

PEOPLE'S ADVOCATE
IN ALBANIA

10 YEARS ACTIVITY

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INTRODUCTION

Very soon, the Institution of the People's Advocate is getting 10 years old from the day of its establishment. Personally, I feel proud of the fact that the Assembly of the Republic of Albania made me the first Advocate of the Albanian people. It is natural that from the height of a 10 -year operation viewpoint, we now can retrospectively view on all activities carried out for its establishment and development, starting with the pre history of the creation of the People's Advocate. I consider this should be done, because its rapid progress and its success in increasing the trust of people to this new institution have made a positive impression on the internal factor and the international one.

The big social traumas that Albania experienced over the first 10 years of transition (1991-2000) due to the changing of the political system, it might be said for the sake of the truth, that they could not be responsibly managed by the state traditional institutions. The police, the army, the courts and other structures determining state existence, in 1997, for a short time, not in a small part of the state territory, ran into a full collapse. Therefore, I think that the international community being present since the beginning of the democratic processes and with a big influence on Albania, after 1997, implemented another strategy. The message was clear: no more economic aid for survival; no more unconditional financial aid to Albanian government.; on the contrary, development programmes for the establishment and the strengthening of new democratic institutions of the Albanian state.

The Albanian new constitution approved through the referendum of the year 1998, was identified as a contribution of the local experts as well as of the international ones. In this new constitution there was foreseen the setting up of the new Institution of the People's Advocate. In February 1999, the Albanian Parliament passed the respective law with its 40 articles "On the People's Advocate". Which is a combination of danish and Swedesh laws.

When the establishment of the People's Advocate Institution was under discussion, before the approval of the constitution took place, some surveys conducted by some NGO-s made known that the Ombudsman was unknown to the major part of the persons interviewed including here lawyers and

sociologists.

The People's Advocate first electing process made by the Albanian Parliament on 16 February 2000, was quite open and democratic. According to the Constitution, People's Advocate gets elected by the 3/5th of MP. There were 15 candidates to compete of whom I won with more than 2/3rd of MP votes (104 votes out of 155) and the Parliament entrusted me with this duty. After evaluating the work performed during my first mandate, on 17 February 2005, the Albanian Parliament reelected me (99 votes out of 140), entrusting me with a second mandate until 2010.

For the establishment of the Institution of the Albanian People's Advocate were engaged some of the international bodies, especially the Council of Europe and OSCE. The international pressure helpful for the establishment of the democratic institutions, following the financial support to Albania, was associated positively with a coordinated support through consultancy, thrashing out ideas, supporting initiatives and moreover through financial guarantees for this new institution, allocated by the Royal Danish Government in the framework of DANIDA Program.

Two weeks after the election of the People's Advocate, it was created a forum called "The group of Friends of the People's Advocate" composed of representatives from the most powerful international bodies in Albania such as the Council of Europe, OSCE, Embassy of Denmark, American Embassy, AbaCeeli and even representatives from some Albanian NGOs experienced in the field of human rights protection. They expressed their willingness of engaging themselves to make lobbying for and give support to the establishment of this institution. This forum played a very important role, especially during the first two years of operation (2000-20001) with its practical advise and the provision of conditions to eliminate any obstacle coming across the institutions progress.

For a further independence of this Institution, in April 2000, a group of MPs took a legislating initiative resulting with the improvement of the article 35 of law no.8454, dated 04.02.1999, "On the People's Advocate" by entitling the People's Advocate to personally decide on the structure and his staff number.

On 12 may 2005, the Albanian Parliament approved some important changes to the law "On the People's Advocate" by giving us some competencies for a wider supervision over the administration bodies, court procedures, prisons and detention rooms, for participating in the meetings of collegial bodies where decisions are discussed based on the recommendations of the People's Advocate.

In May 2000 was prepared the Internal Regulation of Work and the Code

of Ethics of the Institution. These two documents, important for the Institution management and its well functioning, got reviewed and improved in 2008.

In June 2000 ended the hiring of the first 15th legal experts (assistant commissioners) selected among 60 applicants submitted to an admission test, pursuant to the law “For the Status of the Civil Servant”. Since January 2008, People’s Advocate has also been playing the role of the National Mechanism for Torture Prevention. Taking over this duty, there were needed to be hired even 5 other legal experts who, being part of the Torture Prevention Unit and in teamworking with the other sections, have conducted, up to now, over 100 controls and inspections in prisons, police stations, detention rooms, orphanages, nursery houses so as to bring to light any inhuman treatment, torture exertion or human right violation that can happen in such closed places.

In July 2000, the Albanian government, put at the disposal of the People’s Advocate the ambiances of 10 offices located in the center of the capital, a very suitable place quite accessible to the citizens. Presently, since the year 2007 we have moved to new, more spacious premises. The Albanian Assembly supported the reconstruction of the new building of this Institution with a fund about 40 milion lekë (approx.400 thousand USD).

Before starting the work and before opening the first letter received by the People’s Advocate (15 June 2000) two study visits took place. The People’s Advocate visited two Counterparts’ Offices, of Sweden and of Slovenia, where the first necessary inputs were received for the fundamental orientation of work of an Ombudsman:

- 1. Training focused especially on handling of cases .*
- 2. Public Relations, where the relation with the Media was determined as a permanent priority conducive for establishing the institutional integrity and credibility.*
- 3. Transparency on the activity of the Institution as a necessary condition to guarantee the success and the effectiveness of such a very new institution.*

With the financial support of Danida, in December 2000, there was signed the Project Document on the strategy of establishment, strengthening and consolidation of the Institution of the People’s Advocate. Long-term and short-term objectives were defined for the accomplishment of this strategy. The project ended in September 2003. The cooperation with the Danish Ombudsman Office through DANIDA Program of the Royal Danish

Government, had a very positive impact in all aspects of the operation of the Institution of the People's Advocate.

To reach the aforementioned objectives other activities were described in details to be carried out until the end of the project which included: the IT and case management system; the drafting of a manual of policies and office procedures; qualification of the technical and professional staff; the strategy of Public Relations.

Besides the defining and the accomplishment of the objectives of the People's Advocate Institution, we took into consideration some potential risks. So, the main problem was to maintain the political unbiased position in a political instability environment, which might constitute a risk for the ombudsman and his staff, susceptible to be the target of the political opposition. At the same time the non establishment of contemporary standards of management was a risk to keep the Institution at a mediocre level that could have created the image of a simply bureaucratic structure where some official "wander around". Since the very beginning the People's Advocate was concentrated on the solution of some complaints regarding issues affecting a big number of citizens in Albania like the restoration and compensation of ownership to ex-owners, transparency in governing, investigation of police violence etc.

People's Advocate Office has faced an almost constant workload over these 10 years reaching the level of 3000 complaints a year. From the beginning until now, this Institution has faced a workload of 30 000 complaints of which 20-25%, when being within jurisdiction of the People's Advocate, have been solved in favour of the citizens. Meanwhile, there have been made and addressed over 140 recommendations on legislation improvement of which 87% have been accepted and reflected in amendments of laws and respective sublegal acts.

So far, People's Advocate has submitted to the Albanian Parliament nine annual Reports on the activity of the Institution. Besides them, only during the year 2008, People's Advocate has sent to the Albanian Assembly three other special reports. All these Reports and other aspects regarding our activity can be found at the official web page of the People's Advocate www.avokatipopullit.gov.al

Embracing the philosophy that the ombudsman, being unique in each country, can progress and get consolidated through exchanging experiences with one another, the People's Advocate has received so far 30 Ombudsmen and several foreign experts.

Anyhow, the constant challenge of the Institution of the People's Advocate remains its effectiveness and its impact on good governance, both

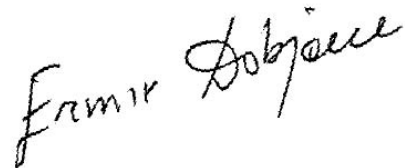
implying the increase of service quality provided to citizens. And they both make the real motive of the existence of such an Institution which my colleagues and myself are working for.

Paris Principals are the basic document adopted by General Assembly of United Nations which provides for the standards of the functioning of the National Institutions in Promoting and Defending Human Rights. People's Advocate has been functioning as such for years.

The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights convened in Geneva from 3 to 6 November 2008 and after reviewing the applications for accreditation decided that the Albanian People's Advocate Institution to regain the status "A" of Accreditation, that means to be member of this Committee enjoying full rights. People's Advocate Institution got this status for the first time on 15 April 2004, thus certifying the fact that People's Advocate in Albania acts in compliance with Paris Principles whose basic feature is the functional independence.

This 10th anniversary finds People's Advocate Institution with a consolidated, tripled status: Ombudsman Office, National Institution for the Promotion and Protection of Human Rights; National Mechanism for the Prevention of Torture.

PEOPLE'S ADVOCATE
Ermir DOBJANI

A handwritten signature in black ink, reading "Ermir Dobjani", written in a cursive style.

Tirana, September 2009

I. WHAT THE PEOPLE'S ADVOCATE INSTITUTION OF THE REPUBLIC OF ALBANIA IS AND WHICH ARE ITS FUNCTIONING PRINCIPLES

People's Advocate in the Republic of Albania represents a state mechanism, outside judiciary structures, making an independent investigation of citizen's complaints, requests or notifications addressed against the improper or unlawful behavior, decisions, actions or failure to act of public administration. The basic principals and features of our Office are independence, confidentiality, impartiality, professionalism, flexibility, credibility, and transparency to the public.

Independence is formally expressed in the Albanian Constitution and the Law "On the People's Advocate". The article 60/2 of Constitution explicitly provides: "People's Advocate is independent in exercising his duty".

Independence is noticed at the discretion of the People's Advocate in hiring his staff, as well as, what is most important, in the relationships the People's Advocate establishes with the Government and the Assembly. Although it is an organ appointed by the Assembly, People's Advocate in his activity can not and must not accept interventions that affect his institutional performance.

Impartiality is an important principle where People's Advocate activity is based upon, as a mechanism of controlling and power balancing. This principle then provides the credibility to the People's Advocate as a party that considers both sides of the matter, so that to ensure not only the fair solution, but above all, the acceptable solution to all parties involved in the process.

Flexibility is expressed in the ways and means People's Advocate use to bring to the citizens his service and to restore their claimed violated rights. This principle is also worth for the official communication of the People's Advocate with representatives of public administration. Even the intended solution in favour of the citizen by the People's Advocate, does not get conditioned of legal deadlines for the appealing of the violation. Likewise, the purpose of the People's Advocate is not penalizing the officials, but making them responsible for being at service of citizens according to the law.

Transparency is a principle and a basic condition for its activity, without which People's Advocate could not have carried out his mission successfully. The natural alliance with the Media makes the implementation

of this principle more necessary, because through transparency People's Advocate manages not only to inform public about his activity, but also to make the officials responsible or eventually unmask the abusive behavior of public officials harming the rights of citizens. Transparency is the best instrument through which People's Advocate convinces people of his personal and institutional integrity and also increases his accountability and reliability. The function and mission of People's Advocate is to handle cases that come out due to ill-administration of public administration. The daily instrument, through which People's Advocate intends to achieve his result, is recommendation. After the examination and investigation of different cases, People's Advocate intervenes and through his recommendation he intends to solve issues on legal bases. The Solutions recommended by the People's Advocate, when professionally based, aim at bringing about improvements in standards as well as in service quality of public administration towards the citizens.

But what is ill-administration? By ill-administration we mean the behaviour, action or failure to act of the official in contravention with the Constitution, the laws in power and our state norms of moral. By fighting against this occurrence, People's Advocate promotes for good governance and fairness in public administration.

The administration attitude towards People's Advocate recommendations indicates its liability to violations it commits and how willing it is to restore them.

Over these 10 years of operation, People's Advocate has had to work with different central and local administration regarding their political orientation. We have been trying to make evident that People's Advocate, by offering his opponency for good governance, has not worked to be in opposition to the Government. This has been and will continue to be the philosophy of its functioning, with no political partiality. If we were orientated towards conflictuality or, on the other side, towards the political compromising with the powerholders, then the fundamental principles we are based on, would be badly compromised and the institution would fail in the eyes of the Albanian public and international monitoring bodies as well.

People's Advocate is an institution, independent and not referring to any organs of public administration, judicial ones included. It gets financed from the state budget and is foreseen to protect and safeguard the rights, freedoms and lawful interests of both Albanian and foreign individuals, being or not permanent residents in Albania, from unlawful or improper actions or failures to act of public administration bodies. We do it by making recommendations, requests or proposals aiming at the restoring of the

violated right.

Good governance and administrative behavior are conditioned even by the existence of an independent and unbiased system capable of examining the manner of Government performance. Today, the system of control and balance is a basic principal to modern governing throughout the world. Ombudsman Institution is part of this system.

At present, there are about 350 Ombudsmen or Mediators in 130 countries, carrying out their activity in all the continents. The International Institute of Ombudsman only has members in more than 120 countries, Albanian Ombudsman included.

The services provided by the People's Advocate assists the individuals in offering equal opportunities, so that they could be treated as equals in their relations with the Public Administration. That is attainable mainly through negotiations, impartiality, and broader standards of justice. The examining of cases by the People's Advocate is not simply restricted to what brief legal provisions provide for. Beyond the formulation based on the legislative technique, People's Advocate considers the best intentions of the legislator and the ruling of law in order to regulate the relations between the state and the individual. This means that his work requires not only professional capacity, but even a generous, spiritual commitment of all the staff of experts working with him. Otherwise, many violated rights of citizens would neither be recognised as such nor restored.

In this aspect, apart from the protection of human rights, one of his main intentions is to develop what is called *culture of good governance*. This notion means a good administration of public property, transparency and explanation given by public administration to its tax-payers. People's Advocate with his recommendations tries to educate the Administration by making it understand its real role to the citizens, thus understanding that the main reason of its existence, is assisting the citizens to fulfill their rights.

The Albanian law does not grant executive power to the People's Advocate Institution in dealing with complaints against public authorities. However, we would like to highlight the "powerfulness of recommendations", since it is the very absence of the compelling powers, which stipulates even the existence of the argumentative power to the highest degree possible. It is exactly the legislation-based "argumentative power" which transforms the recommendation provided by the People's Advocate from formally "non-binding" to essentially "convincing to be implemented".

People's Advocate duty is to handle complaints arising from public administration activity. With his recommendations, requests or proposals he

intends to adequately enhance the standards and quality of service as well as promote integrity on the part of public administration.

To accomplish this main task he greatly relies on the devotion, hard work and integrity of his experts and staff. He intends that individuals enjoy human rights and freedoms without having to address the case to the judiciary.

In a society characterized by the rule of law, naturally the Courts of Justice are the main defenders of the individuals' human rights. Whereas, the People's Advocate (Ombudsman) came out to be successful, despite that it is an extra-judiciary institution. This is made evident by the figures indicating that 25% of complaints within jurisdiction are solved in favour of the citizens, who did not need to address the case to the court.

II. CONSTITUTIONAL AND LEGAL BASIS OF THE INSTITUTION

The institution of the People's Advocate that was anticipated for the first time in the Albania's Constitution approved in November 1998, after 8 years of democratic changes is a great success and important victory on the part of the Albanian People. It is the first time in the history of Albania that its Constitution provides for the Institution of the People's Advocate, guaranteeing in practice the implementation of fundamental human rights in Albania.

In second part of that Constitution, there are four articles, namely from 60 to 63, holding provisions defining the Ombudsman function, principles of its activity, status and its competencies, while the article 134, the item "dh" attributes to the People's Advocate the right to refer the case to Constitutional Court, i.e, to put in motion it.

The Parliament passed the Law no.8454, dated 04.02.1999 "On the People's Advocate" in February 1999. The law has been drawn on the relevant legislation of other countries of Europe, which have established such an institution before. After the changes made in May 2005, the law on the People's Advocate in Albania can be considered as one of the best laws in Europe as regards his jurisdiction and competencies.

The Code of Administrative Procedure, law on "Access to Information over Official Documents", law "On the Rights and Treatment of the Sentenced to Imprisonment People" and law "On Consumers Protection", make the legal base defining almost all rights and functional duties of the People's Advocate.

III. ELECTION OF THE PEOPLE'S ADVOCATE AND HIS COMMISSIONERS

Under the Law “on the People’s Advocate”, the People’s Advocate is elected by three-fifths of all members of the Assembly for a five-year period, with the right of reelection.

People’s Advocate shall be removed from office only in case he is convicted by means of a final court decision, when he becomes mentally or physically incapacitated to perform his duties, when he is absent from duty for more than three months or when he conducts other political, state or professional activities that are in contravention with his duty. The motion for the removal of the People’s Advocate shall be presented by at least one-third of the members of the Assembly. The decision of the removal from office of the People’s Advocate shall be taken with the votes of three-fifths of the members of the Assembly. People’s Advocate enjoys the same immunity as the High Court judge, while his remuneration is the same with the Chairman of High Court .

The People’s Advocate is foreseen to function on a monocacy pattern basis. That means that all the activity of experts is considered to be as moral, professional, legal and political responsibility of the head of the institution, i.e. of the People’s Advocate. This is the reason why the law allows to the Ombudsman a certain level of discretion concerning staff recruiting, budget managing, up to the right to propose to Parliament candidacies for Commissioners for a period of three years, with the right of reelection. Commissioners get elected by the Parliament with a simple majority, that is 50%+1 of the votes.

IV. ORGANIZATION OF OFFICE

People’s advocate Institution works indipendently. The People’s Advocate decides the organizational structure of his office, the staff number and other issues related to the organisatin of office. He appoints and discharges his Advising staff or the outside experts working for him for a certain period of time.

According to the approved organizational structure, the Office of the People's Advocate is composed of three specialised sections headed respectively by each of his three Commissioners. The first section covers central and local governments and third parties acting on their behalf. The second section covers police, secret service, prisons, armed forces and the judiciary. The third section deals with issues outside the domains of the first two sections, cooperation with the non-for-profit organizations and studies in the area of human rights and freedoms.

The third section takes care of the subsection set up for the protection of children's rights. Taking over the role of the National Mechanism for Torture Prevention, a new section has been added to the People's Advocate called the Unit for Torture Prevention. Its work consists in conducting periodical inspections, even unwarned ones, to detention rooms, police stations, prisons, mental hospitals, orphanages, nursery houses, so as to detect any inhuman treatment, torture exertion or human right violation that can possibly happen in such closed places.

A special Unit to the People's Advocate is also the Cabinet comprising Advisers to the People's Advocate and the Head of Cabinet.

The complaints registration section, finance services, staff development, international relations, and the administration are auxiliary sectors contributing to carrying out the principal tasks assigned to the Institution. With the exception of the Cabinet, all these auxiliary bodies are subordinated and managed by the Secretary General of the Institution.

When People's Advocates considers as reasonable, he can appoint a local representative to deal with a certain case, for a certain period of time. It is the duty of local government bodies to provide this representative with an office and create the required working conditions. Budget allocated to People's Advocate provides for his salary. This was put to practice for a period of two years (2005-2007). It was a joint project with "Save the Children" and SIDA Project of Swedish Government. There were opened two field offices, one in Shkodra and one in Korça, focused on children's rights protection. Presently, it hasn't been made possible the opening of another field office due to financial shortcomings.

V. BUDGET

The financial resources for the office are paid by the state budget, which has a separate chapter for the People's Advocate. The draft budget is proposed by the People's Advocate to the Standing Committee for

Economic, Financial and Privatization Affairs, which shall submit it to the Assembly for approval pursuant to the law “on the Drafting and Implementation of the State Budget”.

In a meantime, People’s Advocate is entitled to make use of eventual financial and material donations, but this is to be not conditioned, so that could not compromise independence, impartiality and constitutionality of it’s activity. The cooperation of Albanian Ombudsman Office with DANIDA Project of the Royal Danish Government as well as with the Council of Europe representative in Albania, ABA Ceeli as well as with International Frankophone Agency, has been developed and implemented properly in a partnership basis and delivered unconditionally.

VI. JURISDICTION

The jurisdiction of the People’s advocate is quite broad. According to the Article 60 of the Albanian Constitution and in compliance with the Article 2 of relevant Law, Peoples’ Advocate deals with the complaints submitted to him, while being related to a decision or lack of action by government bodies, and to decisions and actions of public authorities and civil servants. On the other hand, the Ombudsman jurisdiction covers complains related to Government, Ministries, Central State Institutions, as Intelligence Service, National Bank and other Banks, where the State is stakeholder; local government bodies and third parties acting on their behalf. In accordance with Article 25 of the Law on People’s Advocate, the laws and other legal acts, military orders to the Armed Forces, and the court decisions do not fall under the jurisdiction of the People’s Advocate. Immune of Ombudsman jurisdiction are President of the Republic and the Prime Minister of the country.

Nevertheless, without encroaching upon the independence of the judiciary, the People’s Advocate accepts complaints, requests or notifications of human rights violations arising from the administration of the judiciary and judicial procedures. The investigations of the People’s Advocate do not infringe on the independence of the judiciary in ruling.

Based on the amendments of the Law “On the People’s Advocate” approved by the Parliament on 12th of May 2005, People’s Advocate in Albania is entitled to receive complaints referring even to court decisions. The manner how the People’s Advocate will proceed with the implementation of such amendments, is expected to be expressed and specified in the Code of Criminal Procedure and the Code of Civil Procedure. So far, nothing has happened because the respective institutions

have not exerted the right of the legislative initiative as stipulated in Article 81 of the Constitution.

VII. COMPETENCIES

With the competencies entrusted to the People's Advocate, he can conduct independent, detailed investigations and come out with objective results intending to restore the violated laws and human rights.

Every individual, group of individuals claiming that their legitimate rights and freedoms have been violated by an act, action or omission on the part of the central or local governmental bodies, or any other body vested with public authority are entitled to lodge complaints, requests, or notifications with the People's Advocate demanding the examination of the case concerned. In special publicly known cases, it is possible for him to initiate the examination procedure at his discretion, taking at a later stage the consent of the individual concerned or inflicted the damage. People's Advocate can not ask the consent of the protected target, in case when it relates to children's rights, disabled people or even for issues affecting the interests of a large group of individuals.

The People's Advocate is entitled to demand from the Administration bodies the availability of any information or document associated with the case under examination. He is entitled to request access even to information or documents classified as state secret. Under these circumstances, he is obliged to observe the rules related to state secret disclosure.

People's Advocate can ask the presence in his office of, and interrogate any persons or experts he considers to be involved in the case under his investigation. These persons are obliged to respond to his request.

The People's Advocate is entitled to access to any of the above-mentioned administration offices; he can inspect prisons, pre-detention sites, or other establishments wherein the individuals' human rights have been restricted. In addition, he is entitled to private talks with the individuals held in these institutions.

According to article 22 of this law, the bodies the People's Advocate has addressed a recommendation, request, or proposal for dismissal should reply within a deadline of 30 days from the day the recommendation, request, or proposal for dismissal has been delivered. The response should contain sensible and well-grounded explanations relevant to the issue concerned, as well as the actions, omissions or measures taken by the respective body.

Whenever the People's Advocate notes the content of the law itself and the normative acts, not their implementation, as being a source of premises resulting to human rights violation, as recognized by the Constitution, or other laws, he is entitled to recommend the law-making bodies to make proposals with respect to amending and improving the legislation; to propose the administration bodies amendments or improvement for the normative acts; to recommend the Constitutional Court the invalidation of such acts.

VIII. CONTACTS WITH COMPLAINANTS

The Institution of the People's Advocate attaches special importance to contacts with the claimants since it has been established to assist in resolving the individuals' needs. His responsibility is related to preventing or discovering the violations of the individual's human rights and freedoms, with a view to correcting the consequences resulting from the right violated. However, it is very important for this Institution to be open and willing to assist anyone demanding assistance and support. Any Albanian or foreign citizen is welcome to visit during the office hours and contact an employee who is always there. His duty is to listen to the complainants, assisting them to fill in the complain form in writing when he finds the complaint grounded, or he provides any required legal advice or information when the complaint is beyond jurisdiction. The People's Advocate and the Commissioners arrange meetings with the individuals concerned on a case-by-case basis. With respect to complaints, requests, explanations, and information from the prisoners, in addition to official tel. numbers, a toll-free telephone number 08001111 has been made available. This number is very important especially to the detainees and persons suffering sentence in prison. There have also been fixed about 70 post-boxes in all the detention rooms whose key is kept by the staff of the Torture Prevention Unit in order that privacy be to guaranteed.

The citizens can approach the People's Advocate in various ways. According to the procedure assigned, the complaints are addressed to the People's Advocate in writing with a description of the concern. They have to attach relevant documentation to substantiate their claims. In several instances, talks with the complainant are necessary with a view to handling the case under examination properly, especially when it is complicated, hence requiring several explanations.

The information the press provides constitutes a significant aspect of our activity. Based on them, the People's Advocate is set to motion at his own

initiative as foreseen by article 13 of Law “On People’s Advocate”. The entire spectrum of the Albanian daily and periodic press is especially screened every day in our office. The information, which is interesting in terms of our office scope of activity is distributed to the respective sections, according to their problem-range. Afterwards, depending on the circumstances, following the respective verification carried out, they either initiate investigation, or record them for research purposes.

The People’s Advocate arranges meetings even in various districts of Albania. During the year 2002, the People’s Advocate started to implement a new practice, so called “Open Days” as a way to a direct communication with the public. This form reflects a new vision we took to help citizen in need. Under the new circumstances emerged by the decentralization of local Government, People’s Advocate thinks that the problems should be given a solution at the place where they appear and with the persons who create them these problems either purposely or by lack of knowledge.

This implemented consolidated practice is found effective in getting to know better the problem range of the Albanian society. It shortens enough the bureaucratic procedures, long distances to Tirana and saves the economic expenses of the citizens.

Practically, we processed as followig: Initially, we notified citizens through local media the day before the event and the local authorities a few days in advance. When possible, we had a talk show at the local television station. The team was composed of 2-3 experts, who informed the public about the purpose of the visit, the competences and jurisdiction of the People’s Advocate. Meetings at the municipality followed the next day. We have been able to resolve a lot of complaints during the day through contacting the competent authorities. The rest of the complaint had been taken to our office, registered and subject to further investigations.

VIX. PROCEDURE

As a rule, the complaint is submitted to the People’s Advocate in written. It might also be made by telephone in urgent cases, but it should be immediately followed by a written request or e-mail, otherwise, the procedure for the investigation of the case shall be interrupted. The complaint should be supported by the necessary documentation, evidence substantiating its validity and a description of the legal steps taken to resolve it. In cases when the application is not complete, due to lack of required documents, the office of the People’s Advocate asks the petitioner to complete it. The office may also conduct direct inquiry with the body

targeted by the complainant, when this is obvious in the complaint. Some of the complaints might not fall under the jurisdiction of the People's Advocate or might not fulfill the requirements laid down by the office of the People's Advocate for their examination. In such cases, the petitioner will be given advice as soon as possible on what he should, what possibilities remain available to him, or what legal means should be first exhausted before his complaint is taken up by the People's Advocate. As a rule, the People's Advocate delivers the respective bodies a brief description of the problem concerned, likewise demanding detailed explanations about it. At the same time, the People's Advocate arranges the deadline for the reply to be sent by the respective body the complaint have been addressed. The time limit depends on the problem emergency, and its degree of examination difficulty. However, the deadline should not exceed the 30-day time limit.

In case when the public authority do not respond to the request for explanation or the recommendation of the People's Advocate, this action or non action results in the suspension of the administrative act submitted to the People's Advocate, as well as the right of this latter to request the beginning of the procedure for administrative penalty to the public authority in question by its superior authority. Sometimes, when the nature of the problem addressed requires less time to handle, the People's Advocate could verify the problem through making a telephone-call.

After having collected all information relevant to the complaint, request or notification, the experts, the commissioners and the People's Advocate himself make the necessary judgement to reflect it afterwards in the main instrument of their daily work, the Recommendation. In case when the complaint or request is considered as not grounded, the individual concerned is informed.

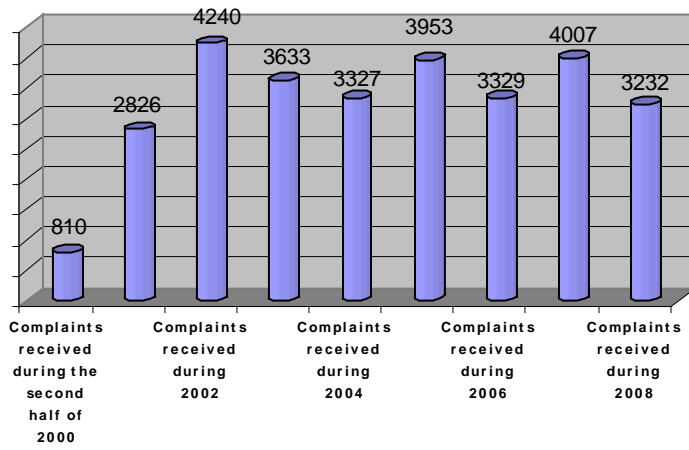
X. CONTENT OF COMPLAINT

The complaint should contain evidence substantiating the violation of the Constitution, legal acts and international documents protecting human rights and freedoms. It should also provide evidence in cases when there have been procrastination or faulty application of court proceedings. The complaints might be complete, partially complete or incomplete. They are partially complete when their evidence does not substantiate all the allegations about abuse of human rights and freedoms, but at least only one of them. People's Advocate does not initiate investigation on the basis of anonymous complaints. Any service to the People's Advocate relating to complaints requests or notifications are free of charge.

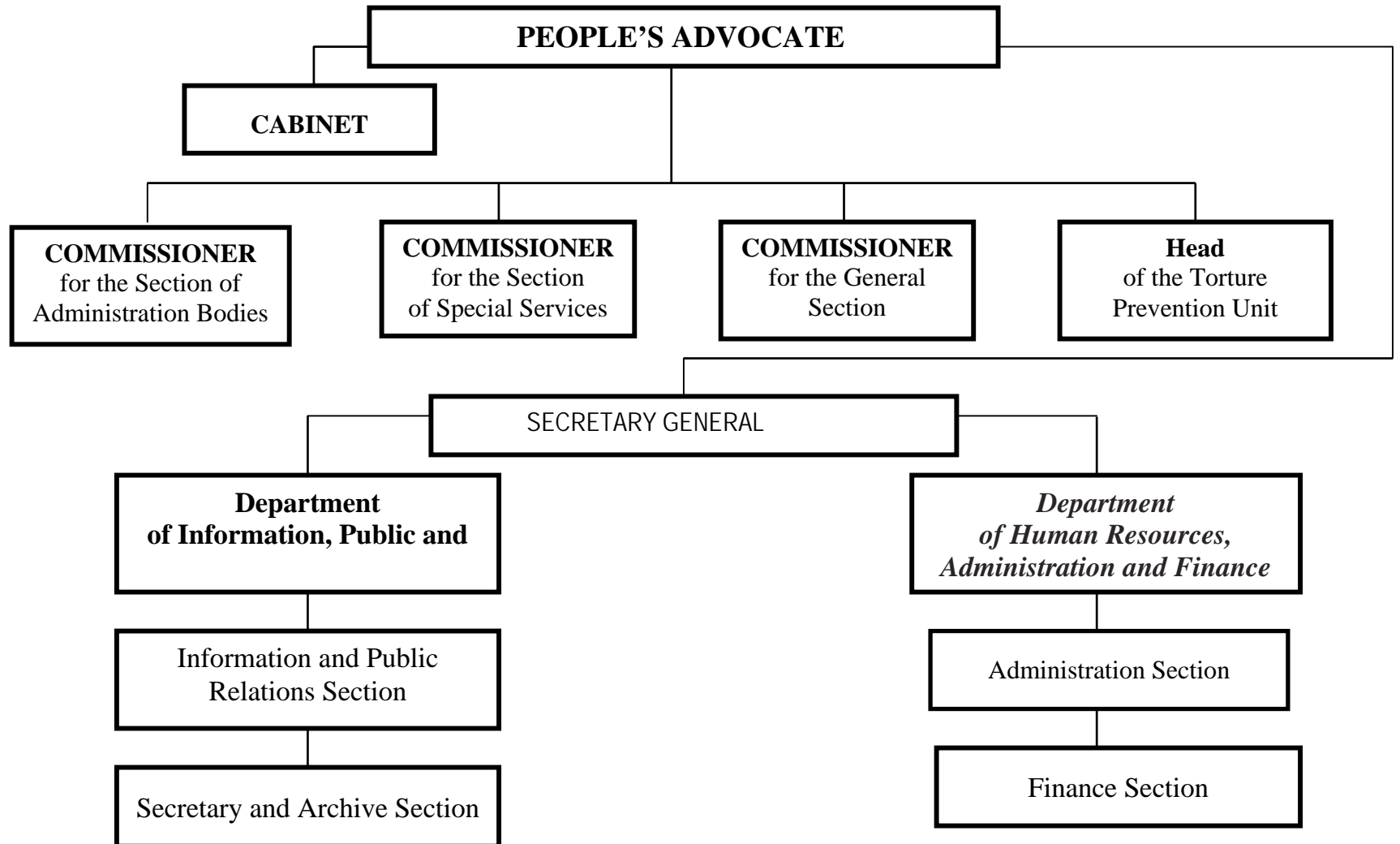
XI. REPORTS TO THE ALBANIAN ASSEMBLY

Under Article 26 of the Law No. 8454, dated 04.02.1999, on People's Advocate, the People's Advocate submits an annual report on his activity to the Assembly. A copy of the report is submitted to the President of the Republic and the Chairman of the Council of Ministers. The report contains a description of the violations of human rights and freedoms and the way these violations have been redressed. The People's Advocate can make specific reports, may report before the Assembly when he is required to do so, and can make a request to the Assembly to be heard on cases he deems important. The People's Advocate may also report to the Assembly on his own motion or upon written request of the Speaker of the Assembly or a group of members of the Assembly. The Speaker of the Assembly decides on whether the report shall be heard by the plenary session of the Assembly, distributing the report to the standing committees of the Assembly. The annual and specific reports are made available to the public and are published no later than one month after the date of the discussion by the Assembly. The office of the People's Advocate publishes a copy of the report in English and distributes it to the counterpart offices in other countries and to the international institutions having established working relationship with our institution. So far, the People's Advocate has presented to the Parliament 9 Annual Reports which have been welcomed by its members; whereas the governing bodies have been given proper messages for enhancing the culture and system of goodgovernance. Three specific Reports have also been sent in 2008. The People's Advocate reports clearly show the multidisciplinary of the handled cases. On the eve of the 10th Anniversary of its establishment, People's Advocate results to have handled over 30 000 complaints submitted to this office while the number of people standing behind a single complaint, in some cases has shown to be much bigger. Accordingly, with an average of 3000 complaints submitted per year, People's Advocate has managed to solve in favor of the complainant about 22-25 % of the complaints within his jurisdiction thus indicating the sustainable effectiveness of interventions of this Institution in Albania.

**Assesment of complaints received during 2000 - 2008,
(including those responded immediately)
Total 29357**



XII. STRUCTURE OF THE INSTITUTION OF THE PEOPLE'S ADVOCATE



XIII. EXCERPTS FROM THE CONSTITUTION OF THE REPUBLIC OF ALBANIA

CHAPTER VI

PEOPLE'S ADVOCATE

Article 60

1. The People's Advocate defends the rights, freedoms and lawful interests of individuals from unlawful or improper actions or failures to act of the organs of public administration.
2. The People's Advocate is independent in the exercise of his duties.
3. The People's Advocate has his own budget, which he administers himself. He proposes the budget pursuant to law.

Article 61

1. The People's Advocate is elected by three-fifths of all members of the Assembly for a five-year period, with the right of reelection.
2. Any Albanian citizen with higher education and recognized knowledge and activity in the ambit of human rights and law might be the People's Advocate.
3. The People's Advocate enjoys the immunity of a High Court judge.
4. The People's Advocate may not take part in any political party, carry on any other political, state or professional activity, nor take part in the management organs of social, economic and commercial organizations.

Article 62

1. The People's Advocate may be discharged only on the reasoned complaint of not less than one-third of the deputies.
2. In this case, the Assembly makes a decision with three-fifth of all its members.

Article 63

1. The People's Advocate presents an annual report before the Assembly.

2. The People's Advocate reports before the Assembly when it is requested of him, and he may request the Assembly to hear him on matters he deems important.
3. The People's Advocate has the right to make recommendations and propose measures when he observes violations of human rights and freedoms by the public administration.
4. Public organs and officials are obliged to make available to the People's Advocate all documents and information requested by him.

Article 134

1. The Constitutional Court can be put into motion only upon the request of:

- a) the President of the Republic;
- b) the Prime Minister;
- c) not less than one-fifth of the deputies;
- ç) the Chairman of High State Control;
- d) every court according to article 145, paragraph 2 of this Constitution;
- dh) the **People's Advocate**;
- e) organs of the local government;
- ë) organs of religious communities;
- f) political parties and other organizations;
- g) individuals.

2. Subjects foreseen by the subparagraphs “**dh**”, “**e**”, “**ë**”, “**f**” and “**g**” of the first paragraph of aforementioned article, can make request concerning the issues, related to their interests only.

The Constitutional Court of the Republic of Albania, decided by its decision no. 49, dated 31.07.2000, that People's Advocate, in compliance with the article 134, second paragraph of the Constitution, may turn to Constitutional Court with the request related to the articles 49, 52 and 71 of the Law no. 8577, dated 10.02.2000 “On organization and functioning of the Constitutional Court of the Republic of Albania”, concerning cases related to its functioning in defending rights, freedoms and lawful interests of the individuals, from unlawful or improper actions or failures to act of public administration or third parties, acting on their behalf, when those violations come to be true from the investigation of the People's Advocate as well as when the constitutional regulations on its (Ombudsman) organization and functioning have been infringed upon.

Also, with some other decisions, the Constitutional Court has specified the role, conditions and the way of request submission on the part of the People's Advocate.

LAW

No.8454, dated 04.02.1999, supplemented by law no. 8600, dated 10.04.2000, amended by law no. 9398, dated 12.05.2005

ON THE PEOPLE'S ADVOCATE

Pursuant to Articles 60 through 63, 81 and 83, item 1 of the Constitution, upon the proposal of the Council of Ministers,

THE ASSEMBLY OF THE REPUBLIC OF ALBANIA DECIDED:

CHAPTER I

GENERAL PROVISIONS

Article 1

OBJECT OF THE LAW

The object of this Law is the adoption of the rules for the organization and functioning of the People's Advocate.

Article 2

DUTIES OF THE PEOPLE'S ADVOCATE

The People's Advocate safeguards the rights, freedoms and lawful interests of individuals from unlawful and improper actions or failures to act of the organs of public administration as well as third parties acting on their behalf. The People's Advocate guided by the principles of impartiality, confidentiality, professionalism and independence exercises his activity for the protection of human right and freedoms as defined by the constitutional provisions and by the laws. The provisions of this Law shall also apply to protect the rights of foreigners, whether they are residing lawfully, in Albania or not, refugees as well as stateless persons within the territory of the Republic of Albania, pursuant to the terms set forth by law. People's Advocate carries out also other tasks determined by special laws.

Article 3

REQUIREMENTS FOR ELECTION OF THE PEOPLE'S ADVOCATE

People's Advocate may be any person who meets the following requirements:

- a) is an Albanian citizen;
- b) has outstanding knowledge of, and activities in the area of human rights, freedoms and law;
- c) has distinguished professional skills and moral-ethical qualities;
- d) has never been convicted criminally;
- e) Is not a member of the Parliament that proposes or elects him.

CHAPTER II

ELECTION, REMOVAL AND RIGHTS OF THE PEOPLE'S ADVOCATE

Article 4

ELECTION OF THE PEOPLE'S ADVOCATE

The People's Advocate shall be elected by three-fifths of all the members of the Assembly. Before taking up or resuming the duty People's Advocate takes an oath before the Assembly. The oath is formulated like: "I swear that while carrying out my duty I will always protect fundamental rights and freedoms of people with no any differentiation and in accordance with the Constitution and the Laws of the Republic of Albania"

Article 5

TERM IN OFFICE

The People's Advocate can remain in office for a 5-year period, with the right of re-election.

Article 6

IMMUNITIES AND SALARY

The People's Advocate shall enjoy the immunity of a High Court judge. His salary shall be equal to the salary of the High Court Chairman.

Article 7

TERMINATION OF FUNCTIONS OF THE PEOPLE'S ADVOCATE

The functions of the People's Advocate shall terminate if:

- a) he resigns;
- b) his 5-year term in office elapses;
- c) he dies;
- d) he is removed (from office).

Article 8

REMOVAL OF THE PEOPLE'S ADVOCATE FROM OFFICE

The People's Advocate shall be removed from office only in case he:

- a) is convicted by means of a final court decision;
- b) becomes mentally or physically incapacitated to perform his duties;
- c) he conducts activities that violate the provisions of Article 10 of this Statute;
- ç) is absent from duty for more than three months.

The motion for the removal of the People's Advocate shall be presented by at least one-third of the members of the Assembly. The decision of the removal from office of the People's Advocate shall be taken with the votes of three-fifths of the members of the Assembly.

Article 9

ELECTION OF A NEW PEOPLE'S ADVOCATE

The Assembly shall elect the People's Advocate within one month from the termination or removal from office of the previous People's Advocate. Until a new People's Advocate is elected as well as in case the People's Advocate is unable to perform his duties, the duties of the People's

Advocate shall be carried out by the longest term serving commissioner.

Article 10

INCOMPATIBILITIES WITH THE DUTY OF THE PEOPLE'S ADVOCATE

The People's Advocate shall be prohibited from being member of any political parties or organizations, carrying out any other political, state or professional activities, or participating in the steering bodies of social, economic or commercial organizations. He may exercise the right to teach or be a book author.

Article 11

SECURING THE PREVIOUS POSITION OF THE PEOPLE'S ADVOCATE

Upon termination of duty pursuant to items "a" or "b" of Article 7, the People's Advocate shall have the right to resume the public duty or position he occupied prior to his election. If this is not possible, (he) shall be provided an equivalent position.

CHAPTER III

COMPLAINTS, INVESTIGATIVE PROCEDURES AND POWERS OF THE PEOPLE'S ADVOCATE

Article 12

RIGHT TO COMPLAIN

Every individual, group of individuals or non-government organization, claiming that his/their rights, freedoms or lawful interests have been violated by the unlawful or improper actions or failures to act of the organs of the public administration shall have the right to complain or notify the People's Advocate and to request his intervention to remedy the violation of the right or freedom. The People's Advocate shall maintain confidentiality if he deems it reasonable as well as when the person submitting the complaint, request or notification so requests.

Article 13

INITIATION OF THE PROCEEDINGS

The People's Advocate, upon finding or suspecting that a right has been violated, shall initiate an investigation (of the case), upon the complaint or request of the interested or affected person, or on his own motion if the particular case is in the public domain and provided the interested or injured party consents.

In cases when People's Advocate starts the investigation procedure on his own initiative and when the custodian or the legal representative do not take any action, then it is not asked for the consent of the injured when he is a minor or mentally disabled or disabled people or when it comes to protect the rights of a big number of individuals.

While protecting the interests of a wide community affected by the administrative procedure, People's Advocate has the right to start an administrative procedure and participate in it, in accordance with the requirements of the Code of Administrative Procedure.

Article 14

CONDITIONS OF ADMISSIBILITY OF COMPLAINTS, REQUESTS AND NOTIFICATIONS

The People's Advocate may refuse to initiate or may terminate the investigation of a case if the same case has been decided or is being scrutinized by public prosecutor or a court. In such a case, he shall be entitled to request information by those authorities who must respond to his requests as soon as possible, and no later than 30 days.

Article 15

NO SPECIAL FORM REQUIRED FOR COMPLAINTS AND NOTIFICATIONS

No special form shall be required for the complaints, requests or notifications submitted to the People's Advocate, provided the object of the complaint or request is clearly indicated. The People's Advocate shall not accept anonymous complaints or requests.

Article 16

SERVICES FREE OF CHARGE

All the services rendered by the People's Advocate with reference to the complaints, requests or notifications shall be free of charge.

Article 17

ADMINISTRATION OF COMPLAINTS AND NOTIFICATIONS

The People's Advocate, following the review of a complaint, request or notification of a violation, shall decide to:

- a) accept or refuse to look into the case;
- b) send a reply to the interested person indicating his rights and the remedies he can pursue to protect those rights;
- c) forward the case to a competent authority.

In all cases, the People's Advocate shall notify the interested person (of his decision) within 30 days from the date he received the complaint, request or notification.

Article 18

PROCEDURE AFTER ADMISSION OF COMPLAINTS FOR REVIEW

Following admission of a complaint, request or notification, the People's Advocate shall proceed in one of the following ways:

- a) shall initiate himself an investigation procedure;
- b) shall request explanations from the organs of public administration and public prosecution's office in cases of pre-trial detention and arrest;
- c) shall make a recommendation to the High State Control to exercise its powers.

Article 19

INVESTIGATIVE PROCEDURES

In case the People's Advocate decides to proceed with an independent investigation, he shall be entitled to:

- a) conduct investigations on the spot, including here the access to any premises of public institutions and examination on the spot of the acts and papers pertaining to the case under investigation.
- b) request explanations from all organs of central and local administration and obtain all files or material relevant to the investigation;
- c) interrogate any persons that, in his judgment, is involved in the matter under investigation and ask for the presence in his office of all people without immunity.
- d) arrange or request an expert opinion.

People's Advocate has the right to give the deadline for the completing of the abovementioned.

Article 19/1

People's Advocate or any persons authorized by himself have the right any time, without restriction or preliminary authorization, however having informed in advance the head of the institution, to enter any public administration institutions like prisons, places that police and prosecution office keep the escorted, detained or arrested people (the detainees), in state units or institutions, mental hospitals, nursery homes, orphanages and other places he is informed or considers that it is possible for human rights and freedoms to be violated.

The access to all above-mentioned ambiances intends either the investigation of a complaint, request or a certain notification or an initiative taken by the People's Advocate to conduct an inspection or study. In such a case, the People's Advocate can meet or talk in confidentiality, without the presence of any official people, with any persons being present or kept in these facilities.

Any correspondence between these persons and the People's Advocate shall not be obstructed or checked.

Article 20

ACCESS TO INFORMATION OR DOCUMENTS CLASSIFIED AS STATE SECRETS

The People's Advocate shall have the right to request information or documents classified as state secrets that are relevant to the case under investigation. In such cases he shall comply with the rules for the protection of state secrets.

Article 21

ACTIONS AND POWERS AFTER CONCLUSION OF INVESTIGATION

Upon conclusion of an investigation, the People's Advocate shall do one of the following:

- a) explains to the complainant that his rights have not been infringed;
- b) makes recommendations on how to remedy the infringement to the Administrative organ that, in his judgment, has committed the violation; The submission of recommendation suspends the improper or illegal acts and proceedings until the examination of this recommendation is done and the response is given to the People's Advocate.
- c) makes recommendations on how to remedy the infringement to the authority supervising the administrative organ that has committed the violation; The non examination of recommendation within 30 days leads to the suspension of the improper or illegal acts and proceedings;
- d) recommends to the public prosecutor to start an investigation if he finds that a criminal offence has been committed; or to re-start the dismissed or suspended investigations;
- e) upon finding serious violations, propose to the relevant authorities, including the Assembly, to dismiss officials under their jurisdiction;
- f) in case of infringement of right by organs of the judiciary, the People's Advocate, without interfering with their procedures, shall notify the competent authorities of the violations;
- g) recommend to the injured persons to take their case to the court;

These actions are not mutually exclusive.

Article 22

OBLIGATION OF ORGANS OF STATE ADMINISTRATION TO RESPOND TO RECOMMENDATIONS OF THE PEOPLE'S ADVOCATE

The organs to whom the People's Advocate has submitted a recommendation, request or proposal for dismissal shall review the recommendation, request or proposal for dismissal and shall reply within 30 days from the date the recommendation, request or proposal for dismissal is delivered. The reply shall include reasoned explanations on the specific case as well as the actions, omissions or measures undertaken by that organ. People's Advocate should be informed and he has the right to participate in the meetings of public administration collegial organs where his recommendation, request or proposal is examined.

Article 22/1

Sanctions for non-cooperation with the People's Advocate

Refusing to cooperate with the People's Advocate on the part of a civil servant, a public official or authority, makes People's Advocate request from the competent authority the beginning of the administrative procedure and disciplinary measures to be taken or even the dismissal from work or civil service.

Article 23

CASE FOLLOW-UP

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

Article 24

RIGHT TO LEGISLATIVE RECOMMENDATIONS

If the People's Advocate finds that it is the content of a statute or other legal act, and not its application that leads to violation of human right recognized by the Constitution or other laws, he shall have the right to:

- a) recommend to the organs vested with legislative initiative to propose amendments and improvement to the statute;
- b) propose to the Administration to amend and improve bylaws; the non-examination of proposal within 30 days brings consequently the suspension of the sublegal acts power leading to violation of rights and freedoms.
- c) put the Constitutional Court to motion to invalidate those acts.

Article 25

PERSONS AND ACTS OUTSIDE THE JURISDICTION OF THE PEOPLE'S ADVOCATE

The following shall be outside the jurisdiction of the People's Advocate:

- a) the President of the Republic;
- b) the Prime Minister;

The following shall also be outside the jurisdiction of the People's Advocate:

- a) statutes and other legal acts;
- b) military orders to the Armed Forces;
- c) court decisions.

The People's Advocate shall accept complaints, requests or notifications of human right violations arising from the administration of the judiciary, final court decisions and judicial procedures. The investigations and requests of the People's Advocate shall not infringe upon the independence of the judiciary in ruling.

CHAPTER IV

RELATIONS WITH THE ASSEMBLY, OTHER GOVERNMENTAL AUTHORITIES AND NON-GOVERNMENTAL ORGANISATIONS

Article 26 REPORT TO THE ASSEMBLY

The People's Advocate shall submit an annual report to the Assembly, which shall discuss it in a plenary session. A copy of the report shall be submitted to the President of the Republic and the Prime Minister.

The annual report on the previous year should be submitted no later than the 30th of April of the ongoing year.

Article 27 SPECIAL REPORTS TO THE ASSEMBLY

In addition to the report provided by Article 26, the People's Advocate shall report to the Assembly on his own motion or upon written request of the Speaker of the Assembly or a group of members of the Assembly. The Speaker of the Assembly shall decide on whether the report shall be heard by:

1. the plenary session (of the Assembly);
2. distributing the report;
3. the standing committees of the Assembly.

A copy of the report shall be sent to the President of the Republic, the Prime Minister and the highest administrative authority, whose subordinate (authorities) are mentioned in the report.

Article 28 PUBLICATION OF REPORTS

The annual and special reports shall be made available to the public and shall be published no later than one month after the date of their discussion by the Assembly. The Assembly shall publish the reports.

Article 29

DRAFTING HUMAN RIGHT REPORTS

The People's Advocate may assist, give opinions and make recommendations in the drafting of reports and other documents by the Albanian State on human rights and freedoms in the Republic of Albania.

Article 30

CO-OPERATION WITH NON-GOVERNMENTAL ORGANIZATIONS

The People's Advocate shall perform his duties in close cooperation with non-governmental organizations and shall regularly request their opinion on the human rights situation.

The People's Advocate, in cooperation with non-governmental organizations, shall organize, at least annually, a national activity on the situation of human rights and freedoms in the Republic of Albania.

CHAPTER V

COMMISSIONERS, OFFICE AND BUDGET

Article 31

STRUCTURE

The Office of the People's Advocate shall have three specialized sections; each headed by a Commissioner.\

These sections shall be:

1. A section for the organs of central administration, local government and third parties acting on their behalf;
2. A section for the police, secret service, prisons, armed forces and the judiciary;
3. A general section in charge of all the issues falling outside the scope of the two other sections, co-operation with non-governmental organizations as well as studies and activities in the area of human rights and freedoms.

Article 32

APPOINTMENT OF A LOCAL REPRESENTATIVE

If the People's Advocate deems it reasonable, he may appoint a local representative for a specific matter and definite time. The local authorities shall provide the representative with office space and working conditions that shall be adequate for the fulfillment of his duties under this Statute. The representative shall be remunerated from the budget of the People's Advocate.

Article 33

ELECTION AND SALARY OF COMMISSIONERS

The commissioners shall be selected from among the most outstanding lawyers for a three-year term, with the right to reelection. The Assembly, upon the proposal of the People's Advocate shall elect them. The requirements of Articles 3 and 10 of this Law shall also apply to election of commissioners. The salary of the commissioner shall be equal to the two-thirds of the People's Advocate salary.

Article 34

TERMINATION OF FUNCTIONS AND REMOVAL OF COMMISSIONERS

The rules in this Statute regulating termination of functions and removal of the People's Advocate shall also apply to the commissioners.

When the position of a commissioner remains vacant, upon the elapsing of the 3-year term or pursuant to items "a", "c", or "ç" of Article 7 as well as Article 8 of this Law, the People's Advocate, within a month, shall propose to the Assembly the new commissioner to be elected.

They can be removed with the request of the People's Advocate before termination of the 3 -year mandate, for violation of work or any behavior or act that badly discredits their position and personality.

Article 35

EMPLOYEES OF THE OFFICE

The staff members of the Office of the People's Advocate shall be members of the Civil Service of the Republic of Albania. "The structure and the organigram of the People's Advocate's Office is defined by the People's Advocate". People's Advocate determines of the structure and organigram of the People's Advocate Institution. People's Advocate and the three Commissioners obtain the Official Buletin free of charge

Article 36

BUDGET

The financial resources for the People's Advocate shall be paid by the state budget, which shall have a separate chapter (line item), for the People's Advocate. The draft budget shall be proposed by the People's Advocate to the Standing Committee for Economic, Financial and Privatization Affairs (of the Assembly), which shall submit it to the Assembly for approval pursuant to Law nr.8379, dated 29.7.1998, "On the drafting and implementation of the state budget". The People's Advocate shall prepare every year his accounts pursuant to Statute no 8379, dated 29.7.1998, "On the drafting and implementation of the state budget". The financial records of the Office of the People's Advocate shall be subject to review by the High State Control.

Article 37

ACCEPTABLE DONATIONS

The People's Advocate may benefit from donations in money or in kind. The donations may not include conditions that might affect the independence, impartiality or constitutionality of the People's Advocate

activity. The donations shall be declared and registered in a registry held for this purpose by the Office of the People's Advocate. The People's Advocate shall provide, by the end of the year, the High State Control and the Standing Committee for Economic, Financial and Privatization Affairs [of the Assembly] with a copy of the registry each. The registry shall include the type of donation, quantity, date [of donation], person and mode of delivery of donation. The registry shall also include the name and signature of the donor.

LAW
Nr.9888 date 10.03.2008

For changes and amendements on Law Nr.8382 dt.16.04.1998

“On the rights and treatment of the sentenced to imprisonment”

Based on articles 78 and 83/1 of the Constitution of Albania, upon the proposal of Council of Ministers

PARLAMENT OF REPUBLIC OF ALBANIA

DECIDED

Article 1

Title of this law to be changed as follows:

“On the rights and treatment of sentenced to imprisonment and detainees”

Article 20

Article 43 changes as follows:

Article 43

Entrance in Institution

Institutions of execution of penal court decisions can be visited without prior authorisation by:

President of Republic, Speaker of Parliament, Prime Minister, Head of Constitutional Court, Deputy Speaker of Parliament, Deputy Prime Minister, Minister of Justice, Chairmen of High Court, General Prosecutor, Representatives of Parliament, Vice Minister of Justice, **Peoples Advocate, Commisioners of Peoples Advocate and Ass/Commisioners**, General Director of Prisons and his deputies, General Director of Prison Police, Director and Inspectors of Internal Control of Prison, Membes of monitoring commision of execution of penal decisions, Judges, Prosecutors and Lawyers, while exercising their duties.

No more than two person who accompain this officials are allowed to enter without prior authorisation. Any other person shall enter in Detention Center with authorisation of Director of Prison. If the Director does not give authorisation without any resonable argument, any person has the right to admmit complain to the General Director of Prison. For the representatives of religious communities rules are foreseen in article 42 of this Law”

Article 36

After article 74 are added articles 74/1, 74/2 and 74/3 as follows:

Article 74/1

National Mechanism for the prevention of torture and cruel, inhuman and degrading treatment, and it’s competencies

Peoples Advocate, through the National Mechanism for the prevention of torture and cruel, inhuman and degrading treatment, hereinafter National Mechanism, acting as a special unit under his authority, observes aplication of this law for the purposes of the protection of the rights and treatment of detanees.

National Preventive Mechanism has the following competences:

- a) To regularly examine the treatment of the persons deprived of their liberty in places of detention and/or during arrest or imprisonment, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;
- b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;

Article 74/2

Guaranties for National Preventive Mechanism activity

In order to enable the national preventive mechanisms to fulfil their mandate, the NPM is entitled to:

- a) Access to all information concerning the number of persons deprived of their liberty in places of detention;
- b) Access to all information referring to the treatment of those persons as well as their conditions of detention;
- c) Access to all places of detention and their installations and facilities;
- d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information;
- e) The liberty to choose the places they want to visit and the persons they want to interview;

Article 74/3

Ways of Observation

The activity of National Preventive Mechanism is to be performed as following:

- a) Receiving complain by detainees by writing or orally;
- b) Receiving informations, complains or requests from the detainees or from the individuals, enjoining status of visitor or by state organs and NGO-s, has previos visited places of detentions, as well as from the lawer of the prisoner or detained person;
- c) Seeking informations by the detention administration;
- ç) Verifying document, object, equipments or facilities, relating to the life of detainees indoor and outdoor places of detention.

National Preventive Mechanism has the right to activate impartial relevant experts to fulfill his duty. In each case and despite of violations and irregularities observed during verification, the experts of this unit keep records, which is to be signed by both director of the prison or person authorised by him, with the right of reflecting respective comments.

Article 38

Entry into Force

This Law shall enter into force 15 days after publication in the Official Gazette.

LAW

No. 8485, dated 12.5.1999

CODE OF ADMINISTRATIVE PROCEDURES OF THE REPUBLIC OF ALBANIA

Pursuant to articles 81 and 83, item 1 of the Constitution, upon proposal of the Council of Ministers,

THE ASSEMBLY OF THE REPUBLIC OF ALBANIA

DECIDED:

FIRST PART

GENERAL PRINCIPLES AND DEFINITIONS

CHAPTER I

APPLIANCE AMBIT AND DEFINITIONS

Article 1

APPLIANCE AMBIT

Provisions of this Code are applicable by all Organs of Public Administration in the exercise of their functions through individual acts. Principles sanctioned in this Code are applicable to normative acts at the possible extent.

Principles sanctioned in this Code are applicable even over normative acts, for as much as it is possible.

General principles of the administrative activity, sanctioned in this Code are compulsory even for the activity of private subjects, when these activities do affect public interests.

This Code is applicable by physical and juridical persons, entitled to exercise their duties and competencies by law, bylaw or contract. Provisions of this Code are not applicable to the actions of public administration, regulated by the Private Law.

Provisions of this Code are not applicable over actions of public administration, which are addressed by Private Law.

Article 3

ADMINISTRATIVE ORGANS

According to this Code, organs of the administration are to be:

- ★ central government bodies exercising administrative functions;
- ★ public establishment bodies to the extent they exercise administrative functions;
- ★ local government bodies exercising administrative functions;
- ★ organs of the armed forces and of any other structure, servants of which enjoy military status, as long as they exercise administrative functions.

Article 4

INTERESTED PARTY

Interested part in any administrative procedure is to be named every physical, juridical person or state authority, whose lawful rights and competencies, be they individual or collective, tend to be affected during administrative procedures.

FOURTH PART

INTERESTED PARTIES IN THE ADMINISTRATIVE PROCEEDING

Article 44

TAKING PART IN THE ADMINISTRATIVE PROCEEDING

1. Each one entitled to a legitimate interest, enjoys the right to take part in an administrative proceeding in persona or/and being represented.
2. Ability to take part in an administrative proceeding gets arranged in compliance with the provisions of civil right on juridical ability to act.

Article 45

LEGITIMACY

1. Persons entitled to the rights and lawful interests, being affected by decisions to be taken during an administrative proceeding, have the right to initiate administrative proceeding and to take part in it. Associations and organizations enjoy aforementioned rights too.
2. In protection of wide interests, being eventually affected by the administrative proceeding, do have the right to initiate an administrative proceeding and/or take part in it, as following:
 - a. Persons to whom administrative proceeding cause or might cause harm in their common rights, as a case in point being public health, education, cultural legacy, environment as well their quality of living.
 - b. Persons residing in or nearby a public property, which can get damaged from the administrative proceeding.
 - c. **The People's Advocate.**
3. Associations acting in protection of wide public interests do have the right to initiate or take part in the administrative proceeding.

LAW

No. 8503, dated 30.06.1999

ON THE RIGHT TO INFORMATION ON OFFICIAL DOCUMENTS

Pursuant to articles 23, 17, 78, and 83, item 1 of the Constitution, upon proposal of the Council of Ministers,

ASSEMBLY OF THE REPUBLIC OF ALBANIA DECIDED:

CHAPTER I GENERAL PROVISIONS

Article 1

OBJECT

This law regulates the right to information on official documents.

CHAPTER II

THE RIGHT TO INFORMATION AND PUBLIC AUTHORITY

OBLIGATIONS

Article 3

RIGHT TO INFORMATION

Every person is entitled to ask information on official documents concerning activity of the state organs and persons, exercising state functions, without being obliged to explain motives for that. Public authority is obliged to deliver any kind of information related to an official document, except when by law it is foreseen differently. Any information on the official document, delivered to one person, cannot be refused to anybody else asking for it, except when this information holds personal data of the person himself, to whom is given information.

Article 4

RESTRICTION

If the required information on the official document is subject to restriction by law, public authority issues to applicant a written declaration, where are shown reasons of information denial and the regulations, upon which he can ask for it.

If the restriction is for only a part of the data, held in the official document, the remaining part cannot be refused to the applicant.

Article 7

WAYS OF GIVING THE INFORMATION

At the applicant disposal is put an entire copy of the official document, he is interested to be informed.

Public authority can, upon request of the interested person or on his own suggestion, offer to the applicant other forms of giving the information, verbal one included.

In every such a case, applicant gives his consent in written to the offered way.

CHAPTER IV

THE FINAL PROVISION

Article 18

COMPETENCIES OF THE PEOPLES' ADVOCATE

The Peoples' Advocate takes care for carrying into effect this law.

People's Advocate competencies on access to information on official documents, get regulated by the law no. 8454, dated 04.02.1999, "On the People's Advocate".

Extract from LAW

N0. 9902, date 17.04.2008

“ON THE CONSUMERS’ PROTECTION”

Pursuant to articles 78 and 83 item 1 of the Constitution, upon proposal of the Council of Ministers,

ASSEMBLY OF THE REPUBLIC OF ALBANIA

DECIDED:

PART 1

GENERAL PROVISIONS

Article 1

OBJECT

The aim of this law is protection of consumers’ interests in market, as well as definition of the rules and setting up the relevant institutions dor the consumers’s rights.

Article 2

APPLIANCE AMBIT

This law regulates relationship between sellers and consumers, releted to consumers’s goods or services, except of those foreseen in specific law provissions.

CHAPTER V

CONSUMERS COMPLAIN HANDLING

Article 56

Consumers' complains

1. The consumer, whose right has been violated, when not otherwise foreseen, submits complain to:
 - a. State administrative structures responsible for consumers' protection;
 - b. Consumers' associations;
 - c. People's Advocate;
 - ç. Arbitration court;
 - d. Judicial organs;
 - dh. Any other structure set up specially for resolving disagreements outside judiciary.
2. Structures referring to letter "dh" item 1 of this Article, are established with the decision of the Council of Ministers.

SUMMARY

BACKGROUND

The last 10 years in Albania are considered as a state-building period, devoted mainly to the drafting of the main organic laws of the country and to the establishment or reforming of state institutions based on the constitution of the year 1998 and the standards required by European Community.

Among these institutions is the People's Advocate as well, as a national instance for the protection of human rights through the well governing of the public administration. As now the institutional means exist, more attention must be paid to the application of the law.

People's Advocate, acting within the jurisdiction and competences that are provided by the Constitution and Law "On the People's Advocate", is expected that, by means of the resolving of individual complaints, to sign as an achievement the improvement of well governance and the quality of life.

Priorities and challenges of the government are, to some extent, the priorities and challenges for the People's Advocate as well, being an institution influencing well governance. This means that the strategies of the People's Advocate will aim among others the approximation of the public administration with the civil society; the local well-governance under the conditions of the decentralization of the local government; the engagement in the fight against corruption through promotion of transparency of the public administration; engagement in the national strategy against the trafficking of human being; protection of children's rights; elimination or prevention of any form of torture or degrading behaviour in state institutions where this criminal action can happen, etc.

VISION

The basic principals of the development of a democratic society constitute in the respecting of fundamental human rights and freedoms, strengthening of the rule of law and the good governance.

We see the People's Advocate Institution in a dynamic and progressive position in Albanian society, where the concept of democracy is new. The People's Advocate contributes directly to the consolidation of the democracy and improvement of governance in the country.

Complaints received by citizens are not a burden to People's Advocate daily work. On the contrary, they make the reason why People's Advocate exists and works. The administration services are not privileges to people, but rights they enjoy according to the law. Public authority gets its salary out of the citizen's taxes for the fulfillment of these services.

I. INSTITUTION'S DIFFICULTIES AND THEIR CAUSES

Its normal that People's Advocate Institution has its own difficulties. These difficulties are encountered under the conditions of a country lacking the tradition of democratic institutions, and the problems arising while carrying out our tasks aim at improvement of the administrative performance of the traditional institutions like government, local government, state police etc.

The fact of being to some extent, challenger to the decisions taken by public administration, determines another difficulty to our effective influence for good governance. In this context, not only the People's Advocate Institution in Albania, but any Ombudsman's office in the world, time and again encounters a kind of resistance on the part of the public administration organs.

The main difficulties could be identified as:

1. There is not the same understanding of the People's Advocate role and mission from ordinary people and the public administration. While, the first seems to be conscious of the presence of the People's Advocate in our society, the public authorities, mainly local ones, are too delayed in responding to the recommendations made by us.
2. Increasing of the work volume carries the risk of being superficial and affects the professional performance of the staff during the performance of their duties.
3. Lack of adequate compatibility and compliance of Public

Administration with the recommendations submitted by the People's Advocate, which, thanks to its disposition, have been envisaged to be challenging the Public Administration's decisions.

4. Lack of adequate awareness for the Albanian Public Administration to be seriously committed to implementing recommendations submitted by the People's Advocate.

5. Lack of familiarization on the part of the existing traditional state institutions with the presence and activity of the People's Advocate institution, in its capacity of external examiner, in the even of violations of the fundamental human rights and freedoms in Albania.

6. Failure to establish regular and consistent contacts of collaborations between the respective chains of all levels for the office of People's Advocate with the offices of public authorities and bodies.

7. In view of the consistently dynamic legislation applicable several difficulties have been encountered in implementing the newly adopted laws. In this context, we would like to single out Law No 8485, dated 05.12.1999 "On the Code of Administrative Procedures", Law No. 8549, dated 11.11.1999, "On the Status of Civil Servants", Law No. 8503, dated 30.06.1999, "On the Right of Access to Information over the Official Documents".

8. We should have focused more on very important issues, such as legal regulation and arrangement of property and its compensation, which affect a considerable number of citizens.

In addition to the above mentioned, People's Advocate should consider as difficulties even the below challenges:

- Insufficient administrative capacities in public administration as well as in his office.
- Lack of implementation of laws properly by public administration and private business.
- Non appropriately functioning of the Judiciary
- Current corruption in public administration.
- Forms of organized crime and the illegal trafficking.

II. THE GROUNDS FOR THE INSTITUTION'S CURRENT ACHIEVEMENTS

1. The independence guaranteed by the Constitution and the international principles of performance for the Ombudsman. Impartiality in exercising the functions of People's Advocate have provided the prerequisites required to enhance his credibility, both in terms of his relation to public, and the Public Administration authorities.
2. The support offered so far by all the Albanian Governmental Institutions with respect to the needs and activity of our Institution, aware of the fact that one of the conditions for membership or suspension of membership in the European Union, as stated in the Charter of Copenhagen is "respect for and stability of the institutions guaranteeing democracy, rule of law, human rights and protection of minorities". Even the People's Advocate is an institution guaranteeing democracy, since he assists in strengthening the concept associated with the rule of law.
3. The international support already granted, and still being granted to this institution constitutes a considerable advantage given that this Institution in Albania has been an idea and a recommendation of the International Factor to be included in the Constitution of Albania.
4. The staff professional qualities, ever increasing demands towards higher standards in our activity, our total devotion to prove that "we know how to establish and set up a democratic institution from scratch".
5. Experience gained during three years of its existence through the ongoing trainings and the continuous motivation of our staff in completing their tasks.

III. CHALLENGES AND THE INSTITUTION'S TARGETS ONWARDS

From the early days of carrying out our activity, we have intended to set up an independent institution providing services to the citizens whose rights have been violated by the public administration. It will become possible by examining the relevant cases on a step-by-step basis, recommending the respective administrative measures, as well as offering opinions on preventing future violations by the public administration.

Some of our activity's aspects implemented so as to attain the above results have been the following: making legal assistance available through recommendations and advice in the event of conflicts involving the administration and public, discovering the administration's defects, reporting the bad behaviour of employees as reflected in relation to public, exerting pressure to change the heavy, burdensome, and vague procedures of Public Administration, creating the conditions for the citizens to enjoy their rights of access to the necessary information from public administration, as well as encouraging the latter's transparency in its activity.

In our view, the following aspects should be focused special attention, so as to meet this target:

1. Consolidating the achievements made so far, intending to enhance the efficiency level for our institution's interventions in resolving the citizens' complaints.
2. More efficient collaboration with the Albanian Parliament with a view to effecting the necessary legal changes, which would bring about greater efficiency for the office of People's Advocate.
3. Establishing more regular and closer contacts with the central and local administration employees. Appointing our local representatives will contribute to meet this target.
4. Continuing with the periodical organisation of the open days in various areas of the country.
5. Demanding and justifying the need for continuous support, both in financial and political terms, through lobbying by the Albanian and international Non-for-Profit Organizations for the People's Advocate with the supreme instances of the Albanian state.

6. Exerting influence towards respect for and stability of the Albanian institutions, which ensure and safeguard democracy and prosperity, especially the impartiality of the Albanian Judiciary.

7. Making publicly known the main problems identified in the area of human rights violations by the public administration, as well as exerting “positive pressure” against the Albanian Parliament and Government as regards improving legislation, and its better implementation.

8. Continuance of the program to strengthen the office’s capacities, including the continuous qualification of our staff.

9. We expect to preserve the actual administrative endurance regarding the rational distribution and management of work load. We have been envisaged the installment of a unit who will provide mediation services. This requires understanding and financial support, both from the Albanian authorities and foreign partners as well, whose help is vital in training our experts on this new practice. Since the People’s Advocate is a relatively new institution, this presupposes even a dynamic process subject to future increasing challenges.

10. Technical endurance is related somehow to our financial situation. The information system network requires continuous maintenance. Also, the increasing work volume has brought up the need of an Archive, reformatting the complaints and public relations office and experts as well.

11. Financial endurance might be questioned for the future since the Government is applying a very strict financial policy in considerably reducing the budget. Our successes, other than the dedication characterizing our staff, can be attributed to various trainings taken either abroad at our homologues offices or in Albania. In the situation that the funds from foreign organizations will be reduced in the future, we need internal support but it is clear that we are not a priority for the Government compared with other state institutions.

12. In accordance with the priorities within the Process of Association and Stabilization to the European Union, specifically for the strengthening of public administration, issues regarding justice and law and other aspects, People’s Advocate will be more effective in:

- a. ★ Increasing the standards of work in handling the cases.
- b. ★ Increasing the authority and cooperation with public institutions.
- c. ★ Strengthening the collaboration with international partners.

IV. FUTURE INSTITUTION STRATEGY

In our opinion and belief the political and financial commitment of the Albanian Government and Parliament to support People's Advocate both politically and financially, as a modern type institution, which plays a significant role in the democratic process in our country.

In the course of the years of our activity, there have never been identified any instances of direct criticism on grounds of political biases, since unless impartiality is maintained, we could very easily become target of political objections. Thanks to our high professional and ethical values, we will continue to avoid biases, hence maintaining the principle of political impartiality.

The positive practice and good messages delivered to the Albanian people have created the necessary environment and awareness enhancement, so that the Albanian citizens could utilize our instrument of protecting their rights against the violations inflicted by public administration.

Through the dialogue established between the Institution of People's Advocate, the human rights organizations, the Albanian Parliament and Government, we will continuously encourage the authorities to undertake measures targeting improvements of legislation and its implementation.

It highlights, and brings into the fore the significant role the People's Advocate plays in the area of democratic transformations, likewise justifying the need for the long-term existence of such an institution.

The strategy of long-term existence is part of the process related to strengthening and developing the Institution, its role and impact in our society. The efficient use of the internal resources, utilizing them on the basis of correct criteria, care for the continuous staff training, qualification, and motivation, as well as good administration constitute the good foundation towards attaining long-term existence and success for our Institution.

Naturally, we are aware of the existence of shortcomings and drawbacks in our activity, since we are exploring new ground, we lack the experience required, therefore we will make efforts to improve our activity method, carefully apply the remarks and suggestions to be made, so as to correctly solve the individuals' complaints and demands, through protecting their fundamental rights and freedoms.

From now onwards, the attention and intellectual resources available with our Office will be focused on several preventive strategies, of which education and training in the area of human rights have proven to be the

most efficient. It is manifested in a series of actions we have undertaken and will undertake, such as: diffusion of information, training programme implementation, seminars with the participation of several interest target groups, as well as with representatives of Administration, NGOs, etc. At the same time, we will never ignore or neglect the development of practical strategies targeting the efficient education in such areas as training of police, penitentiary services , military forces etc. taking into account our main constitutional obligation: resolving citizen's problems means protection of human rights and fundamental freedoms.

For as long as our democratic system is a system that requires continuous perfection, and good governance be considered as human rights, People's Advocate will not stop handling cases and complaints, thus providing a positive impact not only to the current complainants but also to other potential complainants standing behind a certain case that though seeming simple, it can be made present to our Office in a form.

September 2009