

**STUDY**

**ON THE EVALUATION OF THE**

**REQUEST-COMPLAINT**

**MECHANISM**

**IN INSTITUTIONS OF LIBERTY**

**DEPRIVATION OF ALBANIA**

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**Tirana, September 2011**

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## **Preface**

Monitoring and inspection of places of deprivation of liberty, and the establishment of an independent internal and external mechanism of processing complaints of persons deprived of their liberty are essential to protect the rights of persons deprived of their liberty and are part of Albania's obligations under national and international laws.

Monitoring, involves in itself internal monitoring through services that enable specially such a doing, or through external monitoring that may be carried out on case to case basis through judicial inspections by judges or prosecutors, the official monitoring bodies that are independent in their monitoring activity, NGOs and media. Monitoring helps in rendering a clear picture of the internal situation in a country and the measures to be taken to guarantee the practical and legal measures necessary to respect the rights and freedoms of persons detained in these institutions. Therefore, monitoring is considered an essential element in the dynamic process of establishment and operation of a defence system for persons deprived of their liberty.

The main function of almost all external and internal oversight bodies in places of deprivation of freedom in Albania has been handling complaints, which, over the years, have grown in number and, no doubt have had an impact on the awareness of relevant institutions to guarantee these rights for persons deprived of their liberty. However, little research has been made for studying the effectiveness of the deliberation of requests / complaints in places of deprivation of liberty and limited efforts to improve existing procedures and complaints system.

To accomplish this study, the experts involved have used a combination of primary and secondary sources. Primary sources such as official data on this issue, interviews with staff of police stations and penal institutions, and interviews with persons deprived of liberty are consulted and brought into this study. Secondary sources such as domestic and foreign literature in this field, as well as consulting and legal study of national and international approach constitutes the basis of theoretical part of this study.

Given the elaborate international practice in this respect, in this study it is not without purpose that we have paid attention to recognition and presentation of standards and rules that international acts provide, to ensure appropriate treatment of requests / complaints of persons deprived of liberty. Special attention in this part of the study is given to European Prison Rules and some Western models that can be seen as a good example to refer to and be adapted into the Albanian system of police and prisons.

Of importance for both practical as well as theoretical part, is analysis of domestic legislation in force, the guarantees that it provides and the gaps that require intervention and its improvement with a view to determining the effective mechanism of request / complaint in the institutions of deprivation of liberty and its practical implementation. This part of the study is followed by a treatment of both internal or external request / complaint existing mechanisms, focusing on their efficiency, in order to guarantee the right of persons deprived of liberty to have access to a mechanism ( internal or external) right / fair and effective of processing.

This study, perhaps the only one so far of its kind, on this important topic, with its findings, concludes with some important recommendations that are afterwards suggested local authorities in improving the legal and institutional aspects of establishing and practical implementation of this mechanism request / complaint.

AHC and its experts find here the occasion to thank state authorities such as the Ministry of Justice, General Directorate of Prisons, the General Directorate of State Police and the heads of police stations and penal institutions who welcomed the study and made possible our visiting in their respective institutions. Without cooperation with relevant authorities, this study would not have been made possible.

AHC hopes that this study serve as a starting point of a complete analysis and then lead to taking appropriate measures to improve the functioning of the mechanism of requests and complaints.

## I. Definition of terms / key concepts

**1.1** For the purport of this study, it is worth giving some key concepts that we encounter in the study broadly, in order to better understand its terminology. These terms derive from international standards in the field and are borrowed and have become part of our domestic legislation.

### **Deprivation of liberty**

Deprivation of liberty implies any form of detention or imprisonment or placement of a person in a public or private depriving environment, from which the person is not allowed to leave at his will<sup>1</sup>. That can happen only by order of a judicial, administrative or any other public authority<sup>2</sup>.

Although this definition is general and covers any form of deprivation of liberty for purposes of study, we will refer to deprivation of freedom, given by a competent judicial authority in compliance to our legislation. In line with international definitions is the regulation that the Constitution of the Republic of Albania makes, which stipulates: *"No one shall be deprived of liberty except in cases and under procedures provided by law.*

*Person's liberty cannot be restricted except for in the following cases: when is sentenced to imprisonment by a competent court; for failure to comply with the lawful orders of the court or for failure to comply with an obligation set by law when there is reasonable suspicion of having committed a criminal offense or to prevent the commission of his offense or his escape after its commission, to supervise a minor for purposes of education or for accompanying him to the*

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<sup>1</sup> Rule 11.b - UN Rules for the Protection of Juveniles Deprived of their Liberty (otherwise known as the Havana Rules), 1990

<sup>2</sup> While the Havana Rules are dedicated to minors, this definition of deprivation of liberty as a concept applies to adults as well.

*competent authority, when the person is the carrier of a contagious disease, impaired mentally and dangerous for society, for illegal crossing of state borders and in cases of deportation or extradition*"<sup>3</sup>.

## **Detention**

Speaks of the time period when people are deprived of their liberty, and covers the period between the time the charges are raised and the final sentence of the court is given<sup>4</sup>. In the UN Standard Minimum Rules, in paragraph 84.1 of it, it is provided this definition: "*Persons arrested against whom a criminal charge is raised, being held in police custody or in detention, but have not yet been tried and convicted, shall be considered as detainees.*"<sup>5</sup> Detainees should be considered innocent until a final court decision and therefore should be treated as such.

Also, in line and in full compliance with the UN Standard Minimum Rules, the same attitude to maintain the detention of the Committee of Ministers Recommendation of the Council of Europe on the European Prison Rules EPR (2006) 2, passed in January 2006, that stipulate thus: "*For purposes of these rules, detainees are those who are detained by the decision of a judicial authority before they are judged and punished with a final form decision*".<sup>6</sup>

## **Imprisonment**

Occurs when a person is limited freedom of movement, as it is held in a place from which it is not allowed to leave at his / her free will<sup>7</sup>, where deprivation of liberty is a result of conviction by the court because of the offense committed. Imprisonment should only be granted by the competent authority designated by law, which is the court.

As in the case of detention so also in imprisonment, all persons should be treated humanely and with respect to their internal integrity as human beings. Arrest, detention or imprisonment should be made strictly in accordance with legal provisions in force of the Code of Criminal Procedures (the CCP) and only by competent authorities that the law authorizes.<sup>8</sup>

## **Monitoring and Inspection**

Control in the places of deprivation of liberty includes the monitoring and inspection. Inspection of these institutions means an activity which is undertaken as part of bureaucratic and operational

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<sup>3</sup> See paragraph 1 and 2 of Article 27 of the Constitution of the Republic of Albania.

<sup>4</sup> Group Policy for the Protection of All Persons subject to any form of imprisonment or detention, approved by the UN General Assembly, December 1988

<sup>5</sup> The original term used in English in these Rules is "untried prisoners".

<sup>6</sup> Rule 94.1 of the European Prison Rules, Rec (2006) 2.

<sup>7</sup> Group Policy for the Protection of All Persons subject to any form of imprisonment or detention, approved by the UN General Assembly, December 1988.

<sup>8</sup> Principle 1 and 2 - Group Principles for the Protection of All Persons subject to any form of imprisonment or detention, approved by the UN General Assembly, December 1988.

functions of police and prison system and these activities are undertaken by the relevant state structures.<sup>9</sup>

The opposite is meant by monitoring, being controlling activities which are undertaken by organs / structures / organizations, independent of the functioning of police and prison system. In his work Van Zyl Smit and Snachen<sup>10</sup> distinguishes between internal inspections of government and national and international independent monitoring. In this work it is stressed that the independence of the monitoring and inspections, as sanctioned in Recommendation Rec (2006) 2 of the Council of Ministers to member states on the European Prison Rules is that which matters most and not so much the terminology.<sup>11</sup>

Inspections are internal when conducted within the system of police and prisons, while the external monitoring are carried out by the fact that outside of police and prison system such as courts, prosecutors, the Ombudsman, NGOs operating in human rights and that have inculcated in their status, their monitoring activities in this field as well as independent oversight structures such as boards / Supervisory Committees.

## **2. Need for an effective complaint mechanism and its monitoring**

Monitoring treatment and infrastructural / physical conditions of persons deprived of liberty through regular visits, is one of the most effective means to monitor respect for human rights in these environments.

Supervision and inspection of places of deprivation of liberty with the internal mechanisms is a commitment and legal responsibility that governmental law enforcement agencies, will ensure and show towards persons deprived of liberty under their care. Organ(s) of internal supervision is / are designed to ensure (on behalf of society) that prisoners receive proper treatment. They have an intermediary role between the convicts and penal institutions. These bodies can provide legal advice to the Ministry of Justice on reform of the penitentiary system and justice for juveniles and can be the recipient of prisoners' complaints. The main tasks of internal organs of inspecting associated with the inspection on the implementation of sanctions and in particular about the "treatment" and "security". It is necessary that written protocols have clearly defined powers of internal oversight and inspection bodies in order to avoid overlapping and to ensure effective communication of these bodies, transparency, professionalism and objectivity of their supervision and the inspection carried out by these bodies.

The idea of monitoring the external and independent places of deprivation of freedom (in addition to internal supervision and inspection mechanisms) has made considerable progress in recent years. Now it is widely accepted that external and independent monitoring is one of the

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<sup>9</sup> European Prison Rules, Rule 92

<sup>10</sup> D. van Zyl Smit - S. Snachen: Principles of the European Prison Law and Policy, Oxford: Oxford University Press, 2009, p.116.

<sup>11</sup> Complaints - Assessment of the complaint mechanisms in prisons in Central Eastern Europe - Hungarian Helsinki Committee in cooperation with OSI, Budapest 2010

best safeguards against any violation of law for places of deprivation of liberty. Hence, places of deprivation of liberty should be as transparent as possible, allowing access to the structures / bodies / organizations outside the police / prison system.

The internal and external supervision or inspection, as well as monitoring mechanisms, aim at preventing tempering with and the protection of the rights and treatment of persons deprived of liberty. To accomplish their purpose they embark on responsive and proactive visits. Responsive supervised visits, are made for the purpose of supervising a particular individual. In this case the methodology of the visit is built to ensure the opportunity that exists about treating an individual issue. Visits are a more of an ad hoc<sup>12</sup> nature. Usually they are conducted in response to a complaint received individually or collectively.

Proactive visits, on the other hand, rather than dealing with individual cases directly, are intended to address more general and reoccurring problems inherent within the system. They are supposed to keep an eye on the overall implementation of the policy of prison. In contrast to the reactive visits, which provide an opportunity to address a violation that has occurred, proactive visits focus on the potential opportunity to provide that a violation does not occur in the future. These kind of monitoring visits should focus on possible violations of laws, rules and regulations in general, as the implementation of daily programs, staff attitudes and behaviour, protection of prisoners' rights, etc. Consequently, the principles on which the proactive visits are based, are long-term commitments to public authorities and constructive dialogue, in continuity, but also to confidentiality, in order to ensure a gradual change in "culture" of the criminal justice system, ensuring the protection of individuals deprived of their liberty in care of this system. However, both types of visits are complementary to each other.

Both the supervision and inspection of internal and external on one hand, and the monitoring mechanisms on the other one, are necessary to ensure effective and transparent oversight of the rights and treatment of persons deprived of liberty.

Legal written protocols that include the purpose, methodology of work and jurisdiction of these structures of monitoring and supervision / inspection, makes their activities transparent and credible.

### **3. Purpose and methodology of the study**

#### **1.3.1 The purpose of this study**

The main purpose of this study is to analyze the internal legal framework of the complaint mechanisms in place for individuals deprived of liberty and its practical implementation in order to identify gaps and problems arising from practice. Based on these findings are formulated recommendations for improving the internal legislation and its practical implementation in accordance with national and international standards and best practices.

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<sup>12</sup> On a specific case.

The main function of almost all external and internal oversight bodies and of places of deprivation of freedom in Albania, has been the investigation of complaints, which, over the years, have grown in number and, no doubt affected the willingness and ability of these bodies to carry out proactive visits. However, there has been little research studying the effectiveness of the complaints bodies in reviewing claims in places of deprivation of liberty and limited efforts to improve existing procedures and complaints system.

Persons detained may appeal in simultaneously to the administration of the institution, the General Directorate of Prisons (GDP), the Ministry of Justice (MD), Commission of Supervision of the Execution of Prison Sentences, the Office of the Ombudsman, the prosecutor's office, courts, local authorities, NGOs, international organizations, etc... Experts have also drawn attention to the problem of processing in due time and effectively the complaints of persons deprived of liberty, because complaints are often sent from one organization to another, and, in the absence of transmission of information, bodies dealing with complaints, often remain unaware of complaints about the decisions and measures taken by other bodies.

There is a lack of regular analysis of complaints within the bodies of complaints, and lack of regular cooperation between them, which would contribute to solving key problems in this regard. Many complaints arise from lack of a unified interpretation of legal provisions by the administration of institutions of deprivation of liberty and lack of information on national legislation and international standards of human rights. While recognizing that most complaints can be resolved within the institution, the cases of persons deprived of liberty who have no confidence in the internal complaints system, are not rare. Moreover, there is no transparent system which would specify the bodies of inspection, monitoring and supervision, what their competences, purpose and methodology of work are, and how they cooperate and complement each other.

A reform of the complaints system for persons deprived of liberty is necessary, in order to overcome the problems associated with this system that would lead to changes in the procedure of reviewing complaints, regular analysis within their handling complaints bodies, and facilitate intensive cooperation between them. Complaint procedures and routes to be followed in other prison systems will deserve further attention.

Also complaints deserving attention are also those that concern the treatment by the police administration of the accompanied / arrested / interdicted individuals. Some bodies have competence to examine individual complaints for violations committed by the police. Complaints may be directed to domestic supervisory authorities, which report to the Minister of Interior. There has been criticism from domestic and foreign organizations in terms of independence, transparency and professionalism.

When people are in police stations there is almost no official data on complaints that these people may have about how their rights are respected by the staff of these institutions and how they are treated. This is an indication of lack of knowledge of persons in conflict with the law for their right to complain, but also their lack of information regarding this right. As will be seen during the analysis, there is a lack of clear legal base for the request-complaint procedures in police departments.

Having said this, this study will provide analysis of legal aspects as well as aspects of the implementation of legislation relating to the complaints mechanism.

## 2. Methodology

For the purpose of making the survey, the methodology applied is based on visits to institutions of deprivation of liberty, in interviews with staff of these institutions and persons deprived of liberty there at the time of field visits, statistics and data collected at these institutions or other institutions that handle or monitor these institutions and various publications on this topic.<sup>13</sup> Data are presented as an annex at the end of the study. It is to be emphasized that there is no formal general information in regard to request / complaints made by persons deprived of freedom in these institutions monitored. Data on request / complaints reported in this study, belong to the data that comes from particular institutions, subject to monitoring.

Also, data related to the object of study available at AHC during its monitoring visits carried out continuously, have become part of this study in some special components of it. In the study, an important place is given to the international acts in this field and comprehensive analysis is made of the Albanian legislation in force in relation request-complaint mechanism for persons deprived of liberty, by examining inter alia, its practical application and the need for change or improvement in the legal and institutional framework in force in respect of guaranteeing the rights and freedoms of persons deprived of liberty.

## II. International standards: the importance of creating responsible structures

### 2.1. European Standards

European Prison Rules

#### *Request and complaints*

Rule 70.1 *Prisoners, individually or as a group, shall have ample opportunity to make requests or complaints to the director of the prison or to any other competent authority.*

Rule 70.2 *If mediation seems appropriate this should be tried first.*

Rule 70.3 *If a request is denied or a complaint is rejected, reasons shall be provided to the prisoner and the prisoner shall have the right to appeal to an independent authority..*

Rule 70.4 *Prisoners shall not be punished because of having made a request or lodged a complaint.*

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<sup>13</sup> Among others, here are included information from the Ombudsman and the Directorate General of Prisons.

Rule 70.5 The competent authority shall take into account any written complaints from relatives of a prisoner when they have reason to believe that a prisoner's rights have been violated.

Rule 70.6 No complaint by a legal representative or organization concerned with the welfare of prisoners may be brought on behalf of a prisoner if the prisoner concerned does not consent to it being brought.

Rule 70.7 Prisoners are entitled to seek legal advice about complaints and appeals procedures and to legal assistance when the interests of justice require.

## **2.2. International Standards**

In Article 36 of the UN Standard Minimum Rules for the Treatment of Prisoners there is a special provision to make a complaint, during a prison inspection. This article provides:

Rule 3.2 It shall be possible to make requests or complaints to the inspector of prisons during its inspection. The prisoner shall have the opportunity to talk to the inspector or to any other inspecting officer without the director or other members of the staff being present

## **2.3 Establishment of independent, external structures**

During several last decades there has been positive developing towards the establishment of national institutions of human rights, the Ombudsman, specialized bodies of general or specific competences and involvement of international standards in a global and regional level. In 1993 the UN General Assembly adopted the "Principles Relating to the Status of National Institutions", which are widely known as the Paris Principles. Paris Principles on the list of criteria envision the effective functioning of a national institution of human rights, such as institutional and functional independence, broad powers, adequate funds for operation and protection of human rights. Reports published in this area aim at assisting national institutions in order to improve their performance and impact by using standards and indicators to assess their work.

At the same time, there have been developments in the design of regional standards relating to different thematic competencies of relevant national bodies. By ratifying a number of international treaties of human rights, such as the International Covenant on Civil and Political Rights (ICCPR),<sup>14</sup> UN Convention against Torture (CAT) and the European Convention on Human Rights (ECHR), Albania is thus obliged to treat all persons in any form of interdiction or restriction with dignity and respect for their human rights. All these instruments, as well as international right of the common law, require the country to effectively prevent torture, inhuman or degrading treatment or maltreatments in places of detention and penal institutions. An effective protection of the rights of persons deprived of liberty in a sovereign state, requires that structures be set up and operate responsibly.

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<sup>14</sup> In some cases, English acronyms are preserved in the Albanian text, because some of these acronyms are well known in Albanian

Ratification of the European Convention on Human Rights (ECHR) provides that victims of violations of human rights, have the right and assurance of having their case reviewed in the European Court of Human Rights (ECHR). In addition, by ratifying the European Convention for the Prevention of Torture and/or degrading or humiliating treatment, the European Committee for the Prevention of Torture (CPT), has the right to exercise control in member countries, which, in a number of occasions has visited in Albania places of deprivation of liberty, and has captured the observations and recommendations in its reports.

At a national level, ratification of the European Convention on Human Rights has made possible that the provisions of the ECHR be directly applicable by the Albanian courts. Many provisions of the ECHR are of direct importance to protecting the rights of persons deprived of liberty.

The main importance of independent inspection and monitoring in regard to oversight of the practice in places of deprivation of liberty is highlighted in 2006, in the European Prison Rules (EPR 2006), and one of the fundamental principles on which these regulations are based is: "All prisons should be subject to regular government inspection and independent monitoring"<sup>15</sup>.

### **2.3.1 European and international monitoring structures**

*Rule 92* of EPR stipulates that institutions of deprivation of liberty must be inspected regularly by a governmental agency in order to assess whether they are administered in compliance with the requirements of national and international law and the provisions of these rules.

#### **International principles for an independent monitoring**

*Rule 93.1* *The conditions of detention and treatment of persons deprived of liberty shall be monitored by an independent body or other bodies which will make their findings public.*

*Rule 93,2* *Independent monitoring bodies should be encouraged to cooperate with international agencies that are legally entitled to visit the institutions of deprivation of liberty.* This requirement for an independent inspection stems from international documents that focus on the management of institutions of deprivation of freedom such as the UN Minimum Standard Rules for the Treatment of persons deprived of liberty.<sup>16</sup>

UN Standard Minimum Rules for the Treatment of prisoners, seeking to have a regular inspection of penal institutions and services by qualified and experienced inspectors appointed by a competent authority.<sup>17</sup> Their task will be in particular to ensure that these institutions operate in accordance with existing laws and regulations in order to conform to the objectives of penal and correctional services.

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<sup>15</sup> Rule 9, IPR 2006.

<sup>16</sup> Rule 55 of the UN Standard Minimum Rules for the treatment of persons deprived of liberty.

<sup>17</sup> Ibid.

*Rule 36.2 It shall be possible to make requests or complaints to the inspector of prisons during his inspection. Prisoners should be able to talk to the inspector, or any other official inspectioneer without the governor or other members of staff of the institution being present.*

Optional Protocol of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (OPCAT, 2002) states:

*The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.*<sup>18</sup>

Each Member State, shall establish, designate or maintain at a national level, one or several bodies, to carry out visits to places of deprivation of liberty for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment (hereinafter known as the National Preventive Mechanism – NPM).<sup>19</sup> The responsibility for regular supervision of the conditions of the institutions of deprivation of liberty and the situation of persons deprived of liberty, and the management of these institutions, belongs to the Government. National authorities should ensure that institutions of deprivation of freedom are managed in accordance with national and international law, including international standards of human rights. The internal government inspection is not considered sufficient to ensure appropriate oversight of the independent institutions of deprivation of liberty, the same way as the existence of an inadequate internal complaint mechanism is considered insufficient.

European Committee for the Prevention of Torture (CPT) states that "*effective complaints and inspection procedures are fundamental safeguards against maltreatment in the institutions of deprivation of liberty. Persons deprived of liberty shall have the roads open as to address the inside and outside the context of the prison system, including the ability to have confidential access to an appropriate authority.*" CPT attaches particular importance to regular visits to each prison by an independent body that has competences to hear (and if necessary take action as appropriate) the complaints from prisoners and to inspect "the premises of the institution."

Given the very different legal systems and institutions of deprivation of liberty in all Europe, the standards do not describe a model of an independent monitoring of conditions of the institution of deprivation of liberty. While in the commentary of EPR 2006, the Ombudsman is noted as one of the opportunities available monitoring institutions of deprivation of freedom, "*(.....) formats are not excluded as long as the authorities involved are independent and well equipped to perform their duties.*"

It is also important is that the body or the competent authorities should make public their findings and any recommendations made in the management of prisons, be made known to the relevant ministries and parliament.

### **Optional Protocol of the Convention against Torture (OPCAT)**

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<sup>18</sup> Article 1 of OPCAT

<sup>19</sup> Article 3 of OPCAT

The CAT has repeatedly recommended the establishment of national active mechanisms for inspection of different types of institutions of deprivation of liberty and has developed some criteria for their effective functioning. In some cases they are not detailed like criteria is such as national preventive mechanisms as described in the Optional Protocol to UN Convention against Torture (OPCAT) are. OPCAT sets standards and criteria for internal inspection mechanisms that may be designated as "national preventive mechanism" to ensure effective and independent functioning of these structures and to ensure that they will be free from any undue interference. OPCAT does not prescribe any particular form of national preventive mechanisms allowing the member states to have flexibility to choose the type of mechanism that is most suitable for their particular context. A national preventive mechanism, may be a national institution of human rights, an Ombudsman, an NGO, or a specialized body set up specifically to monitor places of deprivation of liberty.<sup>20</sup> OPCAT requires Member States to take account of the Paris Principles, which define criteria for the effective functioning of national institutions of human rights, such as guarantees of functional and financial independence, bases of its foundation, pluralistic makeup base, etc.. .

### **Committee against Torture (CAT)**

CAT consists of ten independent experts elected by the member states, to serve in an individual capacity. The purpose of the Committee is to monitor the obligations of the Convention Against Torture and Other Cruel Inhuman or Degrading Punishment of "(1984). All member states shall submit reports to the Committee on measures taken to implement the commitments undertaken by signing of the treaty. The Committee examines the reports in a public meeting. Article 20 of the Convention empowers the CAT to obtain information and investigate allegations of systematic practice of torture in Member States. CAT may, if it believes that credible information is received that torture is systematically practiced in a Member State, conduct an undercover investigation in cooperation with the state in question. The investigation may include conducting a visit.

### **United Nations Human Rights Committee (HRC)**

HRC was established by the International Covenant on Civil and Political Rights (1966) to verify if the Member States implement its provisions. HRC consists of 18 independent experts nominated by Member States serving in an individual capacity. All Member States of the Convention must submit a report on actions they are taking to give individuals the rights recognized by the Covenant. In 1985 the HRC decided to appoint a Special Rapporteur on Torture.

### **Special Rapporteur on Torture**

The Special Rapporteur considers issues relating to torture and frequency of carrying the torture, and the amount of the application in practice of these issues. His / her competence covers all member states of the UN. The rapporteur submits annually a report with recommendations to the Human Rights Committee (HRC). Information obtained by individuals, non-governmental and

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<sup>20</sup> Articles 17-23 of section IV of OPCAT define the obligations of member states regarding the national preventive mechanism.

governmental sources. Rapporteur may, with consent of the government concerned, visit a place to gather direct information on alleged cases and situations. These missions are "merely advisory" and are a good way to monitor the situation and make further recommendations tailored to the situation.

### **Special Rapporteur on arbitrary and extra-legal executions**

In 1982 the United Nations Commission on Human Rights (1946) appointed a Special Rapporteur on extra-legal and arbitrary executions, to intervene in all cases where the right to life is violated, especially as a result of torture during detention / restriction of freedom. Rapporteur accepts claims, handles immediately the complaints that may be submitted to it, and can conduct investigations and missions in the country to visit people deprived of freedom, provided that the State concerned grants permission to it. Each year the rapporteur presents a Commission report. In 1992 the Commission on Human Rights established a Working Group on arbitrary detention, composed of five independent experts.

### **International Committee of the Red Cross (ICRC)**

The ICRC is an impartial, private and humanitarian body, founded in Geneva in 1863. The ICRC seeks to provide protection and assistance to civilian and military victims of armed conflicts. Representatives of ICRC can visit persons deprived of their freedom and check if they are subjected to torture. Geneva Conventions (1949) ensure that the ICRC representatives are authorized to "go into all the places" where people can be protected and have access to all premises where there are prisoners of war. The neutral, impartial and independent position of the ICRC resulted in good faith and cooperation with national authorities and is considered essential to the success of the ICRC visits.

### **European Institutions**

#### **European Committee for the Prevention of Torture (CPT)**

CPT was founded in 1987 by the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment and became operational in 1989. Although this is a non-binding instrument, it is an important mechanism to prevent torture in Europe. The work is based on a system of declared and confidential visits in all places of deprivation of freedom of the Member States of the Council of Europe. CPT monitors the extent to which states have implemented the European Prison Rules. After each visit, a report is compiled on the findings and recommendations and it is sent to the relevant government. CPT reports are confidential and released only if the government of a country requires so. Visits are carried out in small teams of members of the CPT, teams composed of only independent experts.

#### **Organization for Security and Cooperation in Europe (OSCE)**

OSCE member states have adopted effective measures to prevent torture and other cruel, inhumane or degrading treatment. A Member State may request the assistance of an expert mission of the OSCE to see if it is possible the finding of a resolution of an issue or

problem. The mission has the right to investigate, to visit without restriction and to meet with various officials, NGOs and / or individuals on a confidential basis. Observations and comments from the host country can be discussed by the Supreme Council of the OSCE.

## **2.4 European models concerning the internal structures of accountability and their organizational aspects**

### **2.4.1 The situation in the Netherlands**

In the Netherlands there are three main bodies responsible for inspection and monitoring. These are the Council for the Administration of Criminal Justice and Child Protection (RSJ), the Inspectorate for the Implementation of Sanctions (IST) and the Supervisory Committees.

Every Dutch penitentiary institution has its Supervisory Committee. These committees were established in 1953 and are comprised of independent members of civil society. The members are usually representatives of the judiciary, lawyers, academia, the field of social work and other parts of society and at least one person with a medical background. The task of the supervisory committee is to ensure, on behalf of society, that persons deprived of their freedom, receive appropriate and proper treatment. Supervisory Committee members serve as commissioner for a month and in this capacity they deal with any complaints and concerns that persons deprived of liberty may have. Supervisory committees have an intermediary role between persons deprived of liberty and penal institutions. Important complaints are discussed at monthly meetings, which are attended by the director of the institution.

Council for Administration of Criminal Justice and Child Protection (RSJ) is an independent advisory and judiciary body. The Council has two duties: administering justice and providing advice for youth protection and enforcement of sentences and non-punitive orders. In each year, the Council receives about 3,300 complaints. The Council originally had a supervisory task, but it was taken over by the Enforcement of Sanctions Inspectorate (EST) in 2005. The Council has 60 members: specialists in criminal law, for juveniles, in family law and behavioural sciences, members of the judiciary and legal professions, public administration officials, as well as a number of doctors. The Council is an independent body, with members who are appointed by the Queen of the Netherlands, and are not under the Ministry of Justice or other active organizations under the Council's responsibility.

Enforcement of Sanctions Inspectorate (EST) was established in 2005 as an independent body within the Ministry of Justice. Its main duties are to inspect the implementation of sanctions and in particular in regard to the "treatment" and "safety" of persons deprived of liberty. EST if it ascertains incidents, reports to the Minister of Justice. Visit reports are published and made public.

### **2.4.2 The situation in England and Wales**

In England and Wales has three main inspection bodies, and these are: the Chief Inspector of Her Majesty's Prisons, the Ombudsman for Prisons and Probation Service and the Independent Monitoring Boards (IMB).

Chief Inspector of Her Majesty's Prisons, conducts special inspections in prisons, making periodic thematic reviews and investigation of incidents that occur in prison. Each year a report is published that draws media attention.

Ombudsman for Prisons and Probation Service investigates complaints from prisoners, convicts on probation and those held in immigration centers. It also investigates all deaths of prisoners, detainees and immigrants and those who are put on probation. Ombudsman for Prisons and Probation Service is appointed by the Interior Minister and is completely independent of the Prison and Probation Service.

Every prison and immigration centre has an Independent Monitoring Board (IMB), formerly known as the Board of Visitors. The group consists of volunteers appointed by the government and that act as "observers" of the Prison Service as well as the general public, to ensure that appropriate standards of care and welfare are maintained. IMB members visit prisons on a weekly basis to monitor the situation and to deal with individual complaints of prisoners. In light of several European models of internal and external monitoring, inspection and supervision of places of deprivation of liberty, it should be noted that Albania must have its efficient and independent organs, both internal and external to ensure timely and effective treatment of complaints and moreover, to have a full supervision over the closed institutions in order to guarantee the safety and treatment of persons under their care.

In the following sessions will be made a detailed analysis of legal framework and what is more important, the analysis of findings regarding the implementation of legislation in this regard and specific conclusions about the current state of developments, will be presented. It will also make present the recommendations for improving the current situation.

### **III. The right to request and complaint - the Albanian legislation in respect of international standards**

The right to request and complaint in Albania for persons deprived of liberty is a constitutional right, which takes on particular significance for these categories of individuals. Penalty of deprivation of liberty must be made in material and moral conditions that ensure respect for human dignity. Enforcement of regulations, laws, shall be made impartially. There should be no discrimination because of race, color, sex, language, religion, political opinion, national or social origin, birth status, economic status, etc.. Every person deprived of liberty is entitled the right to exercise religious beliefs as well as the moral and cultural values of the group to which he belongs. According to Law no. 8328, date 04. 16. 1998 "On the rights and treatment of prisoners and detainees", as amended, the persons deprived of liberty was recognized a number of fundamental rights, where one of the fundamental rights mentioned is that of request-complaint.

In continuation of this chapter an analysis will be laid forth of legal base and structures for its implementation in this field. Analysis of the legal base's deficiencies and findings of law enforcement practice will be addressed in a separate chapter.

### **3.1. The mechanism of request-complaint for accompanied, detained / arrested persons by police**

#### **3.1.1 The rights entitled to people accompanied in the police**

In Article 11 of the Law 'On State Police', point 6, the accompanying is defined as follows: 'Accompanying in the context of this law means when a person has violated an administrative rule and his identification necessitates his accompanying in the offices of police with or without the person's consent'.

In the definitions of the law "On State Police", is given the particular notion of accompaniment concretely in the Article 11/6 that *"Accompaniment, in the meaning of this law means when a person has violated an administrative rule and his identification necessitates accompaniment in the police offices, with or without his will".*

Also, police accompanies the person in its premises, until the matter for which the accompaniment is conducted, is verified up to a maximum of 10 hours. Accompaniment to police it is made for keeping under control the juveniles for purposes of education or for to accompany him to a competent body; and when the person is a carrier of a contagious disease, mentally ill and dangerous to society.

Accompanied persons are entitled to humane treatment and respect for their dignity.<sup>21</sup> They ought to be notified immediately by the police for reasons of their accompanying to the police. Persons accompanied are kept in different areas from those of detained or arrested. For the accompanying and retention of people in police stations, the police officer records the action and immediately notifies his superior or the authority concerned to clarify the issue. In all cases of accompanying and retention in the police premises, consideration is made to personal and family conditions of accompanied persons.

When accompanied to the police, the person should not only be notified immediately of the reasons for accompaniment, but he should be given immediately the opportunity to notify a relative or a person in whom he trusts. When the accompanied person is a minor, then in each case immediately the person responsible for his custody is notified.<sup>22</sup> The same goes for adults, for whom a custodian is appointed.

In connection with the police accompaniment, men and women are accompanied to environments isolated from each other and also minors are accompanied to separate areas from those of adults.

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<sup>21</sup> Article 101 of Law no. 9749, dt. 06.04.2007 "On State Police".

<sup>22</sup> Article 107 of Law no. 9749, dt. 04.06.2007 "State Police"

The status of an arrested / detained is defined by the Code of Criminal Procedure (CCP), as well as procedural guarantees of such persons. While the person is detained / arrested, he, in any case cannot be subjected to violence or any other form of abuse.<sup>23</sup> A person is entitled to protection which must be guaranteed at every stage and condition of the proceeding. Also, the CCP provides that if proceedings are contrary to law or in case of wrongful conviction, the person's rights are restored and he / she is compensated for the damage sustained.<sup>24</sup>

### **3.1.2 The rights detained / arrested people are entitled**

In connection with the observance of the rights of persons detained / arrested or accompanied by police, special importance take: the right to have counsel, the right to be informed the reason for detention / arrest and this fact be made known to family members or other persons responsible / interested, and the right to seek medical examination. In any case, the police must notify the person accompanied, held / arrested, of his rights. The defence counsel must have access not only to contact at any time with the arrested / detained person, have access to the information collected and to assist him during questioning, but also to have guaranteed the confidentiality and privacy within the police facilities, of conversation with his client. For the juvenile, besides the defence required necessarily to be present, it is mandatorily required the notification and presence of a parent or legal guardian and psychologist to assist him. Also, treatment facilities and conditions in the premises of the police, must respect the principles of humane treatment in accordance to national legislation and international standards.

The law on "state police" does not contain a special provision to provide for the possibility of appeal and relevant procedures of the accompanied or detained / arrested while with the police, in regard to violations of their rights. That is possible only after leaving the police stations.<sup>25</sup>

### **3.1.3 Internal monitoring and processing requests and complaint mechanisms in state police**

In terms of inspections, in places of detention / arrest or accompaniment, they are performed by inspectors of the Directorate General of State Police that have in the focus of control the legality of actions performed by police staff in the phase of arrest / detention or accompaniment, the conditions and their treatment while staying in these premises and respect for their rights during this period.

In the Police Law on National Prison Service, among other known functions of this service, are also the competences that in the inspections it conducts in the police departments, to monitor the observance of obligations by the police in connection with ensuring of the rights of persons accompanied / interdicted / arrested while in these premises.

It is important to note that the detainees / accompanied / arrested should be made aware of the rules that apply to police departments, and the rights and obligations that citizens have.

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<sup>23</sup> Article 5 of the CCP.

<sup>24</sup> Article 9 of the CCP.

<sup>25</sup> See the latest report by the Ombudsman.

Though the law "On State Police", among other things also contains provisions that are procedural in nature, not reflected clearly in it is the right of persons accompanied / interdicted / arrested to request / complain against any action or inaction of the police in guaranteeing their rights.

#### **3.1.4. External monitoring and processing of requests and complaints mechanisms in state police**

In case of an appeal of these people in respect to their treatment during arrest / detention or accompaniment, they may turn to the Ombudsman (see below at the Ombudsman section), various organizations dealing with protection of human rights as well as to the Court. For purposes of appeal during the proceedings, rules are followed about the terms, procedure and manner of appeal in accordance with the provisions of the Code of Criminal Procedure.

### **3.2. The mechanism of request and complaint for persons deprived of their liberty in prisons and detention**

Execution of punitive sentences restricts only those rights, in the extent and time, as it is prescribed in the criminal decision, respecting all the other rights recognized by law, except as expressly provided in this law. A person convicted on all stages of execution of the decision, is entitled the rights that belong to this law and, when not recognized or violated them, the person seeks protection and their implementation in a manner as determined by law.<sup>26</sup> For the protection and realization of its rights, detainees / prisoners are guaranteed communication with authorities as for example appeal to the court and defence through lawyers.

#### **3.2.1. The rights recognized persons deprived of their liberty in prisons and detention**

The right to request and complaint, as a constitutional right has been reflected in the law no. 8328, date. 04. 16. 1998 "On the rights and treatment of prisoners and detainees," as amended. Specifically, Section 8 of this law stipulates that prisoners have the right to submit claims and make complaints about law enforcement and internal rules and an individual way, in a closed envelope<sup>27</sup>.

From formal viewpoint, complaints may be made orally or in writing. Through these complaints the prisoners can address different organs. So, when detainees / prisoners deem it proper, they can address any state or non-governmental bodies, domestic or foreign. To consider these requests and complaints are settled general terms. Specifically, complaints should be addressed specifically within one month from their filing date, but in special provisions there may be contained also special deadlines.

The detainee has the right to address complains to the higher authorities of the prison system and, when the complain it is not solved administratively, or towards given decision, the detainee

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<sup>26</sup> See Law no. 8331, date. 04.21.1998 "For the execution of penal decisions," as amended.

<sup>27</sup> See article 49 of the law no. 8328, date 04. 16.1998 "On the rights and treatment of prisoners and detainees," as amended.

can address to the court of the place where the institution is located<sup>28</sup>. Also, any detained / convicted is entitled the right to be informed about internal and disciplinary regulations and rules of the institution and for any act that gives him the ability to recognize the rights and duties, to be adapting to life, wherever his sentence is executed.<sup>29</sup>

In making the individual request / complaint, the legal framework in force does not mention the fact that the legal representative / guardian have the right to make and file a complaint.<sup>30</sup> While international standards provide for such a thing. However, in practice this is accomplished, so not only the convicted / detainee but also his legal representative may file a complaint on behalf of the represented. Also, in practice the complaint may be made also by an NGO.<sup>31</sup>

It should be noted on this part and that stems from international standards, is that for every request / complaint can be a convicted / detained it should be possible to not only personally, but to enable him to have this request made by his or her legal representative or his family. The same applies to NGOs, which may represent a request / complaint of individual nature on behalf of the person deprived of liberty, with his / her consent. This standard though practically is applicable in practice, nevertheless, it should be clearly reflection in the law.

In addressing the mechanism of request / complaints matter also adhering to the principle of confidentiality, which is emphasized by international acts such as: CAT, Group of the UN Principles for the Protection of All Persons subject to any form of imprisonment or detention, and EPR, and that are reflected in our domestic legislation.<sup>32</sup> Thus, prisoners / detainees are entitled to have their requests or complaints<sup>33</sup> directly and personally submit to the director of the institution. In the same way can be done with other staff of the prison, regarding the nature of the request-complain<sup>34</sup>. Furthermore the law provides even making of the complains in a closed envelope. Also, it must be stressed that the procedural rules for investigation of complains, are stipulated in the inner regulation of institutions (not in the law).<sup>35</sup>

### **3.2.2. Internal monitoring and review mechanisms of requests and complaints of persons deprived of their liberty in prisons and detention**

As the detainee / inmate is admitted in the institution, he is briefed with the rights and duties, and the manner of presenting requests and complaints.<sup>36</sup> He / she must be provided each day the

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<sup>28</sup> See article 50 of the law no. 8328, date 04. 16.1998 "On the rights and treatment of prisoners and detainees," as amended.

<sup>29</sup> Article 5 of the General Regulation of Prisons.

<sup>30</sup> See the findings in the study "Assessing Prison complaints Mechanism in CEE and FSU regions", supported by the Hungarian Helsinki Committee in cooperation with OSI Budapest, 2011, pg. 20.

<sup>31</sup> Ibid

<sup>32</sup> See the findings in the study "Assessing Prison complaints Mechanism in CEE and FSU regions", supported by the Hungarian Helsinki Committee in cooperation with OSI Budapest, 2011, pg. 27.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid

<sup>35</sup> See the study "Assessing Prison complaints Mechanism in CEE and FSU regions", supported by the Hungarian Helsinki Committee in cooperation with OSI Budapest, 2011, pg. 29.

<sup>36</sup> Article 56 "Requests and complains" the Decision no. 303, DCM dated 03.25.2009 as amended by DCM no. 187 dated 03.17.2010 "On some amendments to the Decision no. 303 dated 25.03.2009, the Council of Ministers "On approval of the General Regulation of Prisons."

opportunity, that either in writing or in some exceptional case through the staff of the institution, the petition, complaint, or request a meeting with the director of the institution or the responsible personnel. Persons authorized must organize meetings with detainees / prisoners to create the opportunity for them to present their requests and complaints.

Requests or complaints, as recorded in a special book, are submitted to the Director of the institution, who has the obligation to assign the appropriate officer for resolution and to provide an answer to the prisoner's request/complaint. For requests and complaints addressed to the institution, the answer must be given within 15 days<sup>37</sup>. These complaints and requests are recorded in a special register that must be kept by each institution.<sup>38</sup>

Detainees / prisoners can present their requests or complaints orally or in writing, even in a closed envelope, to the director of the facility, inspectors, Director General of Prisons, the Minister of Justice, Ombudsman, Prosecutor, Court of the country of execution of the decision, the Supervisory Committee on the Execution of Penal Decisions or other state institutions, persons who visit the institutions under Article 43 of Law no. 8328, date 16.04.1998 "On the rights and treatment of prisoners", as amended. These persons are eligible to receive a response within the time specified in the legal acts in force. The general time-frame, as above mentioned, is 1 month.

Referring to the legal provisions in force, it becomes clear that there is an internal mechanism for controlling / monitoring the rights of detained / sentenced in penal institutions, to ensure a more humane treatment to them in accordance with standards set for this purpose. Inspection and supervision of prison is conducted by inspectors working for General Directorate of Prisons, and inspectors of the General Directorate of the Justice Issues in Ministry of Justice.

Thus, the CMD no. 303, dated 3.25.2009 as amended by C.M.D. no. 187 dated 03.17.2010 "On some supplements and amendments to the Decision no. 303 dated 25.03.2009 of the Council of Ministers "On approval of the General Regulation of Prisons" in its Article 94 / 1 entitled "Institutions Performance Inspection of Criminal Judgments (IEVP)" are defined structures responsible for controlling the activity IEVP the States, their powers and procedures followed in this case. Director General of Prisons sends inspection groups at penal institutions, composed of specialists from the Directorate General of Prisons, who verify certain issues in an order issued for this purpose. The order also specified the scope of control, according to the respective problems. At the conclusion of the inspection, the group designs an inspection act to check in the presence of people already checked, providing afterwards necessary recommendations for improving the violations found. When a violation is found, the inspection group proposes to the Director General of Prisons to take concrete disciplinary action against those responsible for violations. However, we think that there should be specific modalities and protocols on how the inspection will be conducted. The transparency of inspections is also important, that if it is appropriate, there be not only recommendations in the inspection act designed in this case, but also to monitor the situation by the competent structures to see if the observations / recommendations are reflected over time.

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<sup>37</sup> Article 56 of the General Regulation of Prisons.

<sup>38</sup> Article 8/letter 'dh', of the General Regulation of Prisons

Against the first decision, the person deprived of liberty shall have the right to appeal to a higher instance of the prison system, and also to the court as part of a judicial review of an administrative decision.

Also, controlling factor of the prison staff is also the Internal Prison Audit Service of the Ministry of Justice.<sup>39</sup> Field of activity of this Service is the prevention, detection, documentation and preliminary investigation of criminal activity committed by the prison police officers from other departments of the General Directorate of Prisons and security-related issues in prisons. Although NPS performs inspections / checks in prisons, its inspections we noted are not made transparent. However, there have been various disciplinary measures taken against staff for various violations found, as a result of an internal complaint procedure. From monitoring in institutions, we were not able to receive relevant information about how severe or what was the object of these measures taken against the staff whenever violations were observed in the performance of their duty to persons deprived of their liberty.

### **3.2.2.1. Inspector for Legal Affairs and Security in GDP**

Inspector for Legal Affairs and Security has certain important functional powers and duties with respect to the principles and legal obligations to treat prisoners and respecting of their rights.

These inspectors conduct the ongoing inspection of prison's and detention activity, or in connection with the functional performance of sectors of the police, legal or educational institutions (at least 3 times/year for each institution). They also perform periodic planned and specific inspections, independently, direct and with full competences. Moreover they follow periodically the implementation of recommendations made during or at the conclusion of inspections, and propose measures to be taken against people responsibilities concerning unimplemented recommendations, by conducting a genuine analysis of the consequences of failure to implement the recommended measures and prepare an annual report that covers the work completed throughout the year by presenting accurate statistics on the number of inspections, findings, the proposed measures, the measures implemented, etc. We think that there should be specific modalities and protocols that will show how control/inspection will be carried out. Also important is the transparency of these inspections, which until now was only treated as internal matter of these institutions of deprivation of liberty or from a hierarchical approach in their line of superior structures.

It is an important functional task of them to process the requests / complaints addressed to the prison system and in-site verification of certain situations that require a fair and fast decision, by the Director General of Prisons. The existence of these inspectors serves as an internal mechanism which helps in identifying on time the requests—complaints of convicted / detained persons and allows the exact address and their immediate solution.

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<sup>39</sup> Internal Control Service in the prison system, performs functional duties pursuant to law No. 9397 dated 05.12.2007 "On Internal Control Service in the Prison System, No. 7895, dated 01.21.1995," The Criminal Code of the Republic of Albania ", No. 7905, dated 03.21.1995," The Code of Criminal Procedure of the Republic of Albania "and No. 8677, dated 11.02.2000 "On Organization and functioning of the Judicial Police."

Regarding dependence, Inspector for Legal and Security Issues, reports directly to the Director General of Prisons on the findings of inspections. At the conclusion of the inspection conducted, the inspector recommends to the General Director concrete measures to improve work in support of the results of inspections in sectors where the inspection was made. Also, these inspectors propose to the nominated Director General of Prisons, and after its adoption, the director of the institution, suspension until the examination by the appropriate body the illegal actions.<sup>40</sup> Also, in addition to GDP inspectors, inspections carried out by other sectors in GDP in the respective cases dealing with the implementation of functional tasks by sectors under them. Thus, inspections are carried out periodically by the sectors of Social Problems, Law, Health, Police and Logistics.

### **3.2.3. External monitoring mechanisms and review of claims and complaints of persons deprived of their liberty in prisons and detention**

Besides the internal mechanism of monitoring / control of requests—complaints, is also important the external mechanism, as an extra guarantee in respecting of the rights of persons deprived of their liberty in prisons, detention centres and police stations. Thus, referring to the legal provisions in force and as mentioned above, an important role in this respect is played by the Court and the Prosecutor in charge of supervising the execution, the Ombudsman as a guarantor institution of respect for constitutional rights and liberties of individuals from public administration<sup>41</sup> and civil society organizations or international organizations operating in the area of respect for human rights.

Penal institution provides confidential meetings of detainees / prisoners with members of the Supervisory Commission, the Ombudsman and his office staff, defence counsel requested by the prisoner or assigned, representatives of NGOs, local or foreign, operating in the field of human rights or of international bodies. These meetings shall in no case be made in the presence of staff of the institution. They should be held in areas away from the presence of staff and ability to overhear it, to guarantee in this way the application of the principle of confidentiality.

As noted earlier, the inmate has the right that in cases where the complaint is not resolved administratively within the prison system, or for the given decision, to address to the court of the region where the institution is placed.

Also, in the context of fulfilling its role as the National Mechanism for the Prevention of Torture (CPT), the Ombudsman carries out inspections in prisons and provides relevant recommendations.

#### **3.2.3.1. The prosecutor in charge of supervising the execution**

The prosecutor is obliged to take all measures for execution in accordance with the commandments of the court and law prescriptions, to check the regularity of the execution,

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<sup>40</sup> Activities which seriously undermine the institution's interests and that are explained constitute a criminal offense to be prosecuted.

<sup>41</sup> See article 60 of the Constitution of the Republic of Albania: "Ombudsman defends the rights, liberties and interests of individuals from unlawful and not proper actions or inactions of bodies of public administration."

intervene with the competent authorities or address the court to restore law and the violation and put perpetrators accountable under the law<sup>42</sup>. Prosecutor's forms of control are several, as noted below such as<sup>43</sup>:

1. notification of the commencement and completion of execution by the appropriate body;
2. review of claims and complaints of prisoners and his defence;
3. information search and verification directly of documents, or in the place of punishment, in the presence of the relevant official;
4. receipt and verification of reports on facts and circumstances that affect the execution of decisions;
5. obtaining the opinion of specialists of various fields;
6. cooperation with the internal control of the body where the decision is executed or of the institutions of state administrative control.

For verifications performed in places of decision execution, or in other places, the prosecutor maintains the record, which is signed by an present official, who has the right to declare his own remarks. The law obliges that for verifications made upon the complaint of the convicted person or his counsel, the latter must be present when he has filed the complaint. After verification, the prosecutor files a request the court for restoration of the violated rule or recognition of the right of convicted for the cases in its jurisdiction. In other cases, the prosecutor intervenes in the organs charged with the execution of the decision or other competent bodies, to restore the law or violated right, setting the relevant time limits. When there is no legal obstacle, the prosecutor orders the immediate restoration of law and the violation.<sup>44</sup>

When appropriate, the prosecutor submits the request to the competent body for putting before the administrative or disciplinary liability of compensation to persons who have allowed or committed a violation. The request is necessarily reviewed by competent authority and the prosecutor is notified about the end result. However, in terms of practical results that few of these powers are exercised by the prosecutor in the supervision and control forms that described above. This requires that the prosecutor in charge of overseeing the execution plays a more active role in accordance with legal powers when it comes to controlling the penal institutions of deprivation of liberty.

### **3.2.3.2. Commission oversight of the execution of prison sentences**

The Commission is an advisory body for law enforcement in the execution of prison sentences and the protection of the rights of prisoners and is established and works under the Ministry of Justice and extends its operation across the country. Its members are representatives of various

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<sup>42</sup> Article 9 of Law No. 8331, dt. 04. 21. 1998 "For the execution of penal decisions," as amended.

<sup>43</sup> Article 53 of Law No. 8331, dt. 04. 21. 1998 "For the execution of penal decisions," as amended.

<sup>44</sup> Article 55 of Law No. 8331, dt. 04. 21. 1998 "For the execution of penal decisions," as amended.

state institutions<sup>45</sup> and in the exercise of their duty have legal attributes and responsibilities of public civilians. Publication of data from members is made by permission from the Minister of Justice. In any case, the rules for protection of state secrets are followed. Committee members reserve the right to provide information on activities and findings in the body which appointed them.

According to the law, the Commission should meet regularly once every three months and in exceptional cases at the request of the president before regular meeting. On the basis of complaints or reports submitted, the commission or an authorized member from it, has the right to conduct even unannounced verifications on the penal institutions, have a meeting at any time with particular detainees / prisoners, seek clarifications and to inspect documents and premises, and make other necessary verifications. Actions are performed in the presence of the director of the institution or his appointed, with the exception of meeting with detainees / prisoners that can be done without their presence.

The Commission recommends immediate measures to restore law or the violations and submit findings to the Minister of Justice, asking for appropriate measures. Minister of Justice must reply to the measures taken within 30 days. When taking action is the competence of prosecutors and judges, the Minister of Justice provides the materials to the competent prosecutor. When based on the findings it is estimated that there is room for changes, additions or new legal and sublegal acts, the Commission makes proposals to the competent authorities.

### **3.2.3.3. National Mechanism for the Prevention of Torture (MPT) under the Ombudsman**

Any individual, group of individuals or nongovernmental organizations, who claim that they have been violated the rights, liberties and legitimate interests from illegal and irregular actions or inactions of bodies of public administration, have the right to complain or to notify the Ombudsman and seek his intervention to restore the violated right or liberty<sup>46</sup>, including persons deprived of their liberty in police facilities, prisons or detention. Ombudsman begins the procedure of considering the case when he observes or suspects that there has been a violation of the law, according to the complaint or request of the person concerned or harmed against, and on its own initiative, for special occasions made public (with the consent of the interested or harmed party). For requests, complaints and notices submitted to the Ombudsman, no particular form is required, but they must clearly express the subject of complaint or request. The Ombudsman does not accept anonymous complaints or requests.<sup>47</sup>

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<sup>45</sup> Under Article 61 of Law no. 8331, date 04. 21.1998 "On execution of court decisions", as amended, entitled "Appointment of Members", is determined the composition of this committee as follows:

"President of the Republic, Speaker of Parliament and Prime Minister designate each as members, a person with no public functions.

Ministers covering health, food, construction and culture, appoint a member of their employees, provided that they are specialists in the respective profiles.

Minister of Justice shall appoint a member who has no public office, but that meets the conditions for becoming a judge.

One member appointed by the National Chamber of Advocacy. "

<sup>46</sup> Law No.8454, dt. 02.04.1999 "On Ombudsman", as amended.

<sup>47</sup> Article 15 of Law No.8454, date 04.02.1999 "On Ombudsman", as amended.

The Ombudsman may not initiate or may terminate the investigation if the same matter has been decided or is being examined by the prosecution or the court. In these cases, it has the right to request information by these bodies, which must meet its requirements as soon as possible but no later than 30 days. Ombudsman, following the complaint, request or notice of violation, decides<sup>48</sup>:

- a. accept or not the case for review;
- b. to reply to the interested party, showing their rights and ways through which to protect this right;
- c. forward the case to the competent authority.

In all above mentioned cases, the Ombudsman shall notify the applicant within 30 days of receipt of the complaint, request or notification. After receiving the complaint, request or notification, the Ombudsman<sup>49</sup> shall conduct himself an inquiry or request explanations from the organs of administration, and prosecution in cases of arrest and detention.

With ratification by Albania of OPCAT, near the Ombudsman it was established a unit known as the National Mechanism for the Prevention of torture, inhuman treatment or punishment, inhuman or degrading treatment and it is defined in the law "On Ombudsman" in regard to his powers. In this context, this amendment was reflected in the law no. 8328, dt. 04. 16.1998 "On the rights and treatment of prisoners and detainees," as amended.

Thus, the Ombudsman, through the MPT oversees implementation and enforcement of this law to protect the rights of prisoners and detainees. This mechanism regularly monitors the treatment of individuals deprived of their liberty in places of detention, arrest or imprisonment, in order to strengthen, where necessary, the protection of individuals from torture, inhuman treatment or punishment, inhuman or degrading treatment, and makes recommendations to relevant bodies, in order to improve treatment and conditions of these individuals and prevent torture and any inhuman treatment or punishment, inhuman or degrading.

According to the Ombudsman, the MPT (Unit for the Prevention of Torture), in 2010, has conducted about 160 inspections, re-inspections, special checks on the topic and visits to places of deprivation of liberty including here institutions like police stations, detention centres and prisons. During the year the MPT has received and has handled about 380 complaints that were received during meetings with individuals detained or sent to the office of the Ombudsman by post or telephone. For the period January – August 2011, MPT has taken and treated 250 complains<sup>50</sup>.

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<sup>48</sup> Article 17 of Law No.8454, date 04.02.1999 "On Ombudsman", as amended.

<sup>49</sup> Article 18 of Law No.8454, date 02.04.1999 "On Ombudsman", as amended.

<sup>50</sup>As main object of these complains have been the objections towards investigation and court decisions, refusal of the leaves from prison administration, for food supply, absence and suspicion over the water quality in prison, help and juridical advice, complains for not proper/qualified health service, for not having the possibility to follow the studies, for use of violence from the prison, for the right calculation of the sentence period, execution of sentences for meetings with their children as result of divorces, etc.

## Investigation Procedure

In cases when it decides to conduct an independent investigation, the Ombudsman has the right:

- a. conduct investigations in the place, including entering into any office of public institutions and examination in the spot the acts or documents related the issue under investigation.
- b. request explanations from all organs of central and local administration, and get all files and documents relating to the investigation;
- c. to question any person who, in his view, is related to the case, and call in his office all persons of no immunity;
- ç. perform or require expertise.

After completion of the investigation, the Ombudsman performs the following actions:

- a. Explains to the complainer that his rights are not violated;
- b. Makes recommendations to remedy the violations from the administrative body, which, according to him has caused a violation of the rights and freedoms;
- c. make recommendations on measures to remedy the violations of law to a superior organ of the body that caused the violation. If the recommendation is not taken into consideration within 30 days, it suspends the unlawful or irregular actions.
- ç. recommends prosecution to begin an investigation if it finds that a criminal offense has occurred or to resume dismissed or suspended investigations.
- d. for serious violations observed, proposes to anybody, removal of officials under their jurisdiction;
- dh. for violations of rights by organs of the judiciary, without interfering in their procedures, the Ombudsman shall notify the competent authority;
- e. recommends the affected individuals to file suit in court;

Presentation of recommendation suspends the unlawful or improper acts, to the revision of this recommendation and answering the Ombudsman. These above mentioned cases are not mutually exclusive. Bodies, which the Ombudsman has submitted a recommendation, request or proposal for dismissal shall consider the recommendation, request or proposal for dismissal and reply within 30 days from the date the recommendation, request or motion for dismissal. The answer must contain reasoned explanations on the matter, and what actions, omissions or measures are undertaken by that body. If the Ombudsman does not consider adequate responses or measures taken by the body, he has the right to refer the matter to the highest in the hierarchy. In repeated cases, as and when appropriate body does not respond to the recommendations of the

Ombudsman, the latter may present to the Assembly, a report, also proposing measures to remedy the violations of law.<sup>51</sup>

When the Ombudsman notes that the cause that leads to violations of human rights recognized by the Constitution or other laws, is the content of the law itself or other normative acts and not their application, is entitled<sup>52</sup>:

- a. recommend to the bodies entitled for legislative changes, to make proposals and improvement of laws;
- b. propose the administration organs to change or improve the sublegal acts. Not reviewing of the proposal within 30 days results in the suspension of sublegal acts that cause the violation of human rights and freedoms.
- c. activate the Constitutional Court with a request to annul such acts.

To maintain the principle of confidentiality in obtaining request-complaints, the National Mechanism has established mailboxes in all penal institutions where detainees / prisoners cast their requests-complaints and the key of those mail boxes is in possession of only employees of the National Mechanism.

#### **3.2.3.4. Court**

Bodies and institutions where there is the execution of the decision or who are charged with supervising the execution, and their superior bodies in the internal control framework, to make appropriate checks. For the findings, when they are legitimate, appropriate measures are taken, otherwise the intervention of the prosecutor is requested, and, where appropriate, through him seek the taking of the case over by the court.

The court issuing the decision or the court of the place where the sentence is executed, for issues that fall within its competences in matters arising during the sentence execution, has the right to request information from the prosecutor and the organ where the decision is executed and, when appropriate, directly controls the regularity of the execution.

The convict has the right to appeal to higher instances of prison and detention system, where this complaint is not resolved through administrative or against the sentence imposed, the convicted person may petition the court of the country where the institution is located, which must be given within 5 days over the claim of the right violated and where appropriate commands restoration of the violations made.

#### **3.2.3.5. Civil society organizations and international organizations**

At police stations, detention and prison institutions, other state bodies and NGOs may also seek information and clarification on the regularity of the execution of the decision and respect the

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<sup>51</sup> Article 23 of Law No.8454, date 02.04.1999 "On Ombudsman", as amended.

<sup>52</sup> Article 24 of Law No.8454, date 02.04.1999 "On Ombudsman", as amended.

rights of persons deprived of liberty, and recommending appropriate measures by competent state bodies and when they see appropriate, seek the intervention of the prosecutor. Monitoring at these institutions is made in accordance with legal provisions and regulations in force, respecting the privacy and confidentiality of each case data. Entry into these institutions and organizations that monitor the observance of the rights of prisoners or detainees is made in accordance with law "for the rights and treatment of prisoners and detainees" and Article 66 of the General Regulation of Prisons.

For the period January 2011 - August 2011, AHC has received 106 complaints from persons detained in custody or prison. Number of persons who allege physical or psychological violence have filed 7 received complaints during this period. It is very difficult to verify claims of violence and these are addressed in the relevant prosecution offices. There are about 50 complaints received about the poor conditions in different institutions. There were 6 complaints about the lack of health care for prisoners (such as prohibition of prisoner to be visited by a private doctor, the prisoner is not sent to the Prison Hospital Centre for specialized medical treatment and lack of supplying from the institution with appropriate medical treatment for the diagnosis of convicts). Claims for infringement of the rights of persons deprived of their liberty have been 23 complaints, such as: discrimination with the right of airing, to meet family members to make phone calls, etc. unfair denial of the right to get permission, passive corruption of the administration of the institution in granting the permit, unfair disciplinary measures. For unfair transfers from one institution to another, and as a result of non-respecting of the distance, depriving thus the person of the right to meet family, have been 6 complaints etc...

International external organizations are in operation, dealing with complaints, and these organizations are treated at more length in the section entitled "Creating external independent bodies."

#### **IV. Findings and issues related to practical implementation of the mechanism of request-complains**

While the previous section focused on current legislation in force and its analysis, focused especially on handling requests and complaints of persons detained in police stations, detention canters and prisons, this section addresses the practical aspects of the functioning mechanisms of request and complaint and the realization of this right in practice, highlighting the positive and negative aspects of current legislation and system, and the findings recorded by the AHC. This will enable the identification of existing problems in order to make recommendations for improving the situation for a more humane treatment in accordance with established standards.

The main function of almost all external bodies and internal oversight of places of deprivation of freedom in Albania, has been, among other things, handling requests and complaints, which over the years, have grown in number and have played a role in the identification of shortcomings of the system, and its improvement. This has led to increasingly more attention to handling problems related to mechanisms of requests and complaints and the need to study the current system and make recommendations to improve it. However, there has been little research studying the effectiveness of various organs in the examination of complaints from places of

deprivation of freedom and a little effort to improve existing systems and procedures of requests and complaints.

#### **4.1. The mechanism of request-complaint for accompanied, detained / arrested persons by police**

##### **4.1.1. The mechanism of request and complaint for people accompanied by police**

In certain cases envisaged in the law, the police perform the accompanying of the person to its premises, until the case, for which this accompanying was made, is verified up to a maximum of 10 hours. As mentioned in the previous section, the police accompanying is for *'supervision of a minor for purposes of education or for accompanying him to a competent body, and when the person is a carrier of a contagious disease, mentally ill and dangerous to society'*<sup>53</sup>. Also, under section 11 of the Law 'On State Police', section 6, the accompanying of persons can be done *'when a person has violated an administrative rule and his identification creates the need for police accompanying in offices with or without the person's consent'*.

Although Article 101 of Law no. 9749, date 04.06.2007 on "State police" defines only two cases of police accompaniment of a person, the later article 106 provides for several other cases of accompaniment. This arises from the interpretation of the provision, namely Article 101 / 4<sup>54</sup> and Article 106 of the Law. The latter stipulates that protective measures are taken against the mentally ill, the drunk, drug-addicts or people with contagious diseases. In these cases, the police officer, accompanies the person on the premises of the Police, health institutions, and rehabilitation centres or turns him over to the guardian or persons responsible.<sup>55</sup>

So what we find is that dispersed and even somewhat confusing, in various provisions is provided for 5 cases of accompaniment of citizens in police premises. This causes misunderstandings and problems in their practical application by the police. Accompanied persons are entitled to humane treatment and respect for their dignity.<sup>56</sup> They should be notified immediately by the police officer for reasons of their accompaniment. What is observed by monitoring visits to the premises of the accompanied, it turns out that for accompanying and holding people in police stations, the police officer keeps record of the action in the book the accompanied persons. Recorded in it is the person's identity, date of birth, reason for the accompaniment, the date and time of entry and exit, the name of the officer who made the accompaniment, the measures taken, the demand for physician if it would be necessary or attorney, and notification of the family, as well as records the claims of the accompanied person. This last section is worth it just to reflect the demands or claims that the accompanied persons may have. In the books reviewed in various police stations in this section here there were no records of any claim or complaint by the accompanied.

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<sup>53</sup> Article 101 / 1 of Law no. 9749, date 06.04.2007 "On State Police"

<sup>54</sup> Article 101, stipulates:

"..... 4. In cases of accompanying for illegal entry at state borders, deportations or extraditions, interdicting procedures and time frames are defined by legislation in force."

<sup>55</sup> Article 106 / 1 of Law no. 9749, date. 06.04.2007 "On State Police".

<sup>56</sup> Article 101 of Law no. 9749, dt. 06.04.2007 "On State Police".

From visits, it turned out that persons accompanied are kept in different environments from those detained or arrested. In regard to the accompaniment to the police, we were informed that the person is notified immediately of the reasons for accompaniment, and is given the opportunity to notify a relative. When accompanying a minor, we were informed that in each case the family was notified immediately about the juvenile and for the adults a lawyer and psychologist was notified as well. In Tirana and Durres this obligation was met on directorate level. In connection with the police accompaniment, men and women are accompanied in environments isolated from each other and also the juveniles are accompanied in separate sections from those of adults. On the time for visits it was evidenced only one case of a person accompanied the Police Station Nr. 4 in Tirana.

It was noted during the monitoring visits, the fact that in Tirana and Durrës, police accompanies on its premises a considerable number of persons because of various conflicts with each other, insults, attacks or quarrels between them. We stress that aside the positive intent that the accompanying of the people in these cases has, that is to prevent the escalation of situations, accompaniment in this case has no legal basis. This happens only because in the police continues to exist the concept of accompaniment as under the previous law of the state police, when the accompaniment was possible also in such cases, but that is not supported by the current law for the police. These accompaniments unfounded in law may constitute cause for complaints by citizens accompanied, but obviously neither the police nor the citizens in question are aware of these procedures that are unfounded in law.

In every case, the accompanied persons were checked and their personal items, such as telephones, money, documents etc. removed, but we stress that this procedure is not in accordance to the law. Thus Article 106/3 of the Law for the state police, stipulates that the officer can conduct the physical checking of accompanied persons in order to take protective measures against the mentally ill, the drunk, the drug-addicts or those with contagious diseases. So physical control can only be done in these cases, and not in each and every case.

Also, Article 108 of this law provides that, except as provided by law, items can be blocked only if it is totally unavoidable the avoidance of immediate threats to public order and safety. Therefore, we stress that in these cases unauthorized by law, control of accompaniment persons constitutes a blatant breach of the constitutional right to personal inviolability. This action by the police is contrary to Article 37/3 of the Constitution of the Republic of Albania, which states that "To no one outside criminal proceeding can be performed personal check ups, except in cases of entry into the territory of the state and exit from it, or to avoid a risk that threatens public security. " Also, when accompaniment belongings were impounded, the monitoring visits showed that there were kept records, but a copy of the document was not given to the person accompanied.

From the books of accompaniment it did not prove that accompanied people are held over the legal time frame of 10 hours. There are no separate rooms for the male, female or juvenile accompanied, as defined in Article 107 / 3 law for the state police. Only the Police Directorate of Tirana District there is a separate room for women and another for juvenile. In general the facilities visited, the rooms of accompaniment do not meet the criteria and standards for humane

and dignified treatment of people accompaniment. Mainly they are indoors, cramped and not spacey at all, without sufficient lighting.

At the time of the visit in the Police Directorate of Durrës District, although there were no persons accompanied in the three rooms of accompaniment of this directorate, the environment was much undesirable, and that also because of lack of hygiene and cleanliness in these areas. In this directory, though we were informed that the accompanied were told their rights while in the premises of the accompaniment, there were no posters or other materials that capture these rights. The opposite was evidenced in Tirana, where in the police stations, the rights of persons accompaniment, held and arrested were posted in conspicuous places in the premises of the accompaniment and the detention / arrest. In Tirana, at the police station premises, in conspicuous places the orders by the Director General or head of the commissariat regarding the rights and duties of accompaniment persons, detained or arrested and police staff obligations to them (for example, this was evidenced in the Police Station no. 4) were all posted.

All of these deficiencies identified during monitoring may constitute legitimate reasons for people deprived of their freedom to make their complaints.

Inspections in places of detention/arrest or accompaniment are conducted also by inspectors of the Directorate General of State Police who control the focus of the legality of actions performed by police staff in the phase of arrest / detention or accompaniment, their conditions and treatment while residing in these areas and respecting of their rights during this period. During 2010, inspections were conducted by NPS in the Police Directorate of Durrës District, during which it was ascertained that among other things, subject to control by the NPS was the book of accompanied persons. It is worth mentioning as a remark that the findings of these inspection reports are not made public, although it may well be subject to internal analysis of the work of the institution.

We note also that the law "On State Police" there is not a special provision to provide for the possibility of appealing by the accompanied while in police to the effect of violations of their rights. This is done just after exiting the system.

#### **4.1.2. The mechanism of request and complaint for persons detained/arrested by police**

Procedural guarantees of arrested/detained are defined by the CCP. As mentioned above, while the person is detained/arrested, he, regardless of the case, cannot be subjected to violence or any other form of maltreatment.<sup>57</sup> The person is entitled to protection which must be guaranteed at every stage and condition of the proceeding. CCP also provides that if the proceeding contrary to law or in case of unjust punishment, the person's rights are restored and is compensated for the damage sustained.<sup>58</sup>

In connection with the observance of the rights of persons detained / arrested or accompanied by police special importance is given to: the right to counsel, right to be informed the reason for

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<sup>57</sup> Article 5 of CCP.

<sup>58</sup> Article 9 of CCP.

detention / arrest and this fact is made known also to their family members or other persons responsible / interested, and the right to seek medical examination.

From the monitoring it was evidenced that several kinds of registers/books are kept in police stations:

- Book of meetings with the lawyer / Judicial Police Officer (JPO) or attorney
- The book of medical visits
- Book of the control by the competent authorities in the accompaniment, detention / arrest rooms
- Book of accompanied
- Book of the movements of detainees to the court
- Register with the respective data of arrested / detained
- Register of the items of arrested / detained that were kept (for accompanied this is evidenced in the form of a record page in the book of taking and leaving service by police staff).

In any case, the police officers must notify the person detained / arrested of their rights, which, during monitoring visits, we were told that it is done in every instance by the police. Also, the defence should have access not only to contact at any time with the arrested / detained, but have access also to the information gathered and to assist him during questioning, but also have guaranteed the confidentiality and privacy of conversation with his client while in the police facilities. In the premises of police stations monitored in Tirana and Durrës, the current facilities do not offer real conditions and safeguards for confidentiality.

At police stations, there is also the book of meetings with the lawyer of the detainees / arrestees, where according to sections of this register is recorded the date, time of entry and exit, the name of the arrested person that he represents, observations (if any) and signature of counsel. In all cases monitored, it did not reveal any objection by counsel for any problems associated with his client while in the police station. Meanwhile, it was evidenced through the examination of the files kept by police in Durrës Police Station, at least in one of the folders examined, irregularities were noted, that although it existed as a section, was not completed by JPO in that case any information if the arrested in the act had or not an attorney to represent him, or whether he needed one. This column was left blank.

We note that in this case the arrested in the act was a minor 17 years old, which constitutes a serious procedural violations, if we consider that the law, in the case of the minors, requires that counsel must necessarily be present in every state and stage proceeding.

Also, treatment facilities and conditions in the premises of the police must respect the principles of humane treatment in accordance with national legislation and international standards. In fact, in regard to the physical facilities and infrastructure, detention / arrest areas do not offer such treatment. Because in some of the cases they are old and outdated, most of them dating back as before the 90s, they do not offer suitable conditions for staying, neither sufficient lighting, ventilation for such a humane treatment in accordance with the standards. Also, cleanliness and sanitary conditions of facilities are largely unsatisfactory. These were added to the fact that in the case of the police commissariat Durrës, foods were allowed to be kept in the premises of those detained / arrested. Different is the situation in Tirana Police Stations, where this issue has been

already addressed, through meals offered by a private enterprise under a contract that GDSP has with this entity. As good practice, we suggest that it is extended to other stations.

Unsuitable conditions in police stations, old and outdated infrastructure, lack of funds and investment (or the misuse of funds) are among the factors that also contribute to not fulfilling the standards for respecting the rights of persons accompanied, arrested / interdicted in police stations and may constitute a cause of complaint by an individual detained / arrested. However, the examination of relevant records, it was not noticed any complaints about these violations / concerns.

At the time of the visit, the Police Directorate of Durres District, we were informed that the detainees / arrestees there were told their rights. In the premises of this Directorate there were no posters or other materials that capture these rights. The opposite was evidenced in Tirana, where, as already mentioned above, in police stations posters with the rights of persons accompanied, interdicted and arrested were located conspicuously in the premises of the detention / arrest, in some cases even in foreign languages. Also displayed were internal orders of the police directors about the rights and treatment of these persons. Moreover, in Tirana, in the premises of the police stations, the number of the Ombudsman 0800 1111 was posted, to report violations or abuse.

By any police officer asked in regard to violence, both in Tirana and Durrës, we were told that at the time of arrest / detention or while accompaniment or stay of persons in the premises of the police station, there was no violence exercised nor any other form of maltreatment. By Order of the Director General of State Police, no. 64, date 01.25.2010, was adopted 'the Manual for rules of treatment and security of detainees and those arrested in the police unit. "In it are defined standards and rules for the treatment of those arrested / detained in accordance with the law in force. However, the problems mentioned above, show that these rules and standards still do not find practical application of appropriate stations. From meetings and interviews with police officers in police stations visited and from the inspection of books, it was not evidenced any complaints by detained / arrested by police.

In connection with the notification of households, from information provided by police staff it results that the notification is made. Also from contact with persons arrested asking for this purpose, it was evidenced that families were notified but were not allowed contact with them during this time.

Fingerprints taken at the Police Directorate of Tirana District and there is also made an examination by a doctor who checks on the health of the person, issuing the appropriate file at the end. When these people have problems while on station, the arrested / detained are visited / examined by a physician, who acts at the directorate level.

In Tirana, rooms for women and juveniles arrested / detained are in the District Police Directorate and not in the stations of this Directorate, since there are better conditions at the Directorate for these above mentioned categories.

Inspections in places of detention/arrest were conducted by inspectors of the Directorate General of State Police who have in focus of their control the legality of actions performed by police staff

in the phase of arrest / detention or accompaniment, their conditions and treatment while stay in these areas and respecting of their rights during this period. It turned out that this was conducted by NPS during 2010 and in the Police Directorate of Durres District, it was noted among other things, subject to control by the NPS was the book of detained / arrested. At the conclusion of the inspection, the group designs the audit in the presence of people already screened, making necessary recommendations for improving the violations found. However, we think that there should be specific modalities and protocols on how the inspection needs to be made. Also important is the transparency of inspections, if that it is appropriate, the matter is not just left to recommendations in the act / control designed in this case, but also to monitor the situation by the competent bodies to see if the observations / recommendations are reflected in time. From visits to police stations we were told that such inspections were performed, but we were not provided a copy of the findings / observations of them.

In conclusion we can say that apart from legal deficiencies related to guaranteeing the right of request and complaint by individuals accompanied / arrested / detained, the monitoring visits revealed that even in cases of irregularities, violations and improper treatment by the police, persons in conflict with the law or their counsel had not exercised the right of appeal.

#### **4.1.3. The mechanism of request and complaint for persons deprived of their liberty in detention and prisons**

For the protection and realization of their rights, detainees and prisoners are guaranteed communication with competent authorities to address the above mentioned in the legislation part, the appeal to court and the defence attorney, and addressing complaints or requests to NGOs and other organizations domestic or foreign, operating in the field of human rights. From formal point of view, complaints may be made orally or in writing. In penal institution requests / complaints are kept in a special register. There are even forms for their composition, e.g. in the case of the prison 'Ali Demi' in Tirana.

Under the General Regulation of Prisons, all detained / convicted is entitled to be informed about internal and disciplinary regulations of the institution and for any act that gives him the ability to recognize the rights and duties and the manner of presenting requests and complaints. These rights and duties were posted in conspicuous places in prisons and detention monitored.

Detainees and convicts are given every day the opportunity, that in writing or exceptionally verbally through institution staff, submit a request, complaint, or require a meeting with the director of the institution or the responsible staff. Once these requests / complaints are collected, they are recorded in a special book for requests and complaints that belongs to each institution, they are forwarded to the director of the institution, who in turn forwards those to the person in charge of his staff. As mentioned above, for the requests and complaints addressed to the institution, the answer must be given within 15 days and in fact from the books examined, it was evidenced that this deadline is respected. It is worth mentioning that even when the requests / complaints are made verbally, the staff of the institution should document them in any case in the

appropriate register and also to address them properly. The visited institutions have different practices on the way how they manage the request/complaints<sup>59</sup>

In monitored institutions, the requests - complaints are related to issues such as additional meetings with family members, or additional phone calls during afternoon, special and rewarding leaves. For permits is followed a set procedure coupled with the relevant documentation. These requests are received and recorded separately. The detainee or convict was notified regardless of a positive or negative response, as well as for the reasons for rejection. In the case of a response in writing for permission, a copy of the decision was provided to the convicts. In addressing the mechanism of request / complaints matter also adhering to the principle of confidentiality, which is reinforced also in such international acts that are reflected in our domestic legislation.<sup>60</sup> Thus, prisoners / detainees are entitled to their requests or complaints be submitted directly and personally to the director of the institution. This they can also do with other staff members according to the type of request / complaint.<sup>61</sup> However, it should be noted that the procedural rules for investigating complaints of domestic are defined in internal regulations on the institutions (not law).<sup>62</sup> In the case of requests / complaints to the authorities within the institution, the survey found that confidentiality cannot be guaranteed as long as the requests / complaints were not inserted in an envelope nor secrecy of correspondence was ensured in any other way. By monitoring visits it was evidenced that they could be read freely by staff that collects them.

For requests-complaints outside the institution, they can be addressed via postal service or telephone, guaranteeing in any case their confidentiality and privacy. For this purpose in each institution there are mailboxes, where the prisoners / detainees deposit their requests / complaints. Mailboxes are located in the institution by the Ombudsman, and their keys are administered by the staff of this institution, which is another safeguard for the respect in practice of the right of requests and complains.

Also, to address request-complaints of detainees / prisoners in institution monitored were posted in various places within the institutions the phone numbers of the Ombudsman, the Albanian Helsinki Committee and the General Directorate of Prisons. From contacts with staff and prisoners it was evidenced that representatives of these institutions had established also direct contact with the persons who had made the request/complaint. For requests-complaints addressed outside the institution, a copy of the response was sent to the institution as well, for their awareness. It held true primarily to the income replies from the Ombudsman or the General

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<sup>59</sup> In the institution 'Ali Demi in Tirana the request/complaints were put in a box placed inside the regime. They were taken by an employee that works with mail, inside and outside the institution, who hand in the request/complaints to the protocol office, where they are registered in a special register; and afterwards they are treated by the director of the institution, who delegates the request/complaints to the respective employees. After the treatment of the request/complain, the detainee signs for taking notice of the treatment of it's request/complaints in a format. In the other institutions the request/complaints are taken by the specialist of the social care section working in the internal regime; and after registering them in the corresponding register, give them to the director of the institution for further treatment.

<sup>60</sup> See the study "Assessing Prison complaints Mechanism in CEE and FSU regions", supported by the Hungarian Helsinki Committee in cooperation with OSI Budapest, 2011, pg. 27.

<sup>61</sup> Ibid.

<sup>62</sup> See the study "Assessing Prison complaints Mechanism in CEE and FSU regions", supported by the Hungarian Helsinki Committee in cooperation with OSI Budapest, 2011, pg. 26.

Directorate of Prisons). In the monitored institutions, it was shown that there were no cases of complaints that the request / complaint have not been addressed or that it has not been replied.

In penal institutions, for persons convicted there are forms for requests concerning lowering the sentence or probation release addressed to the court (the case of institution 'Ali Demi' Tirana). When the answer comes negative, it turned out that these requests were not always addressed properly. In most of these cases the offenders complain to the Ombudsman when according to the law they should address the competent court.

In penal institutions, the people deprived of liberty, were allowed two calls a week and when approved their requests, additional calls to family members or others. Calls are recorded in a special register, where is written the name of the person who placed the phone, the number he calls and the duration of the conversation. The phone calls are not listened in by the personnel, in the scope of guaranteeing confidentiality of the conversation. However, we think that this confidentiality is not fully guaranteed, as the distance of the institution's staff from the convicted / detainee during a telephone conversation is very minimum, which makes practically possible to overhear the conversation.

Penal institutions provide through special sections, confidential meetings of prisoners / detainees with members of the Supervisory Commission, the Ombudsman and his office staff, counsel, representatives of NGOs, local or foreign, operating in the field of human rights or international bodies.

#### **4.1.4. Internal inspection / monitoring**

It is observed that presently there is an internal mechanism for inspecting / monitoring the rights of convicted persons / detainees in penal institutions, to ensure a more humane treatment in accordance with standards established for this purpose. Inspection and supervision of prison inspectors is conducted through the Directorate General of Prisons, and inspectors of the Inspection Section for the Implementation of Justice Ministry of Justice, which was discussed earlier.

While we stress that in practice, the Supervisory Commission close to Ministry of Justice as a supervisory structure of the rights of persons detained in penal institutions, is not functioning. Despite that the Commission is envisaged in the law, detainees / prisoners were not aware of its existence and powers.

NPS also conducts inspections in penal institutions for violations by staff in uniform, but in addition to the above mentioned, we do not possess more information about the performance of this service. It should be emphasized that this structure should be reviewed in terms of its functioning, to better serve the mission of law enforcement by the prison administration staff.

In conclusion, we emphasize that, despite the existence of different structures of inspections and supervision, there is a need to review the powers and the protocols of these inspections, and quality of this service.

#### **4.1.5. External control / monitoring**

In the scope of fulfilling its role as the National Mechanism for the Prevention of Torture, the Ombudsman carries out inspections in penal institutions and has offered relevant recommendations in each case. Ombudsman begins the procedure of considering case when he observes or suspects that there has been a violation of the right, indicated by the complaint or request of the person deprived of liberty, and at his own initiative, for special occasions made public but with the consent of the person concerned. For complaints, requests and notices submitted to the Ombudsman it is not required any particular form but that they must clearly express the subject of complaint or request, and as mentioned, it can be made by mail, telephone or directly through contact with the convicted / detainee. In any case, confidentiality is guaranteed. In all cases, the Ombudsman replies within 30 days of receipt of the request-complaint.

Given the above, the Ombudsman, through the National Mechanism oversees the implementation and enforcement of this law to protect the rights of prisoners and detainees. This mechanism regularly monitors the treatment of individuals deprived of their liberty in places of detention, arrest or detention, to be strengthened, where necessary, protecting individuals from torture, inhuman punishment, and cruel or degrading treatment, and submits relevant recommendations to relevant state organs in order to improve treatment and conditions of these individuals.

However, current concern still remains in regard to insufficient logistical and financial support of this structure from the state budget, which directly affects the remaining active and efficient of this supervisory structure.

The role and position of the prosecutor in charge of supervising the execution of penal decisions, given the powers that the law "On execution of penal decisions" recognize in this regard (see for more treatment of the topic in the respective section), remains inactive as well.

#### **4.1.5 /a Organizations of civil society and international organizations**

In institutions of deprivation of liberty, monitoring can be carried out by NGOs associated with the regularity of the execution of the decision and respect the rights of prisoners / detainees, recommending concrete measures and when they see appropriate, seek the intervention of relevant authorities. Monitoring at these institutions is made in accordance with legal provisions and regulations in force, respecting, in any case, privacy and confidentiality of data. Entry into these institutions and organizations that monitor the observance of the rights of prisoners or detainees, is made in accordance with the Law "On the rights and treatment of prisoners and detainees" and Article 66 of the General Regulation of Prisons.

The law and moreover the General Prison Regulations, has no specific provision for access of NGOs in closed institutions. It is required that a written request be sent to the director of the institution where the subject matter appears and the details of the visit and the director of the institution, reviews the request for granting permit within five days, and must provide a written

response to grant or not the permit, explaining the reason for refusing in the case of a negative response. NGOs have the right to appeal to the Director General of Prisons. In 2011, in some cases, AHC observers were not permitted due to the lack of a formal agreement between AHC and the GDP, while the law is a legal act, and as such, is superior to mere agreements.

As for the monitoring the facilities of the police stations, in each case the requirement should be addressed to the Director General of State Police with details of names, passport number and scope of entry in and duration of observations. We should emphasize the need for an add-in in the law and regulation for a special provision to facilitate access to these institutions from NGOs that have in their status, monitoring activities in the field of human rights, including rights of persons deprived of liberty.

In regard to the access of the international organizations in detentions / prisons, it is widely delved previously in this study.

## **V. Suggestions**

### **5.1. For the improvement of the legal basis**

- We suggest that immediate action be taken to draft the legal and sublegal framework to make possible the ensured exercise of one of the fundamental rights of citizens that get accompanied / detained / arrested, namely the request-complaint right, in police stations.
- In addition to just the persons deprived of liberty, national legislation must ensure that legal defenders, family members of persons deprived of liberty, as well as anyone else familiar with the case, should have the right to make a complaint on behalf of person concerned; also, the legislation should guarantee the right of making a complaint addressed to NGOs representing the interests of the person deprived of liberty, of course with the consent of the latter;
- The pertaining legislation should envision the right of suspending the implementation of a decision / disciplinary action against persons deprived of liberty when the subject of complaint is the decision / action in question;
- Although in general the Albanian legislation, at large, guarantees the right of free legal protection of persons deprived of liberty, we suggest that the legislation relating to the request-complaint procedure, ensures also a right that persons deprived of liberty should have to be represented by their legal defenders, or by organizations that provide free legal aid, during the internal process of making and handling a request-complaint.
- Domestic legislation in this area does not envision explicitly the complaint procedures that persons deprived of liberty must follow when wishing to appeal decisions made by state authorities for their complaints. Moreover, the law should be clear about providing access to an independent state authority to review decisions made in relation to complaints handled.

## **5.2 For improving law enforcement**

Given that in the law on state police there are not envisioned specific provisions for the exercise of request-complaint, this part of the recommendation is therefore focused on the implementation of the legal basis in the penitentiary system. With the establishment of full legal and sublegal basis for the police system, will definitely be a need of taking concrete measures to implement the law in this regard.

Thus for the prison system, we present as follows:

- Although there are various management practices to administer an request-complaint in various penal institutions of the prison system, it is suggested to develop a written and unified protocol, with clearly defined procedures for administering the request-complaint, the responsible persons, as well as the procedures and time limits of a response;
- Development of written procedures / protocol for request-complaint will create the possibility of guaranteeing confidentiality, from the moment of making a complaint as well as during its processing. In this regard, it is suggested concrete and practical measures be taken, to fully guarantee the confidentiality of the processing of complaints, especially within the prison system;
- It is necessary to design a standard format of request and complain for persons deprived of their liberty in all penal institutions, which will help persons deprived of their liberty, to facilitate the process of submission of their request-complaints. However, the making of request-complaint forms and other ways, should still retains the same administrative and judicial value;
- Since in penal institutions and the state police there are different understanding of the concepts of request-complaint, it is suggested the carrying out of activities with the scope of raising the professionalism of these institutions' staff related to the concepts of request and complaint law enforcement procedures in this direction.

## **5.3 For increasing the efficiency of inspection / monitoring of internal / external supervisory structures**

- Given that in the Albanian context, there are a number of internal structures which have the power of inspection and supervision, their efficiency must be analyzed to determine how capable they are to cooperate with each other, and how transparent are the procedures they follow. Moreover, part of the analysis must be also how effective their activities are in inspecting and supervising the police and prisons system, and how much impact they have on improving the situation in this regard.
- Given the best practices of some European countries, which this research brings to our attention, the Albanian police and the prison system, should therefore adopt one of these

models, to ensure a pellucid and efficient internal inspection as well as supervisory structures, which, along with their staff's performance, have as subject of their consideration, the respecting of the rights of persons deprived of their liberty, including the receipt of complaints.

- We take notice that although the law provides for the functioning of the Supervisory Committee for the Execution of Penal Decisions, in practice, this committee does not work. Therefore it is suggested that actions are taken to make this structure efficient, referring to the best European practices.
- Part of this analysis must be also the professional level of personnel working in these internal structures, the methodology of their work, their financial resources and logistics.
- The revision of the written procedures and protocols of structures that have in their competency the inspection and supervision, becomes mandatory, so that they reflect the standards of inspection and the transparency of these activities.
- As for the external independent institutions of monitoring such as the Ombudsman along with the Unit for the Prevention of Torture, we suggest that these structures have sufficient human, financial and logistical support to enable their normal operation.

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- Data from the Ombudsman, the Ministry of Justice and the General Directorate of Prisons.

## **ANNEX 1**

### **List of contact persons in the visited institutions**

- Mr. Iljaz Labi, Deputy / Director General of Prisons
- Mrs. Irena Çela, Director PDEI "Ali Demi", Tirana
- Mrs. Xhizela Haxhiu, social workers, PDEI "Ali Demi", Tirana
- Mrs. Drivalda Hoxha, psychologists, PDEI "Ali Demi", Tirana
- Mr. Fetah Dyrmishi, In charge of Accompaniment / detention / arrest rooms Police Station No. 4, Tirana
- Mr. Patriot Çobaj, Head of the legal sector. Detention Institution 302, Tirana
- Mr. Abdullah Duka, Director of the Detention Institute, Durrës
- Mr. Rezart Tusha, Deputy / Director of the Detention Institution, Durrës
- Mrs. Ina Domi, Head of the social care sector, Detention Institution, Durrës
- Mr. Karafil Xholi, Head of Public Order and Security, Police Directorate of Durrës District

## ANEKS 2

- Statistical data

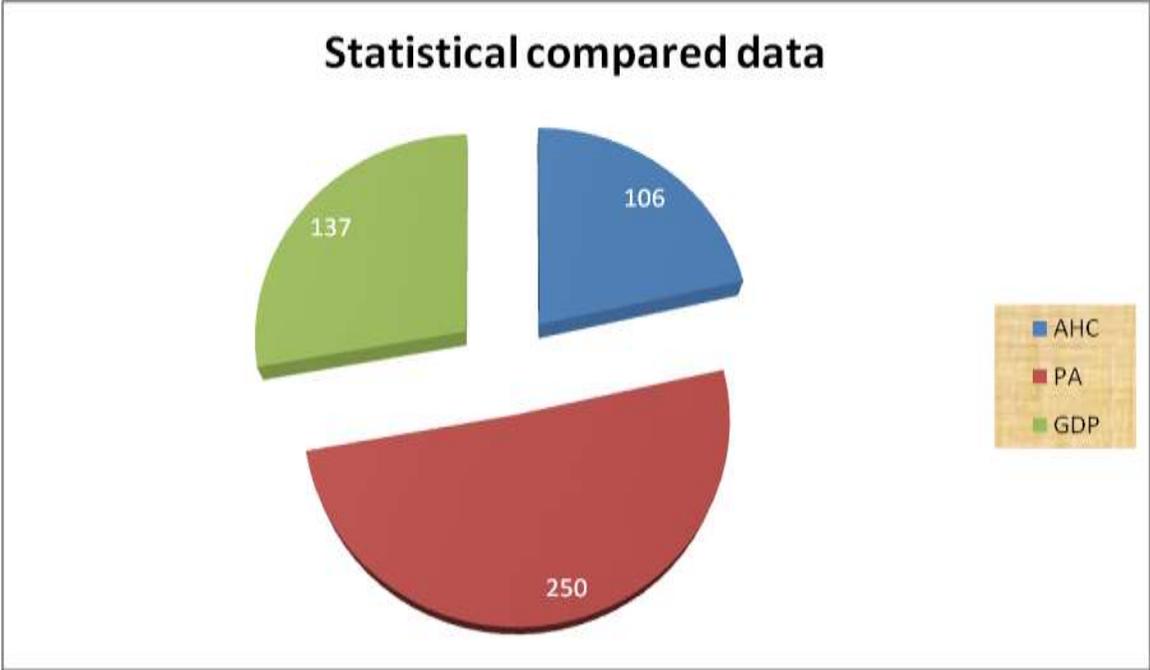
- *Statistical data from the General Directorate of Prisons*

### **Request/complains from the pre-detainees/prisoners.**

Year	2007	2008	2009	2010
Number of the request-complains	1.984	2.666	1.751	1.776

- *Statistical data of institutions monitored for the period January-March 2011*

Institution	Convicted	Pre-detainees	Arrested/detained/accompanied	Request (January-March 2011)
PI, Durrës	4	252	-	115 requests
“M. Peza” Prison	8	196	-	265 requests
“Ali Demi” Prison	171	-	-	688 requests
Police Commissariat, no. 4, Tirana	-	-	1	-
Police Directory, Durrës Circuit	-	-	3	2 requests



The data presented in the table above show the number of the requests – complains of the pre-detainees/prisoners during January - August 2011, addressed to the Albanian Helsinki Committee (AHC), Peoples' Advocate, and General Directorate of Prisons (GDP).