which 54 were finalized, 29 are still under examination, 15 were found ungrounded, 4 fell out of jurisdiction and 16 out of the mandate of the institution, 15 were settled in favour of the complainant. There were, additionally, 2 accepted recommendations and 2 rejected recommendations.

Issues in the field of education are of vary in nature, with the main focus on working relations, including the increased demand for employment of the university graduates who ask for a job as teachers at the schools of the country, cases of dismissal, transfers induced by reforms or the reduction of the number of pupils in schools, kindergartens or nurseries

(mainly in districts), etc. Additionally, complaints have involved cases of incorrect evaluation in various competitions, etc.

### *Analysis of specific cases*

The UN Committee on the Rights of the Child has stated that the human rights of the teenagers should be promoted, so that they enjoy the highest health standards possible. As a result, States shall guarantee the right of the children and youth to benefit from education in a safe environment free of violence, insult, social exclusion or other forms of discrimination. Methods, curricula and education resources should serve to enhance the understanding and respect of diverse individuals, regardless of their sexual orientation or gender identity, including the special needs of pupils, students, parents and other members of their families.

*Following our findings in the case no. 201202398, started “Ex officio”, we recommended to the Ministry of Education to undertake the following:*

- *Introduce in the curricula and school programmes knowledge and information on the LGBT community, in order to ensure education in a safe environment free of violence, insult, social exclusion or inhuman treatment because of the sexual orientation or gender identity.*
- *Train the academic staff so that they do not allow any form of discrimination based on sexual affiliation to take place, by ensuring protection and discipline in the educational institutions.*
- *Being the body in charge of assuring quality and respect of standards in the public and private higher education institutions in the Republic of Albania (Article 63 of the Law no. 9741, dated 21.05.2007, as amended), the Ministry of Education should take immediate and relevant measures for the implementation of the applicable laws on the protection of the fundamental human rights and freedoms, in respect of the above-mentioned principles.*

*In response to this recommendation, the Ministry of Education informed us that the People’s Advocate recommendations were in line with the goals and measures set out in the Action*

Plan on “Non-discrimination Policies in Education”. The Ministry of Education and Science said that it remains committed, in collaboration with the education institutions, to plan, implement and monitor the accomplishment of the objectives and activities of the plan in question, in function of ensuring a safe school environment, free of insult, social exclusion or improper treatment based on sexual orientation and gender identity.

Additionally, the Ministry is committed to work with the higher education institutions in the country for the implementation of the objectives and activities contained in the Action Plan “On Non-discrimination Based on Sexual Orientation and Gender Identity 2012-2014”.

From the complaints lodged with our institution from Roma community members, we found that the majority of claimants was uneducated or had only completed elementary education, whereas their children did not attend school. Education of the members of this minority should not only be viewed in the light of the constitutional obligations, but also as one of the most efficient ways to enable their full integration in the society. A poor education level is a serious issue that prevents this community from integration into the society. The majority of the children coming from the said community are illiterate, due to language impediments they have in the first grade (as they speak the Roma language), the extremely hard economic conditions of their families, the distance of their residence from the school institutions and also due to the wrong mentality of their parents.

*In order to address this issue, the People’s Advocate started ex officio the investigation no. 201200670. Following the findings of this investigation, we sent the following recommendation to the Ministry of Education and Science: “Measures should be undertaken to establish preparatory classes of Albanian language in the preschool education, in order to enable the enrolment of the Roma children at all the education levels, and work should be coordinated with the Regional Education Departments to raise the awareness of the Roma Community members, in order not to prevent their children from attending school”. In response to this recommendation, we were informed that the Ministry of Education had developed a detailed action plan that considered with priority enrolment of the Roma and Egyptian children in kindergartens and schools. Further, the Ministry reported it had reviewed and allocated budget funds to the Action Plan for the Education of Roma Children, on which Regional Education Directorates and Education Offices report to MoES on a periodical basis.*

In order to follow up on their vital issues and provide final solutions, experts of the People's Advocate conducted an inspection in the campsite of the former Military Cantonment of Sharra, Tirana, on 18.05.2012, where 8 Roma families were been accommodated. During this inspection, we found that their children did not attend school. Interviews indicated a total of 35 children, of which 20 belonged to the age group of 1 to 5 years old, whereas the rest (15 children) were up to 14 years of age. None of these children were enrolled to attend the 9-year education. Consequently, we sent a recommendation to Tirana Regional Education Directorate and to the attention of the Ministry of Education and Science: *"To take measures that would enable the enrolment of the children of Roma community settled in Sharra former Military Cantonment, Tirana, in the 9-year schools located near their current place of residence"*. In response to this recommendation, we were informed that MoES, in line with the established goals for the improvement of the educational situation of the Roma minority and its overall policies, has created all the due legal room to enable not only the enrolment of the children of this community, but also a step-by-step monitoring of their attendance and progress.

After a chronicle on a conflict between students and teachers broadcast by Top Channel TV *Fix Fare* programme, the People's Advocate conducted an inspection at Ramazan Kabashi Institute of Visually Impaired Children in Tirana, on 14-16.02.2012. The inspection team included a psychologist, whose purpose was to present the findings of the psychological evaluation. The psychological evaluation was based on the meetings with the school Director, deputy Director, supervisor, psychologist, the teachers who appeared in the broadcast video, and with the pupils of the class subject thereof. Additionally, supporting materials were used, including the video recording broadcast by the media, the reports written by the director and the psychologist, as well as copies of the notes kept by the deputy director on the conflicts between the pupils and teachers, the supervisor and the director. The evaluation found that the pupils who had raised their concerns in the aired video footage had been subject to negligence and continuous physical and psychological violence intended to scare, threaten and manipulate them. *The case was started ex officio and was further recorded in the system for examination, with registration no. 201200670. Following the findings on the case, we issued the following recommendations to the Ministry of Education and Science:*

- *Measures should be taken to enable the partial reconstruction of the building that*

*serves as the dormitory, in order to remove humidity from many of the rooms and the furnace room. Many of the furniture, including wardrobes and chest of drawers should be renewed as they are quite worn out. The number of supervisors should be increased, given the particular role to provide care for this category of children and their care. The gym of the Faculty of Medicine located within the premises of this institution should be transferred and the space should be used by the institute.*

- *Train the pedagogic staffs of the Institute on the main motives and factors that trigger the violence against the children, in order to raise their awareness on the approach of the law and on the rights of the children that safeguard them from physical and psychological violence. The pedagogic staff of the Institute should be trained on good teaching practices and alternative methods to ensure discipline among children. A system should be in place to report, record and address all the cases involving episodes of violence in the institution.*
- *Train the psychologist of the Institute on stress management and dispute settlement among the staff and pupils, as well as on providing a proper psychological service. Open a psychological consultation office at the institute.*

As a feedback on the recommendation, we were informed that MoES would take all the relevant measures to fulfil the recommendations issued by the People's Advocate.

The complaint with Doc. no. 201204016 was lodged with the People's Advocate Office by the citizen Haki Veza, parent to one of the pupils of Haki Dardani 9-year school in Tirana. He claimed that students and parents of that school were dealing since five years with bouts of violence one of the pupils with mental issues directed against his peers, who, moreover, had been frequent cause of disruption of classes. In December, the pupils refused to attend school for two weeks, in a sign of protest and demanded the expulsion of their violent peer from the school. We addressed the Ministry of Education and Science and the Regional Education Directorate of Tirana and asked for an immediate settlement of this situation that put the life of the other children of this school at risk.

*In response to this problem, education authorities explained that: "The regional education*

directorate is familiar with this case and has exhausted all the available legal and personal channels to find a definitive solutions, but such efforts have proved useless, considering that, according to the Law on Pre-University Education in the Republic of Albania, the 9-year education is mandatory and, as such, it does not allow for the expulsion of the pupils from schools. On the other hand, the Directorate has exhausted all available legal ways involving the police, prosecutor's office, the Ministry, families and pupils, but has failed to successfully address the issue".

We singled this case out, due to its specificity. On one hand the law provides that the 9-year education is mandatory, seeking, thus, to integrate individuals with mental and physical issues in the community, but, on the other hand, it has failed to foresee sanctions in those particular cases that might result to be threatening to the life of other children, and has not provide for the establishment of relevant specialized centres on such issues, which, actually, are lacking in Albania.

### *Conclusions*

The People's Advocate believes that the new textbooks, teaching methods, improvement of laws and development of Strategic Plans have had an impact upon the enhancement of educational services, the accreditation of these institutions, etc. University liberalization is to be considered as a positive move, but attention should be paid to the endorsement of equality-based approaches for vulnerable groups and various minorities (Roma, Egyptians, etc), who attend these institutions. These issues, however, should be focus of monitoring by the mechanisms tasked by the law with the implementation of national and international standards. Likewise, greater attention should be dedicated to the didactic means and physical infrastructure, in order to improve the general quality of services. In terms of textbooks and other didactic means, as well as a contemporary training of the teaching staff, periodical and coherent training and skill development programmes should be introduced, in order to incorporate best practices both within the school and in the community.

## 2.10. Meeting housing demands

### *General overview*

There is no doubt that one of the extremely important human rights that takes on a special meaning in a complex perspective, as part of the right to life, is the right of the individual to adequate housing. This remains a sharp, serious and highly concerning issue of the Albanian society. The right to housing has been established as one of the social objectives that are enshrined by Article 59, Chapter V of the Constitution of Albania:

1. *(a)....the state, within its constitutional powers and the means at its disposal, aims to supplement private initiative and responsibility with employment under suitable conditions for all persons who are able to work...*  
*(b) fulfilment of the housing needs of its citizens etc.*
2. *Fulfilment of social objectives may not be claimed directly in court*", as well as by Law no. 9232, dated 13.05.2004, "*On Social Housing Programmes of Urban Areas*", and DCM no. 814, dated 03.12.2004, "*On establishing housing rates*", and the Decision "*On the documents and procedures applicable to the beneficiaries of the law.*

During 2012, the People's Advocate Office handled a total of 265 cases involving this issue, of which 110 fell out of the jurisdiction and scope of the institution, and 141 were settled in favour of the complainants. In the meantime, 21 new complaints are in process of examination. Additionally, 12 recommendations were sent to the relevant bodies in relation to specific cases involving the negation of the right of the applicants to benefit from social housing programmes.

### *Analysis of specific cases*

The serious situation of the Roma community in terms of housing and its exclusion from the housing scheme for the homeless is of public domain. The accommodation of more than 65



members of the Roma community in the premises of the People's Advocate Office early in 2012 turned the public attention to the yet unaddressed housing issue for this category of citizens, who are faced with extreme housing conditions, with inadequate living spaces and facilities that are generally adapted as living premises, but were not originally built for such purpose.

During the examination of the complaints received by members of this community and others, the People's Advocate advised the concerned parties to register with the respective municipal offices, in order to benefit the status of the homeless and take advantage of the housing fund or various other programmes applied by the local government bodies, as much as the financial capacities of the public central and local institutions allow. In this context, it is worth mentioning that, although the laws on housing are aimed at protecting the vulnerable strata, the terms and criteria to benefit from the existing options are hard to be met by the homeless, in particular, when it comes to the requirement of a certain income level that would guarantee the payment of the housing loan. In the meetings held for this purpose with various complainants in urban areas, we heard that the majority of those who asked for housing support included that category of citizens (mainly Roma community members) which has no possibility to generate incomes at the level required to guarantee a loan and, thus, they were *de facto* stripped off any chances to benefit.

As above, the People's Advocate recommended to the Minister of Public Works and Transport, Mr. Sokol Oлдashi, to amend the Law no. 9232, dated 13.05.2004 "On Social Housing Programmes for the Inhabitants of Urban Areas", as amended, to include, in particular, specific provisions on the Roma community that would truly insert the latter in the scheme, in view of their peculiar economic, social and cultural situation that requires an equally peculiar treatment that would constitute "positive discrimination" within a determined but not permanent period of time. In an answer to this recommendation, the Minister informed us that that law contains provisions that are equally applicable to all the citizens, without discriminating any categories or groups of the society and that, in his opinion, the Roma community enjoys the same chances and opportunities to benefit from the support of the state. Regardless of the above opinion, the People's Advocate Office believes that the non-discriminatory approach of the law does not provide equal chances for all the citizens to enjoy their rights, as it is quite obvious that vulnerable categories, such as that of Roma Community, can in no way meet even the minimum criteria set out in the law. It is for

such reason that we reiterate our belief that, under the conditions where a category/group is clearly disadvantaged, it should be treated with priority.

Further, as part of the institutional commitment of the People's Advocate to find a final solution to the housing of several Roma families who have been accommodated in the campsite of the former Military Cantonment of Sharra, Kombinat, Tirana, and in line with the respective DCM no. 51, dated 02.02.2012 that regulates the issue, we have been constantly following the problems associated to the accommodation conditions of the premises in question. In addition to the frequent inspections, we have urged the Ministry of Labour, Social Affairs and Equal Opportunities to ensure the appropriate living conditions in these premises, where families from Roma community were expected to be accommodated. Following a no-answer attitude to our recommendation sent by the document of 10.06.2012, we required from the Minister of Labour Social Affairs and Equal Opportunities to provide information on the relevant measures, but, again, there was no official answer on the matter.

Further, in view of the continuous complaints of the families that had to be accommodated in these premises, we sent another recommendation to the Minister of Labour, Social Affairs and Equal Opportunities on 04.09.2012 whereby we asked him to address definitively the issue of improving the living conditions of the Roma families in the premises of the former Military Cantonment of Sharra, Kombinat-Tirana, considering it a matter of emergency that affects their integration in the social life of the country. By recurrence, the People's Advocate did not receive any official answer from this Ministry, although the request of 16.10.2012 sought for an official stand on our Recommendation.

On 09.01.2013, a team of experts from the People's Advocate Office went on another inspection of the premises of this settlement and found the same shortcomings and issues referred to above, for which we had constantly recommended the undertaking of concrete measures, in line also with the Decision of the Council of Ministers no. 51, dated 02.02.2012. Likewise, we found that no proper investments had been carried out, except for the water supply, and that the living conditions were extremely difficult, taking into consideration the low temperatures. In an effort to find a definitive solution to this matter, the People's Advocate sent a request to the Prime Minister asking from him to exercise his institutional authority, in order to make sure that immediate and appropriate measures are taken by state bodies to improve the living conditions of the residents in these premises.

Following this recommendation, on 18.02.2013, we were informed by the Ministry of Labour, Social Affairs and Equal Opportunity that an initial intervention fund of Lek 8,000,000 had been approved for this purpose and that it would be followed by another fund of Lek 22,000,000 to be used for the further reconstruction of these premises.

Issues resulting from the issuance and implementation of the Council of Ministers normative act no. 3, dated 01.08.2012 “On the homeless tenants freeing the former owner houses that were previously expropriated”.

The number of the complaints lodged with the People’s Advocate by the homeless families who live in houses that are property of ex-owners has increased progressively, following the issuance of the Council of Ministers normative act no. 3, dated 01.08.2012 “*On the homeless tenants freeing the former owner houses that were previously expropriated*” and its endorsement by the Assembly, due to the consequences produced by its implementation.

The People’s Advocate considers that the restitution of property to the lawful owners and the creation of all the relevant conditions for a complete and peaceful enjoyment of the property constitute a constitutional and legal obligation of the Government, on one hand, and a moral and legal obligation of the whole society and the citizens, on the other.

Regardless of the positive intention to settle a social injustice, resolving such matter would require a thorough and definitive solution that took into account not only the re-establishment of the negated rights of the ex-owners, but also the application of an equal and fair treatment, in line with the Constitution, of those citizens to whom the normative act in question should have guaranteed the same condition as the other citizens, that is, the right to housing.

The increasing number of complaints and the issues emerging from the approval and implementation of this act have reconfirmed our consideration that such key decisions should, in any case, be preceded by an in-depth, serious and transparent research that would guarantee that the suggested solutions mitigate social conflicts and do not threaten to fuel other conflicts or add to the existing problems.

The Council of Ministers normative act no. 3, dated 01.08.2012 stipulates in detail the procedures of restitution and defines the bodies in charge to follow the process, and, on the

other hand, it establishes the modalities of providing housing to homeless citizens, who resided in the houses that were property of ex-owners.

Specifically, this normative act provides the following ways in which the housing of these subjects could be made possible:

1. Loans from the National Commercial Bank for 30 years at a 0% rate of interest.
2. Treatment through social housing programmes from the municipal councils and consideration with priority in the social houses leasing programmes.
3. With regard to old age individuals who are not able to take care of themselves and have no other dependants and who do not wish to benefit from house leasing programmes, by submitting a statement in writing or, in the case where, upon verification, they are unable to take care of themselves they will be accommodated in the care facilities for the elderly.

In order to assess the effectiveness of the application of this normative act and the real chances for the affected individuals to benefit housing, we addressed:

The Minister of Public Works, Transport and Telecommunication and the Minister of Finance, in order to obtain official information on the chances to treat such families with a loan at 0% interest rate and social housing. Additionally, we asked for information in relation to the sufficiency of the funds allocated for loans, following the re-allocation in the local budgets to deal with the emerging situation.

The Minister of Labour, Social Affairs and Equal Opportunities to provide information on the possibilities to accommodate old individuals who are unable to take care of themselves and who have no other dependants into elderly care facilities. Information was required on the number of the existing facilities, their capacity and the true accommodating capacity.

National Housing Entity to ask for information on the following issues:

1. What is the number of homeless citizens who inhabit the houses that are of property of the ex-owners that their office has sent to the National Commercial Bank for

purposes of benefiting from loans, in line with the Article 1 of the normative act?

2. What is the number of homeless citizens enlisted by the NHE and sent to National Commercial Bank as of 5 September 2012, according to the provisions of Article 2 of the normative act?
3. In how many cases have they received notifications from the owners of the property or their authorized representative on a refusal by the tenants to free the habitation?
4. How many orders of execution have been issued by the relevant Court upon your request for this purpose?
5. In how many cases so far has verification been carried out as required by Article 6 of this normative act? What are the conclusions of such verifications?

Likewise, we addressed requests for information to Durres and Tirana municipalities in relation to their real possibilities to meet the numerous demands of the tenants of the ex-owner houses with social houses.

In the answer no. 2619/3 received on 11.01.2013, the Ministry of Labour, Social Affairs and Equal Opportunities explained, among others, that as part of the decentralization process the social care services have been delegated under the local government. In line with the legal acts issued for this purpose, 19 residential service institutions had been transferred within two years, of which 4 are public residential service centres for elderly people (Kavaja, Gjirokastra, Fier, and Shkodra).

In the meantime, in terms of meeting the needs across the territory of the Republic of Albania, this ministry reported that it operated through the State Social Service the Elderly Care Facility in Tirana, with a hosting capacity of 40 beneficiaries, which is currently accommodating 32 individuals.

In the answer provided by the document no. 5352/1, dated 20.12.2012, the National Housing Entity has explained its role in the implementation of the requirements of the above normative acts, attaching a series of tables that specify the information required by our side. More specifically, NHE has sent to the National Commercial Bank a list of 1066 names, in line with Article 1 of the normative act, and another list of 3,295 names, as per the requirements of Article 2, for a total of 4,381 names.

Meanwhile, there is a total of 543 applications filed with NHE by the owners for the period between 05.11.2012 and 19.12.2012. In terms of the NHE requests for the issuance of an executive order by the respective courts, there are 370 such orders, whereas the number of the execution orders retrieved by NHE is 213. As of present, there is no information whatsoever coming from the Ministry of Public Works, Transport and Telecommunication and the Minister of Finance. Further, no answer has been received from Durres or Tirana municipalities.

From the complaints lodged with by tenant families in the ex-owners' properties it results that:

- Regardless of their situation and of the fact that they have applied for a 0% interest loan with the National Commercial Bank, as provided for by the normative act, they have failed to obtain such loan, as, according to the bank, they do not meet the due requirements.
- Regardless of having applied for social housing, they, not only have not benefited from any such treatment, but, even worse, they have received no answer on the matter by the respective municipality.
- In a considerable part, these tenant families have members who are paraplegics and tetraplegics, unemployed individuals, retired individuals with no other supplementary subsistence or even former politically prosecuted individuals of the communist regime and there are families with minimum incomes compared to the number of members.

Moreover, some municipalities (such as Kucova Municipality) have addressed the People's Advocate with specific requests for assistance, in order to enable provision of houses or loans to these families, in line with the normative act, as the latter avail of no financial means.

Amidst the efforts to cooperate with the civil society in order to come to a realistic conclusion on the situation and try to identify potential options for solution, it was recently brought to our attention a communication between the ResPublica Centre and a number of municipalities on the matter. From this exchange we found that:

Berat Municipality confirmed through the letter no. 2001/1, dated 09.11.2012 that no special funds had been allocated from the state budget for the implementation of the normative act

no. 3, dated 01.08.2012. Additionally it was reported that no plan to construct houses was in place, due to lack of funds and because there were no available apartments in this municipality.

Shijak Municipality confirmed through letter no. 876/1, dated 07.11.2012 that no special funds had been allocated from the state budget for the implementation of the normative act no. 3, dated 01.08.2012. Additionally, it was reported that there no plan to construct houses was in place and that, actually, the municipality had only 2 available social houses, while the number of citizens pending to benefit from housing was 295, without including the number of tenants in ex-owners houses.

Çorovoda Municipality confirmed through letter no. 1072, dated 01.11.2012 that no special funds had been allocated from the state budget for the implementation of the normative act no. 3, dated 01.08.2012. Additionally, it was reported that there was no plan in place to construct houses, due to lack of funds and because there was no available apartment in this municipality.

Vlora Municipality confirmed through letter no. 2929, dated 05.11.2012 that no special funds had been allocated from the state budget for the implementation of the normative act no. 3, dated 01.08.2012. Although a 10-year programme on social housing was in place, there was no plan for house construction, due to the lack of funds and, additionally, because of the municipal property being unregistered. Currently, the municipality does not avail of any social house to give to this category of homeless individuals.

Pogradec Municipality confirmed through letter no. 756/1, dated 31.10.2012 that no special funds had been allocated from the state budget for the implementation of the normative act no. 3, dated 01.08.2012. Additionally it was reported that no plan to construct houses was in place, due to lack of funds and because there was no available apartment in this municipality.

Gjirokastra Municipality confirmed through letter no. 2503/1, dated 31.10.2012 that no special funds had been allocated for these families and there were no allocated funds for providing housing to the families under this category.

Based on the information received from the state institutions and the findings of the local government bodies, the People's Advocate considers that, although the normative act intends

to provide support to the homeless citizens who used to live in the ex-owners houses with loans at 0% rate of interest or social housing offered by the local government, as well as to assist the old people who are unable to take care of themselves and have no dependants by accommodating them in elderly care facilities, it will hard to ensure practical application of these provisions. Even more so, referring to the figures provided by the line ministry, it is quite impossible to deliver on the accommodation of the old people who are unable to take care of themselves and have no dependants in elderly care facilities.

As above, pursuant to Article 81(1) of the Constitution of the Republic of Albania, the People's Advocate addressed the Albanian Prime Minister, Mr. Sali Berisha, with the recommendation letter no. K1/B36-7, dated 15.02.2013, requiring the undertaking of a legal initiative to amend and improve the legal framework that could enable within the shortest time possible the housing of the individuals or families living in the houses that are expropriated property of former owners.

With reference to the complaint with **Doc. no. 20120062** that was started *ex officio*, considering the situation caused by the removal of some Roma families from the temporary settlement in Babrru, Tirana and the extreme living conditions aggravated by the winter season, the People's Advocate addressed the Director General of Civil Emergencies and the Mayors of Municipalities and Chairs of Municipal Councils of the country with a recommendation with subject "On taking every possible organizational measure for preparing provisional settlements or residences for groups in emergencies, such as Roma Community, roaming or homeless individuals and everyone who seeks assistance from local government bodies, in order to prevent situations that might result threatening to their life or health and that of their children".

Complaint with **Doc. no. 20120623** was lodged with by the citizen T.M., inhabitant of Sheshaj village, who claimed lack of action by Rreshen Municipality on his quests to solve the housing issue. Specifically, the claimant stated that in January 2004 his house was made inhabitable, due to natural disaster. Upon such occurrence, the citizen went to live with his relatives, while the local government identified the issue and drafted the relevant documents to enable this person to benefit from the emergency funds, but the matter has not come to a conclusion since years. In relation to this complaint, on 23.02.2012, the People's Advocate asked for explanations from Rreshen Municipality and Lezha Prefecture. In response, the



Mayor of Rreshen informed that, upon its Decision no. 10, dated 02.04.2004, the Municipal Council proposed to Lezha Regional Council to offer the complainant a financial support at 40-50% of the amount of the damage. The Prefect of Lezha Region confirmed in his letter no. 290/1, dated 01.03.2012 that after the decision of the Municipal Council that allocated a financial compensation of the damage at a rate of 40-50 %, the file had been sent to the Civil Emergency Directorate. In view the initiative of Lezha Prefect to send the file to the Directorate General of Civil Emergencies and in order to avoid further delays in the procedures to provide the financial support for repairing the damages in the habitation of the complainant, the People's Advocate issued a recommendation to the Head of the Directorate General of Civil Emergencies, and sent it for attention to the Ministry of Interior, requiring the processing of the case within the shortest term possible.

Complaint with **Doc. no. 201200670** filed by Roma Community members involved claims on the unaddressed issue of housing. The complainants stated that they were living in barracks together with their families and that were faced extreme living conditions, which made it impossible for them meet their basic daily needs. The complainants claimed that, although they had been living in Tirana for 15-20 years now, they had failed to find a solution to their housing issue, regardless of the frequent requests filed with Tirana Municipality and submission of the required documents. In relation to the case, the People's Advocate Office asked the Housing Management and Social Service Directorate at Tirana Municipality to provide further information and the following answer by the head of this directorate indicated as below:

- 50 complainants did not result to be registered as homeless in the electronic programme. This category, thus, would have to go to the local boroughs where they are registered, in order to fill in the housing form.
- 20 complainants had already completed the housing form at the local boroughs and should proceed with the second stage of application that involves the submission of the required documents.
- 31 complainants had already completed the second application stage and, according to the law, it was up to the decision of the Municipal Council, as the decision-making body, to declare the winning applicants. Following these clarifications, we responded to the respective groups and provided them with guidance on the legal options they had to take.

The complaint with **Doc. no. 201200999** lodged with by the citizen M.A., inhabitant in Peza-Helmes village, had to do with the damages caused by the rains of early 2011 to his house. Among others, the complainant was concerned as he had not benefitted from the emergency funds for the repairing of the damages caused to his house, claiming that he had been denied a lawful right. Further, the Ndroq Commune had submitted all the relevant documents on the damages caused by the landslide during the rains. In view of the case, the People's Advocate addressed the Directorate General of Civil Emergencies to ask for information on how the case had been handled, but no answer was received from this structure. On the other hand, Ndroq commune had submitted the complete relevant documentation on the damages caused by the landslide during the rains. In these circumstances, in an effort to avoid further delays in the delivery of financial support for the repairing of damages caused to the house of the complainant, the People's Advocate sent a recommendation letter to the Director of the Directorate General of Civil Emergencies and to the attention of the Secretary General of the Ministry of Interior on 22.05.2012, urging for a swift resolution of the matter and provision of an official answer to the claims contained in our official letters. In response to this Recommendation, the Secretary General of the Ministry of Interior informed us that this institution was open to assist the complainant with financial support during 2012, depending on the available funds.

The complaint **Doc. no. 20122422** is a case started *ex officio* by the People's Advocate due to the media coverage of the incident that occurred to the Z. family in Xatha village, Puke, after flames destroyed the house where the family had been living since years. With the powers conferred to the People's Advocate by virtue of the provisions of the Law no. 8454, dated 04.02.1999, "On the People's Advocate", as amended, this case was examined *ex-officio*, in order to set in motion the legal procedures by the structures in charge, to find a proper solution in the shortest timeframe possible. In view of the urgent need for a joint commitment of the state structures to prepare the legal documents and allocate an emergency aid for Z. family, the People's Advocate sent letter of recommendation to the Mayor of Blerim Commune, Puke, to the Chair of Shkodra Municipal Council and Shkodra Region Prefect on 04.06.2012, requiring the preparation of legal documents and delivery of an emergency aid to the Z. family in Xathe village, Puka region.

## *Conclusions*

Meeting of the housing demands of citizens is a persistent and highly sensitive social and legal issue, particularly, when it comes to vulnerable groups. It is quite imperative that amendments are made to Law no. 9232, dated 13.05.2004, “On Social Housing Programmes for Citizens in Urban Areas”, with particular focus on the Roma community, due to the fact that it is impossible for them to benefit from housing programmes and, for this purpose, provisional transitory provisions should be introduced, given that the existing legal requirements do not provide any real opportunity for them to benefit.

In terms of the problems emerging from the endorsement and implementation of the normative act no. 3, dated 01.08.2012, the People’s Advocate considers that it is imperative that the homeless individuals or families who live on rent in the expropriated houses of the ex-owners benefit from the following:

- Loans at a 0% rate of interest that are adequate to purchase a house in the free market, directly provided by the state in their favour, without going through banking procedures, as it is provided by the current law or enable the State to act as a guarantor for the mount of the loan to be benefitted in these circumstances by the applicants from the National Commercial Bank.
- Allocation of funds from the state budget to the local government units in the shortest period possible to start the construction of social houses that will be distributed with priority to the individuals or family tenants living in the expropriated houses of the ex-owners, in accordance with the specific requirements of the municipalities.

Application of the above solutions requires the amending and improvement of the current legislation that governs these matters or, in a best-scenario case, the endorsement of another decree by the Council of Ministers that would address and regulate this urgent issue.

## **2.11. Economic aid**

### ***General overview***

The economic aid is regulated by the Law no. 9355, dated 10.03.2005 “On the Social Aid and Services”, as amended, and by the sub-legal acts issued for the implementation of this law. During 2012, 98,800 Albanian families have benefited from the full or partial economic aid, mainly in the northern and north-eastern areas of the countries, both in cities and villages. For many Albanian families, the economic aid constitutes their sole means of living. However, the People’s Advocate received 51 complaints through which citizens claimed about infringements of their right to benefit such economic aid, termination of the economic aid, as well as requests to obtain the economic aid in favour of those persons who are no longer receiving it, because they have changed their place of residence. The process has been completed for 48 complaints, of which 27 resulted with no grounds, 13 fell out of the scope of the institution, 7 were settled in favour of the complainant and 1 recommendation was accepted. Three other complaints are still under review.

One of the issues related to the economic aid is also failure to declare the minimum living standard in Albania. Constant requests have been filed in years by the trade unions and other non-government organizations with the People’s Advocate on having an official declaration of the minimum living standard, but no answer or statement has been received in that regard. This matter has to be addressed, given that the minimum living standard not only is an indicator of the needs of the individual to survive under the current conditions but it also serves as a basis on which the levels of benefits from the social protection schemes are determined.

Under the conditions where this important legal obligation with a huge impact on the lives of the citizens and families belonging to the most vulnerable stratum of population has failed to be met, the People’s Advocate addressed again the Prime Minister of Albania on 06.12.2012 to reconsider the recommendation issued by our office on the establishment of a working group that would research and establish the minimum living standard in Albania. We are still pending for an answer to this recommendation.

One of the priorities of the People’s Advocate activity is also the respect of the rights of the

Roma community in Albania. Meeting of the obligations deriving from the National Strategy designed to improve the living conditions of this community requires an inter-institutional coordination, which is of fundamental importance to ensure a more effective protection of the rights of the Roma community. Members of the said community have often raised their concerns in relation to the benefits from social protection programmes. All the complainants have claimed they are faced with extremely hard living conditions and that it is impossible for them to meet any of the basic needs of daily life. Under such conditions, they have required from the local government units to be included in the social protection schemes and benefit economic aid.

One of the claims filed with the People's Advocate both from members of the Roma community and non-profit making organizations of the said community or those which protect and promote their rights focuses on the obstacles that prevent Roma families from benefitting economic aid, because their previous residence has been registered in the village, while they have a registered place of residence in the city after 1 August 1991.

The reason why the members of this community do not benefit the economic aid stems from the provisions of point 3, Chapter I of the Decision of the Council of Ministers no. 787/2005, "On establishing the criteria, procedures and amount of economic aid", as amended. According to such provision, those families who have their place of residence in the city registered after 1 August 1991 and who have previously resided in villages should obtain a document signed by the mayor of commune or municipality, or by the head of village and the head of the cadastral office that proves that they do not have land in ownership based on the decision of the land distribution commission, given that they left their residence prior to 1 August 1991, due to working motives. We have found that this legal provision has an adverse effect on the Roma families, who do not have land in ownership, although they result to have left the village for the city before 1 August 1991 not for working reasons. The same issue applies to the Roma families which have changed residence after 1 August 1991 from one city to another and which at the moment of moving had a job in the new place of residence. Even this legal provision affects Roma families, in the case where their change of residence has not occurred for working reasons.

In an answer to this recommendation, the Ministry of Labour, Social Affairs and Equal Opportunities informed us on 18.02.2013 that a joint working group will be established to

identify the proper ways and tools to enable the implementation of the People's Advocate Recommendation.

The People's Advocate has written a Special Report *ex officio*, in accordance with Article 27 of the Law no. 8454/1999, "On the People's Advocate" on ***"Poverty and the contribution of the Economic Aid programme to curb its effects, and the related People's Advocate activity"***. The report was submitted to the Assembly of Albania by July 2012 and it is pending for review.

### ***Analysis of specific cases***

Some of the complaints enlisted below provide a clear picture of the claims filed by various citizens in relation to the current economic aid scheme.

The complaint with Doculive no. **201202933** was lodged by a citizen residing in Tirana, who claimed that Borough No. 9 had not recognized his right to benefit from the economic aid. The claimant used to be a beneficiary of the economic aid until 2007, when the aid was suspended as he was abroad for health purposes and could not show in person to retrieve the aid within the 6-day term provided by the law. Upon return, the citizen submitted the required documents to the Economic Aid and Social Assistance Section, but again he was refused the right to benefit from it. Regardless of the continuous requests, the complainant had not managed to find a solution to his problem, because he was not clear of the motives that prevented him from benefiting the aid. After intervening with the borough, we received the relevant information and explained to the complainant that no document proving that he was abroad on a health treatment had been submitted to the Economic Aid Office in 2007, and that this was a legal requirement. Additionally, we advised him to go to the offices of Borough no. 9 to apply for economic aid, because the Instruction no. 4, dated 24.04.2012 "On Some Amendments and Additions to Instruction no. 338/3, dated 10.03.2006 "On Implementing the Decision of the Council of Ministers no. 787, dated 14.12.2005 "On establishing the criteria, procedures and amount of the economic aid", as amended," had repealed Section V.1 of the Instruction no. 338/3, which stipulated the 6-day term to withdraw the economic aid.

This subject matter applied also to another complaint lodged with by a citizen with residence

in Korca, with Doculive no. **201202377**, who claimed that his economic aid had been suspended and he was not recognized the right to apply for benefitting such aid. In an answer to our request, Korca Municipality informed us that the citizen in question had been a beneficiary of the economic aid for the period between October 1996 and July 2000. The aid had been suspended afterwards, as the citizen had failed to show up within six days to retrieve the economic aid, in line with point 10(e) of the Decision of the Council of Ministers no. 787, dated 14.12.2005 “On establishing the criteria, procedures and amount of economic aid”. For these reasons, this family was no longer entitled to the economic aid.

Considering that the local government units have taken different approaches on the matter in terms of following the procedures to benefit the economic aid after its suspension on grounds of not respecting the six-day term, we sent a copy of the Instruction no. 4, dated 24.04.2012, “On Some Amendments and Additions to Instruction no. 338/3, dated 10.03.2006, “On Implementing the Decision of the Council of Ministers no. 787, dated 14.12.2005 “On establishing the criteria, procedures and amount of the economic aid”, as amended” had repealed Section V.1 of the Instruction no. 338/3, which stipulated the 6-day term to retrieve the economic aid, so that the Housing and Social Assistance Directorate is acquainted with all the implementing sub-legal acts and provide grounded legal answers to the citizens as to whether they are eligible to benefit economic aid.

Considering the above complaint as grounded, we sent a recommendation to Korca Mayor: “On accepting and reviewing the legal documentation relevant to benefitting economic aid of this citizen and all other citizens who have been subject to the termination of the aid, as a result of the failure to retrieve the amount within a six-day term”. Following the above recommendation, we started a communication with this municipality on the way of proceeding for the families that have been affected by this situation. We are still waiting for their answer.

The complaint no. **201202359** was lodged by a citizen from Tirana, who had no source of income and lived in very difficult economic conditions and was the head of household and mother to two young children. She had gone to the offices of Borough no. 2 to apply for economic aid, but her request had been refused. After contacting Borough no. 2, we were told that the Economic Aid Office had no information on the case. In line with our constitutional

obligation, we advised the citizen to go to the offices of Borough no. 2 and complete all the relevant documents to benefit to economic aid.

### ***Conclusions***

Identification of the minimum living standard remains a legal obligation and an imperative for determined strata of the Albanian society. This consideration of the People's Advocate was also voiced in the National Conference, "The Rights of People with disabilities, an integral part of the human rights", organized on 25 June 2012 by the People's Advocate Office, in cooperation with the National Council of People with Disabilities, which saw the participation of government representatives, representatives from international institutions, diplomatic corps accredited in the Republic of Albania, and a series of human rights organizations.

Serious consideration should be given to the ways that enable the Roma community to benefit from the economic aid, as the figures are extremely low.

*Work should be intensified for the establishment of the National Electronic Register of Economic Aid* that will enable the identification and prevention of all cases of abuse with the economic aid scheme.

## **2.12. Consumer protection**

### ***General overview***

Within its mainstream mission of defending, promoting and respecting human rights, the People's Advocate Office has dedicated special attention to the right of consumers' protection, not only because it has been tasked to do so by virtue of Article 56 of the Law no. 9902 of 17.04.2008, "*On Consumer Protection*", as amended, but also because such right is directly linked with the consumers' standard and quality of living.



The number of complaints lodged in the course of 2012 indicated that the consumer right was particularly infringed from the public service provided by CEZ Distribution sh.a. and the Water-supply and Sewerage Company sh.a. in Tirana and other districts.

As legal grounds in handling these complaints we have mainly referred to the Law no. 9902 of 17.04.2008 “*On the Consumer Protection*”, as amended, the Law no. 9072, dated 22.05.2003 “*On the Electric Energy Sector*,” as amended, Law no. 8102, dated 28.03.1996 “*On the regulatory framework of the sector of water supply and removal and processing of wastewater*”, as amended, DCM no. 1304, dated 11.12.2009 “*On the endorsement of the template of the regulation on water supply and sewerage in the service area of Water Supply and Sewerage Enterprises sh.a.*” and, in particular, we have referred to the Contracts entered between the parties and approved by the supervisory entities of the commercial operators, and to the United Nations Guidelines for Consumer Protection (as expanded in 1999).

The inter-institutional cooperation with the public utilities (Water Supply and Sewerage sh.a. and CEZ Distribution sh.a.), the right of consumers to information, the handling, verification and handling of complaints within the administrative timelines was strongly mentioned by the People’s Advocate Office early in 2012 and this was reflected in the meetings with the responsible operators, covered also by the media.

This year, we received a total of 445 complaints, of which, 331 involve claims against CEZ Distribution sh.a., 120 address infringements of the consumer rights by the Water Supply and Sewerage Companies sh.a., and 4 complaints are filed against Albtelekom, the fixed telephony company.

### ***Analysis of specific cases***

#### ***Complaints involving the infringement of the consumers’ right by CEZ Distribution sh.a.***

In 2012 we had a total of 331 complaints against CEZ Distribution sh.a., of which, around 268 were finalized and 63 are still under examination. Of the processed complaints, 71 involved ungrounded claims, 37 were out of the scope and jurisdiction of the People’s Advocate, 134 were settled in favour of the claimants, while the administrative proceeding has ended for 7 complaints because the concerned parties have been retreated. Additionally,

we drafted recommendation in relation to 19 complaints, of which 15 were accepted and fully applied, whereas 4 of them were rejected.

1) A constant issue in the submitted complaints remains the lack of electric power supply for some areas of the country, due to the lack of investment projects or, where such projects exist, they have not been implemented due to the lack of funds and the difficulties CEZ Distribution sh.a. has been facing in the course of this year.

Val village in Martanesh Commune (complaint **no. 201200964**), which is located 30 km from Tirana in, is under conditions of economic and total isolation that prevents it from a normal living, considering that it has no power supply since September 2006. The damaging of the power line at that time not only saw no competent structure respond with concrete measures to restore the service, but the situation has been persisting up to date, even three years after CEZ Distribution sh.a. privatized the distribution operator (OSSH sha).

The inhabitants have often sought to meet with state authorities, including Ministers of Economy, Trade and Energy (Mr. Genc Ruli and Mr. Dritan Prifti), the heads of the Energy Regulatory Entity and CEZ Distribution sh.a. In the course of the official communication with the heads of the former Power Distribution Operator sh.a., they were informed through the Letter no. 800/1, dated 05.02.2008 that the distributor operator had allocated a fund of Lek 1,950,402 “For the construction of the power supply air connection line of Val village,” and the respective bid took place on 07.02.2008. Nevertheless, the effort was unsuccessful and the village was not supplied with electric energy. The local government structures continued with their efforts and on 12.01.2012 insisted to have a meeting with CEZ Distribution sh.a. In the meeting mediated by the representatives of the Energy Regulatory Entity, the inhabitants were told by CEZ Distribution that the latter had no funds to act and that they had to address the Government to press for a loan in favour of the supplier, so that the investment were carried out.

The People’s Advocate deemed that the situation was extremely serious and critical and, within its constitutional and legal powers, it invited CEZ Distribution sh.a., the Energy Regulatory Entity and the local representatives of the area to present their arguments in an official version.

In the course of the meeting, the representatives of CEZ Distribution sh.a. admitted the

existence of this issue and affirmed that all relevant claims were grounded. Further, they explained that a partial investment to lay the transmission line towards the Val village had started, but the project was not brought to an end due to the lack of funds. The persistent administrative delays in completing such investment and the stealing of the partially built line left the area under the same conditions.

However, CEZ Distribution sh.a. informed that it had designed a project for this purpose, which had taken into account the proposals of the inhabitants of the Commune in relation to the areas where the air line would go through. Most concerning, though, was the fact that the company had no response with regard to the fund it had allocated for the investments within this project.

As above, we recommended that the investments planned by CEZ Distribution sh.a. for the inhabitants of Val village of Martanesh Commune took place within the second semester of 2012, on the basis of an investment plan approved by ERE. In response to this recommendation, CEZ Distribution sh.a. informed us on the following: *“The Val-Martanesh MV line, worth around Lek 7,000,000, is not part of the 2012 investment plan endorsed by ERE. It was reported that the line had been stolen and that it needs to be replaced with another line of 5-6 km, which will supply not more than 20 families. As a matter of fact, this phenomenon has turned into a problem for the distribution company and we have expected that the local government collaborated with us to tackle this issue that is taking its toll on our company and is affecting the supply of the consumers. However, upon the release of the investment funds, we will submit to ERE our proposal to include this project in the investment plan”*.

The above information, however, was contested by ERE through the official letter no. 403/1, dated 23.05.20012 sent to the company, which explains the following: *“ERE approved by its Decision no. 37 of 05.04.2012 the Revised Investment Plan of CEZ Distribution sh.a. for the third regulatory period 2012-2014. The investment plan CEZ Distribution sh.a. submitted to ERE was endorsed without any changes and, consequently, it cannot be considered as inappropriate. Finally, we would like to bring to your attention that it is a legal obligation for CEZ Distribution sh.a. to supply with energy all its consumers in every area, without excluding any of them from the investments. Failure to meet such legal obligation by Your company constitutes administrative contravention and shall be subject to penalties by ERE,*

*in line with the requirements of Article 64 of Law no. 9072, dated 22.05.2003, “On the Electric Energy Sector” as amended”.*

In the meantime, the situation remains the same in Val Village of Martanesh commune, with no investment project approved for the area and lack of electric power supply for the inhabitants.

The Fushe-Kuqe Commune in Laç (complaint with **Doculive no. 201201086**) is suffering lack of power supply since five years, after the energy distribution line was stolen. Inhabitants of the area reported that the Distribution System Operator had informed them on 24.02.2009 that: “Burrel Directorate has submitted a project for the construction of the 6 kW power line and of a new 100 kW power cabin in the Plepisht Commune, Fushe-Kuqe. OSSH noticed gaps in the project and asked Burrel Directorate to correct them. Burrel Zonal Directorate submitted the final project fiche No.161 on 13.02.2009, and on that basis, OSSH approved the allocation and delegation of the respective funds to carry out the investment. Following this approval, Burrel Directorate will take all the relevant measures to carry out this investment”.

Following the answer by OSSH, regardless of the promises that the investment would take place, no measure whatsoever was taken to ensure power supply. On 29.10.2010, the inhabitants addressed the Energy Regulatory Entity asking for a solution to the situation. Through the request for information no. 651/1, dated 29.10.2010 sent to CEZ Distribution sh.a., ERE asked for explanations on the situation and the motives why the investment had not been taking place, although a respective fund had been allocated for that purpose. CEZ Distribution sh.a. (Letter no. 3919) informed the inhabitants that: “In relation to ensuring power supply of the 18 families inhabiting the commune, the project fiche of the MV power line, the electric powerhouse and the UT distribution grid had been revised”.

In relation to the case, the People’s Advocate Office organized a meeting with CEZ Distribution sh.a., the Energy Regulatory Entity and the local representatives of the area (the meeting was covered by the electronic media) to hear all the official claims. The representatives of CEZ Distribution sh.a. admitted in the meeting that the problem existed and the claims were grounded, and that they would take relevant measures to draft a project of investments upon the approval of ERE.

Following up on the case, the People's Advocate recommended that immediate measures were taken to conduct the investments projected since 2009 within the second half of 2012 to ensure power supply for the Fushe-Kuqe Commune, in Lac. In response to this recommendation, CEZ Distribution sh.a. reported that: "The area is lacks electric power supply and the respective project fiche is being drafted to realize the project. The project in question was due in 2011, but the financial hardships of CEZ Distribution sh.a. have not enabled its implementation. As above, considering the power supply situation and the continuous complaints of the inhabitants, the project has been incorporated in the 2012 investments submitted to the Energy Regulatory Plan for approval".

Further, the People's Advocate Office addressed ERE with the letter no. K3/N22-7, dated 10.05.2012, asking for information on whether measures had been undertaken for the endorsement of this project and when were the investments due to start. From the contacts with representatives of ERE and CEZ Distribution sh.a., we were informed that ERE had approved the plan of investments for the area of Fushe Kuqe, Lac, for an amount of Lek 4.5 million. Procedures for the kick-off of the works were expected to start by December 2012 and they were due to be completed by early 2014. Nevertheless, due to the financial hardships CEZ Distribution sh.a. had to face, the loan failed to be delivered and investments had stalled. Currently speaking, the Fushe-Kuqe area is still lacking power supply.

An unfavourable situation of electric power supply has been identified also in **Ksamil Commune and Himara Municipality** (*complaints no. 201201072, 201201073 Doculive*). In the complaint lodged with the People's Advocate Office, the mayor of Himara Municipality, Mr. Gjergji Goro, raised the issue of the poor power supply for the entire area of Himara and villages of Dhermi, Gjilek, and Palasa. The low and middle voltage distribution grid is in a highly consumed state that has lead to serious recurring defects, leaving the area in a blackout for days and, even when there is supply, it ranges from 130v to 180v. The situation has produced serious consequences both for the inhabitants of the area and for the business entities which are preparing for the summer holiday season.

Likewise, a complaint was lodged with by the Chair of Ksamil Communal Council, claiming that the current state of power supply is highly problematic and the distribution grid is in poor conditions. The complaint reported that, unless investments were carried out by CEZ Distribution sh.a., the grid was not able to cover the increasing population of the area, taking

into account that it was designed 50 years ago, when the area did not have the current development. The consequences of such situation are quite tangible throughout the year, but they become even more problematic during the tourist season, where power cuts and the low voltage affect both business entities and tourists.

Considering the gravity of the situation, the People's Advocate Office held a meeting with the representatives of CEZ Distribution sh.a., ERE and of local representatives of Himara and Ksamil in the premises of the institution in order to hear the claims by the parties. In the meeting that was made public, CEZ Distribution sh.a. admitted the existing problems with the distribution grid and affirmed that all claims were grounded.

The Maintenance Manager at CEZ Distribution sh.a. explained that maintenance of the grid in Himara areas takes place during spring and that works had started since two weeks. However, maintenance works of the current grid had encountered two problems:

- Fibres have to go through the olive growing areas of private farmers, which would require cutting of the trees.
- In the meantime, CEZ Distribution sh.a. has faced issues such as stealing of the 4 km of transmission cable.

CEZ Distribution sh.a. reported that, upon finalization of maintenance procedures of these fibres, expected to be concluded by 15 May 2012, the situation would settle and the area would no longer experience power supply issues. Maintenance works were expected to reduce the number of defects and enhance the quality of power voltage. CEZ Distribution sh.a. structures argued that the situation was a result of the rapid development pace of the Himara area and surrounding village and the illegal connections by the consumers. This issue had become impossible to manage by CEZ Distribution sh.a., although constant efforts had been made to keep the situation under control.

ERE representatives contested the information provided above implying that the situation would be addressed upon maintenance of the current grid, as they had been reported that it was impossible for the area to meet the demand of the growing number of consumers by having in place the old grid, regardless of whether it was well-maintained. A definitive solution, according to ERE, would be the establishment of two sub-stations capable of

handling the load of the area in:

- a) Orikum, Vlora, which would ensure the distribution along the entire southwest coastline;
- b) Saranda, which would handle this part of the area.

Additionally, ERE emphasized that an investment plan for CEZ Distribution sh.a. to intervene in the area had already been approved. In relation to that, CEZ Distribution sh.a. explained that quick investments had been carried out and that Himara was planned to be included in the ABC network.

The company had completed the bid procedures for this purpose and the establishment of Orikum substation was planned to take place soon. Completion of the works, worth Lek 40 million, would finally address all issues, after the instalment of two other 3-phase power line substations in Shen Vasil and Bunec.

Regardless of the above promises made by the CEZ Distribution sh.a., the representatives of Himara Municipality present in the meeting organized by the People's Advocate insisted on the gravity of the situation, where distribution cabins failed to meet even the minimum parameters and posed a threat to the life of inhabitants. In some cases, there were no utility poles and power cables were left loose in the streets of the city.

Himara local government reiterated that they had no collaboration by CEZ Distribution sh.a. to address these issues, although they had often tried to talk to them in the organized meetings.

CEZ Distribution sh.a. reported that the company has established the Directorate for Relations with the Local Government for this purpose, with local structures for Tirana, Fieri, Shkodra and Elbasan.

With regard to the situation in Ksamil, CEZ Distribution sh.a. explained that a project had been drafted 3 years ago for this purpose and the new grid to be constructed is expected to improve the supply at a rate of 60%. The investment will amount to a value of Lek 160 million and will cover the area from the exit of Saranda to Butrint.

In an answer to our recommendation to start works within the second half of 2012, CEZ Distribution sh.a. explained the following: *“The realization of the CEZ Distribution sh.a. investment plan is closely linked with ERE decisions on the electric energy price for 2012 and on the guarantees sought by the investment funding banks, namely, EBRD and IFC. Inappropriate decisions regarding these two issues have led to a situation where the financing institutions have not released the investment funds. The current ERE plan of investments for the tourist areas of Himara and Ksamil foresees the construction of 11 LV power cabins with the ABC grid, worth Lek 60,467,960: a 20 kW MV line and power cabins in Ksamil worth Lek 160,000,000. The first stage of the bid has started, but it is impossible to follow due to lack of funds”.*

*Referred to the above, considering failure to release funds and the difficult financial situation, it will be impossible for us to enact the investment plan, which means that, the activity of grid maintenance cannot take place.”*

2) Along with problematic areas that face lack of supply with electric power in years, the billing of electric energy is another concerning issue, both for overbilling and underbilling of energy. Complaint with Doculive no. 201200401 indicated that citizen Q.D. was subject to an extremely energy overbilling for the period April-May 2011, at an amount of 66,354 kWh (worth Lek 1,073,225). The complainant claimed that the amount in question resulted from the failure of CEZ Distribution sh.a. to calculate the consumed energy in the old meter and that on 30.04.2011, the meter was reset to 0 kWh.

After finding that the citizen was billed in a way that fell against the legal provisions and Article 12 of the electric energy supply Contract, we recommended that immediate measures were taken by CEZ Distribution sh.a. to cancel the bill in question, to make the required reconciliations and correct the amount based on the real energy consumption.

In an answer to our recommendation, CEZ Distribution sh.a. informed us that measures had been taken to cancel the amount billed for the period April 2011 - January 2012. Upon *in situ* verifications on 27.02.2012, calculation was made of the difference in the reading of the meter for the period of cancelled bills and of the corrected bill for the same period of time, including the consumption during February 2012, treated under the first block for each



month.

3) Another issue carried over from 2011 was related to the administrative measures with fines by CEZ Distribution sh.a. for damages caused to the electric meters. In terms of handling these complaints, we mainly used to act through the hearing sessions in the premises of the Energy Regulatory Entity. What CEZ Distribution sh.a. was expected to change for 2012 was the improvement of the state of the laboratory examination of the damaged meters. In order to deal with this matter, private subjects would be authorized to conduct observations, verification and notification of the concerned parties over the potential damage of the meters. Being that the supervision of the laboratory analysis and testing of the meters was removed from the responsibilities of CEZ Distribution sh.a., that could raise the awareness of the suspicious consumers in respect of the damaged meters.

4) Another issue has been also that related to claims against consumers, who resulted to be debtors for a series of reasons:

- a) Non-crediting of the previous energy bills paid via bank or postal services, mainly, during the period between 2007 and 2008.
- b) Non-payment of the former tenants of the apartments.
- c) Overdue energy payments (payments made via banking or postal services) for which no interest has been cashed but has been carried over.
- d) Cases where the complainants live abroad but have been billed with the service fee and the television tax, which they were not even aware of, after claiming that they had requested termination of the contract with the former OSSH or CEZ Distribution sh.a.

In that relation, we have established a continuous communication with the Energy Regulatory Entity and CEZ Distribution sh.a., both through hearing sessions and recommendations, with a view of improving the situation resulting from the delayed reconciliation by the company of the payments made by consumers via second-tier banks.

5) A concerning issue of this year has been penalization of the debtors with power cuts. We made an investigation mainly into those areas that claimed they were not debtors at 100% and complained that inhabitants were subject to collective punishment. In this context, we may mention the cases of Fushekruja inhabitants (*complaint with Doculive no. 201202670*), inhabitants of Kombinat, Lezha, etc. After meeting the Director of the Distribution Division of CEZ Distribution sh.a., we were informed that Fushe-Kruja was one of the most problematic areas in term of the losses in the grid and the poor cashing level. CEZ Distribution sh.a. started an intensive campaign of power cuts for indebted consumers from the end of May and onwards, in an effort to restore the grid to a normal state and provide a more qualitative service possible to those consumers who pay energy on a regular basis. This was one of the motives for the induced blackout in these areas. Another issue leading to frequent power cuts in this area has been the reaction of the consumers punished with cuts of energy due to lack of payment or illegal connections to the grid, who protested by throwing wires over the middle voltage power lines and triggering a series of defects in the grid.

6) In addition to complaints on various issues involving CEZ Distribution sh.a., 2012 saw a series complaints lodged with by the National Council of People with Disabilities claiming the suspension of the subsidy for the energy bills. Law No. 27/2012, “On some amendments to Law no. 8626, dated 22.06.2000 *“On the Status of the People with Paraplegic and Tetraplegic Disabilities”* made the following changes to Article 12: *“People affected by paraplegic and tetraplegic disabilities, who have obtained the status, shall benefit from the compensation of the electric energy and fixed telephone bills. The amount, terms and procedures for benefitting from this financial compensation shall be determined by a Decision of the Council of Ministers”*.

Upon the amendment of the above law, CEZ Distribution sh.a. proceeded with the subsidy of the electric energy bill until the end of April 2012. After that date, all the consumers with the status of the paraplegic and tetraplegic were subject to the full payment of the electric energy bill until the issuance of the respective CDM that determined the amount of subsidy of these bills.

For the purpose of implementing the above law and in function of issuing the relevant sub-legal acts, the Council of Ministers endorsed Decision no. 404, dated 20.06.2012 *“On*

*establishing the amount, terms and procedures of benefiting financial compensation for the electric energy and fixed telephone bills from people who have the status of the blind, paraplegic and tetraplegic invalid”.*

With reference to the above DCM:

- i. The individuals who benefit from the status according to Law no. 8626, dated 22.06.2000, “On the Status of the Paraplegic and Tetraplegic Invalid,” and who need a caregiver, shall be provided with compensation for the electric energy bill at a monthly amount of Lek 2,000.*
- ii. The individuals who benefit from the status according to the Law no. 8098, dated 28.03.1996 “On the Status of the Blind”, as amended, and who need a caregiver, shall be provided with compensation for the electric energy bill at a monthly amount of Lek 2,000.*
- iii. The individuals who benefit from the status provided in Law no. 8626, dated 22.06.2000 “On the Status of the Paraplegic and Tetraplegic Invalid”, as amended and Law no. 8098, dated 28.03.1996 “On the Status of the Blind”, as amended, who do not need a custodian shall benefit compensation for the electric energy bill at the monthly amount of Lek 1,400.*
- iv. The compensation amount shall be calculated by and withdrawn in the offices of the local government unit where the individuals with visual impairment, paraplegic and tetraplegic disability have their place of residence.*
- v. The beneficiaries who are subject to this decision shall be exempted from the compensation of the electric energy price, provided for by in the Decision of the Council of Ministers no. 565, dated 09.08.2006 “On the protection of vulnerable needs from the increase of the energy price”.*

Complaints on the matter lodged with the People’s Advocate Office indicate that the legal amendments have aggravated the state of the pre-existing rights for the category of blind people and paraplegic and tetraplegic people. Moreover, it has been noticed that the implementation of the provisions of Law no 26/2012, dated 05.04.2012 “On some amendments to Law no. 8098, dated 28.03.1996 “On the Status of the Blind,” and Law no. 27/2012 “On some amendments to Law no. 8626, dated 22.06.2000 “On the Status of

Paraplegic and Tetraplegic Invalid”, has produced immediate and serious consequences for these categories that were already facing economic hardships.

Subsequently, the People’s Advocate Office in cooperation with the Association of the Blind People and the National Association of the Paraplegic and Tetraplegic Individuals filed a motion with the Constitutional Court, on “Repealing on grounds of being anti-constitutional of the Law no. 26/2012, dated 05.04.2012 “On some amendments to Law no. 8098, dated 28.03.1996 “On the Status of the Blind” and of the Law “On some amendments to Law no. 8626, dated 22.06.2000 “On the Status of the Paraplegic and Tetraplegic Invalid” and the issue is set to be examined in a plenary session.

*Complaints on the infringement of the consumers right by the Water Supply and Sewerage Company sh.a.*

In 2012, we recorded a total of 120 complaints filed against the Water Supply and Sewerage Company sh.a., of which, 100 were finalized and 20 are under process of examination. Of the finalized complaints, 31 resulted ungrounded, 17 fell out of the scope and jurisdiction of the People’s Advocate, 28 complaints were settled in favour of the claimants and administrative proceedings were terminated for 2 complaints, after the withdrawal of the concerned parties. Additionally, we drafted 18 recommendations, of which 7 were accepted and fully implemented, while 11 were rejected.

1) One of the recurring problems in the complaints of this year has been the incorrect billing of drinking water. After reviewing and conducting the relevant verifications *in situ* of the complaints, on a case by case basis, we found that customers had been underbilled for a long period of time and, further, all the cumulated unbilled amount of water was included in the bill of one single month. The issue appears to be recurring in years and we have issued continuous recommendations after finding that the legitimate interests of the consumers and the provisions of the water supply contract (Article 9 thereto) had been infringed. (Complaint with **Doculive no. 201201746**)

Additionally, with reference to the above infringements, the People’s Advocate started *ex officio* the drafting of a recommendation (in relation to complaint **no. 201200067**), through which it requested that an option of payment in instalments could be applied in those cases

where the debt is not created because of the consumers, who result to have paid the monthly bills of water regularly, and for those who have economic difficulties to pay the bills. The Water Supply and Sewerage Company sh.a. responded by refusing to have such agreements in place, as the procedure had resulted unsuccessful for the collection of revenues from debtors and was abolished as such since 2010.

2) Another issue has also been the overbilling of water consumption, even for those individuals who did not live in their flats. In this respect, we asked the Water Company through our recommendations to re-establish the infringed consumer right and to be as transparent as possible with the consumers by confronting the meter with the actual bill. The People's Advocate conducted case-by case verifications for the complaints involving those individuals who claimed they had not been living temporarily in their apartments, to find whether the amount of water had been consumed and if it had been recorded by the meter. When the claims resulted as grounded, we asked for the cancelation of these bills that had created a fictitious debit for these consumers (*complaint no. 201201489*).

3) Another problem has been also changes in billing. Since early 2012 we found that consumers who did not have a drinking water meter were subject to an aforfeit billing (household per capita). In addition to this, an immediate increase and changing of this billing method has been observed for these customers, resulting into a considerably high billing rate. Following verifications on a case by case basis, and having found an infringement of the applicable legal provisions, we recommended to the Water and Sewerage Company sh.a. to take measures that would change the billing practice and to cancel all fictitious bills. We insisted in particular on those cases where the consumer has no other dependants and is the sole member of the household, according to the family certificate (*complaint no. 201202059*).

4) During this year we have also come across cases of duplication of the water supply contracts, where in one of the contracts the customers result to be debtors to the Water Supply and Sewerage Company, without being aware that there are two supply contracts for

the same meter. We have issued recommendations in relation to these cases and have required that proper action is taken to conciliate the payments of the consumer proved by the payment booklet based on a second contract with the debts recorded in the other contract and the termination of the second contract that is fictitious. (Complaint no. 201201487).

In addition to the above-mentioned issues we have issued a series of recommendations for the Water Regulatory Entity to review, verify and identify on a case by case basis all the complaints of customers on the failure of the Water Supply Company to react positively on a legal claim of the complainant and have asked for proper legal measures against the company in question, including the application of administrative or financial sanctions on those individuals who have hampered the appropriate exercise of the functional duties, affecting the legitimate interests of the consumers. Additionally, during 2012 we have encountered problems in the official communication with Fier Water Supply and Sewerage Company, due to significant delays in providing information and explanations with regard to the complaints due to be addressed by this company.

### ***Conclusions***

In the future, the People's Advocate Office shall give maximum attention to the complaints involving the fair treatment of the consumers' legitimate interests.

For this purpose, we will continue to recommend:

- Intensive activities together with the regulatory entities to oversee and respect the rights of consumers for the delivered public services.
- Drafting of an agreement for the payment in instalments of the debts that have not been created because of the consumers, who result to have paid monthly water or energy bills on a regular basis and for individuals who are faced with economic hardships and cannot afford paying these bills.
- Creation of facilities and opportunities through hearing sessions between utilities and consumers, as an intermediate link that would help for the identification and verification of the emerging issues.
- Improvement of the service with focus on the protection of human rights and insist, through our recommendations, that room is found to further improve the existing

legislation or issue new legal acts that would enable us to find concrete solutions to the complaints of the consumers on the delivery of services and their approximation with the standards of the *acquis communautaire*.

### **2.13. The right to healthcare**

#### ***General overview***

Access to health care shall be equal for all citizens and it must ensure the application of the relevant standards in meeting the demands at all healthcare levels. That would enable the delivery of the healthcare without any discrimination on grounds of nationality, gender, race, colour, religion, social state, physical and mental abilities, etc. As part of our institutional efforts, we have taken initiatives to identify and highlight the shortcomings of the health service, as a pre-requisite to avoid negative phenomena and enhance through a serious performance the quality of services provided by our hospital centres.

The People's Advocate exercised its activity in this field of the human rights pursuant to the Constitution of the Republic of Albania, Law no. 3766, dated 17.12.1963 "On the Healthcare in the Republic of Albania", Law no. 8092, dated 21.03.1996 "On Mental Health", Law no. 7870, dated 13.10.1994 "On Health Insurance in the Republic of Albania", Law no. 7895, dated 27.01.1995 "The Criminal Code of the Republic of Albania" (Article 97), etc.

The activity of the People's Advocate during this year focused on the inspection of the Regional Hospital Centres throughout Albania and in the Mother Teresa University Hospital Centre, in Tirana. Healthcare is a key component of the right of every individual to have a secure and protected living in their country.

This process was not only focused on identifying the state of observation and implementation of the law, the respect of the individual rights and freedoms in these hospital institutions, but also on evaluating the *modus operandi* of the institutional structure, in accordance with the standards required by the law.

Specifically, 2012 counts a total of 77 cases *ex officio* (inspections) in the area of health. Of these, 62 cases were finalized, 15 are in process of examination, 24 have no grounds, 100 fell out of scope, 14 were settled in favour of the complainant, and 1 resulted in the withdrawal of the party. Further, we have had 10 accepted recommendations and 3 rejected. The issues involving the Ministry of Health and its subordinate agencies were mainly related to decisions of dismissal, financial effects in relation to the dismissed, applications with the Ministry of Health for medical treatment abroad, shortage of medicines at the hospitals and poor infrastructural conditions, etc.

### *Analysis of specific cases*

#### *1. Koco Glozheni Obstetric-Gynaecological Hospital, Tirana*

It is since years that the Neonatal Pathology Department (reanimation of babies) has been faced with a significant workload. Referring to statistics, 2011 marked a total of 820 children admitted in this department, which means, 16 neonates a day. This department treats children at a very young age and is exposed to a very high risk rate. The situation is handled by a staff of 16 nurses and 7 doctors and it is quite hard for them to meet the quality-related goals of the service. Currently, the service has shown significant improvement of the neonatal mortality rate, which means a much higher rate of survival of children born under 1000 grams of weight and in the 28<sup>th</sup> week of the gestational age. In order to ensure the required standards, it is indispensable to meet the demands of the institution for the increase of the staff with doctors and nurses. The neonatal intensive care unit has 20 beds (6 intensive and 14 sub-intensive ones). It uses a 7-year old technology (according to international standards, technology should be renewed every 5-7 years) and over 30% of the existing technology is non-functional (either consumed, lacking spare parts), etc.

*The case was initiated ex officio and was further registered for review as complaint no. 201200792. Following our findings, we recommended the actions listed below:*

- Measures should be taken to increase the number of doctors and nurses in the Neonatal Pathology Department of this hospital.
- New equipment (incubator and radiant, etc.) should be purchased for this service, in order to meet the required standards.



- The staff should include a social worker or a psychologist, considering their indispensable role in this hospital institution.

In a response related to the case, the Ministry of Health explained that it would make efforts to allocated funds for the purchase of new equipment in the 2013 budget. In the meantime, following a Decision of the Council of Ministers, two employees have been added to the staff of this hospital, namely, a social worker and a psychologist.

## 2. Queen Geraldine Obstetric-Gynaecological Hospital, Tirana

The case involved the Neonatal Pathology Department (reanimation of babies), which has marked a significant reduction of the neonatal mortality rate, which means a very high rate of survival of those children who are born under 1000 grams of weight on the 28<sup>th</sup> week of the gestational age. Inspections found that the Department did not have a psychologist or a social worker, which are indispensable for the patients. International statistics indicate that 70% go through post-partum depression and the presence of these specialists would help with this increasing phenomenon even in our country.

Another concern for the hospitalized patients in this unit was related to the non-functional and uncomfortable beds.

We mentioned it above that the hospital receives many patients from other districts of the country and it causes a burden to its budget.

Lack of funds has hindered the reconstruction of the laundry.

*The case was initiated “Ex officio” and was further registered as complaint no. 201201145.*

*Following the findings, we issued these recommendations:*

- Social worker or a psychologist should be included in the organizational structure, as an imperative need of this hospital institution.
- The budget should be increased, in order to enable the hospital to handle patients who come from other districts of the country and complete the reconstruction of the laundry.

In relation to the above, the Ministry of Health explained that the issue of employing a social worker or a psychologist will be addressed within the existing staff of the hospital employees, by making changes to its structure. In the course of planning investments for 2013, opportunities will be looked at to fund the reconstruction of the laundry or contract a private company to ensure the service. In order to reduce the number of sick people who come to the university hospital centres, as part of the initiated reform for the rationalization of services, the Ministry of Health is working towards the enhancement of the infrastructure, upgrade of the medical technology and training of the staff, so that people benefit from the services provided by the regional hospitals that are closer to their place of residence.

### 3. Vlora Regional Hospital

The Surgery Unit lacked qualified medical staff. It counted only 6 medical doctors out of 10 that should be working in this unit. Surgery and treatment tools were utterly consumed and needed to be renewed. The majority of the patients' rooms in this unit suffered from humidity, lack of lighting, mould, sewerage problems and other issues which required investments. The surgery theatre lacked warm water, the garbage cans were open, the lighting was improper and there were no feet isolating bags. The ER toilette rooms were non-functional, full of humidity and lacked lighting. At the Paediatrics Unit, the first-floor rooms were humid, bathrooms had no lighting and filled with mould and there was no running water. At the ORL and Ophthalmology Unit, all the rooms were damp and filled with mould and they lacked lighting. Missing medicines in this unit included Atropine, Aseptic, Rulaskopik, Travatan. The Obstetric and Gynaecology service was faced with difficult conditions, as the operational premises had extreme humidity. Some of the rooms lacked lighting; heating was enabled through air-conditioners, which were mostly out of function. Further, there were no detergents that were mostly purchased by the doctors and nurses. A highly sensitive and yet unaddressed issue was that of the management of hospital waste that were buried in a repository assigned by the Municipality for this purpose and were not burnt in Incinerators, according to the legal requirements.

*The caste was initiated ex officio and, further, it was registered for examination as complaint*

*no. 201201977. After the findings, we made the following recommendations:*

- Measures should be taken to increase the number of doctors and recruitment of a radiologist in the Surgery Unit of Vlora Regional Hospital.
- Measures should be taken with regard to the disposal of hospital waste. A solution should be found shortly for the drainage of the entire building of Vlora Regional Hospital, in order to remove the humidity from the patient rooms and the issue of the heating and lighting system should be properly addressed.
- Measures should be taken to allocate a fund in the budget for the supply with the required detergents that lacked in all the units of Vlora Regional Hospital.
- Measures should be taken for the improvement of the laundry and kitchen services.

The Ministry of Health has not provided an answer so far, but the director of Vlora Regional Hospital informed us that some of the issues identified by our institution had been addressed, while he was institutionally committed to find a solution to the rest of the problems.

#### *4. Fier Regional Hospital*

The hospital laundry is still state-run. The hospital has asked from the ministry to enable the privatization of the laundry and kitchen service, but nothing has been done so far. Walls had high humidity and the hospital does not have funds to incinerate the hospital wastes, which seriously affect the environment. Another issue of concern was the overly consumed hospital furniture, specifically, the wardrobes, beds, blankets and sheets. The conditions of hygiene are poor and there is lack of lighting.

*The case was initiated ex officio and was further registered as complaint no. 201201978. After the findings, we issued the following recommendations:*

- Measures should be taken to address the disposal of hospital wastes and find a solution within a short period of time to drain the entire building, in order to remove humidity in the premises. Likewise, the heating and lighting system should be improved.
- Measures should be taken to allocate a fund in the budget for the supply with the

required detergents that lacked in all the units of Vlora Regional Hospital.

- Measures should be undertaken to improve the laundry and kitchen service.

The Ministry of Health has not yet provided any answer but the director of Fier Regional Hospital informed us that our recommendations would be subject to requests for fund allocation by the Ministry of Health for 2013

#### 5. Berat Regional Hospital

After the transferring of the maternity unit as a separate facility within the premises of this hospital, at the first floor, the situation was less than normal, with patient rooms with more than 6 beds and only one bathroom. The walls displayed extreme humidity. The Neonatal Pathology Unit (children reanimation) has an intensive workload, with only one paediatric doctor responding to all the emergencies in 24 hours. Another concern was the lack of furniture, considering the utterly rundown situation of the existing ones, including the wardrobes, beds, blankets and sheets. The last floor of the building was quite ruined, with extreme humidity of walls and corridor ceilings.

*The case was initiated ex officio and was further registered as complaint no. 201202081. After the findings, we issued the following recommendations:*

- Measures should be taken to improve the existing conditions and meet the needs set out in the recommendations of the People's Advocate for the Regional Hospital in Berat.

The Ministry of Health reported that it would consider the measures suggested by the People's Advocate Office, based on the priorities set by the Ministry and within the funds of 2013 budget.

#### 6. Gjirokastra Regional Hospital

We found shortages of qualified medical staff, namely of an anaesthetist and otoyaters. The obstetrics and gynaecological service is faced with hardships, because of the extremely rundown premises. Specifically, the entire maternity facility needs to be reconstructed. Another very sensitive and yet unaddressed issue is the disposal of the hospital wastes that were buried in a repository designated by the municipality, instead of being burnt in an incinerator, as it should happen. The managers of the hospital told us they had negotiated with the Ministry of Health to address this issue.

*The case was initiated ex officio and was further registered as complaint no. 201201979. After the findings, we issued the following recommendations:*

- Measures should be undertaken to improve the conditions and meet the needs set out in the recommendations of the People's Advocate for Gjirokastra Regional Hospital.

Responding to our recommendations, the Ministry of Health said that it would look into the possibility to reconstruct the premises of the obstetric and gynaecological facilities, whereas, with regard to the waste disposal, the budget of this year has allocated a fund for the purchase of an incinerator. The process is at the tendering stage.

## *7. Saranda Regional Hospital*

The medical staff experiences shortages. A gastric haematologist, haematologist, two paediatric doctors and a surgeon are needed. We found that, even though the hospital had been reconstructed, bathrooms had significant humidity that was not removed due to the lack of funds. There was food insufficiency due to the low food quota. An issue of immediate need to be addressed was the state of the building where the maternity unit was operating, which was in utterly rundown. Although projects had been submitted to the Ministry of Health for this purpose, they had not been considered due to the considerable value they entailed.

*The case was initiated ex officio and was further registered as complaint no. 201201980. After the findings, we issued the following recommendations:*

- Measures should be undertaken to improve the conditions and meet the needs set out in the recommendations of the People's Advocate for Saranda Regional Hospital.

The Ministry of Health informed us that, in relation to the city maternity hospital, a master plan is expected to be developed. The project has been finalized and funds are expected to be allocated to begin with the construction.

8. *Shefqet Ndroqi University Hospital in Tirana*

Following an investment worth Lek 3 billion allocated from the state budget for the reconstruction of this hospital building, some technical defects were identified in some of the premises. The hospital director had contacted the construction company to take over repairing them. Another concerning issue was the overconsumption of furniture and other items, such as wardrobes, chest of drawers, beds, blankets, sheets, etc. This institution has made continuous requests, year by year, for funds to cover these needs, but with no success so far. The laundry, as well, was not in normal working conditions; its walls had high humidity, there was leakage from the ceilings, due to the heat pipes placed therein. On the other hand these pipes were extremely worn. The employees that provided such service had to work under hard conditions.

*The case was initiated ex officio and was further registered as complaint no. 201202154. After the findings, we issued the following recommendations:*

- Measures should be undertaken to address the issues highlighted by the People's Advocate, in order to improve hospital standards.

In its answer to our recommendations, the Ministry of Health explained that it will look into the possibility to find a solution for the laundry and the furniture and other items through the

2013 budget and the secondary revenues of the institution itself.

9. Lushnja Regional Hospital

*The case was initiated ex officio and was further registered as complaint no. 201202154.*

*After the findings, we issued the following recommendations:*

- Funds should be increased in order to enable the total reconstruction of the unit of infectious diseases for adults, ensure new furniture and items for some of the units and purchase the required tools and equipment, in particular for the paediatrics and gynaecology unit.
- The terrace needs insulation to avoid humidity for all the third floor of the hospital, and a proper and functional heating and cooling system should be in place.

We are pending for an answer by the Ministry of Health.

***Conclusions***

One of the persistent issues of the regional hospitals is the shortage of specialty doctors in the medical staff, in relation to which the Ministry of Health informs on the following: In cooperation with USAID, the Ministry is working towards the establishment of the telemedicine system, which consists of providing medical service in distance that would mitigate this problem. By addressing this issue, we would have a reduction of the patients flow towards Tirana University Hospital Centre or other regional hospitals, such as those of Durres or Vlora. Shortage of medicines and medical materials is worth mentioning as a key issue recurring in various times of the year, due to long-drawn public procurement procedures applied for their tendering.

From the conducted inspections and processing of the cases involving the right to health care, we have concluded that, in general, the health and social services provided to the

individuals in these medical facilities need to be backed up by increased investment funds, completion of staff, quick implementation of the projects, great focus and attention to the humane treatment of the sick people. The inspections and visits in these institutions have played a major role in identifying the issues in relation to the conditions and the treatment of the citizens in line with the legal requirement, according to the respective area for which the People's Advocate has issued relevant recommendations on a case by case basis.

## **2.14. The goal towards a healthy environment**

### ***General overview***

The goal towards a healthy environment has been one of the priorities of the work of the People's Advocate. The complaints filed during 2012 were mainly focused on avoiding the pollution of the environment caused from various agents or unlicensed and illicit activities, air pollution from burning hazardous substances, disposal of waste in public spaces, acoustic vibrations and others which have an adverse effect on the quality of health and living of the inhabitants residing in the affected areas. We have dealt with complaints on this subject even previously.

During 2012 we recorded 22 complaints through which various individuals required the intervention of the People's Advocate to ensure a correct implementation of the legal requirements by the public administration bodies, to ensure a cleaner and healthier environment that would improve their life quality.

Among the complaints that were lodged in the course of the year, 10 cases were settled in favour of the complainants, 6 were within the scope of other public administration bodies to be followed up, whereas for 3 complaints, we sent recommendations to the respective bodies, so that they took measures, in line with the legal provision, to ensure and guarantee a healthier environment not only for the claimants that had filed complaints with the People's Advocate, but also for the community of the area affected by the environmental issue. Three complaints were carried over for examination in 2013.



### *Analysis of specific cases*

Following the review of the lodged complaints, the People's Advocate has found a continuous awareness of the individuals to ask for the support and response of the state authorities in terms of environment protection. Compared to 2011, 2012 marked a lower number of complaints, but still they are indicative of the lack of action by the local and central structures to exercise their legal duties to verify and address issues.

The issues reporting during this period, and, in particular, in the summer holiday season, involve the acoustic pollution along the coastline or the inhabited areas of the cities, which seriously affect the tourists and ordinary citizens.

Among the reviewed complaints that were settled in favour of the complainant, we may mention the case of the citizen M.S. who filed a complaint on behalf of a group of inhabitants and herself. The claimant said she lived in a building located in A. Moisiu Str. in Tirana and she complained of the noises and pollution caused by a commercial entity, which had an activity of bakery production and selling in the first floor of that very building. From the examination of the documents attached with her complaint, we found that Tirana Regional Environmental Centre had turned down the environmental permit for the subject, as the latter not only failed to meet any of the minimum standards to exercise the required activity, but it also had not taken any action to fulfil the tasks set by the inspectors. Upon our request, the Public Health Institute confirmed, based on the act of expertise conducted by its experts, that the activity in question was a true cause for concern for the complainant and the inhabitants of the building. Following the review of the documents and of the feedback of the public administration bodies involved in such proceeding, the People's Advocate Office recommended that immediate measures were taken to close down that activity, since it failed to meet any criteria for baking and selling bread in the existing premises and caused serious health concerns for the inhabitants, because of the noise, smoke and steam released during the bread-making process. This recommendation was accepted and the complainant informed us that, following the response of the state bodies on line with our recommendation, the commercial subject had closed down the activity.

With regard to this issue, the Council of Ministers has endorsed the normative act no. 2, dated 25.07.2012 "On establishing the taskforce for immediate action against the entities which generate noise above the allowed level in urban, tourist and coastal areas"; however,

we have found that it has not efficiently tackled the problem. This may be also result of the fact that the Act was endorsed during the peak of the summer holidays, without taking into account the organization and establishment of the competent structures to act for its implementation.

Quite worrying is the situation in the coastal area when it comes to the discharge of sewage produced by the hotels and residential buildings constructed quite close to the water. Actually, the current situation in public beaches is quite incompatible with the objective to have a healthier and more appropriate environment for holidays.

### ***Conclusions***

The People's Advocate finds that the environmental situation and the protection of the environment in Albania require special attention and common action by all the individuals and state structures, in order to take care of the health and enhance the quality of life. There are still problems with the waste disposal and their management and processing or even with the respect of other environmental standards, which may, at first sight, appear to be harmless but have long-lasting effects which are slow and invisible, constituting a serious risk for the life and health of the individuals.

The Environmental Inspectorates and Regional Environmental Centres should identify what are their tasks and responsibilities deriving from the legal and sub-legal acts, in order to exercise a most efficient possible control over the territory where they operate. There is a need to identify and punish the cases of disposing waste in open spaces and the random burning of the wastes, as well as the treatment of the waste produced by construction, from their creation, transportation and neutralization<sup>9</sup>, to monitor and control noises in the urban and tourist areas<sup>10</sup>, monitoring and action to remove motor vehicles, trailers and their consumed spare parts that are found near national roads<sup>11</sup>, as well as other tasks deriving from the wide range of legal acts that govern environmental issues.

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<sup>9</sup> See Regulation no. 1, dated 30.03.2007 of the Ministry of Environment, Forestry and Water Administration.

<sup>10</sup> See DCM no. 587, dated 07.07.2010.

<sup>11</sup> See the Normative Act no. 3, dated 07.09.2011.

## **2.15. Issues emerging in the activity of the local government bodies**

### ***General overview***

In the framework of the constitutional obligations to protect the legitimate interests of the individuals, the People's Advocate monitors also the activity of the local government units, in order to guarantee good governance and ensure the increase of the quality of its services to the community.

The current legislation that governs the functioning and powers of the local government is complete, but the scale of its implementation in the executive activities, mainly of the communes, is poor as compared to that of the administration of major municipalities.

As it has been reiterated in our previous reports, the staff of some government bodies manifest problems in terms of the wording of an administrative act, lack of legal references, the modalities of the administrative proceeding, failure to respect legal timelines, infringement of such principles as that of the cooperation between the administration and private individuals, the accountability of these bodies and their employees, finalization of proceedings by a decision, the right to inform individuals, the conflict of interests in the decision-making process, kinship relations between local government officials and the inhabitants that lead to subjective decisions or execution of the administrative acts or of the certain local government plans. All these issues are reflected in the poor service the administration delivers to the citizens, delays in addressing the problems of the inhabitants in the areas of their jurisdiction, as well as rejection of the standards an administration should apply to the service of the individuals.

### ***Analysis of specific cases***

In the complaints lodged by the citizens with the People's Advocate, there is an evident concern by the individuals in relation to the duty of the communes and municipalities to protect the environment, according to Article 10(2/f) of the Law no. 8652, dated 31.07.2000 "On the Organization and Functioning of Local Government", as amended, which stipulates their task for waste collection, removal and treatment, and in line with the Law no. 8934,

dated 05.09.2002 “On the Protection of Environment” which governs the relations between the individual, the community and the environment. This issue has been identified even before in our annual reports, but, it is regretful to see that the local government units are not dedicating any special attention to the strict application and observation of their duties in this area.

Of the complaints lodged with the People’s Advocate, 18 involved claims against Prefectures and their subordinate bodies, such the Property Titles Verification Committee, 532 against the municipalities, 125 complaints against the communes and 6 against the regions.

The high number of complaints filed against these local government bodies has indicated that they have failed to duly apply the legal provisions governing their activity.

Like in the past year, lack of cooperation of many local government units with the local ownership titles’ verification committees, which has been stipulated by Law no. 9948, dated 07.07.2008 “On the Examination of Legal Validity of Property Titles on the Agricultural Land”, remains one of the causes that leads to long-drawn administrative and, subsequently, judicial procedures. The situation results into a reduced efficiency of the Committees, the mandate of which, as provided by the Law “On Some Amendments and Additions to the Law no. 9948, dated 07.07.2008 “On the Examination of Legal Validity of Ownership Titles on the Agricultural Land”, has been extended until 31 December 2013.

### ***Right to information in administrative proceedings***

The Constitution of the Republic of Albania provides in Article 23 that: “The right to information shall be guaranteed.” This right is stipulated also by the Law No. 8503 of 30.06.1999, “On the Right to Information on Official Documents,” with Article 18 providing the powers of the People’s Advocate for the implementation of this law, which safeguards the transparency of the relations between the public administration bodies and the citizens. The Code of Administrative Procedures provides the right to access information as one of the basic principles of operation of the Public Administration. (This constitutes the legal ground, which is the same as in the previous report).

From the complaints, it results that the local administration has failed to respect and apply the right to information in the course of an administrative proceeding for those subjects of the administrative law, who have a direct or lawful interest in the proceeding itself. The set of issues we have reviewed during 2012 is the same as those of the past years. More specifically, we have found that parties are not notified on the initiation or conclusion of the administrative proceeding. They are not summoned as parties to the process when their interests are at stake and there's exceeding of legal timelines in making available the official information or documents requested by the individuals in respect of the procedures applied by these local government bodies, with the latter failing to meet their obligations to the citizens.

***Infringement of the right to information in administrative proceedings by A.L.U.I.Z.N.I. in regions***

In the course of examination of the complaints we found that a considerable number of citizens asked to be officially informed on the legalization proceedings relevant to the buildings they had constructed without authorization, but for which they had submitted self-declaration forms within the timelines established by the law. In this respect, we identified a significant flow of requests for information in relation to the applications filed by the citizens with the regional A.L.U.I.Z.N.I. for the legalization of unauthorized constructions under their ownership, but, apparently, they were left unanswered. One of the most problematic agencies is the regional A.L.U.I.Z.N.I. of Tirana, due also to the considerable number of request and files to be processed. Following the claims of many complainants, the People's Advocate addressed a request to the Director of this office, informing also A.L.U.I.Z.N.I. Directorate General, to put at our disposal the official information on the files of the complainants as soon as possible and recommended them to avoid constant delays in providing answer and official information to the People's Advocate Office itself. The recommendation was accepted and the required information on the cases described in our recommendation was made available. It was further sent to the specific claimants.

***Lack of action by local administration bodies***

Complaints filed with the People's Advocate involving the omission of the local administration bodies, refer to the activity of the Local Urban Planning and Construction Inspectorates (LUPCI) in communes/municipalities, and to one case started *ex officio* on Luz i Vogel commune with respect to the issuance of the construction permit for a building. The case has been sent to the court for review.

The People's Advocate Office received 106 complaints during 2012 in relation to the lack of action of LUPCIs to verify unauthorized constructions, take legal measures and sanctions against the perpetrators and failure to execute decisions to demolish constructions.

Lack of action by the Construction Inspectorate at the level of commune, municipality or central instance has, in many cases, laid grounds for conflicts and disputes between the parties. That has led to further delays caused by the prosecutorial bodies or courts in terms of the proceedings to re-establishing the right or to put an end to the alleged damage. Timely action and a strict observation of legal provisions would avoid red tape and would guarantee a safer legal situation for the citizen and their properties.

In relation to the compensation procedure for purposes of expropriation in the public interest, the People's Advocate Office has received claims involving the use of property in the public interest without observing the expropriation procedures.

During 2012, we recorded a total of 11 complaints about delays in the procedures of compensation for purposes of expropriation. Among others, we can mention complaint with **Doc. no. 201200337**, through which citizens who were co-owners of immovable properties claimed that procedures of expropriation in their favour had not been completed, at a time where work had started by the contracted company for the construction of the public work of the Big Ring road. These circumstances were considered as a serious infringement of the right to property, in reference to the applicable legal provisions.

After carrying out the procedural actions to obtain official information from the relevant state bodies, the People's Advocate Office recommended the finalization of the administrative procedures of compensations for purposes of expropriation of these citizens. The recommendation was accepted by the Special Committee established for this purpose.

On the other hand, there was a complaint lodged by the inhabitants of Bestrove village, in Qender Commune, Vlora, who were landowners, based on the Law no. 7501, dated

19.07.1991 “On the Land”, as amended, and claimed that their property had been violated due to the training exercise of the Training Brigade in Bunavi. Following investigations into the case, the People’s Advocate recommended that measures were undertaken to provide compensation for purpose of expropriation to the inhabitants and to put an end to the act of violating their properties. The head of the Individual Training Centre answered to our quest by taking into maximum consideration our recommendation to end the violation of the land that was property the inhabitants of Bestrova village according to Law no. 7501 “On the Land”, as amended, in the CA no. 1173, as a result of the training exercise of the Training Brigade in Bunavi. He considered the continuation of the expropriation process a priority and confirmed his purpose of minimizing the use of the surface areas not included in the deployment plan of the brigade for training purposes.

### ***Observation of legal timelines***

Failure by the local administration bodies to observe legal timelines has been focus of complaints or requests filed by natural and legal private individuals. This is very sensitive issue that the People’s Advocate has identified in its previous reports, as well. Such failure to respect legal terms mainly involves the activity of the LUPCIs at the municipalities and communes.

The identification of contraventions and failure to execute demolition decisions taken by LUPCIs within the legal timelines has become an increasingly concerning reality. Actions taken by LUPCI from time to time are on a selective basis and have no effect whatsoever in preventing unauthorized constructions for which the Inspectorates have been established. Inspectors fail to exercise their legal duties since the beginning of an unlawful construction that is reported by individuals, who are adversely affected by them. On the other hand, inspectors argue that it is impossible for them to act once the constructions are already completed or inhabited and that they might have objective reasons such as shortage of vehicles.

In the big cities, LUPCI is operational at the moment of identification of the unlawful construction, issuance of the respective acts for the suspension of works and the decisions of demolition. However, it all ends up with a failure to execute such decisions within the legal

timelines provided for by the Law No. 9780 of 16.07.2007, “On Construction Inspection,” as amended, with Article 13/3 establishing that “The decisions of the municipal/communal/regional/national LUPCIs shall include an execution timeline of up to 60 days. Exceptionally, the decisions for the demolition of the illegal construction shall include an execution timeline of up to 30 days”. Even though the issue was identified as problematic also in the last year report, it persists being a serious concern in the activity of the local government bodies. Failure to act in a timely fashion has led to a recurring practice of open violation of the construction permits by certain entities or construction companies, while LUPCIs should make sure they are observed; and further they proceed with filing legalization declarations with the regional ALUIZNI offices.

Lack of action by Construction Inspectorates of the small municipalities and failure to observe legal provisions in the field of construction comes also as a result of nepotism, kinship relations of the local officials with the construction entities or on the basis of their political affiliation.

### ***Work relations***

During 2012, the People’s Advocate Office received 58 complaints involving termination of employment relations by the side of the employer or even delays and irregularities in the payment of employees. The People’s Advocate started procedures to review and investigate into the claims raised by the complainants, but, in many cases, re-insertion resulted impossible, due to their immediate substitution and financial gaps to pay their salaries.

### ***Housing***

Housing is a very sensitive and worrisome issue for our society. In the course of 2012 we received 272 focused on the housing-related issues of the claimants and their families. The People’s Advocate advised the concerned parties to meet the legal criteria that would give them the status of the homeless.

In the early months of 2012, the People’s Advocate followed and investigated the issue of the housing of some Roma families living in some areas of the city of Tirana, who were



accommodated within the premises of the institution for several weeks. The complainants stated that they lived in barracks with their families, under extremely hard living conditions and unable to meet any of their minimum daily life needs. Following an official communication with Tirana City hall and other institutions that dealt with Roma community issues, the People's Advocate was informed of the status of the respective application of each family to benefit from the social programmes of Tirana Municipality. Upon the insistence of the People's Advocate and in cooperation with the Ministry of Labour, Social Affairs and Equal Opportunities, based on the Decision of the Council of Ministers no. 51, dated 02.02.2012, the site and premises of a former military cantonment in Sharra were made available to accommodate and establish a permanent settlement for the families of the Roma community. The People's Advocate has conducted several inspections in this place of residence and has found that no investment has been made to ensure the minimum living conditions for the families accommodated there. As above, we informed the Prime Minister and asked the Minister of Labour, Social Affairs and Equal Opportunities to meet the obligations deriving from DCM no. 51, dated 02.02.2012. After this recommendation, the Ministry of Labour informed us on 18.02.2013 that a fund of Lek 8,000,000 has been allocated for initial intervention and it will be followed by a fund of Lek 22,000,000 that will be allocated in the investment areas that will enable the reconstruction of these premises.

Generally, the People's Advocate finds that it is extremely hard, if not impossible, for certain categories of population faced with lack of housing and other issues, to meet the legal terms and criteria for that purpose, excluding them from the list of beneficiaries of social programmes applied by the local government bodies.

### ***Municipal police***

Some of the complaints handled by the People's Advocate in 2012 involved the municipal police, as a body that is subordinate to the mayor, in respect of monitoring and implementation of the legal and sub-legal acts. We dedicated special attention to the monitoring and investigation of Tirana Municipal police, which, for a certain period, went after Roma community members to block their daily activity and their motorized vehicles, which make for their sole source of incomes to secure the living. Specifically, members of the Roma community involved with the collection of recyclable items raised concerns over

the seizure and confiscation of their working means by Tirana Municipal Police. They reported that since more than three weeks of seizing their motor vehicles and collected items and imposing fines on the members of this community, they were not allowed to collect recyclable items, such as plastic, paper, metals, etc., regardless of whether they were collected from urban waste collections or from the source. Further, they claimed that during the seizing process, the municipal police had exercised both verbal and physical violence against the members of this community.

Without prejudice to the purpose of intervention and legal grounds for these actions of Tirana Municipality that could be taken in the public interest, the People's Advocate Office took legal steps to ascertain the situation by asking for explanations and requesting provision of the administrative act that had served as a basis for establishing as a priority of the Police work the seizure of the only living means of a considerable number of the citizens of this community, as well as the relevant documentation that legitimated Tirana Municipal Police actions to block and keep these means at the police premises. After receiving no official answer from the municipal structures and considering the complaints coming from this community, the People's Advocate identified the following issues:

- 1) During its operation, in addition to the working means, the Municipal Police had taken away all the recyclable items collected before and had fined the detained persons.
- 2) Without having any prior notification to stop this activity, which the members of Roma community pursued as a sort of "self-employment" and only opportunity for them in years to meet their basic needs, they had invested in the purchase and/or adjustment of the transportation means for this purpose.
- 3) In addition to the 92 Roma citizens whose transportation means were seized and who and penalized with fines, the same emergency situation, created from the abrupt interruption of this activity without applying any transitory and mitigating measure, involved over 700 other Roma families in Tirana, who were engaged with the activity of collecting recyclable items, as their only income source.
- 4) This community avails of no other means to generate incomes that are indispensable to improve or preserve the economic state of the Roma community involved in the collection of recyclables.
- 5) In the course of the procedure applied by the People's Advocate Office and considering the complaints and claims received from Roma citizens, we identified a lack of

transparency from the municipal structures, including the Municipal Police. Even in the meetings organized with the community itself and the NPOs that protect their rights, we found that the Municipality had not engaged in any preliminary talks with members of this community, as a group that was directly affected by the actions of the municipality itself and had a distinct interest in finding a solution to the issue.

- 6) The NPOs that defend the rights of Roma community informed us that Tirana Municipality had started mediation procedures for the employment of Roma citizens. In addition to the municipal structures and companies, the municipality had taken over to find them employment in private enterprises. According to Article 19 of the Labour Code, upon direct negotiation with the concerned individuals, the Municipality of Tirana should take them to the relevant authorities provided by the Labour Code dispositions, without mediating with private entities directly for their employment.

With reference to the above, the People's Advocate recommended the following:

- Suspension of arbitrary and denigrating acts against the members of Roma community, who are forced to collect recyclables to earn a living.
- The Municipality of Tirana should initiate joint consultations on the socio-economic impact of this order and foresee transitory measures or identify another option that would enable the members of Roma community to generate the indispensable incomes to improve the economic situation of those involved in the collection of recyclable items.
- Involve the Roma community both as actors and active participants in decision-making processes.
- Ensure the involvement of the civil society and the members of Roma community in the drafting of local policies for their employment to be applied by Tirana, which should be in line with the policies established by the legislation in power. They shall be implemented through the state authorities tasked with such responsibility by the law.

The People's Advocate Office will always stand up to defend the rights and freedoms of the Roma community, as part of the society, in the same way in which it defends the rights and freedoms of other vulnerable categories. Additionally, the People's Advocate Office remains open to any institutional and social cooperation that would result into the due protection and

respect of the Roma Community in all the areas. The improvement of Roma living conditions should be a commitment of state actors and factors in the framework of the Decade of Roma Inclusion, as a requisite to obtain the status of candidate for the European Union.

Along with specific recommendations aimed at the improvement of the living conditions of Roma in their residence in Sharra, the People's Advocate has recommended to the Minister of Labour, Social Affairs and Equal Opportunities to undertake the initiative for the amendment of the Decision of the Council of Ministers no. 787/2005 "On establishing the criteria, procedures and amount of economic aid", as amended, by making specific proposals aimed at ensuring the same living standard of Roma population as with the rest of the country's population. With respect to the enhancement of the living quality and conditions of Roma community in certain areas of the communes and municipalities around the country, the People's Advocate recommended to the Minister of Public Works and Transport to start the procedures that would amend Law no. 9232/2004 "On Social Housing Programmes for Inhabitants of Urban Areas", as amended, suggesting the introduction of provisions that would regulate the issue of housing for Roma citizens. In terms of the registration of Roma population, the People's Advocate has recommended to the Minister of Interior to introduce transitory ad hoc procedures in the Law no. 10129, dated 11.05.2009 "On Civil Registry" as amended, to stipulate special provisional measures in favour of this community, in order to achieve their social integration. Our proposals include, specifically:

- Initiation of amendments to Law no. 10129, dated 11.05.2009 "On Civil Registry," in order to have more flexible legal timelines within a determined period (of at least 1 year) and recognize their rights to registration or change of residence in the civil registry office of their actual place of residence.
- We have suggested that a sentence is added at the end of Article 15(3) with the following content: *"Roma minority families which register their changed residence into places that do not have the status of being a residence shall be exempt from the timeline established by this point until 31.12.2013"*.
- We have suggested that a sentence is added at the end of Article 22(1), with the following content: *"For Roma families, the civil registry offices in the territory where they have settled, shall register their place of residence, even if they fail to submit the documents provided by this point of this Article"*.

In regard to this recommendation, the Minister of Interior informed us that a working group would be established to address the issue, including also representatives from the People's Advocate.

### ***Floods in Shkodra***

In the first days after coming in office, the People's Advocate visited the flooded areas in Shkodra municipality and the communes of Berdise and Anamali, and met with senior local government officials and inhabitants of these areas. The serious concerns presented by these inhabitants were taken note of, and investigative procedures were started involving local government bodies and other central structures, in an effort to avoid further delays in the financial compensation of these inhabitants.

Upon conclusion of the procedures, the People's Advocate prepared a Special Report to inform the Assembly of Albania and the Council of Ministers on the existing situation and the measures the respective state authorities had to take to mitigate the consequences of the floods, in line with the legal obligations deriving from the Decision of the Council of Ministers no. 842, dated 06.12.2011. The report in question is still pending to be reviewed by the Assembly and no official reaction of the institutions we have addressed has followed. Considering the inherent situation and the upcoming winter season, the People's Advocate recommended that AEC allocated funds in a special Deposit of the Albanian Government as soon as possible and required the implementation of the Decision of the Council of Ministers "On the compensation of Shkodra inhabitants, who suffered serious damages of their houses and furniture".

### ***Local taxes***

After receiving many individual complaints by the citizens and upon the information obtained by the print media, the People's Advocate started *ex officio* the case related to the application and collection of local taxes. Following the administration of the documents relevant to the applicable legal and sub-legal acts, the People's Advocate recommended to the Mayor and Chair of the municipal council of Tirana to exempt the vulnerable categories

from the tax on cleaning and green areas, in those cases where they have other dependants up to 25 years of age, and also the consumers who have filed a motion for temporary suspension of water supply in their place of residence, because they do not use the respective premises. In response to our recommendation, the Chair of Tirana Municipal Council stated that it would be submitted for examination and endorsement in the next meeting of the Municipal Council.

### ***Conclusions***

Defending the human rights and freedoms from the unlawful actions and omissions of the administration, in this case, of the local administration, brings a positive impact on the good governance of these bodies. The local government should guarantee all the services and meet legal obligations towards all individuals. We have to take into account the effective implementation and exercise of these powers within the legal timelines, by having main focus on the increase of public participation in decision-making the respect of their right to information in all the areas provided for by the law, equal treatment of the individuals within the social programmes or the timely delivery of the economic and social aid to the families for which, often, it is the only means of living. That would increase the public confidence in the local government bodies, would improve the services provided to the individuals and would, on the other hand, contribute to a higher level of performance of the local administration to the service of all the citizens within its jurisdiction, without prejudice or discrimination.

## **2.16. Complaints of former politically persecuted individuals**

### ***General overview***

One of the categories of complaints handled by the People's Advocate Office during 2012 included claims or requests coming from formerly politically persecuted of the communist

regime or their relatives and heirs. The total number of such complaints was 45.

These complaints included claims on: the unfairly denied redress specified by the requirements of the Law no. 9831, dated 12.11.2007 “On the Compensation of Former Political Prisoners of the Communist Regime”, as amended; failure to find the remains of the relatives who were formerly politically persecuted and had died during their imprisonment; failure to receive the compensation instalments they are due to benefit as formerly political prisoners; incorrect establishment of the amount of compensation by the Ministry of Justice; the delay of the procedures to establish the amount of compensation; failure to find real opportunities for the use of the bonds benefited from them as ex-political prisoners; requests to benefit the total compensation amount in a lump sum and not in instalments; claims on the delays caused to the compensation process for the category of people sent on interment during the communist regime, according to the legal requirements; treatment of this category with social assistance from the state.

Of the total complaints received by the People’s Advocate, 6 are under examination, whereas the process has been concluded for 39. Of the finalized complaints and requests, it results that 9 fell out of our scope, 21 were ungrounded, and 7 were settled in favour of the applicants, whereas 2 were outside the People’s Advocate jurisdiction.

One of the recent developments in the quest of the formerly politically persecuted to have their requests fulfilled was the hunger strike of a group of ex-political prisoners that took place in Tirana during September and October 2012.

On 3.10.2012, the group of the participants in the hunger strike lodged a request for the intervention of the People’s Advocate and included the following main requests:

- Full and immediate redress of the ex-political prisoners for the amount estimated in advance in accordance with the law.
- Benefits from state social services for all the ex-political prisoners who had no actual support and were alone.
- General provision of free health services for all the ex-political prisoners.
- Possibility to use bonds with their real value.
- Swift measures to enable the employment of the ex-political prisoners.
- Intervention to ensure passing by the Assembly of the draft law that enables the

opening of the overdue files of the former politically persecuted people, who have not managed to obtain any compensation to date and the amendment in advance of several provisions of this law.

Additionally, they sought an intervention to enable the amendment or issuance of new legal acts on the following:

- Increase to a rate of 30% the respective nominal value of the estimated compensation for each ex-political prisoner, due to the inflation for the period between 2007 and 2012.
- Establishment of a special pension for all the ex-political prisoners who are alive, as it has been provided by the Law no. 7703, dated 11.09.1993, Article 5/c, and by DCM no. 429, dated 12.09.2002.
- Amendments need to be made to the existing laws, as there are ex-political prisoners who, for various reasons, have not had the possibility to prepare the relevant documents for compensation within the timelines established by the law.

With reference to these issues, which are of complex nature and entail a series of requests and alternatives for solution and following a careful analysis of the applicable set of laws that govern the matters and the specific legal relations included in the requests of the participants of the hunger strike, we addressed the Minister of Justice, Minister of Finance, Minister of Labour, Social Affairs and Equal Opportunities and the Minister of health with letter no. K3/G60-4, dated 15.10.2012.

This letter contained a summary of all the issues and potential legal alternatives to address them, considering that, following the past days of hunger strike, it was high time that a universally accepted solution were found among the parties, we suggested to the respective public administration bodies that the proper way to find a solution was to start a negotiation process with the strikers on their requests.

Although the hunger strike came to an end, only the Ministry of Finance answered to our request for cooperation to the benefit of the process, whereas, no answer has followed by the



Ministry of Justice.

While we considered that the issues raised by the hunger strike participants were relevant, we viewed them in a broader angle, beyond the moment of the hunger strike initiation. Thus, in order to have a clearer and more thorough picture of the compensation process for the formerly persecuted people under the communist regime, we addressed the Ministry of Justice and Ministry of Finance with a request for information on the following matters:

1. What is the total number of applicants who have filed a request to benefit compensation, according to the criteria set out in the Law no. 9831, dated 12.11.2007 “On the Compensation of the Ex-political Prisoners of the Communist Regime,” as amended?
2. How many of them have filed their requests within the timelines established in the law and how many applied outside legal terms?
3. What is the number of applicants whose requests for compensation have been approved and have been sent for approval of the financial compensation to the Council of Ministers? What is the number of the applications still in process of approval by the Council of Ministers?
4. Of the total number of the ex-political prisoners, approved by DCM to benefit financial compensation, how many have received one or more instalments of the approved compensation?
5. What is the amount of instalments delivered so far to the ex-political prisoners, whose financial compensation has been approved by a DCM?
6. Were the funds allocated in years sufficient to cover for the financial compensation of the entitled ex-political prisoners, in accordance with the requirements of Article 12 of the Law “On the Compensation of Ex-political Prisoners of the Communist Regime?”

The Ministry of Finance has already provided the required information through its letter no. 17096/1, dated 13.11.2012, whereas, even after two months, no answer has yet been received by the Ministry of Justice, regardless of the repeated requests for this purpose.

In its response, the Ministry of Finance has reported the following:

- In relation to the total number of the ex-politically persecuted who are entitled to benefit from financial compensation, approved by a DCM, and the number of those who have already received one or more instalments of the endorsed compensation, the Ministry of Finance confirms that: *“...the first instalment of the nominal compensation has been approved by a Decision of the Council of Ministers for 11,729 applications. To date, the first instalment has been paid for 10166 files and the second instalment for 1,841 files”*.
- In regard to whether the funds allocated in years, in accordance with Article 12 of the Law “On the Compensation of the Ex-political Prisoners of the Communist Regime,” as amended”, are sufficient to cover the financial payments to the ex-political prisoners entitled to benefit from this law, the Ministry of Finance has confirmed that: *“...from 2009 to 2012, the Ministry of Finance has worked with full staff capacities and there was no insufficiency of funds allocated by the budget, but payment has always been made in line with the applicable legislation, that is based on the documents submitted by the beneficiaries. We have had no period of time where payments were not made due to lack of funds”*.
- Further, the Ministry has stated in its answer that: *“The compensation distribution scheme has been approved by the Decision of the Council of Ministers no. 419, dated 14.04.2011, whereas the Decision of the Council of Ministers no. 189, dated 13.03.2012 “On Some Amendments to the Decision of the Council of Ministers no. 419, dated 14.04.2011....,” provides that “The term for the distribution of the second instalment begins on 26 March 2012. Immediately upon the approval of this DCM, the distribution of the second instalment began in line with the priorities established by DCM no. 419, dated 14.04.2011”*.

In the course of examination of the way how the process of compensation of the ex-political prisoners of the communist regime has proceeded in line with the provisions of Law no. 9831, dated 12.11.2007 “On the Compensation of Ex-political Prisoners of the Communist

Regime”, as amended, we found the following:

The sub-legal act on the approval of the timelines and the scheme of distribution of the funds for the compensation of the ex-political prisoners due to be endorsed by the Council of Ministers in line with Article 32 of the Law no. 9831, dated 12.11.2007, was issued in delay, violating all the timelines foreseen in the law, as amended.

Specifically, Article 32 of the Law no. 9831, dated 12.11.2007 provides that: “Annual funds for the implementation of this law shall be allocated by the law on the budget. The Council of Ministers shall, within 15 months upon the entry into force of this law, estimate the accurate financial bill of compensation and shall propose an 8-year scheme of distribution of the funds to the Assembly”.

With reference to the entry into force of this law, we found that it was published in the Official Gazette no. 160 of 2007, page 4669, approved on 12.11.2007 and published on 03.12.2007. Following the calculation of the terms of entry into force of this law, in line with the provisions of Article 84/3 of the Constitution of the Republic of Albania, the law results to have entered into force on 19.12.2007.

Referring to the terms established in the Law no. 9831, dated 12.11.2007, the respective legal initiative of the Council of Ministers to establish the accurate financial bill of compensation and propose the 8-year distribution scheme to the Assembly should have taken place by 19.03.2009.

That did not effectively happen, but, following the amendment of the article in question by the Law no. 10111, dated 02.04.2009, the fund distribution scheme does no longer have an established 8-year term, due to the stipulation of Article 12, of the Law no. 10111, dated 02.04.2009:

“The second sentence of Article 32 changes as follows: “The Council of Ministers shall approve by 2009 the terms and scheme of distribution of the funds.”

According to this legal obligation, the Council of Ministers endorsed Decision no. 419, dated 14.04.2011 “On approving the timelines and scheme of distribution of the compensation funds for the ex-political prisoners of the communist regime”. It is quite evident that this act not only is overdue with two years from the term established by the law, but its provisions

also have changed the timeline for the distribution of compensation funds from a clearly established matter, into one depending entirely on the process of full approval and completion of the distribution of the second instalment for all the ex-political prisoners. As a matter of fact, we have a compensation scheme divided into equal instalments but which recognizes only a starting date for the process, without a fix termination date.

Thus, it may be affirmed that the content of the basic law (Law no. 9831, dated 12.11.2007), the amendments made thereto, and the sub-legal acts issued for its implementation (this refers to DCM no. 419, dated 14.04.2011) have created confusion for the concerned subjects as to the correct execution of the compensation process, leading to a perceived conclusion that the law is not being implemented.

This situation violates the principle of legal certainty, as a key component of the rule of law, which in this case regards the administrative handling of the case within reasonable timelines that meet the expectations of the directly involved parties. Such timelines, though, have been effectively changed, leading to a deterioration of the timelines within which the individual right is addressed and fulfilled, at a time where they were established in another previous legal act in a way that was more favourable for the ex-political prisoners of the communist regime.

The issue of the compensation of the ex-political prisoners will be further complicated in terms of the scheme and distribution timelines, after the potential approval of the draft law, which has been currently submitted to the Assembly, given that it allows those formerly persecuted individuals who have failed to submit the application and related documents for benefiting financial compensation within the due timelines to do so within 6 months from the entry of the new law into force. Consequently, another group of formerly prosecuted individuals will add up, requiring a new financial compensation process, separately from the current one.

Under these conditions, we conclude that the amendments made to the Law.9831 of 12.11.2007, “On the Compensation of Ex-political Compensation of Communist Regime,” have resulted into an extension in time of the compensation process, which lacks a well-defined final date.

As above, through our letter no. K1/G60-17, dated 12.02.2013, we recommended to the

Minister of Justice to take a legal initiative, pursuant to Article 81(1) of the Constitution of the Republic of Albania, on an amendment of the DCM no. 419, dated 14.04.2011 “On approving the timelines and scheme of distribution of the compensation fund for the ex-political prisoners of the communist regime”, in order to determine a reasonable date for the finalization of the compensation process in favour of the formerly persecuted individuals under the communist regime.

From the complaints filed in relation to this matter, we have found that the category of the people on internment during the communist regime have not yet started to benefit the respective compensations, in accordance with the legal requirements. Claims indicate that, even though the concerned individuals have submitted all the relevant official documents to the Ministry of Justice since time, they have not yet received any compensation. Within the meaning of the law, addressing this category of people who were interned or sent to camps, constitutes part of the complex process of the financial compensation by the state of the former politically persecuted individuals under the communist regime.

In relation to one of the complaints on this matter that our institution is reviewing, we received an answer from the Ministry of Finance, by letter no. 17265/1, dated 13.11.2012, stating that there are no cases approved by Decision of the Council of Ministers to provide compensation for the category people who were on interment by the communist regime, according to the requirements of the law.

Regardless of the frequent requests for compensation by concerned subjects and representatives of the category of the people who had been in internment under the communist regime, the Ministry of Justice has failed so far to propose to the Council of Ministers to endorse the compensation amount due to this category of former politically persecuted individuals by its respective Decisions.

Failure to meet this legal obligation entails not only a violation of the legal requirements by the side of the institutions in charge of the process, but also an infringement of the lawful right of the individuals who represent the category of people who had been on internment under the communist regime to benefit compensation, in accordance with the provisions of the Law “On the Compensation of Ex-political Prisoners of the Communist Regime”, as amended.

A series of complaints contain claims of individuals who report that they have not received any compensation instalment even upon submission of the documents required for this purpose. Following the review of these cases, we have found that the reason for this has been the submission of the request for compensation and the relevant documents out of the timelines established in Article 19(2) of the Law no. 9831, dated 12.11.2007, “On the Compensation of the Ex-political Prisoners of the Communist Regime”, which provides that:

*“Failure to submit the request within one year shall lead to the loss of right for compensation for the ex-political prisoner or the relative of the victim of capital punishment. In accordance with this law, legal terms cannot be restored for the ex-political prisoner of the communist regime, his/her legal custodian or the member of the family of the executed victim, when 1 year has elapsed from the entry into force of this law”.*

Currently, a draft law is in process of approval by the Assembly, and if it is passed with the terms of the respective legal provisions (Article 20), it would provide a solution to these claims, as it results that delays in the submission of the documents are different in nature and reasonable to reconsider a second chance for the concerned individuals to benefit from the compensation.

During the examination of the complaints, we have come across delays or even lack of answer by the Ministry of Justice in terms of the official information we have requested in our letters, which, on the other hand, caused prolongation of the review period by our side.

One of the groups foreseen by the law to benefit financial compensation is that of the people who were sent on internment or were expelled during the communist regime. Specifically, Article 6/c of the Law “On the Compensation of the Ex-political Prisoners of the Communist Regime”, as amended provides that: “The amount of compensation for the political prisoners, interned or expelled individuals shall be as follows: - for the other interned or expelled individuals, a pension scheme shall be provided, which will be regulated by a Decision of the Council of Ministers”.

Monitoring closely the complex process of benefiting financial compensation, based on the categories and terms established by this law, we found that the relevant legal framework is still incomplete, in order to pave the way and enable a factual financial compensation process for the category of interned or expelled individuals, as provided by Article 6 of the

law.

As identified by these cases, although the concerned individuals have submitted all the relevant official documents to the Ministry of Justice, the compensation process has not yet started, according to the scheme provided by the law, as the Council of Ministers has failed to issue a detailed decision on the pension scheme to be benefited from these categories.

This fact is confirmed by the Letter no. 2709/2, dated 08.01.2013 of the Ministry of Justice, which says, *inter alia*: "...Article 6 of the Law no. 9831, dated 12.11.2007 establishes that a pension scheme shall be set as compensation for the interned or expelled individuals and that shall be regulated with a Decision of the Council of Ministers that has not yet been endorsed".

Regardless of the frequent requests for compensation submitted by the concerned subjects and representatives of the category of the interned and expelled individuals under the communist regime, the Council of Ministers has failed to issue as of yet a Decision that endorses the pension scheme from which this category of ex-politically persecuted people will benefit.

In relation to the above, we have recommended to the Minister of Labour, Social Affairs and Equal Opportunities and to the Minister of Justice to submit as soon as possible proposals to the Council of Ministers for the approval of the pension scheme for the category of the interned or expelled people under the communist regime, so that relevant sub-legal acts are issued that would enable the compensation of these groups.

### ***Analysis of specific cases***

The citizen Sh.K. filed the **complaint no. 201203112** with the People's Advocate claiming that he has been denied the right to benefit financial compensation, being a former politically persecuted person. In his complaint he stated that he had been given the status of the former politically persecuted person, upon Decision no. 9, dated 05.05.1994 of the Tripartite State Committee. After submitting the request and relevant documents to the Ministry of Justice, the complainant claims he had unjustly been refused the right to benefit compensation as a former politically persecuted person under the communist regime.

After examining the matter, we asked for explanations from the Ministry of Justice, with the latter claiming that the citizen Sh.K had submitted his request for compensation after the elapse of the legal timelines established in Article 19(2) of the Law no. 9831, dated 12.11.2007 “On the Compensation of the Ex-political Prisoners of the Communist Regime”, as amended. That is the reason why, even though the complainant may meet the legal requirements to benefit compensation, he cannot obtain such right due to the failure to respect the procedural timeline for submitting the request. The complainant was informed of this situation and of the process of approval of the new draft law in the Assembly that will give him a chance to ask for inclusion in the compensation scheme.

Citizen H.H filed **complaint no. 201203586** with the People’s Advocate Office claiming delays in the process of due compensation as a former interned individual under the communist regime, according to the criteria set by the law. He reported that, although the official documents were submitted to the Ministry of Justice, compensation had not started yet.

In the context of the case, we asked for explanations from the Ministry of Justice and Ministry of Finance. Although the Ministry of Justice has not yet given an answer, the response of the Ministry of Finance confirms that there has been no approved case by a Decision of the Council of Ministers to address the compensation of the category of the interned people under the communist regime, according to the requirements set out in the law. That confirmation identifies the failure of the Ministry of Justice to meet its legal obligation by proposing to the Council Of Ministers the compensation for this category of former politically persecuted persons.

For this reason, a Recommendation will be submitted to the Ministry of Justice in 2013, whereby we require submission to the Council of Ministers within a short time of the proposals on the approval of the nominal compensation for the category of people who were on internment under the communist regime, so that sub-legal acts that would enable this category to benefit from this compensation are issued.

### ***Conclusions***

Although Law no. 9831, dated 12.11.2007 “On the Compensation of the Ex-political



Prisoners of the Communist Regime” as amended, stipulates the beginning of the process of financial compensation for the former politically persecuted individuals, we find that the legal amendments that have accompanied the process have not been made known to the subjects who benefit from the law. That means that, at least, in a worse-case scenario, the draft amendments were not consulted with the concerned subjects or with their representatives, and that there are various factors that have led to a situation which results to be serious in certain moments.

Moreover, under these conditions, the law does not result to have been correctly implemented by the state structures that are obliged by law to conduct certain procedures or to undertake legal initiatives that would ensure a normal running or continuation of the process of compensation for the former politically persecuted.

The People’s Advocate has issued several recommendations addressing the situation and it will continue its efforts to do so by closely monitoring the process of compensation and the effective fulfilment of the rights which the law recognizes to this suffering category of our society.

## **2.17. The activity of the National Mechanism against Torture**

### ***Legal mandate and monitoring activity***

During 2012, in its capacity of the National Mechanism for the Prevention of Torture (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 National Mechanism for the Prevention of Torture 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 National Mechanism for the Prevention of Torture (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 National Mechanism for the Prevention of Torture, 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 undertaken to respecting 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 are aimed at the protection activities.

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 National Mechanism for the Prevention of Torture, 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 National Mechanism for the Prevention of Torture was focused on the monitoring of the human rights standards in the Armed Forces of the Republic of Albania during 2012. The activity in question was 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.

### ***Inspections in Hospital Centres, Penitentiaries and Pre-detention Facilities in 2012***

#### ***(Women and Minors Divisions)***

In the course of 2012, the National Mechanism for the Prevention of Torture conducted 18 inspections and thematic controls at the Mental Health Hospital Centres in Tirana, Vlora, Shkodra and Elbasan, at the Penitentiary Hospital Centre of Tirana, at Prison 313 in the Division of Women and Minors, Penitentiary 302 in Tirana, Berat Penitentiary, Durres Penitentiary, Fushe Kruja Penitentiary. Inspections at the Hospital Centres, Social Centres and Penitentiaries and Pre-detention facilities for men, women and minors 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. This legal mission has been playing an active part since early 2008 and will continue to be one of the main priorities of this mechanism.

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 who are 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 by virtue of 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*”.

#### ***Inspections conducted in this institution in line with Recommendation 12 of the European Commission Opinion on Albania.***

1. 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.

2. Inspection *ex officio* of Vlora Psychiatric Hospital, recorded with 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.

3. Inspection *ex officio* of Elbasan Psychiatric Hospital, recorded with Doc. no. 201202140, conducted on 09.04.2012. 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 heat 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 condition.
- 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.

4. Inspection *ex officio* of the Penitentiary Hospital Centre, recorded with Doc. no. 201202137, conducted on 05.04.2012. 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 of the due the 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.

5. Inspection *ex officio* of the Penitentiary 313, Women Division, recorded with the Doc. no. 201202133.
6. Inspection *ex officio* of the Prison 313, Women Division, recorded with the 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.

### ***Scheduled inspections***

1. Inspection *ex officio* of the Penitentiary 313 (division of minors), 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 sells, 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 minors '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.

2. Inspection *ex officio* of Prison 313 (women division), recorded with 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 consequence 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.

**3. Inspection *ex officio* in Penitentiary 302, recorded with 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 division employees, in order to ensure privacy of communication for the pre-detainees.
- The health and dental service infrastructure should be improved, in order to meet the required standards and enhance the service delivered to this category.

4. Inspection *ex officio* of the Fushe Kruja Penitentiary, recorded with Doc. no. 201203731. Upon the conclusion of the inspection in this institution, the following recommendations were issued:

- 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.
- 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.
- Measures should be taken to introduce 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 Tripartite Agreement between the Regional Directorate of Health Insurance, Prisons and Distribution Depots.
- Measures should be undertaken 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 a potential epidemics and to establish a state of hygiene that is in line with the contemporary parameters.
- 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.

5. Inspection *ex officio* in Berat Penitentiary, recorded with Doc. no. 201203709. Upon conclusion of the inspection in this institution, the following recommendations were issued:

- Measures should be taken to finish the new building, in order to move pre-detainees in the new premises as soon as possible, considering that the internal and infrastructural conditions of the old one are out of the standards.

- Measures should be taken to repair showers, to paint all premises, ensure supply with various sanitation and hygiene products, put covered dustbins in all the cells and insulate the electric boxes in line with the technical safety parameters, place electric wires in the proper height, in order to improve conditions and protect pre-detainees from undesired situations, in accordance with the legislation into force.
- Measures should be taken to create a proper space for the social and educational service, to 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 to include a nurse and dental doctor in the staff of the health service, to create a medical room, accelerate procedures for the implementation of the tripartite agreement on the list of reimbursable drugs and retrieval of medicines, in order to ensure that an efficient health service is delivered to this category.
- Implementation of the Agreement between the Ministry of Education and the Ministry of Justice on education and continuation of educational programmes according to the pedagogic profiles for the pre-detainees in this penitentiary institution.

**6. Inspection *ex officio* of the Penitentiary Hospital Centre, recorded with 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.
- 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.

7. Inspection *ex officio* of Tirana Psychiatric Hospital, recorded with 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.

### ***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 National Mechanism for the Prevention of Torture, monitored closely the efforts to improve the shortcomings and kept a constant international communication and cooperation, aimed at their implementation.

All the involved institutions responded to and welcomed the issued recommendations and they contributed for their implementation. We reiterate that, although the People's Advocate recommendations were accepted by the respective institutions, only in few cases has their implementation been complete, whereas partial advancement has been identified for the rest. Our finding in relation to that has been that among the main causes hindering the implementation is the lack of the required funds in the budget of these institutions.

### ***Complaints handled by NMPT in these institutions during 2012***

A total of 42 complaints were handled during 2012 in relation to the above-mentioned institutions, with the complainants claiming that their legal rights had been violated due to the actions or omissions of the public administration and asking for the re-establishment of such infringed rights. The process of review of these complaints has been finalized and it results that: 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.

### ***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 penitentiaries.

We issued **31 recommendations** for the 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 have deprived of their freedom and respect of their rights by the administration of penitentiary institution administration.

Considering the contents of the 31 recommendations and the inspections by the People's Advocate 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 in the majority of the cases obstacles are related to the lack of funds and issuance of sub-legal acts that would result into tangible improvements of the system, both in form and content.

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 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 People's Advocate inspections for their implementation highlighted a set of issues that should be addressed without further delay.

***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, we have to bring to the attention of everyone the issues raised in the annual 2011 report of the People's Advocate, as below:

- “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 standards<sup>12</sup>.*

- 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 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*

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<sup>12</sup> 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.

*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).*

### ***People's Advocate recommendations for the System of Penitentiary and Pre-detention Institutions***

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, also due to 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.

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.

#### ***Penitentiary institutions categorized as 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:***

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

Further, we will mention in a summary the issues addressed by the 2012 recommendations for the pre-detention system, among which:

- 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. Provision of the 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 samples.
- Provision of an ambulance.
- Regular disinfecting 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.
- Food control by the police should be done by use of gloves.
- 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.

### ***Inspections ex office and recommendations issued in 2012***

#### ***a) Penitentiary 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 on the psychic diagnosis of the psycho-social staff, on the intervention plans and the notes on file.
6. Training of the staff for the treatment of individuals who are addicted of narcotic substances.
7. A better coordination with the NPOs 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. Furnishing 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, we learned that the recommendations were accepted and that all the measures will be undertaken for their implementation.

***b) Penitentiary 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, we were informed that recommendations were accepted and that all the necessary measures would be taken for their implementation.

c) Berat Penitentiary, doc. no. 201203709

In a series of inspections and controls, we found a range of issues, which were focus of the following recommendations:

1. Measures should be taken to finalize 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 label them and 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.

We had a positive feedback that informed us that the recommendations were well-received and all the relevant measures would be undertaken for their implementation.

*d) Korca Penitentiary, 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.

*e) Fushe Kruja Penitentiary, 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 introduce 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 Tripartite Agreement between the Regional Directorate of Health Insurance, Prisons and Distribution Depots.
4. Measures should be undertaken 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 a 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.

*f) Penitentiary Hospital Centre in Tirana, doc. no. 201203869*

Upon conclusion of the inspection in this institution, we 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, as its lack constitutes a serious problem for the medical staff, and to provide the required physical constraint means, in range and quantity.
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 on 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.

*g) Saranda Penitentiary, 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.

We were informed that our recommendations were taken into account.

*h) Tepelena Penitentiary, Doc. no. 201203950*

Upon conclusion of the inspection of this institution, we 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 m<sup>2</sup> and m<sup>3</sup>.
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.

*i) Vlora Penitentiary, Doc. no. 201203951*

Upon conclusion of the inspection in this institution, we 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

asphalting the urban road, the segment from the road from Narta to this institution.

*j) Tropoja Penitentiary, 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. Under the current conditions, measures should be taken to observe to the letter the Law no. 8328, dated 16.04.1998 “*On the Rights and Treatment of Prisoners and Pre-detainees*”.
3. The Minister of Justice should be proposed to foresee in the order for the categorization of prisons a section for the detainees, when Tropoja pre-detention facility becomes efficient, in order for the prisoners of this district to be accommodated close to their place of residence, as provided by the fifth paragraph of Article 31 of the Law “*On the Rights and Treatment of Prisoners and Pre-detainees*”. This measure takes into account the distance of the city from the places where penitentiary institutions are located.

*k) Kukes Penitentiary, 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 internal regime unit, 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 internal regime, by changing telephone spot.
6. Immediate measures should be taken to install security cameras in the premises of the internal regime of the pre-detention area.

*l) Burrel Penitentiary, 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 a practice of on-spot controls in cells during the day more than at night.
16. Psychological services should be improved and the offered interventions should be

reflected in the file.

From the feedback we received, we learned that the recommendations were accepted and measures shall be taken for their implementation. As for the humidity issue, it requires funds for insulation from water, and it is expected to be settled with the funds allocated for 2013.

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

Of a total of 152 reviewed complaints and requests, 142 were finalized and other 10 are still in process. Of the finalized complaints, 55 were settled in favour of the complainant, 53 cases were 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 involve the prison administration or the Directorate General 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.

***Some recommendations in relation to the individual complaints.***

Case with Doc. 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, we 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 it dropped the case after the conclusion of investigations.

Case with Doc. no. **201203488**. The complainant was a pre-detainee in Durres Penitentiary. He filed a complaint via telephone over physical ill-treatment by an officer of the prison. 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, we reached 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, we 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 us 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 with Doc. 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, we 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, dated 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, we recommended the Prosecutor General to start investigations against this prosecutor on the grounds of the criminal offence of abuse with duty. However, our 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, we repeated our recommendation and provided arguments in relation to the unlawful actions of the prosecutor in the case.

In our 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 Hospital Centre of Prisons, in line with Article 462/2 of the Criminal Procedure Code. If that were not the case, why would the same prosecutor order on 24.01.2012 the enforcement of Judgment no. 12-2011-1572, dated 22.12.2011 of Kavaja District Court, although it was not final.

In the meantime, in its Judgment no. 12-2011-1572, dated 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. We 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.

### ***Conclusions***

In relation to the penitentiary institutions and Psychiatric Hospitals we 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.

## **CHAPTER III**

### **Public relations and cooperation**

#### **3.1. Reception of citizens**

Right from its founding day, there is an office in place for receiving citizens at People's Advocate Institution. This office helps the citizens lodge their complaints, notifications or demands. Under the Internal Regulation of the People's Advocate, in its capacity as the first contact point with citizens, this office helps the citizens make their demands and complaints; it also provides legal advice in the cases when the subject of the complaint lodged by a citizen goes beyond the scope of the People's Advocate activity, guiding it to the proper body or institution, which is competent to deal with such a complaint.

For the best possible organization of its activity and an increased effectiveness of services offered by the Reception Office, under Order no. 98 of 24/09/2012 "On the Structure and Organogram of the Institution of People's Advocate" and pursuant to Article 35 of the Law no. 8454, dated 04/02/1999, complemented with Law no. 8600 of 10/04/2000, amended through Law no. 9398, dated 12/05/2005 "On the People's Advocate" and Article 68 of the Internal Regulation, the People's Advocate has approved the new structure and organogram of the institution, incorporating the Reception Section to the Directorate of Citizens' Services.

This structural change, which is also supported in the Report of the Experts of EURALIUS, due to the growing flux of the number of citizens, who have reported to the People's Advocate Institution has helped upgrade the level of coping with the problematics of this sector.

In the framework of the good functionality of this Office and the best possible assessment of each and every topic presented by the citizens, the People's Advocate, upon his Order no. 109, dated 08/10/2012 "On the daily assessment of demands and complaints submitted to the institution" has decided to set up an assessment system for each complaint submitted to the institution of the People's Advocate. Given this procedure, an ad-hoc group, composed of three assistant commissioners from each section and from the Torture Prevention Unit,



assess on daily basis all complaints submitted in a certain day.

In 2012, the Reception Section received 1565 complaints, notifications and demands from citizens; from this number, 1180 complaints, demands or notifications were accepted and afterwards registered for further examination by the institution of the People's Advocate. Meanwhile, 385 citizens, whose complaints contained issues that exceed the jurisdiction or competence of the People's Advocate, were counselled and properly guided to follow the legal course in solving their problems.

Month	Total number	Exam. complaints	Advised complaints
January	198	154	44
February	163	137	26
March	154	129	25
April	164	149	15
May	122	102	20
June	116	100	16
July	118	81	37
August	152	111	41
September	103	72	31
October	98	50	48
November	103	52	51
December	74	43	31
<b>Total</b>	<b>1565</b>	<b>1180</b>	<b>385</b>

**Note:** The figures shown in this table do also reflect the summary statistical table at the end of the report. However, it does not reflect the complaints submitted to the institution of the People's Advocate through e-mail, post, telephone, meetings with citizens in the regional offices, the "Days of Open Doors" and the complaints examined on its own initiative.

#### *A lay-out of problems:*

From a general perspective over complaints submitted by citizens, which were considered to exceed the jurisdiction or competences of the People's Advocate and accordingly were registered for a further follow up, it turns out the following:

- Complaints against Rulings by Albanian courts: 112
- Complaints against private entities: 81
- Demands for court representation: 54
- Complaints addressed to foreign states: 31
- Conflicts among individuals: 31
- Conflicts in the family: 18
- Complaints against police bodies of foreign countries: 12
- Complaints against foreign diplomatic representations in Albania: 8
- Others: 38

As it may be noted, a considerable part of the number of complaints, which were not admitted, just as they were shown in the last year report, are those addressed to Albanian courts of all instances, or complaints against judges, on the account of failure to a due legal process of a judiciary case. In these cases, the citizens have been advised to follow the course of judiciary complaint and to launch an appeal to the Supreme Council of Justice for their claims against judges. They account for 29 per cent of the overall number of cases.

A large part in this respect is also accounted by the citizens' complaints against private entities, which relate mainly to unjustified job dismissals or claims over failure by these entities to comply with Labour Contract terms and conditions. The Reception Section has advised the citizens to lodge their complaints in the judicial district courts. They account for a reflection rate of 21%.

From the above-mentioned table, one may also note a number of complaints addressed to bodies or institutions of foreign countries. As far as the problematics of these cases is concerned, it is the complaints concerning the violation of the rights for Albanian citizens because of foreign court decisions which account for the largest part.

Another target of complaints on which advice is provided is also the one addressed to other individuals, or complaints dealing with family conflicts. In these cases, citizens demand the intervention of the People's Advocate for the resolution of the relevant conflicts, whose nature largely relates to the property right.

### **3.2. The activity of regional offices and “Days of Open Doors”**

#### ***Activity of the Regional Office in Shkodra during 2012***

The description of the activity of the Regional Office of the People’s Advocate in Shkodra is conceived in such a way as to disseminate the most comprehensive information possible over its domains of activity during 2012, including the Sub-Section on Children Rights.

Through the Regional Office of the People’s Advocate, every citizen has now the opportunity to file individual and collective complaints ( through an outside post box near the institution) concerning their claims over the violation of their rights; they are treated with professionalism and correctness.

During 2012, the Regional Office of the People’s Advocate in Shkodra has received 213 complaints from citizens and has provided 96 legal advice for certain cases.

It is noteworthy to emphasize that most of the citizens’ complaints were focused on the following:

- Individual and collective complaints over financial indemnities from the families possessing business premises which were overflowed.
- Individual and collective complaints from inhabitants over the construction of a by - pass facility in Shkodra.
- Complaints against CEZ ( the electric distribution Company) and Water Distribution Utility in Shkodra, on the account of unfair invoices for the complaining citizens.
- Complaints for failure to receive in due time time the payments for limited ability for the entitled citizens.

The complaints over the violation of children rights were made mainly by parents or the

legal guardians of the minors; they largely relate to the verification of the payments for economic benefit, payments for guardianship and others.

During 2012, the activity of the Regional Office in Shkodra introduced a novelty in promoting favorable policies on circuit level, especially on communal level for the categories of the marginalized children, while further strengthening the fruitful cooperation with the Observatoire for the Children Rights; the communes and the Council of the Shkodra Region are in the process of exchanging the data based on the children welfare and the implementation of the Regional Strategy for the Children and the relevant Plan of Action 2011-2013 at the Circuit level.

During the year 2012, the Sub- Section of Children Rights attached to the Peoples' Advocate in Shkoder has operated jointly with regional institutions and the organizations of the civil society which are focused on monitoring the children riughts at the regional level.

#### ***Activity of the Regional Office on the “Blood Feud” phenomenon.***

“Blood Feud” is still one of the worrying phenomena in the Shkodra region. The institution of the People’s Advocate has payed special attention to the activities aimed at raising the awareness of the public and competent authorities, in order to say “Stop” to this occurrence. In this respect, the Regional Office of the People’s Advocate has been offering all its necessary assistance; it has also coordinated its activity with different partners, focusing on the following:

- Promote and raise the awareness for complying with children rights in harmony with the relevant standards (the children locked inside home from fear of blood feud killing are denied the right to attend school).
- Inter-institutional cooperation for the strict implementation of human rights.
- institutional promotion and support for the “Observatoire of the Children Rights” at regional level.
- mediation, through civil society organizations, which are focused on the phenomenon of blood feud, in view of signing cooperation agreements with the People’s Advocate institution.
- Meetings and consultations with international representatives over the arrangements

to be taken to reduce the extent of the phenomenon of blood feud; a meeting with the Italian Consul and the OSCE Representative in Shkoder and others.

- Participation and mediation through the civil society through the “Assembly against blood feud” set up upon the initiative of the People’s Advocate.

### ***Activity of the Sub- Section of Children Rights***

The Sub-Section of Children Rights is attached to the Regional Office of the People’s Advocate, Shkodra and has been operating since October 2006. The mandate of this subsection is to “serve as an advocate, catalyzer and monitoring body for children rights, under the Children Rights Convention in Albania”.

It is tasked to do the following:

- to examine the individual complains on the violation of children rights due to illegal omissions or commissions by public administration bodies;
- to promote the public awareness and observance of children rights;
- to make recommendations for the improvement of the legal framework;
- to study and examine the legislation and administrative arrangements on the promotion of children rights and to prepare reports on these issues;
- to submit recommendation on remedying the rights violated by administrative bodies.

The activities of the Sub - Section of Children Right attached to the Regional Office of the People’s Advocate during the year 2012 were pinpointed on lobbying and advocating events; promotion of good practices of inter-sectorial cooperation, access to the data related to indicators of children welfare, in cooperation with the Observatoire of Children Rights and others.

### ***Participation at some of the most important events in 2012:***

- attendance of the meeting held by the Agency for the Protection of Children Rights and the Shkodra Municipality on the Law on Children Rights – referral mechanism;

- Participation at the round table organized by the “World Vision” on the problematics of the communities where they work;
- Participation at the seminar on the gender equality – Shkodra Municipality;
- Meeting held in the Regional Office of the People’s Advocate with children benefiting from the services of “SOS” Children Villages on the National Day of Children; it was devised to provide the institution with an overview on the children rights in the Shkodra Region.

### ***Institutional Support and Mutual Cooperation with the Observatoire for the Children Rights at Regional level***

The Regional Office of the People’s Advocate in Shkoder has continued to support on institutional terms the Observatoire for the Children Rights at regional level.

Now, the Observatoire for the Protection of Children Rights, with the vigorous institutional support and the mutually fruitful cooperation of the Regional Office of the People’s Advocate have established the mechanism of children data collection.

This mechanism is valuable not only to introduce the situation related to the enforcement of children rights in Albania, but also for the formulation of new and favourable children policies, which are forwarded to local government institutions.

From the information gathered in this respect, a series of recommendations have been forwarded in the relevant fields; some of the most important of these recommendations are shown below:

- Set up children right units at each communal level, in order to bring to make a record and coordinate the cases of the violation of children rights;
- reduce to its minimum degree the effects of the phenomenon of “blood feud” in Shkodra region;
- increase the number of stomatologists and the extension of its free service for the pupils of rural vilages, too;
- Identify and provide services for the cases of children suffering from HIV/AIDS;
- An all-inclusive education system for the children with limited abilities in integrated

kindergartens and schools;

- Support for the children with limited abilities with communitary services and, in particular, in the rural areas of the Circuit of Shkodra;
- Alternate economic benefit payment with social services, so that the children included in the economic benefit scheme would also become beneficiaries of necessary services assigned to them;
- open a sheltering place at regional level for the victims of family violence and a better inter-sectorial coordination for the cases of family violence;
- Foster the independence of the structures of the “Pupils Government“ and their further reinforcement, in order to enable the report to the relevant structures the cases of the violation of their rights;
- Larger attention for the Roma community, particularly for the children of Roma families, who have settled themselves in tents or stands down the bank of Buna River
- Implementation of the relevant Plan of Action based on the Regional Children Strategy for the Circuit of Shkodra.

These two structures did also cooperate during the year 2012 in the process of monitoring children rights in the Region of Shkodra; they brought to evidence and referred the problematic cases of complying with children rights and the promotion of good practices for the implementation of their own rights.

During the year 2012, the National Observatoire of Children Rights submitted in a digitalized format the Report on the Social Children Exclusion for the year 2010, which presents the state of the children who were subject to exclusion.

### ***Activity of the Regional Office in Fier Region during 2012***

May 2012 marks the start of the operation of the Regional Office of the People’s Advocate in Fier Region in the premises of the Fier Municipality. This Office was set up not only to cope on continual basis with the growing flux of complaints and demands from individuals on the violation of their legitimate rights, freedoms and interests, but also to come to the assistance of citizens as near their domiciles as possible.

The opening of this Regional Office is part of the strategy of the People's Advocate and its philosophy to be a pro-active institution, constantly close to the citizens and to their service. The Regional Office in Fier will serve the following functions: reception, guidance and counseling; collection of complaints from citizens, mediation between the People's Advocate and Fier Municipality, monitor social services and others.

This Regional Office provides its services each Friday. Even though the period of the operation of such an office is only 7 months old, it has made possible the admission for examination of 49 demands and complaints from citizens, as well as the clarification, counselling and guidance of 72 citizens for the settlement of the problems they have presented, in the cases when the case submitted was not a target of the People's Advocate activity.

### ***Complaints***

There is a wide variety of complaints, demands and notifications submitted by various individuals. Referring to the cases admitted for treatment, the complainers have expressed their concerns against the following local and central government bodies:

- Municipality of Fier
- Regional Directorate of Social Insurances,
- Local Office for the Registration of Immovable Properties,
- "Water Distribution and Sewage" Utility, Fier,
- Office of the Execution of Court Decisions, Fier,
- Municipality Council, Fier,
- Hospital, Fier
- CEZ-Energy Distribution, Fier,
- Civil Office, Fier,
- Educational Department, Fier,
- District Court, Fier,
- Prosecution of the Judiciary District, Fier.



## ***Media***

The local media has been playing a very positive role in the proper operation of this Office, indicating time after time its activity, through the promotion of the services that this office provides.

In our media briefings, we have stressed that this office makes possible for the citizens to lodge their own complaints or demands and to benefit the services that our institution could offer in the shortest time possible.

## ***Increased Number of Regional Offices***

Currently, the Institution of the People's Advocate has two regional offices – one in Shkodra and the other in Fier, where the citizens may lodge their complaints.

The intention of the People's Advocate is to open up three new regional offices, so that it would be possible to cover in a more thoroughly way the whole country's territory.

In the context of the support extended by the Kingdom of Denmark, the People's Advocate institution has unfolded an initiative to draft a strategy with a duration of several years.

This project has three main components, one of which is the cooperation of the People's Advocate with the local government; this component which does also include the opening of three new regional offices.

## ***“The Days of Open Doors”***

In keeping with its vision, as a pro-active advocate in protecting and promoting human rights, the institution of the People's Advocate has launched the event “Days of Open Doors” almost in all the country's communes and municipalities.

In all these days, it has received as many as 682 citizens, who have been instructed case after case on the ways and means they have to follow in order to obtain the services by public administration entities, or whose cases have been admitted for further treatment by the institution of the People's Advocate.

“The Days of Open Doors” have attracted the interest of citizens in introducing their own concerns to the team of experts of this institution; they have also helped the citizens be informed over the activity of the institution of the People’s Advocate in protecting and promoting their human rights and freedoms.

The agenda of “The Days of Open Doors” hosted in 2012 was defined in advance by the institution of the People’s Advocate.

The visitors for the People’s Advocate and its staff have always been announced in the local media; this is made in order to keep each citizen informed on the presence of the People’s Advocate.

The first meeting in the context of the “Days of Open Doors” has been always held with the presence of the civil society representatives, who are active on the ground.

Such a meeting has been designed to reach the following objectives:

- Sign agreements of cooperation among organizations and the institution of the People’s Advocate (the institution of the People’s Advocate counts 114 signed agreements with the civil society organizations throughout the country);
- provide information on the problematics faced by the citizens of communes or municipality where the event “ Days of Open Doors” were held as well as inform the People’s Advocate on the difficulties that the civil society organizations face during the conduct of their own activity.

After meeting with the civil society organizations, the People’s Advocate has also held meetings with local government representatives.

The meetings with local government representatives have been focused on the problematics that the citizens of the area have presented to these government entities, as well as on the problems that the local government bodies face in conducting their activity.

Some of the issues discussed with local government representatives during these meetings are shown in the following:

- Protect and safeguard the human rights and fundamental freedoms on the part of local

government bodies.

- cooperation in submitting to the Institution of the People's Advocate cases for which the People's Advocate can intervene on institutional basis, to make concrete recommendations to public administration bodies;
- treat under the legislation in force citizens' complaints and demands submitted to the local government bodies;
- implement the principles envisaged in the Code of Administrative Procedures (responsibility, legality and transparency) during the administrative prosecution and others) on all individual and collective decision – making processes of local government bodies;
- cooperate with municipality/commune with civil society organizations which are acting in the territory where its extends its own jurisdiction;
- registration and transfer procedures for Roma families;
- find shelters for homeless families that are part of vulnerable groups;
- Implement the legal criteria to define families who benefit economic aids;
- make the referral mechanism for the victims of violence in family relations, trafficking victims and the children in danger functional at municipality level;
- set up social care services for vulnerable groups ( violated women, children, the elderly, for the Persons with Limited Abilities);
- make the Building Inspectorates and Urban Development functional.

Likewise, separate meetings were held with the Governors of Regions to discuss on the state of the implementation of human rights and fundamental freedoms as well as on opportunities of raising citizens' living standards, through the implementation of their constitutional rights and freedoms.

After the meetings with local government bodies, the People's Advocate in person and accompanied by institution's officials has also received citizens, in order to listen to the problems they face.

The citizens' complaints, which lie within the jurisdiction and competence of the People's Advocate were registered and then their treatment began; whereas, in the cases when such complaints went beyond its jurisdiction, the citizen was advised on the course to be followed

for its solution.

While the People's Advocate was having his meetings in the venues where problems had occurred (visit in the village of Berdice in Shkodra, where the bed of a river was being eroded, a visit in a palace in the city of Vlora, where the inhabitants thought that an unauthorized construction work was going on, which threatened its collapse) other experts continued to receive citizens.

Meanwhile, other experts of the Institution of the People's Advocate in some cases and the People's Advocate in person in special cases have made inspections in the state institutions of public services, in order to monitor their state.

During the event "Days of Open Doors" subject to such inspections were the police commissariats and the pre-detention venues, hospitals, schools, mental health centers, residential centers of social care and prisons.

Part of the agenda of the "Days of Open Doors" is also the close cooperation with the local media. Almost in each and every municipality and commune, where the People's Advocate has hosted the "Days of Open Doors", arrangements were also made to give interviews and press releases in the local studios and television channels.

The interviews in the local TV stations were designed to reach the following goals:

- keep the citizens informed on their own rights;
- keep the citizens informed on the People's Advocate competences.

The "Days of Open Doors" have been hosted in the following cities and towns:

- Shkodra (6 times)
- Fier (3 times)
- Korça
- Pogradec
- Librazhd
- Kukes
- Saranda
- Gjirokastra
- Lezha

- Levan
- Durres
- Dropull i Siperim (greek minority area)
- Dropull i Poshtem (greek minority area)
- Elbasan
- Vlora
- Himara
- Other places.

Experts of the People's Advocate have visited almost each country's municipality and commune, where they have picked up complaints by the persons with limited abilities, who in November and December 2012 had not received the payment for their disability.

### **3.3. Relations with media**

The Institution of the People's Advocate is transparent and it makes sure that the information on its own activity could always reach out to the citizens and international partners or interested parties through its echo in the media. The constant intention of drawing the attention of local and central authorities on the necessity of upgrading citizens' human rights and freedoms through the public presentation of their own problematics has paved the way to a vigorous and ongoing cooperation during this year between the People's Advocate and the country's media.

Right from the very first days of coming to office, the People's Advocate has specified the "close cooperation with media as an important part of his vision." The performance and high expectations produced during this year among the public have proved that the Institution of the People's Advocate has not only worked closely with the media based on the above-mentioned goal, but such a cooperation has also been fruitful for the public promotion of the problematics related to human rights.

From the beginning of the mandate of the People's Advocate, Mr. Igli Totozani and

onwards, he was declared in public that the media and civil society are allies during his terms in office and it could be said that the common inter – action during the year 2012 has been quite visible. The presentation and discussion of the problematics of human rights by the People's Advocate in media has never been at the high levels of this year. A clear testimony of the effectiveness of this cooperation with the media may be also noted not only in the knowledge that the public already has, both on the presence and the role of the People's Advocate, but also on a number of issues, which have been introduced into the agenda for the public opinion through television, newspapers and other national-wide media outlets.

It should be emphasized that cooperation with the media during this year was fruitful and mutual. The activity of the Institution of the People's Advocate was frequently selected as a central issue in the daily media; on the other hand, media outlets have frequently served to foster institutional actions by our staff in the fields of human rights.

The People's Advocate, its Cabinet and the institution's administration maintain ongoing, direct and institutional contacts also through its Press Office, with journalists and representatives of printed, online and visual media. The important events of the People's Advocate have arisen the keen media interest in country's journals, televisions and major online outlets. The People's Advocate and members of its staff and cabinet have also been continuously present in the media in all the cases, when the People's Advocate and the public have demanded our own involvement and commitment; this applies particularly in the cases when the sense of duty and the law force us to draw the attention over problems related to human rights in Albania.

### ***The Institution of the People's Advocate as a Source of Information***

During the year 2012, the Institution of the People's Advocate has been steadily a point of reference, as well as a source of news for the media and their own operators:

The highlight issues of the activity of our Institution on human rights were the following:

- The Roma issue.
- Signing cooperation agreements with the civil society.
- The issue of the persons affiliated to LGBT.

- The inhabitants whose houses and properties were affected by the floods in 2012.
- The phenomenon of “blood – feud”.
- Problems concerning former crude – oil workers.
- The incident in the village Qelez in Puka district on 29.06.2012.
- The hunger strike by former political prisoners.
- Problems related to leasers and the houses of former owners.
- Election of the new Commissioner amidst the ranks of the persons with limited abilities.
- The problem of payments for the persons with limited abilities.
- Others.

***Interviews by People’s Advocate, Mr. Igli Totozani in the National TV Stations:***

During his one - year period of work at the head of the Institution, the People’s Advocate, Mr. Igli Totozani has been present through interviews in TV studios, which have been always focused on the following issues:

1. the work and institutional focus of the People’s Advocate;
2. certain issues and topics, which have been dealt with by the People’s Advocate and its own staff.

The “live” appearances of the People’s Advocate in media outlets has been aimed, in particular, at the promotion of human rights of vulnerable groups and other problems, as well as the promotion of the image and institution’s work, providing explanations on the competences of the People’s Advocate and at the protection which he is offering to the legal rights, freedoms and interests of individuals from the unlawful omissions or commissions of administration bodies.

During this one year period, the People’s Advocate, Mr. Igli Totozani, has been present in the following TV broadcasts:

- Tonight- Ilva Tare/ Ora News
- Debate - Alfred Peza/ Vizion Plus
- Prism- Aleksandër Furxhi (invited in the TV studio, the People’s Advocate from Albania, Kosovo and Macedonia - Albania Screen

- Studio 24- Denis Minga/ News 24
- Wake Up- Ledion Liço, Eno Popi/ Top Channel
- Natën Vonë ( Late at night) - Jonida Shehu/ Ora News
- Zip- Vizion Plus
- Intervista e mbrëmjes( evening interview) Patrik Sadikaj/ Ora News
- Arena- Roland Qafoku/ Tv Planet
- Përqasje- ( Approachment) NTV
- Interviews in the studio on various issues/ A1 Report
- Makinë me dy timonë ( a car with two steers)/ Club Tv dhe Radio
- Interview in the studio- ABC Televizion

Likewise, commissioners, cabinet representatives, assistant commissioners and members of the Institution of the People's Advocate have been present in TV, to discuss over issues directly related to the observance of human rights and fundamental freedoms. Experts from our staff have been also present in debates in TV studios of Top Channel, News 24, Ora News, AS, Vizion Plus, UTV and others.

The above-mentioned studios include only the interviews in studio and TV debates; (here are not included the interviews that the People's Advocate and experts of the institution have given for the news information editions). Such interviews have been provided for almost all televisions as: Ora News, Vizion Plus, News 24, A1.

Report, UTV, Albanian Screen, Top Channel, Top News, Tv Koha, Tv Klan, Channel One, Scan Tv, Planet Tv, Shijak Tv, and others.

***The People's Advocate is present in the pages of the opinions of the Daily Albanian Newspapers***

The People's Advocate, Mr. Igli Totozani has been frequently present not only in the TV studios and interviews, but also in the columnist pages and comments of daily Albanian newspapers. In the focal point of the opinions and comments have been human rights and their protection, issues of legislation and its implementation and what could be further



improved –i.e. what can be changed to boost the quality and living standards of vulnerable groups, as the Roma community, the women and children rights, “blood feud”, persons with limited abilities, the LGBT community and others.

- “Një vit” ( one year)- Human Rights, Newspaper “Shqip” 10 December 2012
- “Facing a child who can not see”, Newspaper “Gazeta Shqiptare” 4 December 2012
- “The apeal after a congress of invalids”, Newspaper “Panorama” 8 October 2012
- “For our fellow citizens with limited abilities”, Newspaper “MAPO” 27 June 2012
- Citizens who cannot protect themselves, 7 demands for KNJ, Newspaper Shqiptarja.com 16 June 2012
- “Some answers for question marks on the LGBT” Newspaper” Panorama” 19 June 2012
- “On the citizens who cannot protect themselves”, Newspaper “Panorama” 24 May 2012
- “The day against Hatred”, Newspaper “Shekulli” 18 May 2012
- “Why a National Commission on Human Rights?”, Newspaper “Panorama” 5 April 2012
- “Law and the persons with limited abilities”, Newspaper “Shekulli” 14 March 2012
- “Amendments to the invalidity benefits”, Newspaper “Gazeta Shqiptare” 13 March 2012<sup>13</sup>

### *Online pages*

During 2012, the news from the People’s Advocate found a wide-ranging reflection in the following online media and portals: Top Cannel, Balkan Web, Tema, Panorama, Republica, Shekulli, Shqiptarja. com, Mapo, Shqip, Dita, Ama-News, Gazeta Start, NOA, Gazeta Idea, and others.

The reflection in the media and in the online portals has produced two major elements in the work of this institution:

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<sup>13</sup> All articles may be found in the official homepage: [www.avokatipopullit.gov.al/](http://www.avokatipopullit.gov.al/) in the section Media and AP.

- News and information on the activity of the People's Advocate have become universal – accessible from each country worldwide.
- The analysis of the activity of the institution viewed from the new perspective and established after public reactions.

The public reactions and the citizens' suggestions coming directly from media outlets or from the public, in response to their information have served to help redefine the orientation points in the work of the People's Advocate, based under the priorities, expectations and sensibilities of the public opinion.

***The institution of the People's Advocate and its activity reflected in the international Media Outlets.***

One of the events with a wide-ranging echo in the international media was the accommodation of 8 Roma families in the premises of the institution of the People's Advocate in the cold winter, early in 2012, as well as the protection that the People's Advocate has been providing to LGBT in Albania.

The said events have been mirrored in the following international media agencies and other outlets:

- Reuters
- The Associated Press
- Huffington Post
- ANSA
- Radio Free Europe
- Le Matin
- Giornalettismo
- Repubblica
- Washington Post
- Voice of America (VOA)
- Daily News

- Balkaninsight
- BBC
- Bota Sot
- Zeri
- Journal ELLE
- Prishtina Press

### ***Interviews in Local Televisions***

Apart from the country's central media outlets, the People's Advocate has also been present in the local media of the cities he has visited, in the framework of the event "Days of Open Doors". Thus, during 2012, the People's Advocate has given interviews in the following local TV stations:

- Tv Channel 1 in Shkodra
- Tv Korça
- Tv Riviera in Saranda
- Tv Aulona in Vlora
- Tv Apollon in Fier

The interviews in the studios of the local TV channels were designed to inform the community of the given area on both actions and failures to act, the competences and the activity of the institution of the People's Advocate, as well as to provide direct responses to the local problems dealing with the legal frame of duties and priorities of the People's Advocate.

### **3.4. Communication through the official web site and social media**

Since 2009, the Institution of the People's Advocate has its own official homepage [www.avokatipopullit.gov.al](http://www.avokatipopullit.gov.al). Besides providing a great deal of information on the institution

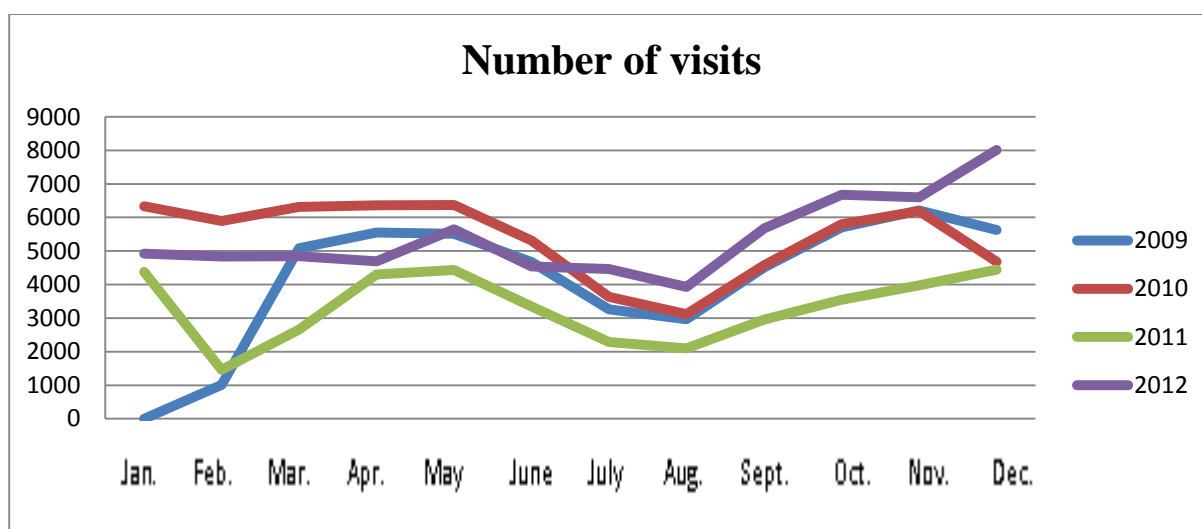
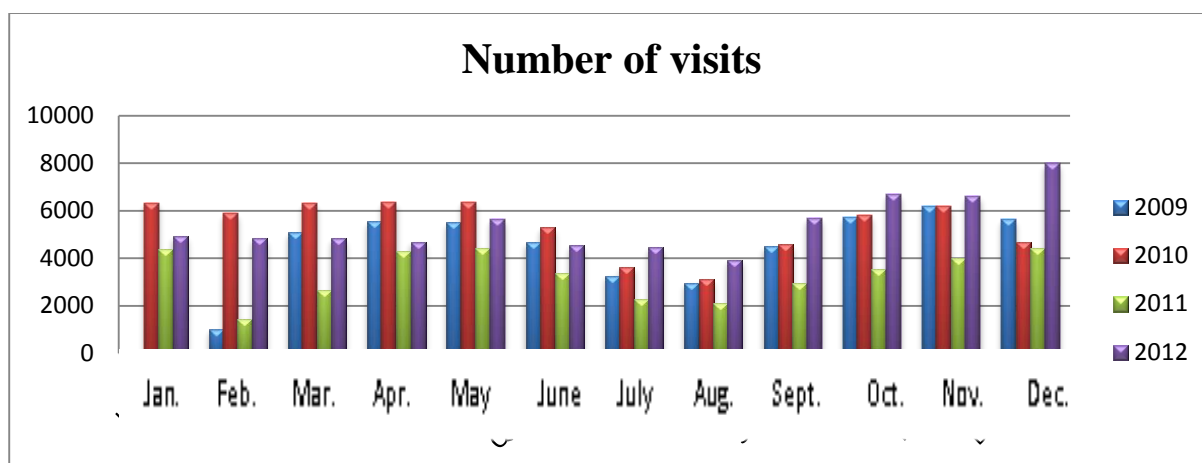
of the People's Advocate, - its history, reports, the legal framework as the underlying pillar for the activity of the People's Advocate, contacts and others, it does also provide a communication opportunity among citizens, media and all other parties concerned.

In the homepage of the People's Advocate, journalists and citizens concerned may find and consult, apart from statistical data, various other materials and information, as reports, recommendation, legislative recommendations, events, press briefings and releases, announcements for free vacancies, tenders and others. All these data are updated and enriched, in order to be as transparent and effective as possible with the citizens in our work.

The Institution of the People's Advocate has at the epicenter of its own work the citizens, the protection and promotion of their rights and liberties. In order to be closer to the citizens, in the homepage of the People's Advocate, apart from contacts with the office (phone numbers and mail addresses) there are also two phone numbers available for citizens. The mobile number 0689034648 is also available to the public. This number is on 24 hours in every day of the week. The citizens may sum up their problem through an SMS together with the accurate address and afterwards they are contacted by experts of the Institution of the People's Advocate. Whereas for the persons who are in the penitentiary institutions, such a communication is made through direct phone lines. Likewise, for these persons, there is also a free of charge phone number 0800 1111 during the official opening hours - 08:30 until 16:30, from Monday till Friday.

The ongoing reflection of the work of the institution of the People's Advocate in the media and the constant close contacts with the citizens has encouraged a large number of clicks in the website as compared to previous years.

More detailed statistical data on the website for the number of visits in every month for the years shown below maybe found in the following:



### ***A new website for the Institution of the People's Advocate***

In the context of the support extended by the Kingdom of Denmark, the institution of the People's Advocate has launched an initiative for drafting a strategy, with a duration for many years and which focuses on the improvement of the activity of the institution and intervention in some domains.

One of the fields of the strategy intervention is communication. One of the targets of intervention at this point would be the renewal of the official homepage of the People's Advocate. It will be enriched with other elements and new options, which will facilitate the access of citizens and it

offers more real time thorough information.

A very important element in this framework is to make possible that a complaint is lodged and then follow up the relevant procedures on line. This novice will provide a brilliant opportunity to the citizens, who would not have to go to the institution of the People's Advocate or to its regional offices in Shkoder and Fier; if they have internet access, they could well lodge their complaint on line and do the same with the follow up procedures in the countries of their domicile. Likewise, through Internet, they could follow in the official homepage the process through which the treatment of their complaints goes through.

Another element to be added to the homepage of the People's Advocate is the possibility for free various comments and rubrics; it would mean that from now on, a citizen is not only a simple reader of the homepage of the People's Advocate but an interlocutor as well.

The new Website is thought to have as its own part other elements- as videos, photo-gallery, new rubrics, links with other portals and homepages of international organizations working in the field of human rights and others.

### ***The People's Advocate and social networks***

The inter-action through Website in the field of information is profoundly changing the approach of institutions and organizations towards public communication. This new mode of communication and conversation has become a "Must", particularly in the development of social networks. Millions of users worldwide have daily access to different social networks through which information are born, circulated and quickly disseminated.

It is obvious that even during this year, the relations between the institution and citizens are going through a stage of fundamental change in terms of modes of communication. The traditional sites of institutions continue to serve as points of access for information; however, these sites should take into consideration now that more and more often, the citizens are seeking direct dialogue with their own interlocutor in the new spaces of communication, whereby direct dialogue is possible.

In the outflow of these changes, the Institution of the People's Advocate has also devised new modules of inter-action and participation in communication, which are aimed at boosting

transparency and effectiveness. During this year we have thought that social media does also provide a large opportunity for our Institution, not only in information and communication terms, but also in building trustful relationships, to listen to and to monitor the serious concerns of priority and with a high sensitivity for citizens.

Currently, the People's Advocate is present in the social network Facebook and Twitter. The consideration of the fact that our institution should have its own profile in one or more social networks has been present in our work throughout this year; nevertheless, we would simultaneously emphasize that these modes of communication are integrated without replacing traditional communication channels, through which the institution makes its information and services accessible for citizens.

### ***The People's Advocate and New Modes of Relations with Citizens***

The goals of echoing our activities in the social networks are shown in the following:

- Illustration of events and functions of the institution.
- Facilitation of access to public services, by developing the relevant legal know-how.
- Promotion of know-how and topics of public and social interest.
- Promotion of the image of the institution, while referring to events of local, regional, national and international significance (events, media briefings and others).

Likewise, some of the opportunities and advantages provided to our institution through access to the social media that do also bring about advantages for citizens are shown in the following:

- **Effectiveness** - almost all internet users are accustomed to daily access in the social media, mainly in the Facebook. Being part of these social networks has made it possible for our institution to reach out to the citizens side by side with the channels of traditional communication.
- **Costs** - an appropriate use of social media outlets to reach to the citizen reduces the communication costs (publicity campaign, surveys, questionnaires, leaflets and others).

- **Monitoring** - the monitoring of users' activities allows the achievement of citizens' expectations on the themes that our institution deals with and namely, the protection of human rights in Albania. These focus groups indicate the sensibilities and concerns of citizens.
- **Listen, dialogue, trust - The citizen perceives** the very presence of our institution in the social networks as an opening and willingness for dialogue.
- **Transparency** - The solid relations between citizens and the institution of the People's Advocate in social media produces necessarily a larger degree of transparency for the institution.

In our work during this year at this segment of cooperation with media we have taken into consideration that simply the presence *on line* is far from being sufficient; therefore, we have done the following:

We changed the searching modules in the web: the ways followed by citizens to reach our information are more specific. True, the web page or the public portal are indispensable means; yet they are not sufficient; therefore, during the year 2012 we have been working and continue to work on the further expansion of the capacities of this sort of communication by making exchanges in the web and links with social networks.

*We expanded communication:* The People's Advocate is working firmly not only to make the information available for citizens in the moment when they are asking for, but also to inform the public in the proper time on different items.

*From announcement into communication:* Online social networks make it possible to have not only one-way but also a two-way communication. There is no reason why the citizen should be a target to be "fished" with a message or even with a service; instead, he should be an actor with whom one can inter-act. We think that the citizen should be incorporated in the activity of the institution of the People's Advocate; to this end, direct communication by our staff in social networks has become a priority during this year and it will continue to be so in the future, too.

It should be emphasized that the People's Advocate considers facing such a profound cultural change in communication as a unique opportunity to boost relations with citizens and raise their awareness on their own rights. Therefore, the presence in social networks



during this year has been and will continue to be a priority for the institution of the People's Advocate in the field of media and communication.

### **3.5. Cooperation with Non-Profit Organizations**

Given his personal outstanding contribution in the field of civil society, since he submitted the platform while competing for this office and afterwards during the public hearing, the People's Advocate layed the emphasis on the essential and irreplaceable role of civil society for the protection of rights and freedoms of citizens; accordingly, he did also stress the importance of cooperation between the institution and civil society organizations. Standing loyal to his pledges made in public, once he took office, the People's Advocate identified the civil society (together with media and international community) as one of the pillars and natural allies in fulfilling his constitutional mandate.

In the context of cooperation with the civil society, the actions taken by the People's Advocate in the defence of Roma Community in January – February 2012 are mention-worthy. The first months of that year were characterized by an intensive cooperation between the institution of the People's Advocate and organizations working to protect human rights and groups of interest, as well as by an unreserved cooperation in protecting and promoting the right of the Roma community to have access to social services and schemes of social protection. During those days, the People's Advocate was visited by various humanitarian and social organizations, which gave their contribution in managing the exceptional situation. Here, one should mention the assistance provided by the following organizations and entities: *Terre des Homme, World Vision, Red Cross, Save the Children, Swiss Foundation for Innovation, Romani Baxt Albania, Vodafone Albania, AS@N and many other organizations.* At the same time, representatives of several international organizations in Albania, including the Ambassador of the EU Commission in Tirana, Mr. Ettore Sequi, representatives of the US Embassy, the French and Swiss Embassies and others kept visiting our Institution every day. On the other hand, a large number of media outlets and journalists broadcasted live all what was happening inside the Institution on daily basis.

Another important moment is the open appeal that the People's Advocate made to domestic

and foreign civil society organizations to show their solidarity with the inhabitants who were trapped by the snow in that severe winter. In response to this appeal, a large number of aids were collected, which the organizations and the People's Advocate transported to the country's north in what was called as the "caravan of solidarity"

Right from the very beginning of his work, the People's Advocate did not hesitate to declare in public the human rights of the LGBT community. From that moment onwards, the People's Advocate has never failed for a single moment to come to the assistance of that community whenever it was necessary. Moreover, for the first time in Albania, the Institution drafted a special report on this community, which after extensive consultations with civil society organizations was forwarded to the Parliament.

In order to make the links with civil society organizations as functional as possible and its approach towards them more and more systematic, the staff of the institution was involved from its first months into a great deal of work designed to bring to evidence and identify the civil society organizations acting in the field of human rights. These organizations were grouped according to the target of their activity; then the institution pursued the approach, which focused with priority on marginalized groups, including all kinds of minorities and the persons with limited abilities. The second step led to the conclusion of cooperation agreements with various civil society organizations. Until the end of the first half of 2012, the People's Advocate had signed 100 cooperation agreements with organizations that are acting in the field of the protection of persons with limited abilities, including those with mental and physical problems, women, the Roma, children, LGBT persons, organizations which are monitoring transparency and good governance, both on local and central scale and others. In total, there are already 114 agreements signed - 54 in Tirana and the rest in Shkodra, Durres, Fier, Vlora, Saranda, Gjirokastra, Pogradec, Korca, Kukes and Lezha. The work in this respect is ongoing. The signed agreements envisage cooperation with organizations in the field of mutual interest, exchange of information, lobbying and educational events in favour of various vulnerable groups, joint studies, surveys and others.

Here, it should be also mentioned the fact that the People's Advocate makes consultations, on regular basis, with civil society organizations on all essential issues of concern for the groups of interests that they protect. In view of achieving the best results possible, the People's Advocate has invited civil society organizations to share the legal instrument of

forwarding recommendations, including the opportunity to address the Court of Constitution. An example of such a synergy is the case when the People's Advocate and the National Council of the Persons with Limited Abilities appealed to this Court concerning the payments for persons with limited abilities.

In general lines, the activities conducted by the People's Advocate in cooperation with civil society organizations during 2012 maybe grouped as follows:

### ***Activity for the protection of various vulnerable groups***

Protection of the rights of LGBT community. In March 2012, following a meeting with representatives of LGBT community, the People's Advocate stated that the rights of LGBT persons are human ones and that the institution he headed would use all means and opportunities available to protect and promote these rights. The People's Advocate has continued to stand on the side of this community. In compliance with the Stabilization and Association Agreement between Albania and the EU, as well as the Recommendations of the year 2010 expressed in the Opinion of the EU Commission, the implementation of the principle of an "equal treatment in the labour legislation" has been considered as a fundamental element in the approximation of the Albanian legislation with the EU *acquis communautaire*. On the same lines, the People's Advocate has also sent a recommendation to the Minister of Labour, Social Affairs and Equal Opportunities, proposing an addition to Article 9 of the Law no. 7961/1995 "The Code of Labour in the Republic of Albania". In more concrete terms, it is required to include in point 2 of this article on the causes for discrimination the following: "sexual orientation and gender identity"; finally, this article requires the inclusion of a new paragraph, which would stipulate which side is liable for the burden of proof, in the cases when it is claimed that there has been discrimination against a certain person. The proposal of the People's Advocate was accepted and it will be taken into consideration in the future amendments to the Code of Labour.

Pursuant to the Recommendation No. 11 of the EU Commission and on the basis of proposals that the LGBT community forwarded, the People's Advocate undertook a comparative study on the penal legislation concerning protection safeguards for the members of this community. From the study of the penal legislation of other countries it turns out that

they have developed the concept of the so-called “crime of hatred”, by stipulating this act in the Penal Code ,as a criminal offence or as an aggravating circumstance. To this end, the People’s Advocate has sent a recommendation to the Minister of Justice, proposing that in letter “j” in Article 50 of the Labour Code, it should be added as an aggravating circumstance, when an offence is driven by motives related to sexual orientation. This recommendation was taken into consideration by the Ministry of Justice and in the very first instance of the initiative for the revision of the Penal Code, the above-mentioned proposal will be also examined.

After he was informed by Embassy Pink and LGBT Pro Albania on the concern over some school texts in the Faculty of Law and Medicines of the University of Tirana, which contain discriminatory non-scientific elements and definitions on LGBT community, the People’s Advocate forwarded a recommendation to the Ministry of Education, as the responsible institution to ensure the quality and the compliance with the standards in public and private institutions of higher education in the Republic of Albania; he also urged the said Ministry to adopt instantly all necessary measures for the implementation of the legislation in force on human rights and fundamental freedoms. This recommendation underlines that there exists a strong need to review the teaching curricula and materials. Likewise, it lays the emphasis on the fact that it is the duty of all state structures but not only theirs, to help alleviating the situation concerning this occurrence.

Pursuant to the European Convention of Human Rights and Fundamental Freedoms, which stipulates that the teaching methods, curricula and sources should serve for increasing understanding and the observance for human rights of individuals, albeit their sexual orientation or gender identity, including herewith the special needs of pupils, students, parents and other members of their families; and 2) the recommendation 2010 of the Committee of Ministers of the Council of Europe, which among others underlines that the teaching subjects should not contain unilateral discriminatory and denigrating texts against the LGBT community, the People’s Advocate has recommended to the Ministry of Education and Science the inclusion in the teaching curricula and programs of knowledge and information on the LGBT community; this is designed to ensure the teaching activity in a safe environment, free from violence, offences, social exclusion or inhuman treatment, on the account of sexual orientation and training the academic staff on sexual orientation and gender identity. Likewise, the People’s Advocate has recommended the training of the

academic staff, so that it should not tolerate any form of discrimination on account of sexual affiliation, ensuring protection and discipline in educational institutions.

On 05.09.2012, the People's Advocate sent to the Assembly and to the President of the Republic of Albania, Mr. Bujar Nishani, the Special Report on his activity during the year 2012, concerning the rights of LGBT persons. This Report has not been taken under review by the Assembly yet.

Protection of the rights of Roma Community: Besides accommodating 8 Roma families in the ambiances of our institution, in order to avoid the loss of human lives, especially children, in the circumstances of a severe winter, the People's Advocate, in cooperation and in consultation with Roma and other human rights organizations drafted three recommendations on (1) adoption of measures to enter the members of Roma minority in the registries of civil office and the facilitation of procedures for the transfer of the civil status data in the local units, where they have their new domicile; (2) adoption of measures to open preparation classes for the pre-school education for teaching Albanian language, in order to enable the participation of Roma children at all levels of education and the coordination of work with the Regional Educational Department, in view of raising the awareness of members of Roma Community, so that they would not allow their children abandon school; and (3) adoption of measures to include members of Roma community in the programs of vocational training and to employ persons at working age from Roma community, on continuous basis and with priority; this is aimed at their integration in the social life and the improvement of the social-economic conditions, so that this community would not feel discriminated.

On 06.08.2012, the People's Advocate organized a meeting with representatives from the Roma community and with civil society organizations entitled: "Protect the rights of Roma community" Attending this meeting were also representatives from the US Embassy, the Delegation of the EU Commission, representatives of the "Terre des Hommes", organization "Save the Children" and others. This meeting dwelled on the problems of Roma community and it was designed to show the efforts that the institution of the People's Advocate has made during these months to solve these problems. This meeting did also discuss on the further steps and initiatives aimed at solving the pressing issues that the Roma community is facing. Throughout his activity, the People's Advocate has cooperated closely with Roma

organizations, as “Roma Woman of Tomorrow”, “Romani Baxt Albania”, “Amaro Drom” and other.

**Protection of Women’s Rights.** 2012 was a year characterized by an escalation of family violence, targeting mostly women and inflicting in several cases the loss of their life. Apart from a wide participation at all activities of civil society organizations that deal with the protection of women’s rights, including the economic ones, the People’s Advocate did also draft a special report on violence against women, which was forwarded for their opinion to non-profit organizations, which conduct their activity in the protection of women’s rights and that cooperate closely with the Institution of the People’s Advocate. The above-mentioned organizations have agreed with the report findings and have even provided some suggestions to include some other issues or problems; these suggestions were incorporated in the report. Likewise, this Report was forwarded for advice and opinion to the Ministry of Labour, Social Affairs and Equal Opportunities, Ministry of Interior, Ministry of Education and Science and to the Ministry of Health. It was also sent to the Parliament in July 2012 and it is pending its examination there.

**Protection of Children Rights.** Last year, the People’s Advocate concerted his attention on the most vulnerable groups amidst children. The orphan children have been at the focal point of the activity of the institution and cooperation with with orgaizations that protect their rights has been quite fruitful. Thus, an agreement has been drafted with one of the major organizations that protect and promote orphan children rights - the “National Institute for the Integration of Albanian Orphan Children” headed by Mr. Ilir Cunami.

*The street children and the children who are working* are a wound for the Albanian society, which has not succeeded in its improvement efforts, despite projects from organizations and donors. Their problematics has become a target of all actions taken by the People’s Advocate, who has laid the emphasis on the need for the mobilization of the whole society to put this phenomenon under control.

*The rights of the children locked inside their homes from fear of blood feud* killing has been increasingly at the focus of the daily activity of the People’s Advocate. In the framework of the International Day of Human Rights, 12 children locked for years inside their homes due to blood feud killing from Shkodra region were received in the Institution of the People’s Advocate. Attending this event were also the Ambassador of France, Mrs. Moro, Deputy

Minister of Interior, Mr. Ndoka, Deputy Minister of Justice, Mr. Dobi, Deputy Minister of Education, Mrs. Malaj, representatives of religious communities and civil society. These children did also exhibit their own paintings and recited verses which they had composed. One could notice there the messages that they conveyed against “blood feud” and their own sufferings due to this phenomenon. At the conclusion of the activity, the Organization “Save the Children” distributed souvenirs for the attending children.

**Protection of the Rights of Persons with Limited Abilities (PLA).** The categories of Persons with Limited Abilities constitute in a natural way one of the most vulnerable groups that need the protection and support by the Institution of the People’s Advocate. Right from the beginning, the People’s Advocate started to make evident civil society organizations acting in the defence of these groups. Accordingly, the Institution has established active contacts and cooperation with these organizations, as “The National Council for Limited Abilities”, “The Association of Persons who cannot Hear”, associations that protect the rights of para and tetraplegic persons, those who uphold the rights of persons with mental retardness, “The Association of the Labour Invalids” and others. A meeting of the People’s Advocate with para and tetraplegic persons in the courtyard of the institution, which was attended also by a number of ambassadors accredited in Albania will remain in the memory of all those present there. On this occasion, a ramp was inaugurated, intended to enable the moving autonomy of persons with limited abilities.

Finally, in December 2012, the People’s Advocate made a tour of consultations with all civil society organizations acting in the field of the rights of persons with limited abilities and with prominent personalities and leaders of the major country’s organizations, aimed at selecting a Commissioner from the ranks of persons with limited abilities. After these consultations, two candidacies from this category were forwarded for examination and approval to the Parliament. Through this act, the People’s Advocate intends to reinforce the work for the protection and promotion of citizens’ rights, introducing in this institution the sensibilities of this social group against any sort of taboo and prejudice; it does also intend to provide equal chances to persons with limited abilities but also to the country and society, to our economy, politics and culture, in order to make use of this immeasurable human capital, which has been underestimated to date.

Activity with civil society organizations acting in the field of “blood feud”. On 21

September 2012, a meeting was organized in our institution with civil society organizations acting in the field of the fighting against “blood feud” and in the field of protection of the rights of women and children, which are often affected by this phenomenon. During this communication, ideas were expressed on the mode of action and cooperation in finding out ways and means to combat against such an occurrence. At this event, the People’s Advocate found the support of such organisations, as “Forum for Free Thought”, “Ambassadors of Peace” and others.

Likewise, during the year 2012, the Institution drafted a report designed to make an analysis of such a phenomenon in general and it raised a task force to monitor the activity of the State Police and other state structures, in order to make the fight against “blood feud” functional, in cooperation with civil society organizations. Likewise, the task force is entasked to review case after case, on continuous basis, the monitoring of issues related to the phenomenon of “blood feud”, as the enforcement of Law no. 9389, dated 04.05.2005 “On the establishment and functioning of the “Coordinating Council in the fight against blood feud”.

Protection of the rights of persons deprived from liberty and who are serving the sentence terms in penitentiary institutions. Respect for the citizens’ rights in the pre-detention institutions, detention and state police is one of the main axes of the institution’s work. During the last year, the Special Section of the People’s Advocate and the Unit for the Prevention of Torture have intensified their cooperation with such organizations, as the “Albanian Helsinki Committee”, “The Center for Rehabilitation from Torture”, “The Albanian Centre for Human Rights”, “The European Institute of Tirana”, as well as with coalitions for children rights, which monitor the situation and the rights of minors in the pre-detention and prison system, “The Albanian Center for Children Rights”, “Alo 116” and others. With some of the civil society organizations, we have arranged joint inspections in the premises of the pre-detention and penitentiary institutions.

***Organization of joint conferences with civil society organizations and participation at events hosted by civil society***

The Law on the People’s Advocate stipulates his cooperation with civil society organizations and hosting, at least a national conference on one of the human rights and with the broad



participation of civil society organizations. During the last year, the People's Advocate hosted 4 such conferences which are shown below:

- 1) The People's Advocate with Tirana Legal Aid Society, Ministry of Justice and EURALIUS organized on 23.05.2012 a seminar on the "Perspective of Legal Assistance in Albania". This seminar was also attended by the Ambassador of the EU Delegation in Tirana, Mr. Ettore Sequi. Attending this seminar were also a large number of representatives from civil society organizations. In his address, the People's Advocate stated among others: "Equality before the law, as a constitutional principle extends to all members of the society; it is even more sensitive to apply it in practice, in order to guarantee and protect the rights, freedoms and the integration of vulnerable individuals and groups and marginalized..... Albania intends to become part of the large European family; however, it should join such a family complying with its requirements not only from the institutional point of view, but also in its practice and legislation. The Albanian society and all of us together should show that we observe the principle of the equality before the law, the human rights and fundamental freedoms; we should also show that we uphold the rights of each individual for an impartial and fair trial".
- 2) On 25.06.2012, the People's Advocate and the National Council of Persons with Limited Abilities organized the First National Conference "On the rights of persons with limited abilities" which was also attended by the Ambassador of the EU Delegation in Tirana, Mr. Ettore Sequi, Deputy Minister of Education, Mrs. Nora Malaj, Mr. Sinan Tafaj, civil society organizations, representatives from OSCE, UNDP, UNICEF, and others. During his speech there, the People's Advocate stated that the persons with limited abilities and their rights constitute one of the most important missions of the Institution of the People's Advocate. They are part of the Recommendation 11, as defined by the EU for Albania. Referring to this text, developments in the legislation and policies for persons with limited abilities and their implementation have been a target of discussions, assessments and recommendations of the Institution of the People's Advocate.
- 3) On 11 December 2012, the People's Advocate, in cooperation with the Pink Embassy, the Kingdom of the Netherlands, the Commissioner for the Protection from Discrimination and the Ministry of Labour, Social Affairs and Equal Opportunities hosted the seminar on "The observance of the rights of LGBT community:

Achievements and challenges”. During this gathering held in the framework of the International Day of Human Rights, it was discussed over the special recommendation made by the People’s Advocate, the Plan of Action of the working group set up by the Ministry, the domestic situation of LGBT community and the challenges which the public and LGBT bodies face in terms of the protection and promotion of human rights.

- 4) On 16 October 2012, the People’s Advocate, in cooperation with the Association “Forum for Free Thought” hosted in Shkoder a National Meeting: “Blood feud – a common challenge”. Together with non-governmental organizations, the Institution of the People’s Advocate, while considering the fight against the phenomenon of “blood feud” as one of the largest priorities of its work, called this meeting in order to share ideas and views, sensitize the society over the grave problematics of “blood feud”, its resolute denouncement and the identification of new and efficient forms of work for its eradication.

On 21.11.2012, the People’s Advocate attended the Scientific Conference: “Violence against children in Albania”. In his statement there, the People’s Advocate laid the emphasis on the significance of the protection of children rights and the problems of concern for them. He stated among others that “we notice a lack of legal provisions on the rehabilitation of children who are victims of violence or its eye-witnesses. In the legislation in force there are no special binding provisions for reporting the acts of violence against children both by citizens and members of teams as a whole, at various institutions, schools and others. Likewise, there are special rules of procedures related to cases of denouncing violence against children. The process of decentralization of competences from the central to local government has brought to evidence that in general, local government is not involved in the proper extent in assuming its own responsibility for the effective administration and while monitoring the tasks of institutions that are transferred into the local government units; due to lack of capacities and limited financial possibilities, the local government fails to respond to demands for setting up new services which could respond to the dynamics of children needs.

On 22.11.2012, the People’s Advocate, in cooperation with civil society organizations hosted an event in the margins of the “Children Week” This event took place in the premises

of the institution of the People's Advocate; it was also attended also by the Ambassador of the EU Delegation, Mr. Ettore Sequi, representatives of civil society organizations acting in the field of children rights, children from the village "SOS", from the Orphan's Home and others. In his contribution to this event, the People's Advocate highlighted some of the problems that our country faces regarding the respect for children rights as: (1) there are only 11 children units under operation at regional level and 62 children protection units at municipality and communal level; (2) Failure to convene the National Council for the Protection of Children Rights on regular basis - until now, this Council has met only once; (3) deficiencies concerning monitoring and supporting children who leave the residential institutions of social care at the age of 15; (4) failure to enact the Strategy and Plan of Action, as a tool to make justice for minors and others. Likewise, there are noticed problems concerning lack of coordination and institutionalization of cooperation between central and local government, non-governmental organizations and other state structures. Likewise, it is necessary to take measures for the improvement of the legal framework for the rehabilitation of children, who are either victims or eye-witnesses of violence; binding reporting for the acts of violence against children; establishing special rules of procedures for the cases of reporting violence against children and others.

On 14.06.2012, the People's Advocate attended the First Regional Seminar for the LGBT persons, which was organized by the US Embassy in Tirana, under the auspices of the US State Department and Department of Justice. The People's Advocate, who was also part of the major panel of discussion at this seminar, highlighted the human rights and fundamental freedoms for the LGBT community, which are also included in the EU Recommendation No. 11 "Human Rights and Fundamental Freedoms"; he stated that they are a determining factor Albania's process of EU integration. Mr. Igli Totozani, the People's Advocate underlined, among others, the following: "However, there is also another more invisible, more silent, and more personal principle, which guides the protection against any discrimination: the principle of putting oneself into the "shoes of others", hence in the place of the one who needs assistance. This principle of sensitiveness and human love encourages us to reflect incessantly and intensively; in this way it helps us all to realize how far we have gone in this regard; yet, the battle against homophobia and transphobia is far from being considered as a won case".

### **3.6. Cooperation of the Institution of the People's Advocate with his counterparts and other international organizations**

As it was also emphasized above, the People's Advocate considers international community as an important ally and partner in meeting its objectives. On its part, the international community, which saluted right from the very beginning the transparent and competitive manner of selecting the People's Advocate and the broad-based support from the members of the Albanian Parliament in this respect demonstrated from the outset its support for the institution, not only through statements, but also through their visits to this institution.

In general, the activity of the People's Advocate during 2012 may be structured according to the following main pillars: 1) internationally-sponsored projects; 2) activity in the multilateral, regional, European and international organizations; and 3) activity in the bilateral respect.

#### *i) Projects of the People's Advocate with International Support*

Currently, the Institution of the People's Advocate is sponsored through the project funded by the Danish Government and it is implemented by the Danish Institute for Human Rights entitled "Reinforcement of the Albanian People's Advocate: closer to the local communities, civil society and media" (2012-2015)". This project is made of five main pillars: 1) Drafting a strategic plan with a duration of several years for the Institution; 2) Improvement of the technological system of the (IT) Institution; 3) Strengthening partnership with the civil society and the media; 4\_ Strengthening partnership with local government units; and 5. Improvement of the level of inspections in the pre-detention system and in penitentiary institutions.

The first stage of this project started with the drafting for the first time ever in the history of our institution of the Strategic Plan for the Period 2013-2016. In the framework of this process, two seminars were held with the staff of the People's Advocate. The first session for the formulation of the strategy took place from 4- 5 December 2012. The second session was held from 14- 15 January 2013. Whereas the third one was held from 25- 26 February 2013. The period in-between seminars is a period of work for the officials of the People's Advocate, who for the first time ever have become part of such a process and are working

intensively on drafting this strategic document.

It should be emphasized that drafting this Strategic Plan has been thought to be the most open and transparent process, which would include all actors – civil society, media, state institutions and international organizations, which have been invited to provide their own opinions on outlining the strategy and its substance. Accordingly, apart from the staff of the institution, attending the seminars on the strategy were also representatives from state institutions, civil society, international organizations and other actors. When the first draft of this document would be completed, it will be distributed to the groups of interest, so that they can provide their own feedback.

Parallel with the strategy, work is also going on for upgrading the IT system. In this respect, the Danish Ombudsman has placed an expert of that area in our disposal. Work in this project is to start according to the stages defined in the project document.

Another important project was developed in the Institution of the People's Advocate from the Center for Development and Democratization of Institutions and financed by the UK Embassy in Tirana on: "The further monitoring and improvement of the activity of the People's Advocate". This project is designed to boost the transparency, effectiveness and the efficiency of the institution of the People's Advocate through an increased monitoring by the civil society over the competences of the People's Advocate staff. During the last year, an assessment was made under this project of the staff work; it was based on the survey of files for various issues, after which a preliminary report was also prepared. A two-day seminar was hosted on 20-21 December in the context of this project with the staff of the institution on Article 19 of the Universal Declaration for Human Rights, which deals with the freedom of information.

The EU funded EURALIUS Program gave its support during the last year by financing an expert to make a comprehensive analysis of the institution of the People's Advocate, including the structure, laws, and by-legal acts which govern its activity. The expert's report was considered as a valuable one by the executive staff and some of its recommendations have been already materialized. At the request of the People's Advocate, the expert was contracted again by EURALIUS to assist the institution in updating the Law on the People's Advocate, the methodology of inspections and inquiries and complaint treatment standards.

Upon the initiative of the People's Advocate, the Institution was involved in the Project IPA 2013 designed to assist in enhancing its institutional capacities. Together with the Commissioner for the Protection from Discrimination and the Ministry of Labour, Social Affairs and Equal Opportunities, the Institution has been also engaged in the fight against discrimination. The other events and details of this project are under the process of formulation and approval. Likewise, in the framework of IPA 2014, our Institution and other Albanian institutions are engaged in the formulation and completion of relevant demands concerning benefits from these funding.

As far as the enhancement of staff capacities is concerned, the People's Advocate has plans to use extensively the support offered by the EU Program TAIEX. The working groups have been already established, the fields of training and cooperation needs have been also identified and there is an agreement in place with a number of counterpart institutions for receiving and training these groups of officials, as the Guardian of Human Rights in France, The General Inspector of the Penitentiary Institutions in France, the Spanish and the Danish Ombudsman and others. The applications have been already submitted to TAIEX and it is expected that the first groups would leave for the first study visit in the counterpart institutions in the first months of 2013.

In order to have a more long – term approach regarding the exchange of experience and the improvement of its working systems, the People's Advocate has drafted a request for a twinning project with a counterpart institution in one of the EU states; he has also submitted this request to the Ministry of European Integration and to the Office of the EU Delegation in Tirana for examination and funding possibilities.

ii) Regional and International Cooperation and the inclusion in the regional and international networks

From the first days of the activity of the institution and throughout the year 2012, different ambassadors have visited the People's Advocate; they have extended to him the high appreciation for the transparent and competitive mode of selection and have assured him for their ongoing support in fulfilling his constitutional mandate. We may mention here the visit of the Ambassador of the Delegation of the EU Commission, **Mr. Ettore Sequi**, the US

Ambassador, **Mr. Alexander Arvizu**, the Ambassador of the OSCE Presence, **Mr. Eugen Wollfarth**, the French Ambassador, **Mrs. Christine Moro**, the UK Ambassador, **Mrs. Fiona Mellwham**, Ambassador of the Swiss Confederation, **Mrs. Yvana Enzler**, Ambassador of Germany, **Mrs. Carola Müller –Holtkemper**, The Austrizian Ambassador, **Mr. Florian Raunig**, the Head of the Office of the Council of Europe, **Mr. Marco Leidekker** and others.

*Working visits by international representatives to the institution of the People's Advocate.*

On 07.02.2012, **Mr. Stefano Sannino**, Director General for Enlargement of the EU Commission and **Mr. Ettore Sequi** visited the office of the People's Advocate in Tirana; they reconfirmed their support for the institution, as one of the pillars of human rights, democratisation and improvement of governance.

On 3 may 2012, the Commissioner for Enlargement of the EU Commission, **Mr. Stefan Fule**, accompanied by **Mr. Stefano Sannino** and Ambassador **Ettore Sequi**, in the margins of the visit of the EU Commissioner in Albania visited the office of the People's Advocate. Among others, Commissioner Fule said that he was honored and he appreciates all what the institution of the People's Advocate has been doing during these years. He went on by saying that "The goal of my visit in this institution is to extend the full-fledged support of the EU Commission for you and your colleagues and to underscore the importance of your work in the EU enlargement agenda and its integration.

On 06.09.2012, the People's Advocate received in his office **Mr. Nils Muiznieks, Commissioner for Human Rights in the Council of Europe**. During this meeting they discussed on the state of play of human rights in Albania and on the role of the institution of the People's Advocate for the protection and promotion of these rights. On his part, the People's Advocate gave an overview of the activity of the institution for the protection of human rights and briefed Mr. Muiznieks on some special reports on the situation of human riughts which the institution of the People's Advocate has prepared during 2012. Mr. Muiznieks congratulated the People's Advocate for the work done by this institution for the protection and promotion of human rights.

On 07.09.2012, the **Minister for Development and Cooperation of the Kingdom of Denmark, Mr. Christian Friis Bach** visited our institution. The People's Advocate, Mr.

Igli Totozani extended to the Danish Minister the gratitude for the ongoing support that the Danish state has been providing from the founding of this institution and assured him for the utmost commitment by the institution he chairs and himself that the Danish project will be fulfilled successfully and that every cent will be spent effectively and in a transparent way.

On 05.10.2012, **Mr. Lamberto Zannieri, Secretary General of the OSCE** visited the institution of the People's Advocate, accompanied by Ambassador Eugen Wollfarth and a part of his staff. Mr. Zannieri congratulated Mr. Totozani for the standards he is establishing with his work and for his decision to stay only one term in office at the head of this institution. Mr. Lamberto Zannieri emphasized that the OSCE supports the activities of the People's Advocate and considers it as a very important institution in the protection of human rights. He pointed out that "from the moment of your election hitherto you have been contributing in boosting the prestige of this institution. We do highly appreciate your personal initiatives for the issues you dealt with during your activity. You have been supporting the issues related to vulnerable groups, which are also a priority for the OSCE and we are glad that we have defined the same priorities. We shall continue to support your institution and you, in person".

The Danish Ombudsman is the institution that has provided a straightforward contribution in the founding of the institution of People's Advocate in Albania. His support continued until 2005, whereas in 2011, the Danish Foreign Ministry approved the continuation of the assistance for the People's Advocate in a new context - that of the further consolidation of this institution. During his visit in Tirana in May 2012, the **Danish Ombudsman, Mr. Jørgen Steen Sørensen**, who was newly appointed at the head of this office congratulated his Albanian counterpart and assured him for the continuity of the cooperation in the new conditions of the enhancement of the activity of the People's Advocate in Albania.

On the occasion the publication of the Progress Report 2012 for Albania by the EU Commission, the People's Advocate was visited by **Mr. Vassilis Maragos**, Head of the Unit for Albania in the Directorate General for Enlargement in the EU Commission, accompanied by the Chief of the Political, Economic and Information Section of the Delegation of the EU Commission in Tirana, **Mr. Clive Rumbold**. During this meeting, they talked on the importance of the institution in the context of Albania's integration process; they laid the emphasis on reinforcing the activity of the People's Advocate in protecting human rights and



fundamental freedoms through continuous and correct monitoring of the public administration bodies and structures.

On 06.06.2012, the People's Advocate received in his office the **Deputy Directress of the Program for Europe and Central Asia of "Amnesty International", Mrs. Jezerca Tigani**. In her statement, Mrs. Tigani praised the work done by the People's Advocate during these months, stating that she has followed attentively the positions of the People's Advocate on the issue of Roma families, the LGBT community and in the case of women violated in a residential center in Kamza. The People's Advocate gave a detailed account of all interventions for the above-mentioned issues. During this meeting, they exchanged information over the problematics and issues related to the situation of human rights in Albania. At this meeting, they also agreed to establish bridges of continuous cooperation and communication between the People's Advocate and "Amnesty International".

On 05.12.2012 the People's Advocate two US experts for Victims of Violence and Eye-Witness to the Federal Prosecution Offices, **Mr. Eric Day** and **Mrs. Michelle Scott**, at the request of the latter. The OPDAT experts of the US Department of Justice visited our country in order to make an accurate evaluation of the situation of the victims of violence and justice collaborators in Albania as well as on the planning of future events by OPDAT in this area. Mr. Totozani informed the OPDAT experts on the activity of the institution of the People's Advocate and, specifically, on the experience gathered while working with aggrieved parties and justice collaborators. Both parties expressed their will to continue the mutual communication and contacts in this field.

### ***Visits and the Presence of the People's Advocate at Regional and Multilateral events***

At the invitation of the EU Commission, the People's Advocate made an official three – day **visit in Brussels, from 18 - 20 January 2012**. He was received in a special working meeting with the Unit responsible for Albania and with **Mr. Vassilis Maragos**, Head of this Unit in the Directorate General for Enlargement in the EU Commission. During this meeting, they discussed in a detailed way on the situation in Albania and on the activity of the People's Advocate in the process of democratization and the consolidation of good governance. The People's Advocate, Mr. Totozani was also received by **Mr. Pierre Mirel**, Director of the

Unit for Albania, Bosnia-Herzegovina, Montenegro and Kosovo in the Directorate for Enlargement and by the Director for Enlargement in the EU Commission, **Mr. Stefano Sannino**.

On his way back home, Mr. Totozani made a stop in Strasbourg, where he was received by different officials of the Council of Europe. He did also have a meeting with the staff of the European Ombudsman.

In April 2012, the **International Institute of Ombudsman (IOI)** published two articles in the e-newspaper and its official website, which reflect and commend the work of the People's Advocate, with regard to the activity and its role on the issue of LGBT and Roma community.

On 22.07.2012, though their **Ambassador in OSCE, Mr. Ian Kelly**, the USA issued a statement to extend the welcome to Ambassador Wollfarth in the Permanent Council. Among others, in his statement, Ambassador Kelly supported the work of the People's Advocate, which as he mentioned, it is worth appreciating; at the same time, he called on the Albanian authorities to pay attention to the statements and recommendations made by the People's Advocate. He stated as follows:

“The election of the People's Advocate has encouraged us to continue the work for safeguarding the human rights of the Albanian people. He should be commended for his work done to date and we urge the Albanian authorities to pay attention to his statements and recommendations”.

From **31 May – 1 June 2012**, the People's Advocate was invited to attend a round table, organized by the **Committee of the Council of Europe against Intolerance and Discrimination (ECRI) in Strasbourg**. This event was attended by heads of national institutions which monitor and protect human rights.

Part of the agenda of the People's Advocate was also the meeting with Mrs. Claudia Luciani, Deputy Directress General in the Directorate for Programs in the Council of Europe. During this meeting, they discussed on the possibilities of cooperation in the field of training, development of the capacities of the institution of the People's Advocate and improvement of its methodology and work. Given the importance which the People's Advocate attaches to the acquaintance of his staff with international instruments and conventions for the

protection of human rights, the People's Advocate has repeatedly urged his staff to make these documents an inseparable part of their daily work. The specialization of the staff for certain groups of human rights is an important measure in getting familiar with these documents in the day - to - day work. In this regard, the institution of the People's Advocate welcomed the latest report of the US State Department on the situation of human rights in Albania. He considered it as an extremely important working document in the field of protecting human rights and fundamental freedoms. The Report devotes special attention to the rights which constitute the scope of the activity of the People's Advocate, as violence in the family, abuses with children and violence in the police stations and prisons, discrimination over ethnic basis, gender identity, sexual orientation and others.

**From 11 - 12 June, the Sixth Session of the Association of Ombudsmen of the Mediterranean took place in Paris (Association des Ombudsmans de la Mediterranee/AOM)** which discussed on the following topic: "Reinforcing the Ombudsman's role".

In the course of this meeting, there were held discussions and exchanged the experience on the authority of the Ombudsmen *vis a vis* the public administration, its role in promoting and protecting the rights of vulnerable groups, as well as the impact of this institution in public education and information on human rights. In the meeting held in Paris, they did also elect the leading bodies of this Association, the Management Board and the Administrative Council. The People's Advocate of Albania was elected with the unanimous vote of those present in this meeting as a member of the Administrative Council composed of 5 persons. The Administrative Council is an important body of this Organization, which discusses and defines its priorities during a certain calendar period of time, the general lines of the activity and other periodic events.

**From 05 -07 June, a three – day event took place in the seat of Albanian People's Advocate seat with the participation of Torture Prevention Units from Albania, Macedonia, Serbia and Slovenia.** This event, which was also supported by the Council of Europe and co-sponsored by the EU Commission was held in the form of exchanging experiences among Balkan experts and as a joint experiment in the surroundings of the Psychiatric Hospital in Tirana.

**The Civil Rights Defender** (CRD - <http://www.civilrightsdefenders.org/>) with its seat in Stockholm distributed a questionnaire to non-profit organizations in the Balkan region; the

latter were asked to provide their response on the role of the People's Advocate, particularly on their cooperation with this institution, their judgment over its activity and the impact of "joint advocacy (institution + NGO) in the relevant societies. The questionnaire of this well-known organization of human rights was distributed in at least 40 NGOs in the countries of the region, including Serbia, Albania, Kosovo and Bosnia-Herzegovina. Based on a system of evaluation by points, the interviewed NGOs have given their own responses over the role of the institution of the People's Advocate. From the results obtained through this questionnaire, the People's Advocate of Albania had the highest level of evaluation by points from the NGOs involved. The CRD presented these results to a special conference entitled "Transparency and accountability in the Public Administration" with the participation of ombudsmen invited by countries of Europe and the region. This Conference was held in Stockholm, from 12- 14 September 2012; it was hosted by the Directorate General of Enlargement of the EU Commission, in the context of Program TAIEX.

In his capacity as co-organizer, the People's Advocate hosted in Tirana on 17.09.2012 the Round Table of Ombudsmen of the Region, in the context of the project: "The promotion of human rights and protection of minorities in Southeast Europe" which was sponsored by the Council of Europe and the EU. The goal of the events in the framework of this project is to strengthen both the work and cooperation among the ombudsmen of the countries of the region.

The Permanent Representative of OSCE in Tirana, Mr. Eugen Wollfarth, in his Report on Albania submitted on 20.09.2012 to the Permanent Council of OSCE, has underlined, among others, the significance of the work of the People's Advocate and has appealed to the authorities on the proper implementation of his recommendations. Among others, the report states as follows: "With regard to the People's Advocate, the election in December 2011 by the Assembly of Albania of the new People's Advocate, following a transparent process of selection of candidates from the Socialist Party did has had a very positive impact. It has increased the public awareness on the issues of discrimination of vulnerable groups, as for instance in the case of protecting homeless Roma families in Tirana. He has also made comments on various draft-laws and recommendations concerning erroneous administrative practices and maltreatment in penitentiary institutions. Nonetheless, it seems that there is still a lack of good will by authorities for the proper implementation of the recommendations tabled by the People's Advocate.

On the occasion of the Centenary of the Independence of Albania, the People's Advocate made all efforts to hold the rotating Conference of Francophone Ombudsmen and Mediators in Albania; this was designed to enhance the extent of knowledge and image of our country abroad. The Conference entitled "Strengthening the powers of Mediators and Ombudsmen in protecting the rights of children" was held from 23-24 October 2012 in Tirana. It was attended by 44 ombudsman and their representatives and mediators from the francophone countries. Attending this Conference were also the President of the Association of Ombudsmen and Mediators of La Francophonie, Mr. Serigne Diop and the Secretary General of the Organization of Ombudsmen and Mediators of the Francophone Countries, simultaneously Guardian of Human Rights in France, Mr. Dominique Baudis. The participants were welcomed by the Prime Minister of Albania, Mr. Sali Berisha, who also hosted an official dinner for the invitees in the Palace of Brigades.

### ***Membership to international organizations and networks***

Currently, the People's Advocate is a full-fledged member in 6 International Ombudsman organizations, which are shown below:

1. International Ombudsman Institute (IOI) founded in 1978, member from the year 2000.
2. European Ombudsman Institute (EOI) founded in 1988, member from the year 2000.
3. Association of Ombudsmen and Mediators of La Francophonie (AOMF), founded in 1998, member from the year 2000.
4. US Ombudsman Organization (USOA) founded in 1977, member from the year 2006.
5. International Ombudsman Association (IOA) founded in 1977, member from the year 2007.
6. Association of Ombudsmen of Mediterranean (AOM), founded in 2008, member

from the year 2009.

Recently, the People's Advocate began his demarches for membership to the European Network of Ombudsmen for Children. Contacts have been already established with the Secretariat and we are waiting to receive the requirements we have to meet for such a membership.

Another initiative where the People's Advocate is involved is the establishment of the Regional Network of Torture Prevention Units of South East Europe. The initiative is also supported by OSCE and the Council of Europe.

### ***Bilateral Activity***

The People's Advocate has established and maintains direct bilateral contacts with the Ombudsman of Kosovo, Montenegro, Serbia, Greece and Macedonia. The same applies to the members of his staff. The officials of the Torture Prevention Mechanism, in particular, have an active interaction with their counterparts of other countries.

At the invitation of the Guardian of Human Rights in France, Mr. Dominique Baudis, the People's Advocate visited this Institution during the period 7-9 March 2012. After the official meeting with Mr. Baudis, during this three – day visit, the People's Advocate held separate meetings with Mrs. Stephanie Carrere, Special Advisor for International Issues, Mrs. Maryvonne Lyazid, Advisor of the College for the Fight against Discrimination and Promotion of Equality and with a number of senior officials of the departments for the protection of human rights in France.

At the invitation of his Danish counterpart, the People's Advocate paid a visit to the Danish Ombudsman from 26-29 September 2012. During this meeting, they agreed on the major issues on which the Danish Ombudsman will continue to offer his bilateral support for the institution of the People's Advocate. This includes visits, exchange of expertise, trainings and joint inspections. During this visit, the People's Advocate met with the Senior Advisor in the Danish Foreign Ministry with whom he talked on issues of Albania's progress in the EU integration, which have a direct relevance to the activity of the People's Advocate.

On 19.09.2012, the People's Advocate met in his office with the counterparts from Macedonia, Mr. Ixhet Memeti and from Montenegro, Mr. Šucko Bakovic. In the start of the talks, Mr. Totozani made a description of the activity of the Albanian People's Advocate, the contribution that this institution has been providing to Albania's integration process and Mr. Totozani's philosophy at the head of this institution. With regard to the relations between the two institutions, during the meeting they also spoke on concrete and continuous cooperation among the institutions of the People's Advocate, the Ombudsman of Macedonia and Montenegro. They mentioned the possibility for bilateral agreements between the parties, the exchange of expertise, the exchange of annual reports, holding annual meetings on certain issues affecting human rights and others. On their part, both Mr. Memeti and Mr. Bakovic expressed the gratitude for the invitation and commended the valuable exchange of expertise and cooperation among the homologue institutions in the region for reinforcing the role of human rights institutions. Other joint meetings will be held in the future among these parties, which will be formalized in concrete agreements.

## **CHAPTER IV**

### **General information on the activity of the People's Advocate**

#### **4.1. Organizational structure of the Institution of the People's Advocate and its reformation during 2012**

Based on Article 35 of Law no. 8454, dated 04.02.1999 "On the People's Advocate" as amended, Article 6 and 7 of the Internal Regulations of this Institution, and in accordance with the priorities and vision of the People's Advocate, we are introducing, as follows, the new organizational structure of this Institution.

##### ***Short Overview***

The new organizational structure of the People's Advocate was approved in September 2012 and aims at regulating and establishing new relations, based on the role and functions of the Institution of the People's Advocate, sanctioned by the abovementioned law, as well as the Institution's new vision to undertake a more proactive role in protection and promotion of Human Rights both in the public administration institutions and in Albania. As a result, modernization and strengthening of Institution's capacities was necessary, improving and making the internal policies and practices more efficient and more transparent, as well as by continually increasing the number of experts and their professional knowledge and skills to provide a qualitative and professional service.

This structure was drafted and approved at a time when the Institution, for more than three years, exercised its activity in the absence of a head elected by the Assembly, and consequently legal space and competences of the Acting People's Advocate were very limited and the organizational structure of the Institution did not reflect the vision of a monocratic institution.

To draft the new structure of the Institution of the People's Advocate, a working group was set up, which, after analyzing carefully the needs and priorities of the institution, the flux and



new tendency of the problems, bringing new practices to the People's Advocate, recommendations of the international institutions, local government, the Assembly and civil society, governing legal framework, as well as the financial resources, managed to propose to the Head of the Institution the new institutional structure. In concrete terms, in drafting the organizational structure of the Institution of the People's Advocate, the working group was based on:

- The People's Assembly resolution "On Assessment of the Activity of the Institution of the People's Advocate for 2011".
- Orientation and vision of the People's Advocate.
- Management analysis of the institution's financial and human resources.
- The report and decision no. 19, dated 14.05.2012 of the Civil Service Commission.
- The EURALIUS mission report.
- Law no. 8454, dated 04.02.1999, supplemented by law no. 8600 dated 10.04.2000, as amended by law no. 9398, dated 12.05.2005.
- The Institution's Internal Regulations.
- Law no. 8549, dated 11.11.1999 "Status of Civil Servant".
- Other legal and sublegal acts in the field of salaries, drafting and approval of the organizational structure.

After evaluating the working group proposal, by Order no. 98, dated 24.09.2012, the People's Advocate approved the Institution's new organizational structure.

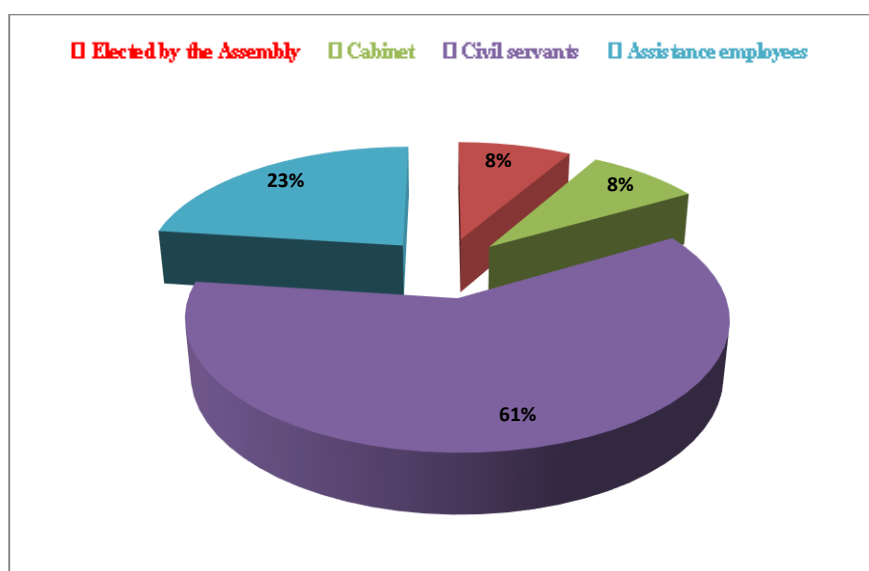
### ***Reform of the organizational structure of the People's Advocate during 2012***

The previous institution's structure reflected the problems of a limited mandate of the acting head of the Institution and the budgetary funds approved by the annual budgetary law of the

People's Advocate. The old structure had the following employee groups based on the following categories:

- 4 employees elected by the Assembly (1 People's Advocate + 3 Commissioners)
- 4 cabinet employees (counselors and director)
- 29 employees as civil servants
- 11 employees in the assistance sector

*Graphical presentation: the old structure*



Whereas the new structure addresses several problems. It aims at regulating relations between the “supporting sector” and the sector of implementation of institutional policies in favor of the latter. The organizational structure in force also improves the internal relations amongst employees with the civil servant status. Out of 33 employees with this status, 20 of them are assistant commissioners, divided into three sections and the National Mechanism for Prevention of Torture:

- **Section of administrative organs:** Deals with complains or requests to organs of the central administration, local government and third parties acting on their account.

- **Section of special services:** Deals with complaints or requests to the police, secret service, prisons, armed forces and judicial power.
- **General section:** Treats complaints or requests that are not included in the first two sections, collaborates with non-governmental organizations and carries out studies in the field of implementation of human rights and freedoms.
- **National Mechanism on Prevention of Torture:** enjoys competences to observe regularly treatment of individuals, who have been deprived of their freedom in the countries of detainment, arrest or imprisonment, and it submits specifically reports and recommendations to the relevant institutions, to strengthen, when it is necessary, the protection of individuals and to prevent torture, and cruel, degrading or inhuman punishment or treatment.

The report and decision of the Civil Service Commission (CSC), which refers to the old structure, addresses a problem that has to do with the institution's internal organization. The report observes that, "On one hand, there is the internal regulations of the work in the institution, which is approved by an internal order of the People's Advocate (an administrative act), which in this case determines the subordination (of the assistant commissioners) by the Commissioner, and on the other hand, there is the Law on Civil Service (legal document), which places this category of employees under the hierarchy of the General Secretary..." (pg. 4, CSC report) and further on, the report comes up with the conclusion that:

"Determination of the structure in conformity to the law on civil service does not bring about any legal obstacles for the assistant commissioners to carry out their duties being under procedural (technical-methodical) subordination from the Commissioners. On the contrary, problems are brought about by a direct subordination of the civil servant from work positions that are not in the civil service..." (pg. 5, KSHC service).

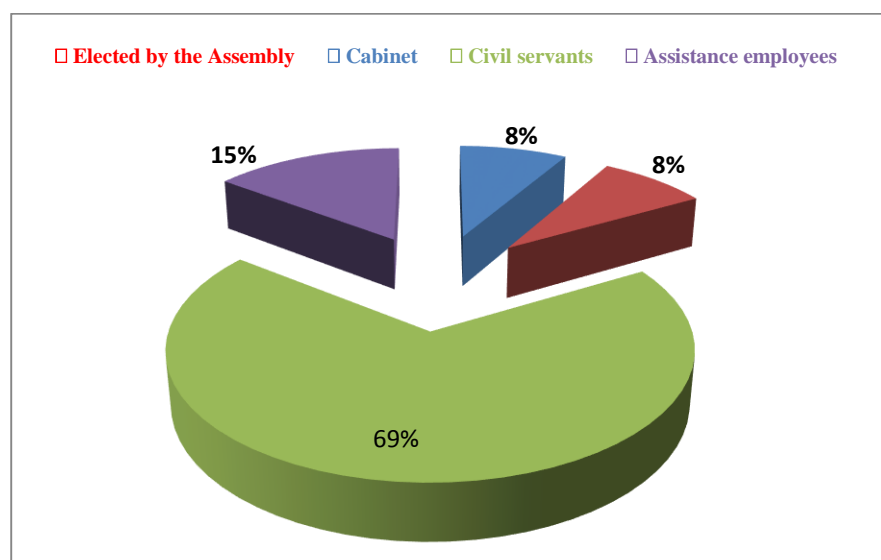
The proposed structures aims at exactly resolving this "conflict", placing under the subordination of the General Secretary all the employees with the civil servant status, related to procedures of recruitment, disciplinary measures, proposals for termination of employment, evaluation of work performance, volume of work, etc.

In addition, the new structure improves essentially the relation between the supporting sector and the sector of the implementation of policies in favor of the last grouping. Based on the new structure we have the following distribution of positions in the institution.

- 4 employees elected by the Assembly (1 People's Advocate + 3 Commissioners)
- 4 cabinet employees
- 33 employees with a civil servant status
- 7 assistant employees

The new structure preserves the same division of sections, but the number of assistant commissioners is increased. Referring to the approved structure, according to the categories of employees, we have the following graphical division:

***Graphical presentation: current structure***



If we compare both structures, it can be easily seen that there is considerable improvement of the group of employees with the civil servant status in relation to employees, whose work relations are regulated by labour code, and improvement of the relations between the

employee groups that could be classified in the policy implementation group with the supporting group. Thus, our institution resolves also the recommendations of the Civil Service Commission referring to the old structure, we cite:

“The regular relations between work positions with a managerial, leading nature and the positions with an executive nature were not observed both towards a) organization of structure, directory and sectors, and also b) number of positions needed to set up these structure units”.

In addition, the above report finds that, in four cases, the institution employees performed their activity in the conditions of a temporary employment and their work relations were regulated based on the labour code, because the employees had not competed before, in spite of their work positions requiring that employees have the status of civil servant. Their nomination in these positions without competition, according to KSHC, was a violation of the law on civil servants, which provides that appointment is done through competition only, based on the principle of equality of competitors. On four cases found, all legal steps were taken and the legality of work relations was resolved in accordance with the civil servant status.

Meanwhile, the new organizational structure also addresses and resolves the irregularities in the appointment and establishment of structures, in particular in the smallest cell of the pyramid as this sector is.

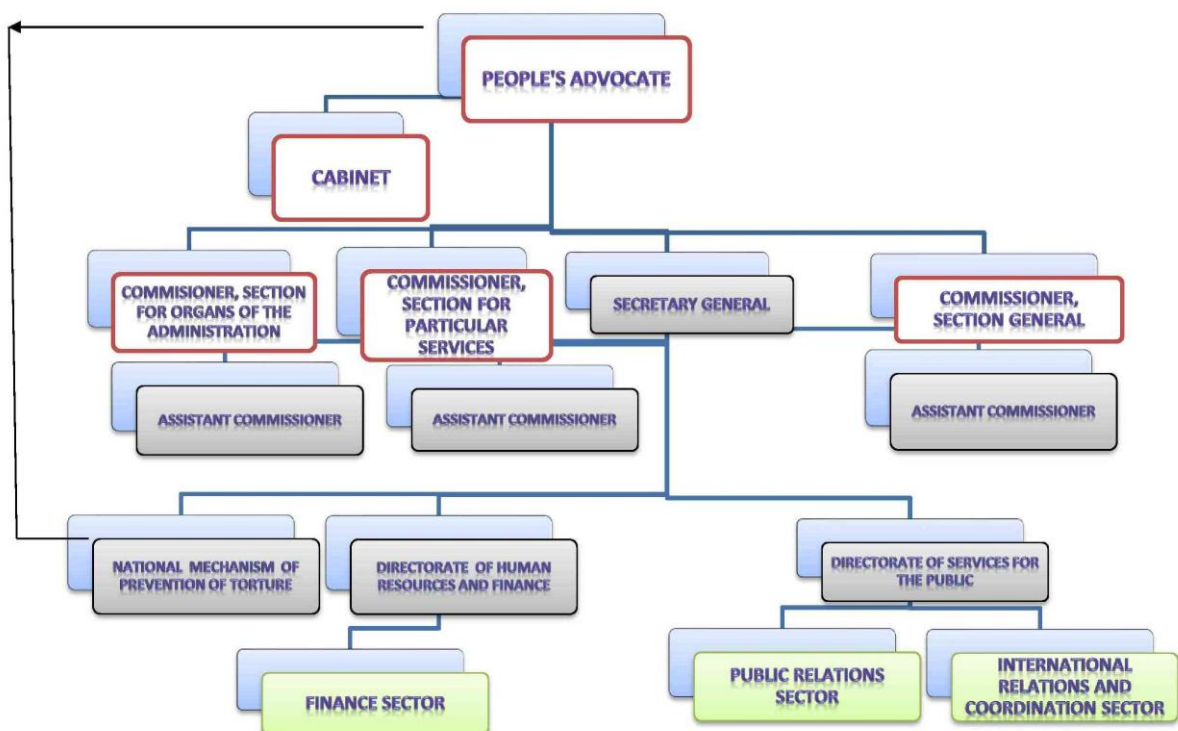
In the old structure, we had four sector responsible employees, who had no one under subordination:

- 1) Responsible for the protocol
- 2) Responsible for IT
- 3) Responsible of reception of people
- 4) Responsible for the finance

Thus, according to the old structure, there existed 4 sectors and 4 sector responsible persons, but no specialists. Just as we also had a director, the information directory, Public and International Relations, with three sector heads and one specialist – all unarranged.

The new structure definitely resolves these problems and strengthens the Institution in function of duties and the law that regulates the activity of the Institution of the People's Advocate. In accordance with EURALIUS Mission recommendations, strengthening of relations with citizens and the addressing, and filtering of issues that citizens face, take on special importance. In addition, the Institution of the People's Advocate, especially during last year, has expanded its collaboration with counterpart offices outside of the country and is a member of many international ombudsman organizations. Coordination of activities and following commitments requires financial and human resources. For this reason, and also because there are many duties of the People's Advocate Institution, related to the process of integration and particularly meeting the criteria to get the candidate country status to the European Union, the establishment of a sector of foreign relations was deemed necessary and important. For the abovementioned reasons, the Directory of Service for Citizens, made up of the Sector of Reception of Citizens and the Sector of Foreign Relations, was established. The Sector of Reception of Citizens examines the requests, selects and categorizes them, and offers advice and orientation to the citizens on cases not directly related to the functions and duties that law has charged the People's Advocate. Meanwhile, Sector of Foreign Relations shall be responsible for the above given components, and it will coordinate the implementation of the project supported by the Danish Government "Strengthening of the Albanian People's Advocate: Closer to local communities, civil society and media (2012-2015)".

Currently, the Institution of the People's Advocate, with the support of the Danish Project and in collaboration with our partners, is drafting the Institution's Strategic Plan for the period 2013-2016, which will provide orientation and the future activities of the institution. In accordance with this strategic document, other interventions will be needed both towards the institution's structure, the internal regulations, bigger support and engagement of financial and human resources, and above all, particular support from the Assembly of Albania.



No.	Denomination	Employee
I	People's Advocate	(1)
II	Cabinet	(5)
	Director	1
	Counselor	3
	Assistant/Secretary	1
III	Section of Administrative Organs	(8)
	Commissioner	1
	Assistant Commissioner	7
IV	Section of Special Services	(5)

	Commissioner	1
	Assistant Commissioner	4
V	<b>General Section</b>	<b>(6)</b>
	Commissioner	1
	Assistant Commissioner	5
VI	<b>General Secretary</b>	<b>(1)</b>
VII	<b>National Mechanism for Prevention of Torture</b>	<b>(5)</b>
	Head/Assistant Commissioner	1
	Assistant Commissioner	4
VIII	<b>Directory of Personnel and Finance</b>	<b>(10)</b>
	Director	1
	Responsible for Finance	1
	Administration Specialist	1
	Protocol Specialist, Secretary of SP/Commissioners, Archivist	2
	Information Employee, storage	1
	Driver	3
	Cleaning employee	1
IX	<b>Directory of Service to Citizens</b>	<b>(7)</b>
	Director/assistant commissioner	1
	Responsible (IT/Citizen Reception-Foreign Relations)	2
	Specialist of Service to Citizens	2
	Specialist of coordination, foreign relations and integration	2



#### 4.2. Budget of Institution for 2012

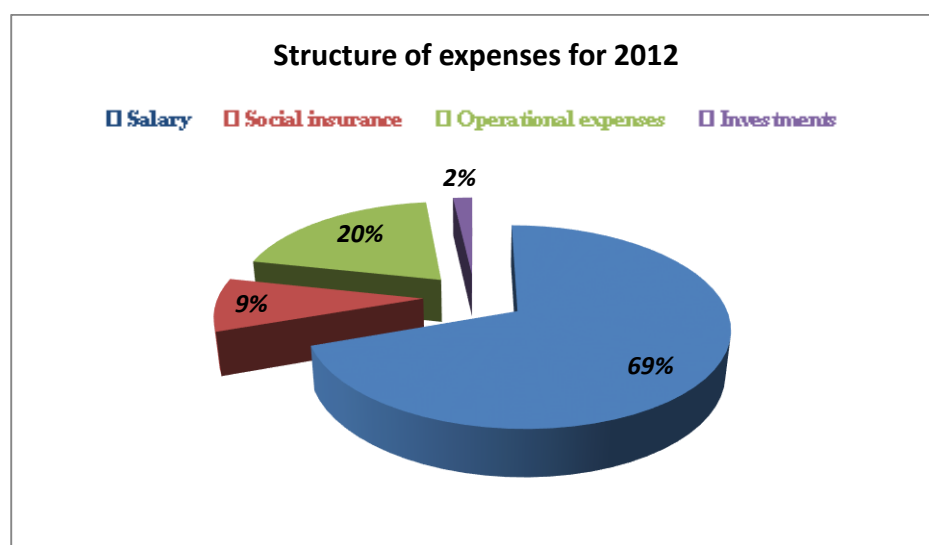
For 2012, the Institution of the People's Advocate, in application of Law no. 10487, dated 05.12.2011 "On Budget of 2012", has been allocated the budget at the amount of 80,211,000 ALL. In June last year, based on our request, the Council of Ministers accorded the amount of 2.7 million ALL to the Institution of the People's Advocate, from the state reserve fund, making the institution's budget for 2012 equal to 83,929,300 ALL.

The following table gives a view of the division of budgetary expenses according to economic categories of expenses and the comparative ones:

Acc. No.	Denomination	Initial Plan	Addition	Modified Plan	Fact
600	Wages/salaries	58,061,000	400,000	58,461,000	57,385,328
601	Insurance	7,350,000		7,350,000	7,120,725
602	Operational Expenses	13,000,000	2,744,800	15,744,800	15,090,854
604	Internal Transfers		573,500	753,500	753,500
605	Membership Fee	300,000		300,000	288,822
231	Investments (equipment)	904,996		904,996	904,574
231	Investments (external work)	595,004		595,004	595,004
	<b>Total (ALL)</b>	<b>80,211,000</b>	<b>3,718,300</b>	<b>83,929,300</b>	<b>81,958,807</b>

### Institutional budget for 2012 according to budget lines 000 Lek

no.	Line	Planned	Factual	in %	difference
1	Wages/salaries	58,400	57,385	98%	-1015
2	Social insurance	7,350	7,120	97%	-230
3	Operational expenses	16,617	15,952	96%	-665
4	Investments	1,500	1,500	100%	0
	Total	83,867	81,957	98%	-1910



The salary fund reflects the structure and organnigramme of the institution, internal and external movements and is realized by 98 percent. In 2012, the average number of staff was 45, from the overall 48 staff approved in the above-mentioned Law.

Operational expenses approved for our institution were in the amount of Albanian Lek (ALL) 15,744,800, while at the end of the year operational expenses were realized by 96 percent of the plan. For 2012, operational expenses were used for paying the electricity, water, telephone communication (Albtelecom, Vodafon, AMC) bills, internet, newspaper subscriptions, postal services, oil, spare parts for vehicles, per diems for travels in the country and abroad, photocopy and printer maintenance services, expenses for reception of foreign

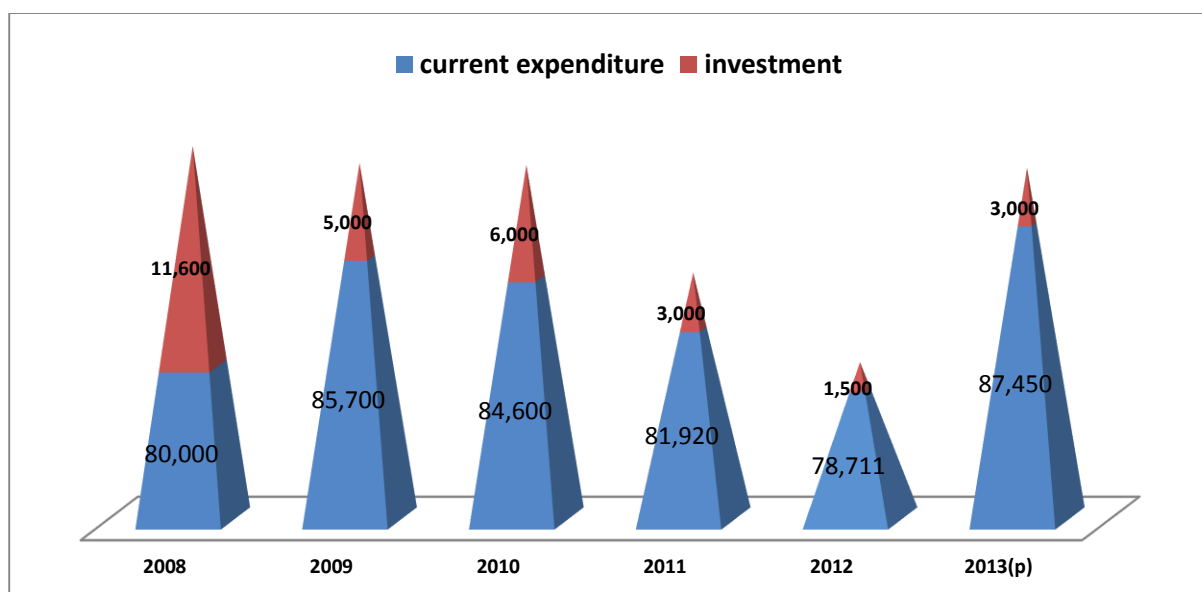
delegations, purchase of stationeries, etc. The overwhelming part of the expenses for our institution have gone for spent on per diems, fuel and stationeries.

It was for the first time that the Conference of Ombudsmen of Francophone Countries was held in Tirana in October of 2012, on the eve of Albania's centenary independence. In order to cover the expenses related to the activity, the People's Advocate, through the DCM no. 394, dated 20.06.2012, got a fund of Albanian Lek 2.74, which was used for the successful organization of the conference, including renting of the conference room, reception of delegations, logistic materials and meals for the members of the delegations. About 40 delegations from different world countries attended the Conference.

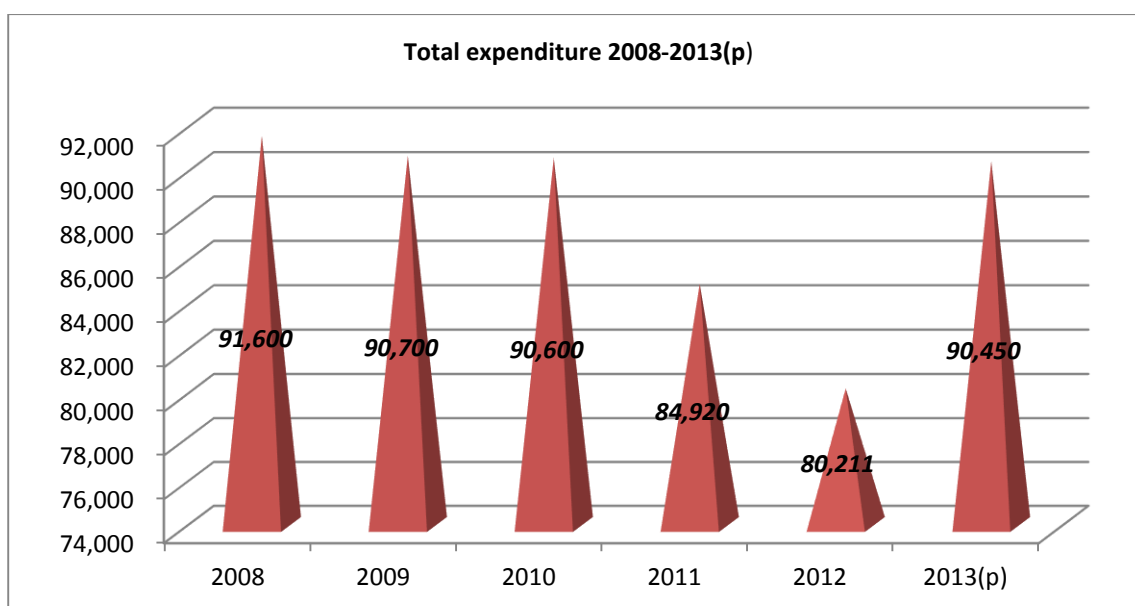
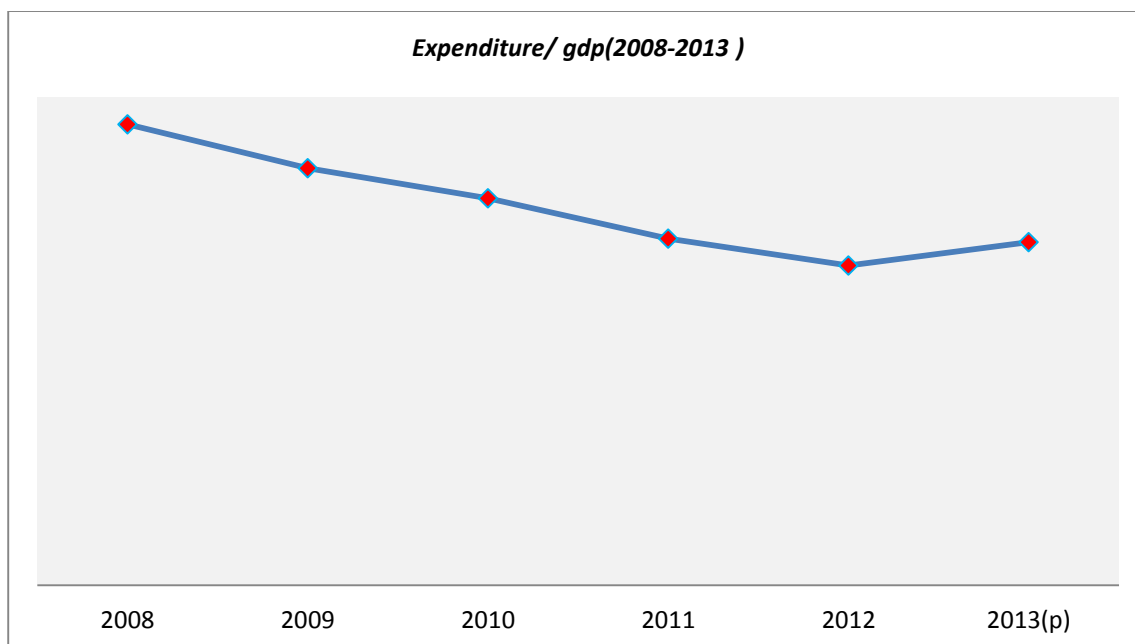
Also, being a member of many international organizations, such as Association des Ombudsmans et Mediateurs de la Francophonie (AOMF), European Ombudsman Institute (EOI), Association of Mediterranean Ombudsmen (AMO), International Ombudsman Institute (IOI), a part of the budget is used for paying the membership fees. Membership fees are paid in the due time and are reflected in the table above.

Investments for 2012 were realized by 100 percent. The budget allocated for investments (see table above) is used as follows: ALL 595,004 for external infrastructure works (ramps for the disabled as well as an investment facilitating communication of citizens in the institution, new entry) and ALL 904,574 (in equipment).

Below follows a chart containing the budget of the People's Advocate Office for the period of 2008-2013 (plan).



The chart below contains the budget of the People's Advocate for the years of 2008 -2013 (a plan vis-à-vis the PBB), while, as easily read by the graphic, the People's Advocate Office budget vis-à-vis the internal net production has decreased from one year to the other (except for 2013). Compared to 2008, the budget for 2013 (plan) is 2.2 points of percentage less, while the work load has grown significantly, as have the obligations towards the integration processes, which, of course, ask for a greater financial support. The requirement for additional funds is also related to the support for the European Union. In the 4<sup>th</sup> meeting of the Stabilization and Association Council between the European Union and Albania, the EU highlighted the “....need for the allocation of sufficient sources for the People's Advocate Office”, p. 6.



### **4.3. Summary statistics for 2012**

In 2012 the People's Advocate has handled 5165 complaints, requests and notifications, of which 4244 are complaints registered in 2012, 330 were inherited from 2011 and 591 complaints were immediately answered by the experts of the Directorate for Reception of Citizen at the main People's Advocate Office, as well as in the regional offices of Shkodra and Fier, while 577 complaints are transferred to 2013.

Pursuant to the Assembly Resolution for the Annual Report of 2011, in 2012 the People's Advocate Office has started more *ex-ufficio* cases. In 2012, the number of cases which start of investigations is supported in Article 13 of Law no. 8454, dated 04.02.1999 "On the People's Advocate" has grown into 195.

While exercising its tasks, the People's Advocate has continued to carry out inspections in public institutions and in the administrative authorities, focusing mainly in the institutions of deprivation of liberty (pre-detention, prisons, psychiatric hospitals, etc.) and in the residential child centers (orphanages) residential centers for the elderly, etc.

Compliant to the Optional Protocol of the UN Convention against Torture and Other Inhuman and Degrading Treatment (OPCAT), in 2012 the People's Advocate has carried out 125 inspections in service of the National Mechanism for Prevention of Torture. Number of inspection has reduced compared to the inspections of 2011, because of having fewer but more in-depth inspections, complaint to the Resolution of the Assembly "On the Assessment of the Activity of the People's Advocate for 2011", and the Danish Project, which has recommended more in-depth inspections. In addition to coordinating our monitoring activity with the civil society, we aim at using human resources and the best expertise to carry out joint, more in-depth and more qualitative inspections.

#### ***Treatment of complaints addressed to the People's Advocate***

During the reporting period the People's Advocate has treated a total of 3965 complaints, of which 409 complaints, or 10 % of all the complaints, were out of jurisdiction and 898 complaints, or 22 % of them, were beyond the competencies of the People's Advocate. 863 complaints or 22 % of them have not been found grounded. In total, 2170 complaints raise

claims that could not be examined by the People's Advocate, or for which the administration bodies have no responsibility. Part of this group are the complaints related to court judgments, private property issues or conflicts, etc. For these cases the complainants are advised of legal remedies they should sought in order to find a solution to their problems.

Out of the total number of 3965 registered complaints, subtracting the 2170 complaints that are part of the group of complaints referred above, it shows that the People's Advocate has deliberated in merits 1795 complaints, of which 1368 or 76% are resolved in favor of complainants during the investigation or mediation proceedings, with no need to address the public administration bodies with an official recommendation.

Regarding complaints that are not resolved during the investigation and mediation procedure, 402 recommendations and proposals have been issued to different public administration bodies, of which 75 have been refused. 238 recommendations are fully accepted, 34 recommendations are still pending, while the People's Advocate has not received any answer about 55 other recommendations, although such recommendations have been re-submitted and the relevant administration bodies are recalled of their legal liability to issue a reply to such recommendations. Despite the lack of replies, the complaints continue to be pursued and all legal remedies and competencies of the People's Advocate used to re-establish a lacking right and/or to cease violation of a certain right.

It also shows that in 114 cases, or 3 % of the total number of registered complaints, the complainants have resigned from their complaints.

Regarding the 577 complaints transferred to 2013, it was not possible to investigate on them and to come up with a conclusion by the end of 2012 because they were submitted at the end of 2012, and, for some of them, we did not receive a reply from to our recommendations from the administration within the legal deadlines.

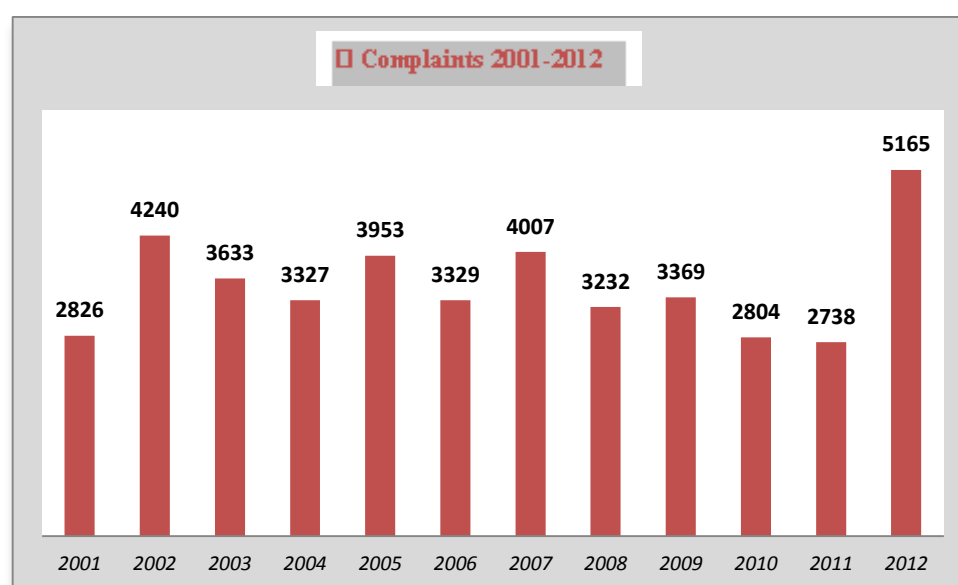
### ***The effective application of recommendations issued by the People's Advocate***

In order to assess the effective application of the People's Advocate recommendations, the Center for Development and Democratization of Institutions prepared a study, surveying over 400 files, and phoning the complaining subjects in person. The survey results show that 58

percent of the recommendations, or of complaints, are fully accepted and applied, 13 % were in the process of application, 2 % were partially applied, 23 % were not applied, while for 4% of them relevant parties have declined to issue information. Detailed outcomes of this survey can be found in Chapter no three of this report.

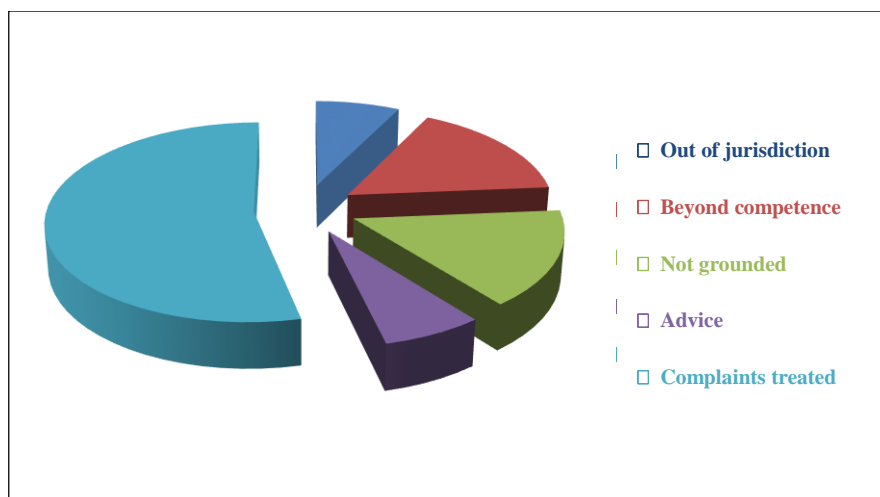
### *Illustrating charts*

The following tables provide information on the cases treated during 2012 by the People's Advocate. The greatest number of complaints (complaints, requests and notifications) submitted in the People's Advocate Office since the beginning of its functioning 12 years were treated in 2012. More specifically, in 2012 the People's Advocate treated 5165 complaints, of which 330 were inherited from 2011.

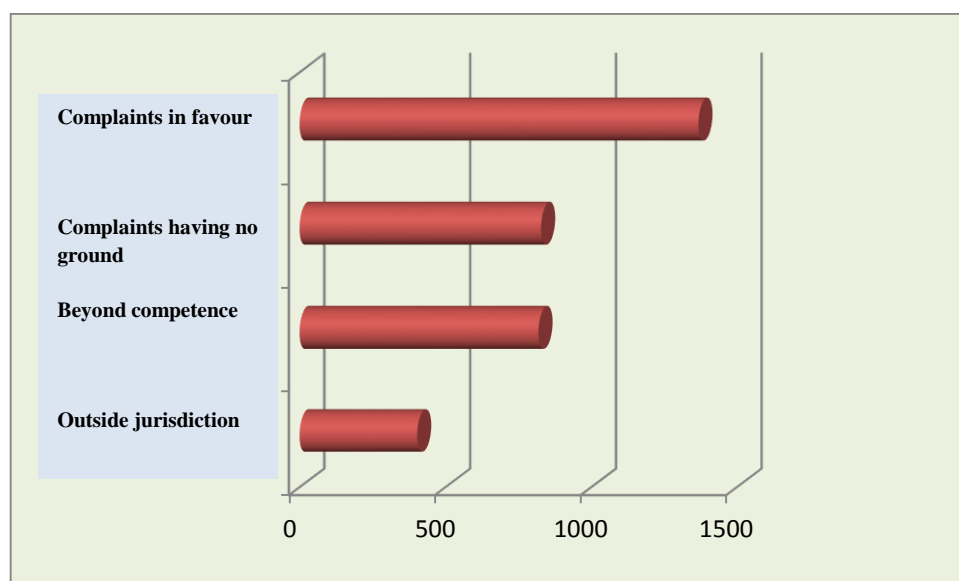


The following pie chart provides information on the way how the People's Advocate has treated complaints it has received from complainants. Amongst them 58% are qualified as following in the People's Advocate mandate, 17% are considered as falling out of the competence of the People's Advocate, while citizens are guided by specialized staff on how to pursue their problems, while in 7% of the cases, the citizens are directly advised by our experts. 16% of the complaints are considered as not grounded by our experts.

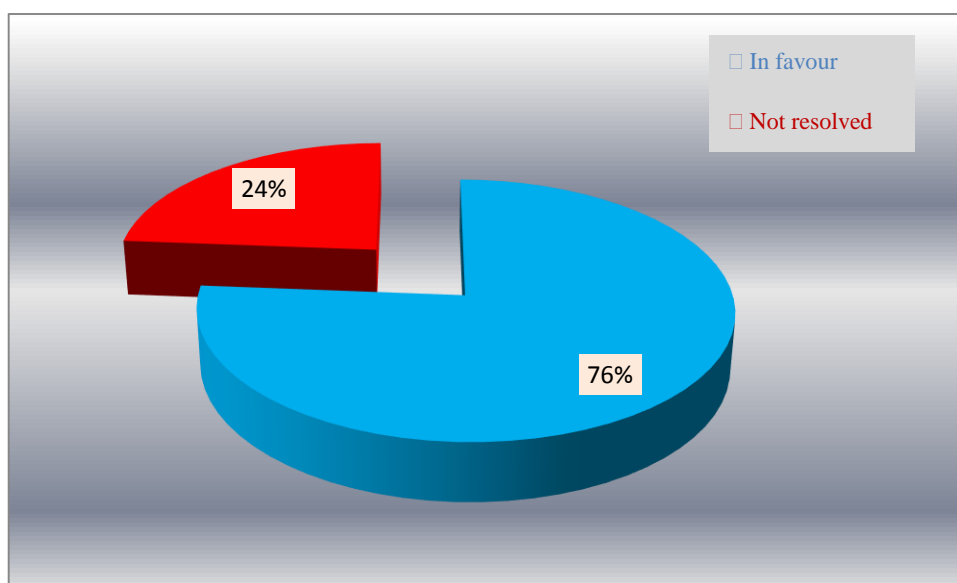




### Division of complaints according to treatment and solution of problems



### Complaints within jurisdiction and competence during 2012

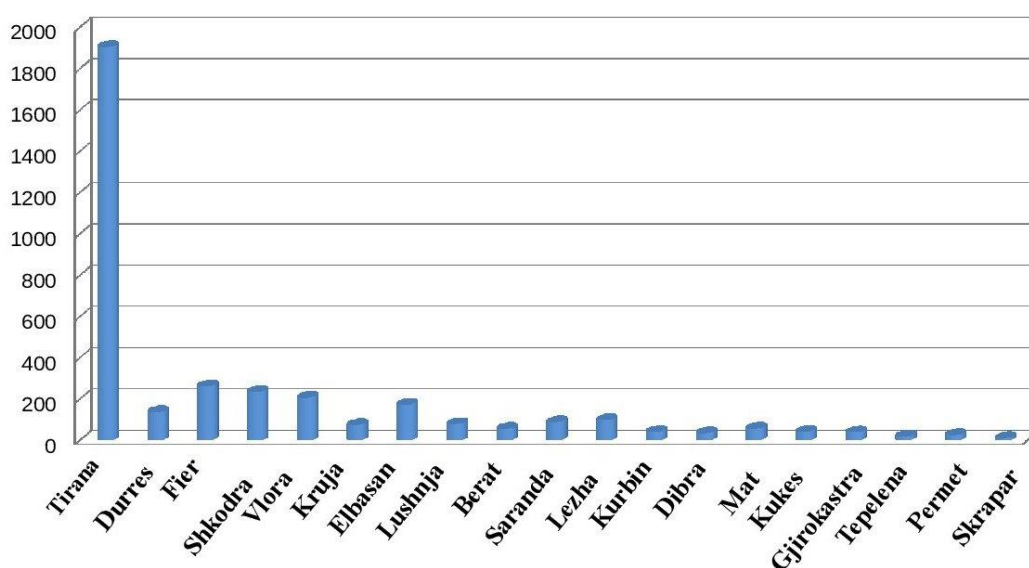


### Comparison of complaints within jurisdiction, resolved for the period of 2000-2012

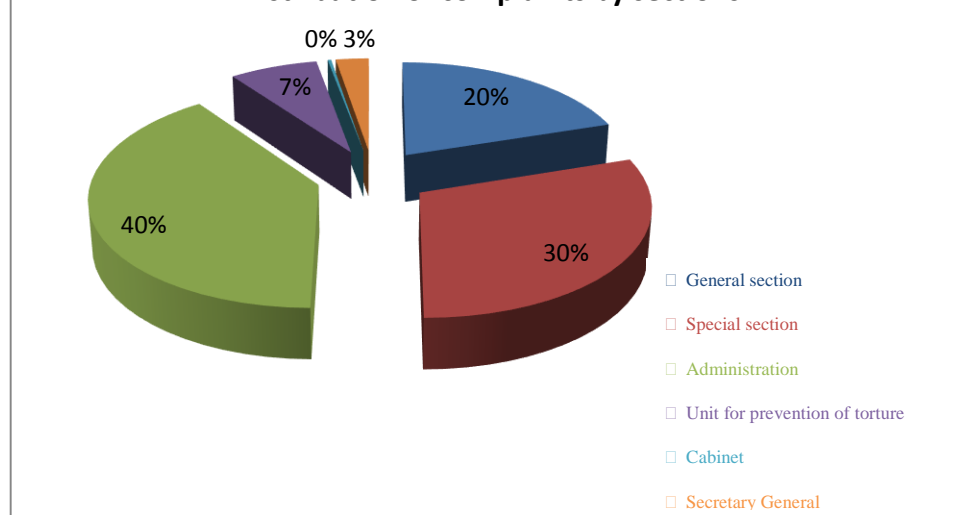


The following charts show of the districts the citizens submitting complaints to the People's Advocate come from and reflect their distribution according to treatment of complaints, according to sections of the institution, their distribution as per the violated right and the distribution according to relevant ministries or other bodies or entities of the public administration depending on them.

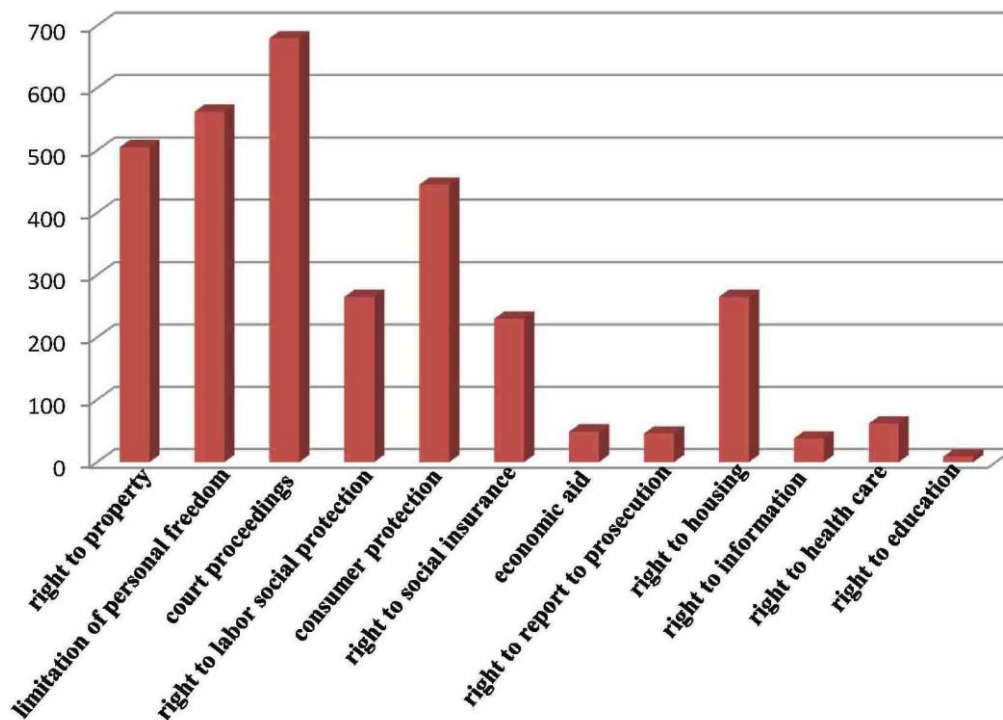
**Distribution of registered cases in 2012, according to districts**



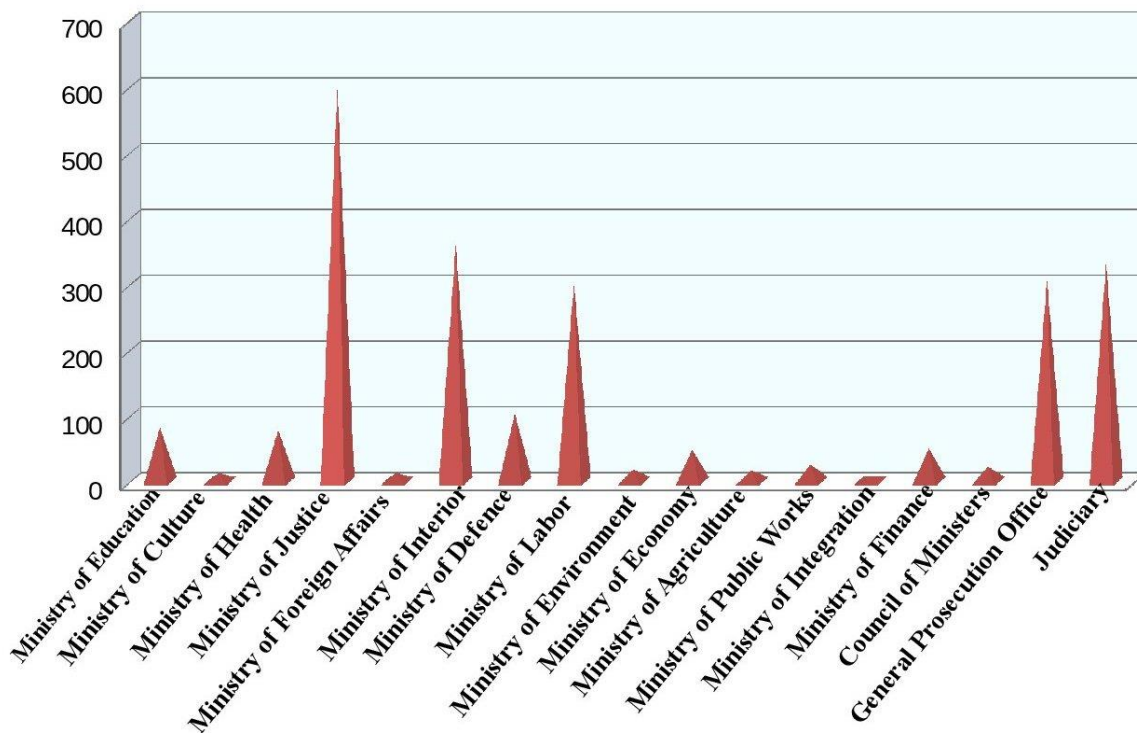
**Distribution of complaints by sections**



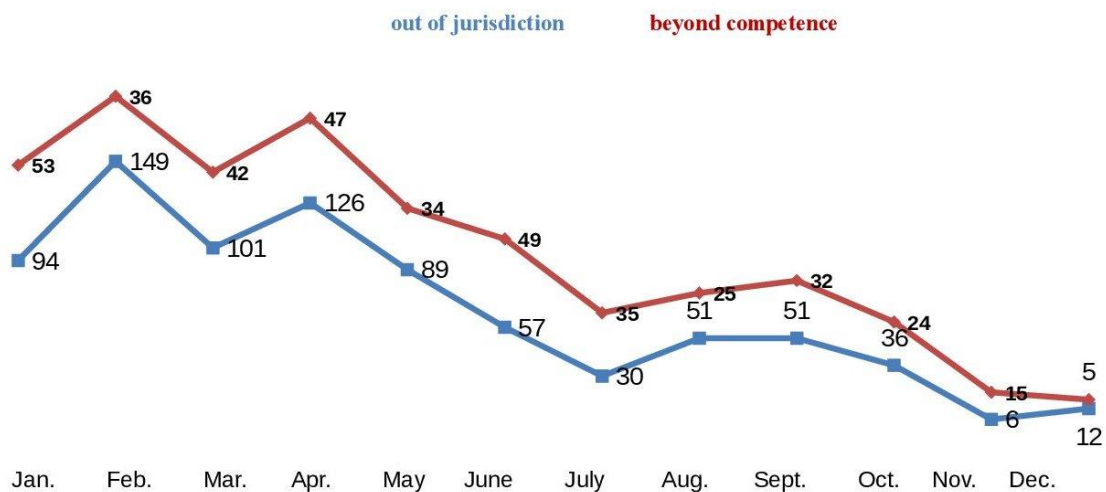
**Distribution of complaints registered in 2012 according to the violated right**



**Distribution of complaints registered in 2012 according to institutions**



The Resolution of the Assembly of the Republic of Albania “On the assessment of the Activity of the People's Advocate Work for 2011” highlighted the need for reducing the number of cases considered as being beyond competence and outside jurisdiction. Reflecting about this need, the People's Advocate, stemming as well from the recommendations of the EURALIUS Mission, addressed this issue adopting the structure of the institution and establishing the Directorate for the Citizens Service, but also circulating internal specific orders. The chart “speaks for itself” as the cases out of jurisdiction (A3) and beyond competence (A2) have recognized a systematic reduction from September onwards.



## **Annex I**

### **I. National Mechanism for Prevention of Torture**

- 1. A recommendation for amending the Law** no. 10289, dated 17.07.2010 “*On the Economic and Financial Treatment and Immediate Assistance for the Staff of State Police, Republican Guard, Internal Control Service, Police for Protection from Fire and Rescue, Armed Forces, State Intelligence Service and of Prisons Police Losing their Lives while on Duty*”, giving a retroactive power to its enforcement starting from January 1, 1991.
- 2. A recommendation for** preparing three draft-decisions facilitating enforcement of the above-mentioned law, pursuant to Law no. 9389, dated 04.05.2005 “*On the Establishment and Operation of the Coordination Council on the Fight Against Blood Feud*”.

### **II. The Administration Section**

- 1. A recommendation** on issuance of statutory acts for the ones subject to floods in Shkodra.
- 2. A recommendation** for preparation of a draft-law “*On Immovable Property Restitution and Compensation*”, referring to Article 5 of Law no. 9235, dated 29.07.2004 “*On Property Restitution and Compensation*” and submission for approval to the Assembly of the Republic of Albania.
- 3. A recommendation** for the enforcement of the Unified Decision no. 6, dated 24.01.2007 of the Joint Benches of the Supreme Court on setting the rules and criteria for distribution of the financial compensation fund to former owners.
- 4. A recommendation** for the amendment of Instruction no. 2, dated 18.08.2011 “*On Execution of Monetary Liabilities of Budgetary Institutions in the Treasury Account*”.

### III. The General Section

1. **A recommendation** for drafting by-laws “*On Exercising the Initiative for Amending Article 29 of Law no. 10142, dated 15.05.2009 “On the Supplementary Social Insurance of the Staff of Armed Forces, of Protection from Fire and of Rescue of the Internal Control Service of the Republic of Albania”* for the Ministry of Finance.
2. **A recommendation** “*On Issuance of the By-law in Implementation of Article 8 f Law no. 9128, dated 29.07.2003 “For a Special Financial Treatment of Retirement Pensions” as amended*” to the Ministry of Finance, Ministry of Interior, the President (approved).
3. **A recommendation** for amending the law “*On Amendments to Law no. 7961, dated 12.07.1995 “Labor Code of the Republic of Albania”, as amended*” (in favor of the LGBTs) **to the Minister of Labor, Social Affairs and Equal Opportunities.**
4. **A recommendation** for a legal act “*On Measures for Registration of Roma People in the Civil Service Registers in Local Government Units of Their Current Residence*”. We have also proposed adding of some transitional provisions, limited in time, to Law no. 10129, dated 11.05.2009 “On Civil Status”, as amended, and their consideration as ad-hoc temporary measures, so as to enable integration of this community to the community. The recommendation is submitted to the Minister of Interior.
5. **A recommendation for issuance of a by-laws** “*On Amending the Decision of the Council of Ministers no. 787/2005 “On Setting the Criteria, Procedures and Amount of Economic Aid” (as amended)* **to the Minister of Labor, Social Affairs and Equal Opportunities.**
6. **A recommendation** for amending the Law no. 9232/2004 “*On Social Programmes for Housing of Inhabitants in Urban Areas*” (as amended) to the Minister of Public Works and Transports.
7. **A recommendation for a legislative amendment** for including the offences of a political nature, provided for in Law no. 1138 of 1950, Article 5 of Law no. 9831,

dated 12.11.2007 “On the Compensation for the Former Persecuted by the Communist Regime”, as amended, as criminal offences. The recommendation is submitted for approval to the Ministry of Justice.

8. **A recommendation** for a normative act for adoption of measures for drafting a Decision of the Council of Ministers for compensation of the ones interned during communist. The recommendation is submitted to the Ministry of Finance and to the Ministry of Justice.
9. **A recommendation** for an amendment in the law on the child rights, submitted to the Ministry of Finance and to the Ministry of Labor, Social Affairs and Equal Opportunities.

#### **IV The Special Section**

1. **A recommendation** for amending and improving Article 450 of the Criminal Procedure Code, which is accepted by the Ministry of Justice.
2. **A recommendation** for establishing a school for educating the minors not subject to legal liability, addressed to the Ministry of Justice. It has so far not received an answer from the Ministry of Justice.

#### **B. We have addressed the Constitutional Court in three cases**

1. Against amendments to Law “On the Status of the Blind”.
2. Against amendments to Law “On Paraplegic and Tetraplegic Individuals”.