



# Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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## Committee against Torture

Forty-seventh session

31 October–25 November 2011

### List of issues prepared by the Committee to be considered in connection with the consideration of the second periodic report of Albania (CAT/C/ALB/2)

#### Articles 1 and 4

1. In the light of the previous recommendation of the Committee (CAT/C/CR/34/ALB, para. 8 (a)), the Committee welcomes the amendments to article 86 of the Criminal Code regarding persons acting in an official capacity. Please indicate any illustrative cases when article 86 of the Criminal Code has been applied to persons acting in an official capacity.

2. Referring to amendments to article 50 of the Criminal Code on aggravating circumstances such as motifs related to gender or race, please explain if the current wording of another aggravating circumstance under article 50 of the Criminal Code of “abuse of duties deriving from a state or religious function or service” does not limit effective punishment of all acts of torture and ill-treatment by law enforcement officers, as article 1 of the Convention requires the prevention and punishment of violations by persons “acting in an official capacity”, without requiring abuse of powers.

#### Article 2<sup>1</sup>

3. Please provide information on the mandate and activities carried out to date by the People’s Advocate (Parliamentary Ombudsman), who has been designated as national preventive mechanism (NPM) under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and on the measures taken by the relevant authorities of the State party to implement NPM findings

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<sup>1</sup> The issues raised under article 2 could also involve other articles of the Convention, including but not limited to article 16. General comment No. 2 (2007) on implementation of article 2 by States parties, paragraph 3, sets out: “the obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter “ill-treatment”) under article 16, paragraph 1, are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture ... In practice, the definitional threshold between ill-treatment and torture is often not clear.” See further chap. V of the same general comment.

and recommendations made following visits to places of detention. Furthermore, please indicate measures taken to provide the People's Advocate with the specific human, financial and logistical resources necessary to ensure its effectiveness and independence, in accordance with article 18, paragraph 3, of the Optional Protocol and guidelines Nos. 11 and 12 of the Sub-Committee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in relation to visits to States parties. Please also indicate challenges, if any, in access to specific places of detention. Please provide the Committee with information on any review undertaken to assess the effectiveness of the People's Advocate.

4. Please also report on the instances of regular and unannounced visits to police stations by the People's Advocate and other independent bodies during the reporting period.

5. In the light of the creation of the Torture Prevention Unit within the People's Advocate Office, please indicate what steps are being taken to ensure that the preventive and complaints-oriented mandates of NPM are equally important and receive adequate support. Moreover, NPM visits to different places of detention should not be limited to on-site inquiry into complaints.

6. With reference to the previous recommendations of the Committee, please provide updated information, including statistics (disaggregated by age, gender and origin), on the number of complaints, investigations, prosecutions and convictions, including criminal and disciplinary sentences, related to acts of torture and ill-treatment under articles 86 and 87 of the Criminal Code allegedly committed by law enforcement personnel during the reporting period. Please clarify which provisions of the Albanian Criminal Code were violated in each case. It would also be useful to receive information about recent examples of cases where the accused was found guilty of acts of torture, including the sentences handed down and the penalties given.

7. Please report on the measures taken to adopt clear legal provisions establishing that orders from a superior may not be invoked as a justification of torture.

8. In the light of the recommendation by the Committee on the Elimination of Discrimination against Women (CEDAW/C/ALB/CO/3, para. 29), please report on the comprehensive measures, if any, taken by the State party to address violence against women in the family and in society. Has the State party taken any steps to amend the Penal Code so as to establish marital rape as a specific criminal offence, to appropriately sanction and criminalize acts of domestic violence and to ensure that all cases of violence against women are swiftly prosecuted and punished?

9. Furthermore, please provide information about efforts to ensure that female victims of violence have immediate protection, including the possibility of expelling the perpetrator from the home, effective recourse to a shelter and access to free legal aid and psychosocial counselling, as well as measures adopted to prevent suicides by victims of domestic violence. In addition, please provide data on the number of investigations into cases of domestic violence and the number and outcome of prosecutions and convictions of perpetrators, as well as information on redress and compensation measures.

10. As concerns trafficking in women and girls and exploitation of prostitution, pursuant to the recommendation by the Committee on the Elimination of Discrimination against Women (CEDAW/C/ALB/CO/3, para. 29), please give information about steps, if any, to amend the Penal Code to the effect that victims will not be subjected to criminal prosecution and punishment and that internal trafficking will also be covered under the criminal offence of trafficking in human beings. Please indicate the steps taken to ensure that offenders who commit either cross-border or internal trafficking are prosecuted and punished. Moreover, please provide an update on the measures taken to guarantee free legal aid to victims of trafficking, provision of shelter and compensation to the victims as well as

safety and protection of relevant witnesses. What measures, if any, have been taken to foster policies on combating child trafficking and define the crimes of the sale of children and child pornography (see report of the Working Group on the Universal Periodic Review on Albania, A/HRC/13/6, para. 67.17)?

11. What further steps have been taken to reduce long pretrial detention periods of up to three years and address overcrowding in places of detention?

12. What measures have been undertaken with a view to abolishing the 10-hour administrative detention period for interrogation prior to the 48-hour period within which a suspect must be brought before a judge?

13. Please update the Committee on progress in implementing the fundamental legal safeguards for persons detained by the police, guaranteeing their rights to inform a relative, to have access to a lawyer and a doctor of their own choice and to be provided with information about their rights.

14. In reference to the Committee's previous concluding recommendations (CAT/C/CR/34/ALB, para. 8(i)), please explain the circumstances in which the Management of the Institution informs relatives on behalf of inmates. Furthermore, please clarify if the Criminal Code allows for the legal guardians of juveniles to be present during their interrogation and whether the minors in pre-detention centre "Jordan Misja" in Tirana have been provided with the assistance of a defence lawyer from the moment of their detention.

15. In the light of the recommendation by the Human Rights Committee (CCPR/CO/82/ALB, para. 12), as well as the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/17/28/Add.3, para. 70), please inform the Committee of additional measures to extinguish a belief in the practice of vindicating honour and blood outside the regular legal system, which remains entrenched in certain parts of the society, and to investigate such crimes and prosecute and punish all the perpetrators.

### Article 3

16. Please inform the Committee of the measures taken to amend the legislation that allows the refoulement of persons considered as a threat to public order or national security without a legal procedure, and to provide all required guarantees under the Convention. Please explain if the new Law on Foreigners or the amendments to the Law on Asylum in the Republic of Albania of 2009 have been used to address this issue. Furthermore, what practical mechanisms have been in place to ensure that rejected asylum-seekers are not at risk of torture or ill-treatment upon deportation?

17. Please provide data, disaggregated by age, sex and nationality, collected during the reporting period in regard to:

(a) The number of requests for asylum;

(b) The number of asylum requests granted;

(c) The number of applicants whose requests were granted because they had been tortured or because of a real personal risk of torture if they were to be returned to their country of origin. Recent examples of decisions in this regard would be useful.

18. Please clarify the steps taken to identify at the earliest possible stage asylum-seekers who may have been subjected to torture or ill-treatment, and ensure medical and psychological assistance and care to those individuals, as well as free legal aid to facilitate the application procedure.

19. Please give information about the number of successful appeals against rejected asylum applications based on the new Law on Foreigners submitted by asylum-seekers who alleged that they were at a real, personal risk of being subjected to torture or ill-treatment upon deportation.

20. Please clarify the extent of the diplomatic assurances against torture or ill-treatment, if any, sought by the State party during the reporting period in the context of extradition and deportation.

21. Please provide information, disaggregated by age, sex and nationality, on the total number of unaccompanied or separated children held in detention for the purpose of removal, the length of their detention and their access to free legal aid and other assistance.

### **Articles 5–9**

22. Please provide information on whether the State party has extradited offenders suspected of having committed acts of torture in accordance with article 5 of the Convention, or otherwise sought prosecution of such offenders before domestic courts.

23. What measures have been taken to amend domestic legislation to establish jurisdiction of the Albanian courts over offences referred to in article 4 of the Convention in cases where the alleged offender is present in the territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States that have established jurisdiction in accordance with article 5, paragraph 1, of the Convention (*aut dedere aut judicare* principle)?

24. Please provide information on judicial assistance and cooperation with neighbouring countries in connection with criminal proceedings brought in respect of any of the offences referred to in article 4 of the Convention, including the supply of all available evidence necessary for the proceedings.

### **Article 10**

25. Please provide information on efforts to combat ill-treatment by the police, including initial and ongoing training on the Convention, international human rights law and other standards relevant to their work, including the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, with the aim of ensuring that force used by police officers when performing their duties should be no more than is strictly necessary and that, once persons have been brought under control, there can be no justification for excessive use of force.

26. Please give information on steps to ensure that all new prison officers benefit from appropriate initial training and that ongoing training is organized for all prison officers already working in the prison system, with due regard for the selection of persons with the appropriate personal qualities.

27. Please inform the Committee whether all professionals who are directly involved in the process of documenting and investigating torture, as well as medical personnel and other officials involved with detainees, are trained on the provisions of the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) and the result of such training. Please also indicate whether the Istanbul Protocol is used in asylum determination procedures.

28. Please clarify what training on the rights of asylum-seekers and refugees, especially how they relate to the Convention, has been provided to the staff of the Office for Refugees, members of the judiciary and all other officials involved in the asylum process.

29. Please indicate measures taken by the State party to provide human rights education to police officers, corrections officers and judicial staff aimed at the protection of women, persons of minority sexual orientation and gender identity and individuals belonging to national minorities from torture and ill-treatment (see A/HRC/13/6, para. 67.19).

## Article 11

30. Please provide information on measures adopted in pretrial detention centres to increase the access of juveniles to recreational activities (such as sports), and to secure outdoor exercise for adult prisoners at prisons, including the steps taken to ensure implementation of the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, as contained in paragraphs 23 and 27 of the report on its visit to Albania in 2008.<sup>2</sup>

31. Pursuant to the recommendation by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, please also provide information on measures taken in all prison establishments in Albania to ensure that: (a) all newly arrived remand prisoners are subject to a comprehensive medical examination on admission (including screening for transmissible diseases) and that all prisoners are provided with information regarding the prevention of transmissible diseases; (b) an individual medical file is opened for each prisoner; (c) all medical examinations of prisoners (whether on arrival or at a later stage) are conducted out of the hearing and – unless the doctor concerned requests otherwise in a particular case – out of the sight of prison officers; (d) the file drawn up after a medical examination of a prisoner contains an account of statements made by the prisoner, an account of objective medical findings based on a thorough examination, and the doctor's conclusions thereon; and that upon request, the doctor's conclusions be made available to the prisoner and his/her lawyer.

32. Please clarify the progress made in reviewing the arrangements for visits at the pretrial detention centres and prisons (including for juvenile offenders), as appropriate, so that prisoners are able to receive visits as provided for by law and under more open conditions, i.e. without a glass partition.

33. Please provide information on the measures taken to avoid the risk of sanctions of persons deprived of their liberty who have been interviewed during the NPM monitoring visits. Please indicate whether the interviews with detainees are conducted in private on a systematic basis.

34. Regarding involuntary hospitalization in psychiatric establishments, please provide an update on whether a judicial review procedure has been carried out in respect of all forensic patients who have been subject to involuntary treatment under section 46, paragraph 1, of the Penal Code for more than a year, as well as information on the outcome of these procedures and whether the High Council of Justice has been systematically reminding judges of their ex officio review obligation under section 46, paragraph 3, of the Penal Code.

35. Consistent with the recommendation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, please report on measures

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<sup>2</sup> CPT/Inf(2009) 6.

taken to continue investments in prison and other detention facilities, with a particular focus on improving material conditions for suspects held in police establishments and pretrial detention centres (see A/HRC/13/6, para. 67.52).

36. Please provide details on the measures to provide systematic medical examination of detainees within 24 hours of their admission to prison, improve medical care in detention facilities, establish training for medical personnel and transfer all prison medical personnel to the authority of the Ministry of Public Health.

37. Please further explain what steps, if any, have been taken to ensure that persons remanded in police custody, sometimes even after the person concerned has been brought before a judge, are promptly transferred to a pretrial detention centre or remand prison.

38. Please provide further information on measures to improve poor conditions in places of detention, in particular in police custody cells in Albania, ensuring that they conform to international minimum standards, including the Standard Minimum Rules for the Treatment of Prisoners. Please update the Committee on the progress of measures to ensure adequate lighting and ventilation; clean mattresses and clean blankets for persons staying in custody overnight and access to the toilet and adequate washing facilities in the police custody cells, and means of rest in holding cells in police stations in Albania, pursuant to the recommendations by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment following its visit to Albania in 2008.

### **Articles 12 and 13**

39. In the light of the previous recommendation by the Committee to investigate all allegations of torture and ill-treatment by law enforcement personnel and the Government's information concerning the measures taken by the Prosecution Office, the Ombudsman and the Directorate General of Prisons to respond to the complaints lodged in regard to violence on inmates of pretrial detention centres and prisons by the police, custodial staff and prison guards (CAT/C/ALB/CO/1/Add.1, paras. 1–6), please provide updated information on the effectiveness of the measures to carry out prompt and impartial investigation of all allegations of torture and ill-treatment by law enforcement personnel, especially at the moment of arrest and during interrogation, in order to eliminate their de facto impunity.

40. Please provide also information on the extent to which the detained and convicted persons are adequately informed of their rights by the police and prison officers, in particular the right to submit complaints about torture and ill-treatment to public authorities, based on the Pre-detention Regulation adopted by the Minister of Justice Ordinance No. 3705/1 of 11 May 2006, and whether the Code of Conduct for Police Interrogation guarantees the information about the rights of persons detained by the police.

41. Please describe the measures, if any, to improve mechanisms to facilitate the submission of complaints by victims of ill-treatment and torture to public authorities, including obtaining medical evidence in support of their allegations.

42. Regarding the functioning of the judiciary, please indicate any effective measures undertaken to strengthen the independence of the judiciary and provide adequate training on the prohibition of torture to judges and prosecutors.

### **Article 14**

43. The Committee would appreciate an update on the application of legal and other mechanisms to ensure fair and adequate compensation for all victims of torture, and former political prisoners and persecuted persons, as well as information on instances and types of

compensation granted (CAT/C/CR/34/ALB, 7 (h)). Please also inform the Committee about whether any programmes or services for rehabilitation are available and accessible to victims of torture and ill-treatment.

### **Article 15**

44. Please inform about measures taken to adopt clear legal provisions prohibiting the use as evidence of any statement obtained under torture.

### **Article 16**

45. In the light of the recommendation by the Committee on the Elimination of Racial Discrimination (CERD/C/ALB/CO/5-8, para. 15), please provide data on alleged cases of ethnic profiling and ill-treatment and improper use of force by police officers, especially against young members of Roma minority, and comment on measures taken by the State party to prevent and combat such incidents.

46. Regarding the involuntary placement in psychiatric establishments of a civil nature, please report on the progress made in preparing the draft amendments to the Mental Health Act in order to remedy the fact that some of the involuntary patients who were being held in a psychiatric hospital on the basis of a judicial placement procedure were not presented before a judge. Furthermore, please inform on the measures to make sure that concerned patients always receive a copy of the court decision on involuntary placement, with an advice on the modalities to lodge an appeal to courts, and that involuntary hospitalisation is regularly reviewed.

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