



PEOPLE'S ADVOCATE IN ALBANIA



PARLIAMENTARY OMBUDSMAN



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INTRODUCTION

About Albania and its People's Advocate (Ombudsman)

I. *Albania is a Balkan country in the Mediterranean area of Southeast Europe. It is about 28,000 square kilometers, with a population of approximately 3,4 million people. It is bordered with Former Yugoslav Republic of Macedonia in the east, Greece in the south, Montenegro and Kosovo in the north and Adriatic Sea in the west, through which Albania is adjoined to Italy.*

The country has been home of the Illyrian tribes in antiquity, some of the earliest inhabitants of the Balkans, and ancient Greek settlers colonized the coast in the classical period. After Roman occupation it became an important province under the Republic and Empire, and a stronghold of Christianity. When in 395, the empire was split into eastern and western sectors, southern Illyria went to the eastern empire and the eastern church, whilst northern Illyria went to the western empire, under the ecclesiastical authority of the Pope. The Byzantines exercised considerable influence in the area, especially during the reign of Justinian (originally an Illyrian), who constructed a vast number of castles, including 167, which were built in the southern provinces of Illyria. It was from one Illyrian tribe, the Albany, who according to the geographer Claudius Ptolemaeus (2C AD) inhabited the hinterland of Durres, that the Albanians of today derive their name, which is first recorded in Norman French as Albanie in the epic Chanson de Roland (composed around AD 1082-84).

Albania played an important part in the military planning of Justinian and the later emperors against the barbarian invaders. After the Slavs destroyed the Eastern Empire provinces, the territory of modern Albania became subject to various feudal lords, and was later taken by the Turks in the 15th century, after which most of the lowlands converted to Islam.

Albania proclaimed its independence from Ottoman Empire on November 28, 1912. From 1928 to 1939 Albania was under the rule of King Ahmet Zog. When Hitler began to alter the map of Europe in 1939, Mussolini quickly followed suit by invading Albania and using it after as a springboard for Italy's invasion of Greece.

The history of Albania since the end of the Second World War has in essence been that of isolation from the mainstream of international events. Albania was a member of the international Communist movement and took a full part in its assemblies and deliberations in the 1950s. But for much of the time since the break with the Soviet

Union in 1960 and then, subsequently, the People's Republic of China in 1976, there was only increasing and sometimes almost hermetic international isolation.

The great changes in Eastern Europe affected Albania as well, and in winter of 1990-1991 most of the symbols of the one-party state were even physically demolished.

The first democratic elections were held in March 1991 and a year later new elections were held, bringing to power the opposition led by Democratic Party. Parliamentary elections held in 1997 brought to power the Socialist-led coalition Alliance for State. The last is still in power, after gaining political elections of 2001.

II. The idea to establish an ombudsman office in Albania, its rapid progress and its success in raising the confidence of the public to this new institution is impressive because the social trauma experienced over the last 10 years due to the changing of the political system, could not be responsibly managed by the traditional institutions of the state. It is enough to bring to attention the chaos and anarchy of the year 1997 followed by the collapse of the state along with its institutions. Therefore, the international community, being present since the year 1991 with the starting of the democratic processes in Albania, implemented a new strategy after the year 1997. It was not based on economic aids for survival, not on unconditional financial assistance to the Albanian governments but on the contrary based on development programmes for establishing and strengthening the Albanian state institutions.

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 five articles of this new constitution there were foreseen the setting up of the Institution of the People's Advocate, its rights and duties, its status and the main competences. In February 1999, the Albanian Parliament passed the respective law with its 40 articles "On the People's Advocate".

When the establishment of the People's Advocate (Ombudsman) 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.

Anyhow, the People's Advocate electing process made by the Parliament was quite open and democratic. There were 15 candidates to compete of whom Mr. Ermir Dobjani won with more than 2/3^d of MP votes from all political forces participating in the Parliament.

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 whose organic law was a combination with the Danish and the Swedish ones. Meanwhile, two weeks after the election of the People's Advocate, 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 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.

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.

In May 2000 was prepared the Internal Regulation of Work and the Code of Ethics of the Institution. In June 2000 ended the hiring of the 15th legal experts selected among 60 applicants submitted to an admission test, pursuant to the law "For the Status of the Civil Servant". In the meantime, the Albanian government, in July 2000, put at the disposal of the People`s Advocate the ambiances of 10 offices located in the center of the capital, opposite to the building of Prime Ministry, a very suitable place quite accessible to the citizens.

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. The work to be done with the complaints by each section (composed of 5 legal experts), headed by the respective Commissioner elected by the parliament for a three years period of time mandate. 2. Public Relations, where the relation with the Media was determined as a permanent priority conducive for establishing the institutional integrity and credibility necessary to guarantee the success and the effectiveness of such a very new institution.

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. To give a solution to these complaints meant that the People's Advocate should intervene to the main state institutions or provide recommendations on the improvement of legislation for positive results. An example is the complaint of an ex-landowner, expropriated by the communist regime, whose land property was used by the communist state to build a factory, which at present was under the process of privatisation. The landowner was invited to become a shareholder but the value of his land property and consequently the value of his share was very low decided by a decision taken by the Government. This was an open violation of the right to property, therefore the People's Advocate recommended to the Government to change its decision on the question. The government refused to consider our Recommendation, so the People's Advocate had to refer the case to the Constitutional Court. The Constitutional Court considered the case as a flagrant violation of human rights and invalidated the decision of the Government as it was recommended by the People's Advocate. The solution given to a complaint in favour of the complainant was an advantage to hundreds of ex-landowners in Albania.

You can understand the positive impact of this case to the Albanian public opinion thinking that a very new institution like the People's Advocate "taught a good lesson to the Government". All this had an effect upon all other institutions of the Albanian public administration which learned that the recommendations of the People's Advocate had to be considered, respected and implemented. There have been other similar cases encountered and solved.

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 12 Ombudsmen and several foreign experts.

The strategy of cooperation with the office of the Danish Ombudsman through Danida Project was reflected in the main Document in three phases respectively:

1. The establishment of the institution, 2. Strengthening of the institution, 3. Consolidation and expansion of the institution.

Long-term and short-term objectives were defined for the accomplishment of this strategy. The project ended in September 2003. The peculiarity of the People's Advocate was that in the daily practice elements of different phases were combined. So, there wasn't any obvious dissection between the phases. So, together with the physical rehabilitation of the offices, their adoption and equipment, the work with the complaints and the contact with the media went on normally.

It was an immediate need the establishment of an independent system

of service for the citizens whose rights have been violated by the public administration, following each case, recommending administrative measures and giving opinions for the prevention of future violations by the public administration.

At the same time as the project was drafted, long-term objectives were considered the publication of the information on the main problems identified in the field of the human rights violated by the administration and the exertion of the "positive pressure" towards the government and the Albanian Parliament for the amendments of the legislation and their application.

To reach the aforementioned objectives other activities were described in details to be carried out until the end of the project which include: 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 "marketing & lobbying"

During the drafting of the project while the objectives of the Ombudsman Institution were defined, 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 Ombudsman at a mediocre level that could have created the image of a simply bureaucratic structure where "some officials wander around" These are the inputs that had enabled the further qualification of all the People's Advocate staff, who has faced an increasing workload, 810 complaints for 2000, about 2800 complaints in 2001 and about 4200 complaints for 2002, with a figure of 22-25 % of all the complaints solved in favour of the citizens.

The three reports on the activity of the Ombudsman Institution presented before the Parliament and all our achievements show that these risks do not exist anymore. Anyhow, the challenges for the future of the institution of People's Advocate are to be its effectiveness and its impact on good governance, so as to increase quality of service provided to citizens.

PEOPLE'S ADVOCATE

Ermir DOBJANI



I. WHAT THE PEOPLE'S ADVOCATE IS

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.

Similar to the legislation of many other countries that have this institution, the Albanian law does not grant executive power to the People's Advocate in dealing with complaints against public authorities. The People's Advocate has only the right to forward recommendations on these complaints.

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. That is beneficial, both to the Government and the citizens.

At present, there are about 350 Ombudsmen or Mediators in 125 countries, carrying out their activity in all the continents. The International Institute of Ombudsman has members in more than 110 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. In the meantime, the role of the People's Advocate shall not be simply restricted to protecting the citizens' human rights in confrontation with injustices and abuses of the public administration and public servants. To accomplish this difficult task he greatly relies on the devotion and hard work of his experts and staff.

The fundamental features for the Institution of the People's Advocate are independence from the Government, or any other political bias, ease of contacts, speed of performance, flexibility, effectiveness and powerfulness of his recommendations. 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".

The Institution of the People's Advocate all around the world, is

expressed in terms of the model associated with the mechanism of check and balance, which, in view of being a constituent part of public power, prevents and hinders the excessive activity of the latter. It even teaches the authorities the principles of administrative behavior and ethics. This institution contributes towards accomplishing what has been termed as "soft justice". It is less formal in character, but easily attainable for all the citizens concerned. Since it is an institution capable of being flexible and multidisciplinary, the People's Advocate intends to adequately enhance progress on the part of administration and good governance.

In a society characterized by the rule of law, naturally the Courts of Justice are the main defenders of the individuals' human rights. The People's Advocate (Ombudsman) is a non-judicial institution, in other words, a special means in its category, which assists the citizens in overcoming the difficulties encountered in their relations with public administration.

II. LEGAL AND CONSTITUTIONAL BASIS

The institution of the People's Advocate was anticipated for the first time in the Albania's Constitution approved in November 1998. 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 on People's Advocate in February 1999. The law has been drawn on the relevant legislation of other countries, which have established such an institution before. Other laws, upon which is based concrete handling of the cases by People's Advocate are Code of Administrative Procedure, Law on "Access to Information on Official Papers", Law on "Personal Data Protection" and the law on "The Rights and Treatment of the Sentenced to Imprisonment People".

III. APPOINTMENT

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. The first People's Advocate was elected on February 16, 2000, and he is Mr. Ermir Dobjani - Associated Professor and Ph.D of Administrative Law.

Parliament elects commissioners by simple majority, upon Ombudsman proposal, for three-year period, with the right of reelection as well. 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.

IV. STATUS OF THE INSTITUTION AND ITS INDEPENDENCE

In compliance with Article 2 of the Law on People's Advocate, in discharging his powers the People's Advocate is guided by the principles of impartiality, confidentiality and independence.

The People's Advocate enjoys the immunity of a High Court judge.

The People's Advocate shall be removed from office only in case when is convicted by means of a final court decision, when he becomes mentally or physically incapacitated to perform his duties; when is absent from duty for more than three months, and when he resigns.

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

The office of the People's Advocate is fully independent. The organization, the number of the personnel to be employed in the office of the People's Advocate and other matters related to the office structure are decided by the People's Advocate. The People's Advocate appoints and dismisses his advisors, assistant commissioners and other staff members as appropriate in his opinion. He may hire additional experts in his office on a temporary basis. The experts, who may be public administration employees, will have the right to go back to their previous jobs at the end of their term of employment with the People's Advocate.

The People's Advocate is independent in exercising his duties and responsibilities. The independence is expressed in terms of several constituent elements, such as: lack of subordination relationships with the other constitutional institutions of the country, the President, Government, courts, etc, being cases in point; lack of involvement in politics, political parties and their political activity; the special budget available to him; the selection of the Commissioners and their assistants

by the People's Advocate, within the structure determined by the Ombudsman himself; determining the Internal Rules Book, the Code of Ethical Conduct, etc. It is significant and worth reporting that the independence has been and is genuine, typical for the activity associated with the People's Advocate Institution in Albania.

V. JURISDICTION

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. Immune of Ombudsman jurisdiction are President of the Republic and the Prime Minister of the country. 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. 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.

VI. COMPETENCIES

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.

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, or conduct independent on-site investigations, retrieve any file or material related to his investigation, to interrogate any person he considers to be involved in the case under investigation, likewise carry out or demand the performance of a legal survey. 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. 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. These rights derive from the interpretation of the Constitution and the Law "On People's Advocate", as well as the international practices of the Ombudsman's performance. But, it would be advisable, in the event of supplementing the Law "On People's Advocate", to be explicitly included in this law, with a view to avoiding misinterpretations and imposition of unjust restrictions for this Institution.

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.

In case the People's Advocate does not deem the responses and measures taken by the respective body as being sufficient, he is entitled to proceed with the highest body in the administration hierarchy. If there is recurrence of cases, as well as in the event of failure on the part of the respective body to react towards the recommendations made by the People's Advocate, the latter could approach the Parliament by submitting a report wherein concrete measures are proposed with a view to remedying the rights violated.

The right the People's Advocate is entitled to as regards legislative recommendations constitutes an important and efficient tool in preventing the violation of human rights.

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.

VII. 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 from 8⁰⁰ to 16⁰⁰ and contact the Complaints and Public Relations Office employee. The People's Advocate and the Commissioners arrange meetings with the individuals concerned on a case-by-case basis. Toll-free telephone number (08001111) has been made available for the public with respect to complaints, requests, explanations, and information relevant to the respective area, thereby making it especially accessible to convicts, detainees, or the individuals arrested.

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. In cases of emergency, the complaint could be made even through making a phone-call, but it is necessary for the written complaint to be submitted, otherwise the examination procedure will be interrupted. No anonymous complaints or requests will be admitted.

In case the complaint made is incomplete, lacking the documentation required, the People's Advocate will demand that it should be completed, or directly approaches the organ complained against, provided it is evident in the complaint made. 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 People's Advocate and his staff arrange meetings even in various districts of Albania. Appointing the People's Advocate representatives in the districts is another possibility, but until then, the Office has already

two mobile units, by which will manage to offer and provide with its service the people of the most distant areas.

The information the press provides constitutes a significant aspect of our activity, as is the case with commissioning and setting in motion spontaneously, at our initiative 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 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.

During the year 2002, the People's Advocate started to implement a new experience, 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 appeared.

Practically, we processed as follows:

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.

VIII. PROCEDURE

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. 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. 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, or sending a fax.

Following the investigation relevant to the case concerned the People's Advocate drafts the report associated with the cases and the conclusions drawn, hence presenting them to the parties concerned. The report involves the judgment of the People's Advocate related to the facts and circumstances pertinent to every case, thereby highlighting the individual's rights and freedoms violated, the way they have been violated, as well as the persons responsible for the respective violations. At the same time, the People's Advocate could propose the ways the ways of restoring the right violated. In addition, he could propose the respective compensations to be made for the detriment inflicted to the individual concerned due to violating the respective human right. The People's Advocate could demand from the body having inflicted the violation of the individuals' human right to apologize the latter for the action committed.

IX. 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.

X. REPORTS

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 may 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 relationships with our institution.

XI. ORGANIZATION OF OFFICE

The People's Advocate decides the organizational structure of his office and the staff number. According to the approved organizational structure, the Office of the People's Advocate is composed of three specialist sections headed each by relevant 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-government organizations and studies in the area of human rights and freedoms.

In addition to the three specialized sections, the Cabinet comprising the Head and two other Advisers is the direct arm of the People's

Advocate in accomplishing his tasks. 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.

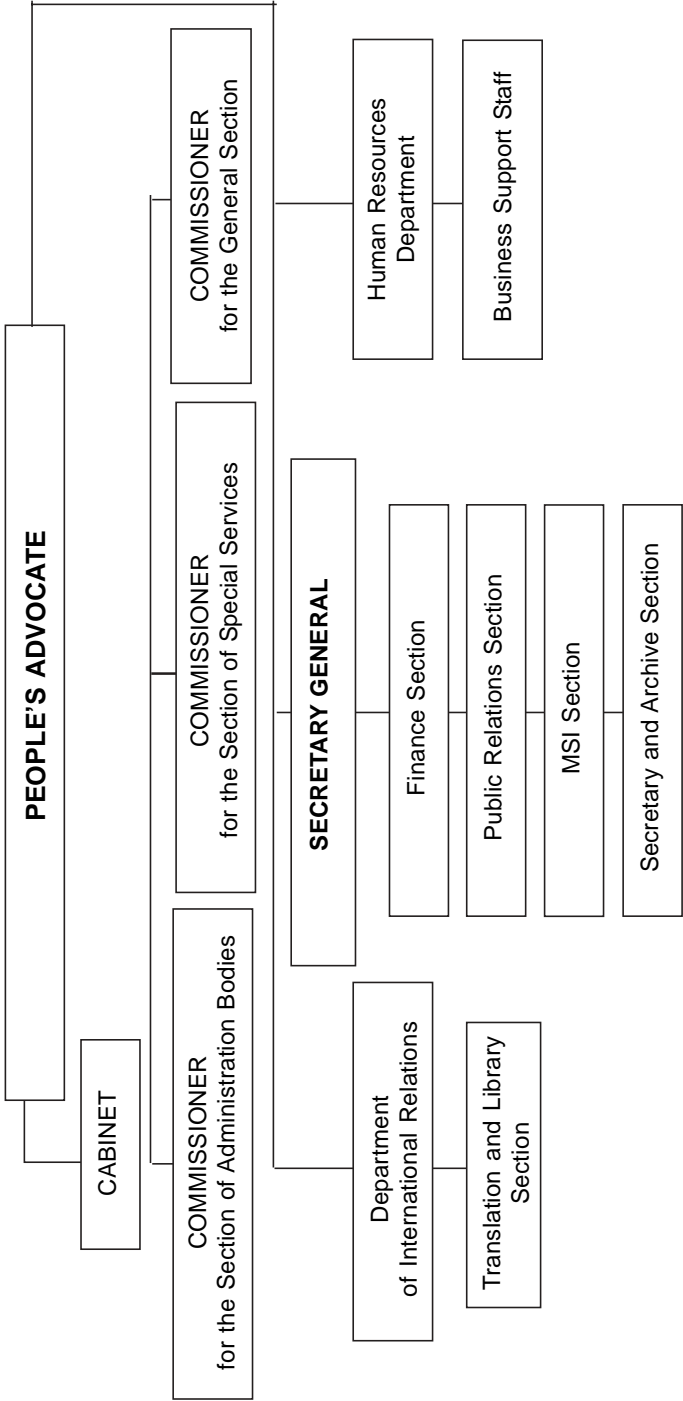
XII. BUDGET

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.

Services provided by the People's Advocate, concerning complaints, requests or notifications are free. 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 Albanian and ABA Ceeli, has been developed and implemented properly in a partnership basis and delivered unconditionally.

XIII. ORGANIZATIONAL STRUCTURE

STRUCTURE OF THE INSTITUTE OF THE PEOPLE'S ADVOCATE



XIV. EXCERPTS FROM ALBANIAN CONSTITUTION

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.

**XV. LAW ON THE PEOPLE'S ADVOCATE
AND EXCERPTS FROM OTHER LAWS DEFINING THE RIGHTS
AND DUTIES OF THE PEOPLE'S ADVOCATE**

LAW

**No.8454, dated 04.02.1999, amended by law no. 8600, dated
10.04.2000**

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.

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.

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 present to the Assembly an annual report. The People's Advocate shall report to the Assembly whenever the latter so requests and may request the Assembly to hear him on matters he deems important and shall only be responsible to the Assembly. 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;
- d) 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-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.

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.

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; or
- 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 conduct himself an investigation;
- b) shall request explanations from the organs of public administration, as well as the public prosecutor 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;
- b) request explanations from all organs of central and local administration and obtain all files or material relevant to the investigation;
- c) interrogate any person that, in his judgment, is involved in the matter under investigation;
- d) arrange or request an expert opinion.

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) explain to the complainant that his rights have not been infringed;
 - b) make recommendations on how to remedy the infringement to the administrative organ that, in his judgment, has committed the violation;
 - c) make recommendations on how to remedy the infringement to the authority supervising the administrative organ that has committed the violation;
 - d) recommend to the public prosecutor to start an investigation if he finds that a criminal offence has been committed;
 - 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.

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 OF 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; or
- c) recommend to the Constitutional Court 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.

Without prejudice to item "c" of this Article, the People's Advocate shall accept complaints, requests or notifications of human right violations arising from the administration of the judiciary and judicial procedures. The investigations of the People's Advocate shall not infringe 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.

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.

The sections shall be:

- a) a section for the organs of central administration, local government and third parties acting on their behalf;
- b) a section for the police, secret service, prisons, armed forces and the judiciary;
- c) 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.

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"*.

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.

CHAPTER VI

TRANSITORY PROVISIONS

Article 38

TRANSITORY PROVISIONS

The Assembly shall elect the People's Advocate within two months from the date of entry into force of this Statute.

The People's Advocate, within one month from his election, shall propose to the Assembly the commissioners.

Article 39

INTERNAL REGULATIONS

The People's Advocate, within 3 months from his election and in cooperation with the commissioners, shall adopt internal regulations.

Article 40

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.

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.

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

DEFINITION

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".

LAW

No. 8517, dated 22,07,1999

ON PERSONAL DATA PROTECTION

Pursuant to articles 35, 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

AIM OF THE LAW

This law aims at guaranteeing protection and lawful use of personal data and their handling by the public authority.

CHAPTER III

COMPLAIN LODGING

Article 15

Complain lodged with the People's Advocate

Complain lodged with the People's Advocate and his competencies in the ambit of personal data are regulated by the law no.8454, dated 04.02.1999 "On the People's Advocate".

The People's Advocate compiles a register of handling the personal data.

LAW

**NO. 9071, DATED 22.05.2003
ON THE AMENDMENT TO THE LAW NO. 8328, DATED 16.04.1998**

ON THE RIGHTS AND TREATMENT OF THE INMATES

Pursuant to articles 78, 81 item 1, and 83 item 1 of the Constitution, upon proposal of a group of MP's,

ASSEMBLY
OF THE REPUBLIC OF ALBANIA

DECIDED:

Article 1

To the law no. 8328, dated 16.04.1998 "On the rights and treatment of the inmates", after item 7 of the article 43, is added item 8, holding:

"8. All the institutions, executing the final court decisions to imprisonment, including the institutions for ill and incapable persons, can be visited by the People's Advocate and his commissioners, authorized by himself, at any time and without authorization. The People's Advocate is entitled to meet and talk confidentially with every convicted persons, lodging complain with him, as well as to conduct inspection on his own initiative to check respecting of the inmates rights.

People's Advocate correspondence with prisoners cannot be hampered or controlled".

Article 2

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

LAW

No. 9135, dated 11.09.2003

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

OBJECT, APPLIANCE AMBIT AND DEFINITIONS

Article 1

OBJECT

This law addresses the rights of consumers, relations between consumers and producers, sellers, suppliers, services providers and the organs of market control and standardization. Its target is protection of health, environment, life security and other consumers' rights, sanctioned by this law.

Article 2

APPLIANCE AMBIT

This law regulates relationship between consumers, on one side, and producers, sellers, services suppliers and providers on the other side as well as defines all obligations deriving from international agreements related to consumer's interests.

CHAPTER III

COMPLAIN HANDLING

Article 54

COMPLAIN LODGING

1. The consumer, whose right has been violated, submits complain to state bodies, responsible for the consumers' protection, to the consumers' associations as well as to the judicial organs.
2. State organs responsible for the consumers' protection and the consumers associations, when observing infringement upon law requirements, turn to the producer, seller, services supplier and provider with a request to apply the law.

Article 55

PEOPLE'S ADVOCATE

The consumers and their associations, claiming their rights have been infringed upon by unlawful and improper actions or failures to act on the side of public administration bodies, lodge a complain with the People's Advocate, pursuant to law no. 8454, dated 04.02.1999, "On the People's Advocate".

APPENDIX: GENERAL SUMMARY

INTRODUCTION

The People's Advocate is a state budget-funded independent institution, which safeguards the rights of Albanian and foreign individuals living in Albania from unlawful or improper actions or failures to act of public administration bodies by giving recommendations, opinions and suggestions.

The People's Advocate is not a decision-making institution and has no binding power.

Just like in all countries with long-standing democracies, the establishment of the Office of the People's Advocate provides a channel for independent inquiry of complaints over the behavior, acts and actions of public administration. The fundamental characteristics of the People's Advocate are independence, flexibility, impartiality, credibility and transparency to the public.

The duty of the People's Advocate is to examine cases related to mal-governance of public administration and give recommendations aimed to improve the standards and quality of civil service and to promote the fairness of its activity. The accomplishment of this task requires that the staff of the Office should be of high standards and have the integrity, which it is demanding from civil service employees.

BACKGROUND

The last three 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. Among these institutions is the Ombudsman 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. The Ombudsman, acting within the jurisdiction and competences that are provided by the constitution and law “on the Ombudsman”, is expected that, by means of the resolving of individual complaints, to sign as an achievement the improvement of the administrative systems. In this context, the priorities of the government are the priorities for the ombudsman as well, being an institution influencing well governance. This means that the strategies of the ombudsman 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; in the new systems in the action of disarmament of the population, etc.

VISION

We see the Ombudsman 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.

INSTITUTION’S DIFFICULTIES AND THEIR CAUSES

Under the conditions of transition for a country lacking the tradition of democratic institutions, such national institutions targeting the protection of human rights, as the Institution of People’s Advocate, are assigned the difficult task of establishing legitimacy, not only for the Government and authorities, but also for the public concerned. The difficulties encountered by our institution in the course of carrying out its functions and duties have been view from this angle. 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" and the Law "On the Protection of Personal Data".
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.
9. The leg the scope of his jurisdiction, say, the lack of entitlement to

carry out inspections in places where human rights are eventually violated more, such as prisons, police stations, mental hospitals, etc.

10. Lack of dispositions on the Law "On People's Advocate" binding public administration to respond to our office within deadlines provided by law.

11. Lack of offices needed in order to perform the normal activity.

THE GROUNDS FOR THE INSTITUTION'S CURRENT ACHIEVEMENTS

The achievement of our institution can be identified as:

1. The independence guaranteed by the Constitution and the international principles of performance for the Ombudsman.
2. Impartiality in exercising the functions of People's Advocate have provided the pre-requisites required to enhance his credibility, both in terms of his relation to public, and the Public Administration authorities.
3. 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.
4. The international support already granted, and still being granted to this institution constitutes a considerable advantage.
5. 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".
6. Experience gained during three years of its existence through the ongoing trainings and the continuous motivation of our staff in completing their tasks.

CHALLENGES, THE INSTITUTION'S TARGETS FOR YEAR 2003 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 street promotion and cognition campaign and other forms to reach the public.
5. Demanding and justifying the need for continuous support, both in financial and political terms, through lobbying by the Group of Friends 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 public knowledge the main problems identified in the area of violating the human rights 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 further qualification of our staff.

9. We expect to preserve the actual administrative endurance in the event of no longer receiving funds from DANIDA project. 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.

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 institutions.

In conclusion, the challenges we will face within the Process of Association and Stabilization to the European Union are as follows:

- ★ Increasing the standards in handling the cases.
- ★ Increasing the authority and cooperation with public institutions.
- ★ Strengthening the collaboration with international partners.

FUTURE INSTITUTION STRATEGY

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

In the course of the three 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.

It is evident that, during year 2002, the number of citizens demanding the services provided by the People's Advocate has been increasing. 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. In addition, we would like to encourage the authorities to effect the supplementation of the Law "On People's Advocate", so that it would be more helpful to public.

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.

Apart from the targets and objectives presented in the previous reports, which are long-term objectives, 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 and military forces taking into account our main constitutional obligation: resolving citizen's problems means protection of human rights and fundamental freedoms.

PRELIMINARY CONCLUSIONS

1. The work establishing the Institution of the People's Advocate is so far proceeding well with small, but firm steps having already been taken.
2. The attitude of the Albanian Public Administration authorities to the recommendations of the People's Advocate is positive. They have not created artificial obstacles.
3. The creation of public confidence in the Institution is closely linked with implementation of the strategy fostering the Transparency through the Media.
4. The growing activity of the Institution in terms of receiving and solving the complaints and applications of the people is increasing the workload and the challenges to keep up with in the future.
5. The Institution's method of work should be improved with the aim of ensuring that the illegalities are redressed as fully as possible.

* Law No.8600, dated 10.04.2000