

# TAIEX Peer Review Mission on Independent and Regulatory Bodies in Albania

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**People's Advocate of the Republic of Albania**

25-28 October 2022

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***Disclaimer***

The views articulated and expressed in this report are purely those of the authors and may not in any circumstances be regarded as stating an official position of the European Commission.

## **Introduction**

### **Mission's Objective**

Independent oversight or regulatory institutions exercise oversight over the democratic functioning and integrity of the executive and state administration.

This mission is part of a regional peer review exercise in all six Western Balkan partners. The exercise is organised by the Thematic Support Unit, together with geographic colleagues, the EU Delegation in Tirana and with the help of our TAIEX instrument.

The purpose is to examine the institutional framework and the effective functioning of independent oversight or regulatory institutions in the Western Balkan partners. The bodies covered by the peer review in Albania are the Office of the Commissioner for the Right to Information and Protection of Personal Data, the Audiovisual Media Authority and the People's Advocate (Ombudsman).

An important aspect which will be looked at is the bodies' functional independence and any links with government bodies and the parliament, notably with regard to the nomination procedure and the follow-up to the bodies' recommendations.

### **Methodology of the Evaluation**

The peer review exercise was based on preparatory meetings taking place online (one meeting between the expert team and EU representatives from DG NEAR and the delegation to explain the country context on 7 September 2022; and one preparatory seminar of a horizontal nature with the expert team, EU representatives and officials of the three Albanian regulatory institutions, the Albanian Ministry of Finance and Economy as well as the Department of Public Administration and the Albanian Parliament on 16 September), a review of documents including key laws (notably the Albanian Constitution, Law no. 9887/2008 On the protection of personal data as amended by Law No. 48/2012 and Law No.120/2014) and Law no. 119/2014 On the right to information; Law no. 97/2013 On Audio and Audio-Visual Media Services in the Republic of Albania (as amended by Law no. 91/2019); and Law no. 9131/2003 On the Rules of Ethics in the Public Administration as well as Law No. 8773/2001 On Assemblies) and a field visit to Albania.

During the field visit, the experts met with representatives of all three regulatory bodies, government and state institutions, parliamentary committees, media outlets and civil society, international donors and EU Member States.

The meetings allowed the experts to assess the legal and institutional framework and review also the output of institutions concerned.

This exercise is a so-called “case-based peer review” – meaning that the experts studied four cases respectively that have been recently handled by the three institutions concerned.

## Executive Summary

The People’s Advocate (PA) of the Republic of Albania, established under Constitution and primary law, has a broad mandate to promote and protect human rights, not only encompassing the functions of a traditional Ombudsperson, but also as a National Human Rights Institution and National Preventive Mechanisms (NPM). He/she promotes various activities to raise awareness of human rights in Albania and also to defend them. To this end, the PA lacks financial and human resources to fully carry out the tasks that are integral to his/her mandate. The independence of the PA may be affected by the fact that there are previous political agreements for his/her appointment, compromising the transparency of the process. The PA, as an independent entity, should also be able to publish his/her Annual Report with full independence from its presentation to the Parliament. In some cases, the PA should continue the work and there is some self-censorship in relation to issues that are politically controversial or not yet accepted by society. In conclusion, the legal and institutional framework on the independence of the PA is satisfactory. There is, however, scope to strengthen the independence of the PA, particularly as regards, for example, to the appointment, the reporting to the Parliament or the handling of politically sensitive cases.

## Findings

From the meetings held in this peer review mission, it was concluded that the PA is acting proactively within the limitations of his/her capacities in terms of financial and human resources. The PA is generally well perceived by the civil society organizations and plays an important role in defending the rights of citizens in Albania. The response and degree of implementation by the Public Administration institutions of the PA recommendations inspires concern. Efforts should be made by the PA and Parliament to improve this situation, and it seems that the measures taken so far are not enough, namely the Follow-Up Mechanism set in pace with the Parliament needs substantial improvement.

### 1. Assessment of the legal and institutional framework

#### Legal framework and competences

The PA was established in 1998 with the adoption of the Constitution of the Republic of Albania (Constitution)<sup>1</sup>. The Parliament elected the first PA on 2001, following the approval, in 1999, of the Law no. 8454, “On the People’s Advocate”<sup>2</sup> (LPA). According to the constitutional configuration of the institution, “the People’s Advocate defends the rights, freedoms, and legitimate interests of individuals from unlawful or improper action or failure to act of the organs of public administration”, making recommendations and proposing measures when he/she observes violations of human rights and freedoms by the public administration<sup>3</sup>.

Within this classic Ombudsperson activity, he/she receives complaints and also promotes activities of his/her own initiative (ex-officio cases). The Law also establishes that the PA shall promote the highest standards of human rights and freedoms in the country<sup>4</sup>, having received A-Status on re-accreditation as National Human Rights Institution (NHRI), in December 2020, being a member since 2003<sup>5</sup>.

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<sup>1</sup> Approved by Law no. 8417, dated 21.10.1998, amended by Law no 9675, dated 13.1.2007, Law no 9904, dated 21.04.2008, Law no 88/2012, dated 18.09.2012 and Law no.137/2015, dated 17.12.2015. [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2016\)064-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)064-e)

<sup>2</sup> Law no 8454, dated 04.02.1999, amended by Laws no 8600, dated 10.04.2000, no 9398, dated 12.05.2005 and Law no 155/2014, dated 27.11.2014. <https://www.avokatipopullit.gov.al/en/article/legislation>

<sup>3</sup> The PA’s activity does not cover private entities. In this case, he/she addresses to the public entity that supervises the activity. Article 60 (1) and Article 63 (3) of the Constitution.

<sup>4</sup> Article 2 of LPA.

<sup>5</sup> The PA is also a member of ENNHRI since 2014.

In addition, the PA exercises the functions of National Mechanism for the Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment<sup>6</sup>, (NPM), according with the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol (OPCAT). The NPM is a separate section of the PA and conducts, without previous authorisation, regular inspections to places where persons are deprived of their liberty. A particularity of the Albanian NPM is also to conduct visits based on complaints.

The PA may initiate proceedings in the Constitutional Court on the conformity of the laws or other normative acts with the Constitution or international agreements<sup>7</sup>. Besides, the PA carries out other relevant tasks determined by special laws in various domains such as the rights and protections of child, of persons with limited abilities, the right to information, consumer's protection and judicial reform<sup>8</sup>. Finally, the PA plays a significant role among the most vulnerable groups in Albanese society, including children, religious minorities and the LGBT community<sup>9</sup>, sending recommendations to the relevant government entities and issuing special reports to the Parliament<sup>10</sup>.

Concerning the ongoing judicial reform in Albania, PA has made important contributions, vested with a special role and powers in this process, serving as an observer of the selection by lot of the Justice Appointment Council (JAC), as well as in its meetings and operations<sup>11</sup>.

Regarding the legal framework of the independence of the PA, the Constitution and the Law provides that he/she is independent in the exercise of his/her duties<sup>12</sup>, guided by the principles of impartiality, confidentiality, professionalism and independence<sup>13</sup>. The PA does not receive instructions from the government, deciding with autonomy if he/she participates in working groups or to be part of the legislative process. During the meetings held with various entities like NGO's, the Commissioner Against Discrimination, Albanian State Police, International Donors, various Ministries and Public Administration Departments, Prisons Directorate and Parliament there was no evidence of such interference in the PA's activity. However, it should be noted that some polarization might arise from the fact that the Ombudsperson generally comes from the political area of the opposition party.

The PA may not take part in any political party, carry on any other political, state or professional activity, or take part in the management bodies of social, economic and commercial organisations<sup>14</sup>.

Finally, the PA enjoys the immunity of a judge of the High Court<sup>15</sup>, which means, immunity related to his opinions and decisions taken in the exercise of functions.

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<sup>6</sup> Article 31/1 of LPA and Law no 8328, dated 16.04.1998 (amended by Law no 9888, dated 10.03.2008), which first stipulated the competence of the PA as NPM.

<sup>7</sup> Article 134 of the Constitution and Articles 49, 52 and 57 of the Law no 8577, dated 10.02.2000 "On organization and functioning of the Constitutional Court of the Republic of Albania."

<sup>8</sup> Law no 119/2014, "On the right to information", Law no 9902, dated 17.04.2008, "On the Consumers Protection", Law no. 18/2017 "On rights and protection of child", Law no. 115/2016 "On the governments of justice system", Law no 84/2016 "On the transitional reevaluation of judges and prosecutors", Law no 12/2018, "On the transitional evaluation of employees of state police, republican guard and service for internal affairs and complaints" and Law no. 93/2014 "For inclusion and accessibility of persons with limited abilities".

<sup>9</sup> <https://www.avokatipopullit.gov.al/media/manager/website/reports/PA%202021%20Annual%20Report.pdf> page 9, 92-100, 105-107, 125-128 and 114-123.

<sup>10</sup> Articles 21, 24 and 27 of LPA. As an example, the PA in cooperation with The Commissioner for Protection from Discrimination issue the report "Violence against women in politics".

<sup>11</sup> Article 149/D (1) (3) of the Constitution. The JAC is responsible for verifying the fulfillment of legal requirements and assessment of professional and moral criteria of the candidates for High Justice Inspector and Constitutional Court. Annual Report 2021, page 158 and note 8 above for the specif legislation.

<sup>12</sup> Article 60 (2) of the Constitution. Article 2 of LPA.

<sup>13</sup> This is in line with Venice (2) and Paris Principles (2) and Recommendation CM/Rec (2021) which states that "Member States should provide a firm legal basis for NHRIs, preferably at the constitutional level, and/or in a law which defines the mandate and functions of such institutions (...)"

<sup>14</sup> Article 61 (4) of the Constitution.

<sup>15</sup> Article 61 (3), Article 137 of Constitution and Article 6 of LPA.

**In conclusion**, it is understood that the constitutional and legal framework of the PA confers satisfactory independence to the Institution, in order to develop his/her tasks and exercise his/her competences. Thus, the PA does not receive or follow any instruction from any authorities. This conclusion applies both to the traditional functions of Ombudsperson, as NHRI and NPM. As said, there is no evidence of interference in the PA's activity, despite the risk of polarisation given the fact that the Ombudsperson comes usually from the opposition party.

### Financial autonomy

The Venice and the Paris Principles state that the institution must be equipped with sufficient financial resources and autonomy to determine how the budget is spent<sup>16</sup>. The PA has his/her own budget, allocated annually by the State Budget, which he/she administrates independently. The PA proposes the budget pursuant to law on budget management and his budget is approved by the Parliament<sup>17</sup>. He/she also prepares annually his/her accounts. The financial records of the PA are subject to review by the High State Control. The PA budget includes funds for salaries, operational expenses, external transfers, social and health insurance, investments and household budget transfers, allocated to central office in Tirana and 7 regional offices. The PA's Annual Report of 2021 refers a budget of 991,666.65 euros (table 1), from which 75% are salaries expenses of 56 employees and 7 employees of the regional offices<sup>18</sup>.

**Table 1- PA's budget from the last five years (2019-2023)**

BUDGET	2019	2020	2021	2022	2023
ALL	125,100,000.00	116,500,000.00	119,000,000.00	129,200,000.00	138,000,000.00
EUR (average 120)	1,042,500.00	970,833.33	991,666.66	1,076,666.67	1,150,000.00
Average exchange rate	123 ALL x EUR 1	123 ALL x EUR 1	122 ALL x EUR 1	119 ALL x EUR 1	120 ALL x EUR 1
EUR	1,017,073.17	947,154.47	967,479.67	1,085,714.29	1,150,000.00

From 2021 to 2022, the PA budget increased by 8,57% and from 2022 to 2023, 6, 81%.

**Table 2- PA's staff from the last five years (2019/2023)**

Year	2019	2020	2021	2022	2023
Number of staff	56	56	56	57	59

The total number of staff (at 2022, 57) does not include the staff of Regional Offices. There are 7 employees in the regional offices that are contracted every year<sup>19</sup>.

<sup>16</sup> As states The Venice Principles (21) "Sufficient and independent budgetary resources shall be secured to the Ombudsman institution. The law shall provide that the budgetary allocation of funds to the Ombudsman institution must be adequate to the need to ensure full, independent and effective discharge of its responsibilities and functions"

<sup>17</sup> Article 60 (3) of the Constitution and Article 36 LPA. The PA is responsible for the implementation of his/her budget and has control over the management and expenditure of it-Law no.10296, dated 08.07.2010.

<sup>18</sup> <https://www.avokatipopullit.gov.al/media/manager/website/reports/PA%202021%20Annual%20Report.pdf> page 187

<sup>19</sup> The data mentioned in this Report refers to the situation communicated in the field mission in October 2022. Subsequently, in its "Comments of the People's Advocate Institution regarding the European Commission's Assessment Mission Report" (Comments), the PA transmitted that there have been some changes from the date of the mission. As so, in November 2023, the number of employees in the office of the PA is 59. Also, the number of employees with temporary contracts (6 hours per day) is 10 (7 at regional offices and 3 at central office), totaling 69 employees.

Operational expenses such as promotional materials, supply of other office materials, expenses for electricity, water, Institution's premises, expenses for the maintenance of the institution's vehicles, expenses for construction maintenance, expenses for maintenance of equipment and technical equipment, represent 12% of the annual budget of the PA.

The estimate of population in Albania in 2021 was 2,877,956 Inhabitants and the GDP per capita expected to reach 5,500.00 USD at the end of 2022<sup>20</sup>. Albania has less 72% of population when comparing to Portugal (10,343,066 habitants in 2021<sup>21</sup>), and the GDP per capita in Portugal is expected to be 24,400.00 USD at the end of this year. The Portuguese Ombudsperson's operating budget was, in its overall total, for 2021, of equal value to the previous year: current expenses € 5,190,880.00 Investment expenses € 79,000.00 in a total of € 5,269,880.00. Expenditure on personnel (96 employees) represented, as in previous budgetary years, most of the Ombudsperson's financial responsibilities. Security, energy, cleanliness and hygiene, computer maintenance and communications represented the main expenses with goods and services<sup>22</sup>.

Referring again to the PA, during the mission and through previous collection of information, it was confirmed that there is a lack of resources to develop some activities and to hire more personnel, necessary for the fulfilment of all the PA's tasks<sup>23</sup>. For instance, some activities in the context of promotion of human rights were supported by donors' funds, because the PA budget does not cover promotion of such activities<sup>24</sup>. Likewise, the PA does not have sufficient financial resources to hire full-time staff for the regional offices (the 7 hired experts are only working part-time) and these offices do not have their own facilities, sharing facilities with other public services. It should also be noted that the PA did not have any additional funds for monitoring the activity of the Justice Appointments Council (JAC) under the Justice Reform process<sup>25</sup>.

The GANHRI Subcommittee Report on Accreditation of December 2020 also referred to this aspect, encouraging the PA to continue to advocate for adequate funding, including to ensure fulltime staff in its regional offices<sup>26</sup>. The need to allocate more funds to the PA in order to develop its activities was also underlined by the European Commission, in its reports "European Commission Report for 2020"<sup>27</sup> and "Report of the European Commission against Racism and Intolerance for Albania"<sup>28</sup>.

**In conclusion**, the constitutional and legal framework in Albania guarantees the PA's necessary autonomy in the elaboration and execution of his/her budget. Since 2021, there has also been a tendency to increase the funds allocated. However, it is still necessary to assign more funds to the institution in order to be able to fully fulfil its tasks and better develop its broad mandate. Likewise, there is still a need for more staff to ensure fulltime presence in the regional offices, as detailed in the next section.

### **Adequate and sufficient staff**

The law ensures that the PA is organized in central and local level, based on the needs of the institution and on the State Budget. The organizational structure is designated by the PA himself/herself,

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<sup>20</sup> <https://tradingeconomics.com/albania/gdp-per-capita-ppp>

<sup>21</sup> [https://www.ine.pt/xportal/xmain?xpgid=ine\\_main&xpid=INE&xlang=pt](https://www.ine.pt/xportal/xmain?xpgid=ine_main&xpid=INE&xlang=pt)

<sup>22</sup> <https://www.provedor-ius.pt/documentos/relatorio-a-assembleia-da-republica-2021-provedor-de-justica/>

<sup>23</sup> Despite the number of employees having - in November 2023 - increased to a total of 69 (plus five), there remains a lack of funds to hire independent experts. See note 19.

<sup>24</sup> Annual Report 2021, page 9 -10.

<https://www.avokatipopullit.gov.al/media/manager/website/reports/PA%202021%20Annual%20Report.pdf>

<sup>25</sup> Annual Report 2021, page 160.

<sup>26</sup> <https://ganhri.org/wp-content/uploads/2021/01/SCA-Report-December-2020-24012021-En.pdf>

<sup>27</sup> [https://neighbourhood-enlargement.ec.europa.eu/albania-report-2021\\_en](https://neighbourhood-enlargement.ec.europa.eu/albania-report-2021_en)

<sup>28</sup> "The budget of the People's Advocate increased slightly, but does still not adequately reflect the extension of its mandate in 2014, inter alia to include promotion and outreach activities for which, however, in spite of several requests, no budget increase was granted" - <https://rm.coe.int/report-on-albania-6th-monitoring-cycle-/16809e8241>

according to the number of employees approved in his/her annual budget. Also, the staff of the PA is part of the Civil Service, therefore the procedure of selection is defined by Law<sup>29 30</sup>.

Currently, there are no secondments and this is only applied when necessary to replace staff. Most of the staff is, therefore, permanently recruited in accordance with the civil service procedures, while supporting staff is contracted by labour contracts. The staff of the regional offices are also hired through employment contracts, which are renewed annually. In this sense, since these workers are meeting permanent needs, and the same people are hired every year, they should be integrated into permanent positions in the staff of the institution, such as civil servants.

The PA is organized in five sections: 1) central and local administration bodies and third parties acting on their behalf, 2) section for police, secret services, prisons, armed forces and judicial power (special section), 3) general section, 4) section for the protection and promotion of children's rights and 5) NPM. Each of these sections has a Commissioner and 3 to 6 assistant commissioners. The current structure of the institution integrates also a Cabinet, the secretary-general, a Directorate of Finance, Services and Reception of Citizens, a Human Resources Unit, a Services Unit, a Finances and Procurement Unit, an IT and Citizens Reception Unit and a Unit for International Cooperation and Europe Integration.

The total number of staff is, in October 2022, of 64 (57 at central office and 7 at regional offices)<sup>31</sup>, including regional staff<sup>32</sup>. In 2021 the mentioned staff of the PA handled a total of 5837 cases including 1170 complaints, 460 ex-officio cases, 4188 advice/guidance and 19 cases outside the competence of the PA. From the total, 1659 were received through the Regional Offices (28 %)<sup>33</sup>.

All sections of the PA issued recommendations and carried out inspections during the year 2021. The NPM carried out a total of 84 inspections, monitoring and verifications, as follows: 38 inspections at commissariats, 3 inspections at elderly centres, 19 to penitentiary institutions<sup>34</sup>, 5 inspections at hospitals, 2 border monitoring, 16 at Frontex and 1 at the National Centre for Victims. In 2021, NPM handled 38 complaints and 9 ex-officio cases.

The Administration Section carried out 22 inspections and 27 monitored hearings. The Special Section carried out a total of 36 inspections, at protests (2), penitentiary (12), police directorate (7), border and migration commissariats (12) and hospitals (1). The Children's Section, in turn, carried out 6 visits to the Commissariats and 15 inspections at second level municipalities. The General Section, in cooperation with the 7 Regional Offices, carried out 374 monitoring actions in 17 state bodies and in 22 cities related to infrastructure accessibility for people with disabilities, 2 inspections at senior centers, 1 inspection at the national centre for victims of domestic violence and 1 inspection at crisis management centre for sexual violence cases.

In regard to awareness campaigns, the PA carries out various promotional activities in Human Rights, having elaborated an Action Plan 2019-20, in order to establish a culture of good governance, which includes promotional activities to increase the awareness of human rights among Albanian's citizens. For instance, the PA planned several activities related to the promotion of child's rights and education on human rights, including integration of human rights education in the curricula in Albania. To this effect, he/she, promotes info sessions in "9-year schools" and high schools across the country, in order to improve the knowledge of students and teaching staff on their fundamental rights and on the PA's

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<sup>29</sup> Law no.152/2013 "On civil servant", as amended

<sup>30</sup> Article 35 of the LPA.

<sup>31</sup> The data referred to in this Report refers to the situation communicated in the field mission in October 2022. Subsequently, in its Comments on the Report, the PA transmitted that there have been some changes from the date of the mission. "Based on Law No. 84/2022, "On the budget for the year 2023", in November 2023, the number of employees in the office of the PA is 59. Also," with the entry into force of the Council of Ministers Decision No 56, dated February 1, 2023, "On determining the number of employees with temporary contracts for the year 2023 in the central government units", the number of employees with temporary contracts (6 hours per day) is 10 (7 at regional offices and 3 at central office of the PA), totaling 69 employees (more five employees than in October 2022). See also note 19.

<sup>32</sup> The Regional Staff is administrative, not handling complaints.

<sup>33</sup> Annual Report PA 2021, page 191-214.

<sup>34</sup> At the present, there are 20 prisons in the penitentiary system in Albania.



work in defending their rights. Specifically, during 2021, the PA conducted 19 promotional activities "Open days" with the participation of students, teachers and parents. Other activity included in this Plan is the human rights blog "Success story in defence of human rights", on the PA official website. This blog features successful cases thanks to the PA's recommendation.

The PA submitted 8 Special Reports<sup>35</sup> to the Parliament in the last two years; "Monitoring Report on the violation of children's rights during Covid-19"; "Report Children's Rights Impact Assessment", Special Report "The Living Minimum Standard in Albania", Special Report "On the situation of domestic violence and violence against women in Albania for the period January 2020-September 2021", "Child protection from abuse and sexual exploitation", "Report Children's Rights Impact Assessment", "CPT's report on the recommendations left to the Albanian state" and Report "Assessment of the Impact of Climate Change on Children's Rights". Furthermore, the PA, in cooperation with the Albanian Commissioner for Protection Against Discrimination has addressed two joint reports "On violence against women in politics" and "Assessment on family access and use of social protection transfers".

For the year 2023, although the PA has requested an increase in the staff of 4 positions, of which 1 Assistant Commissioner at the Child Rights Section, 2 Assistant Commissioners for purposes of creating a sub-section on Research and Reporting Activity and 1 IT expert, the number of PA employees will be increased only by 2, 1 human rights expert and 1 IT expert<sup>36</sup>. As mentioned, the PA does not have sufficient financial resources to hire full-time staff for the regional offices, therefore the 7 hired positions are only working part-time, for 6 working hours.

Also, in the meeting at the PA's office, it was communicated that current salaries are not considered attractive enough in order to hire the most qualified human resources, namely experts in human rights<sup>37</sup>. Finally, it was ascertained that the lack of staff may compromise certain activities, as to conduct a monitoring at Health Services Delivery in Regional Hospitals, considering his limited capacities, the PA had to submit a request to several institutions to hire the human resources required. This situation has already been highlighted in the International Reports mentioned and also by the PA. In fact, in his/her 2020 Annual Report, the PA said that "*The PA has an urgent need for additional human resources (...)*" and that "*(...) the PA structure had to be changed several times to match the existing capacities*"<sup>38</sup>. And even though, since 2021 the staff is increasing, the growth has been small and does not match the needs. This occurred again for the year 2022.

Thus, **it is concluded** that the PA has the autonomy to hire and manage his/her human resources, however, these resources are not sufficient to fully perform all the tasks that the institution is called to carry out in his/her broad mandate. There is, for instance, a lack of staff to carry out inspections, monitoring borders and assure full-time positions at regional offices.

### Decision-making autonomy

According to the Constitution the PA is independent in the exercise of his duties. Public bodies are obliged to present to the PA all documents and information requested by him/her<sup>39</sup>. Following the admission of a complaint or an initiative taken by the PA to conduct an inspection or study, he/she initiates an investigation, being able to access to any premises of public institutions, examine and obtain copies of all necessary documents, request explanations from all organs of administration, interrogate any person involved in the matter under investigation and ask for the presence in his/her

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<sup>35</sup> Article 27 of the LPA.

<sup>36</sup> However, see note 31.

<sup>37</sup> In the meeting held in the Field Mission in October 2022. However, In the Comments on this Report, the PA informed, in November 2023, that there has been "some changes as of the date of the mission and the preparation of the report. Namely, with the Decision of The Council of Ministers no. 325, dated 31.05.2023 and no. 326, dated 31.05.2023, a significant increase in the salaries of the administration (including civil servants and supporting staff) took place. More concretely, regarding the PA institution, **this increase goes up to 40% of the salary for civil servants**. Nevertheless, the PA continues to state that "(...) the issue of the lack of funds for the engagement of independent experts remains. "

<sup>38</sup> Page 18 and 166 of the Annual Report 2020.

<https://www.avokatipopullit.gov.al/media/manager/website/reports/Annual%20report%202020%20english.pdf>

<sup>39</sup> Article no.60 (2) and Article 63 (4) of the Constitution.



office of all people without immunity. The PA has also the right to stipulate a deadline for replying<sup>40</sup>. After completed the investigation and if concluded that the citizen's complaint was well founded, the PA has the right to issue recommendations to the concerned administrative organ or/and supervising authority. He/she also is entitled to issue legislative recommendations<sup>41</sup>. All these powers are in accordance with the provisions of paragraphs 16 to 18 of the Venice Principles.

However, in some cases, as we will see later, the PA should continue the work and there is some self-censorship regarding politically controversial issues or not yet accepted by society.

It should be noted also that Article 19/1 of LPA refers that: *"People's Advocate or any persons authorized by him 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 where the police and prosecution office keep the escorted, detained or arrested people (...)"*.

It is worth referring that the OPCAT<sup>42</sup> ensures unrestricted access to all places of detention and their installations and facilities, which is applied to the Ombudsperson as NPM. As it is easy to understand, the segment of the rule above which provides for the need for prior information of the visit, inspired concern. In fact, advance information on the visit "to the head of the institution" can seriously compromise its effectiveness. When asked about this aspect, it was stated by the PA that he/she has free access to all types of premises, such as those referred in the article, without any need for prior notice and that the article refers to the identification when the PA arrives at the entrance of the institution. In the meeting held with the Prisons Directorate, it was confirmed that the PA has free access to prison facilities, without any previous notice, in all cases resulting from concrete complaints. It was, however, pointed out that, when general inspections are carried out, normally there is a previous information of the visit. For instance, in regard to the inspection conducted in the Institution for The Execution of Criminal Decisions, Lezha<sup>43</sup>, the Prisons Directorate informed that a meeting was held with the PA before the visit. Asked in this regard, the PA reported that, in some specific situations, they previously communicate the visit, but not as a rule and that happened only two times in the last five years.

Seeming that this is only due to issues related to the organisation of the visits, there is no objection to meetings to prepare generic visits, provided that the date on which the visit will take place is not indicated.

With regard to access to documents classified as State Secret<sup>44</sup>, in the State Police Detention Center in Tirana, there is a requirement to fill out a form, for certification of the employees who are granted access to those documents<sup>45</sup>. For this purpose, the employee's criminal record certificate is required.

**In conclusion**, from the documents consulted, meetings held and mission in the country, it was settled that the PA has autonomy in the decision-making process. There was no information to the contrary, in particular at meetings held with different entities and specially with NGOs and International Donors. So, we can conclude that the PA doesn't receive nor follow any instruction by other authorities. However, in some cases, as we will see later, the PA should continue the work and there is some self-censorship regarding politically controversial issues or not yet accepted by society<sup>46</sup>.

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<sup>40</sup> As provided by the LPA (Articles 17 to 20)

<sup>41</sup> Article 21 and Article 24 LPA.

<sup>42</sup> <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-against-torture-and-other-cruel>

<sup>43</sup> Case n. 9 (Registered with document number 202200192/3)

<sup>44</sup> Article 20 LPA.

<sup>45</sup> At the visit to the State Police Detention Center it was said that an authorisation was required, valid for one year, for access by the PA to the premises. However, the PA stated that isn't correct and that they have free access to the premises being the certification required only in the case of access to documents classified as State Secrets.

<sup>46</sup> As the PA recognizes in its Comments "(...) the Albanian Parliament remains still considerably resistant to issues related to the LGBT rights. Such resistance becomes stronger with regard to the recognition of their right to marriage and adoption of children."

Regarding the access to public administration institutions, like prisons, it was found that access is free, without restriction or preliminary authorisation, except to the access to documents classified as state secrets in the State Police Detention Center. General visits (inspections) to prisons can be informed in advance, mainly for logistical and organisational reasons, but it was not considered that this was mandatory. However, it is also concluded that the segment that provides a need to “inform in advance the head of the institution “in the rule of Article 19/1 of LPA must be amended in future revision of the law in order to avoid misinterpretations.

### **Nomination and dismissal procedures**

The procedures of nomination and dismissal of the PA and the Commissioners are established in the Constitution and the Law (LPA). Any Albanian citizen with a university degree, “having an outstanding activity and knowledge in the field of human rights and law’, can be the PA. The LPA adds that it is required that he/she has distinguished professional skills and moral-ethical qualities, has never been convicted criminally and is not a member of the Parliament that proposes or elects him/her, this applies also to the commissioner<sup>47</sup>. The selection process of the PA includes a public announcement, open to all citizens who meet the requirements set out in Article 3 of the LPA. The list of candidates passes to the Assembly committee to verify the fulfilment of constitutional and legal criteria and merit of each candidacy and there are public hearings with each candidate. After the hearing of the candidates, the Commission approves the respective list with the evaluation of compliance with the constitutional and legal criteria and also the merit of each application<sup>48</sup>. This procedure is in accordance with point 7 of the Venice Principles. However, it is worth mentioning here the concern expressed later on, about a gentleman's agreement for the appointment of the PA.

Conditions for being elected commissioner, the procedures of election and termination of the mandate and dismissal of commissioners are provided by Articles 33 to 34 of LPA, being civil society organisations included in the candidate’s selection process.

The PA is elected by a majority of three-fifths of all members of the Parliament (60% and 84 votes out of 140 deputies<sup>49</sup>) for a five-year period, with the right of re-election (article 5 LPA). Although it is not expressly provided for in Article 5 LPA (Term in office), to be re-elected only once, this understanding is the one that is best in line with point 10 of the Venice Principles: “(...) The Ombudsman’s mandate shall be renewable only once.” Therefore, it is understood that the article should be amended accordingly.

The legislature is in Albania of four years. (Article 65. Parag. 1 of the Albania Constitution). Therefore, this is in line with point 6 of the Venice Principles which states that “The Ombudsman shall preferably be elected by the Parliament by an appropriate qualified majority” and point 10: “The term of office of the Ombudsman shall be longer than the mandate of the appointing body”.

The Commissioner is elected by simple majority (50+1 votes) for a four-year term<sup>50</sup>. This difference in the duration of the mandate lies in the fact that the election process of the Commissioner begins by invitation of the PA<sup>51</sup>. Regarding the election of the Commissioner, it was noted by the PA that, as he/she is elected with a smaller majority than the PA, this could compromise the PA’s work as the Commissioner does not need, in his/her election, to gather a consensus as broad as the PA<sup>52</sup>. In practice It is recognized that this rule can be used by the majority in the Parliament to choose the Commissioners to counter-balance the positions of the PA.

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<sup>47</sup> Article 61 (2) of the Constitution and Article 3 of LPA.

<sup>48</sup> Article 9 LPA.

<sup>49</sup> Article 64 (1) of The Constitution.

<sup>50</sup> Article 61 (1) of the Constitution and Article 3 (1), Article 4 e 5 of LPA.

<sup>51</sup> Article 33 (4) 4 of LPA.

<sup>52</sup> Being elected by a majority of 50+1.

The PA may be discharged only on grounded complaint of no less than one-third of the deputies. In this situation, the Parliament makes a decision with three fifths of all its members<sup>53</sup>. Pursuant to Article 8 of LPA, the PA shall be removed from office only in case he/she is convicted by a final court decision, becomes mentally or physically incapacitated to perform his/her duties, conducts activities that violate the provisions of Article 10 of LPA or is absent from duty for more than three months. The mandate of PA also ends if he/she resigns, at the end of mandate and in case of death <sup>54</sup>.

The PA is prohibited from participating in political parties or organisations, carrying out any other political, state or professional activities, or participating in the steering bodies of social, economic or commercial organisations. However, he/she may exercise the right to teach or to be an author<sup>55</sup>. As mentioned, one of the motives for the removal from office of the PA is when he/she conducts activities that violate the Article 10 of LPA, therefore participating in political parties or organisations can be a reason for the dismissal of the PA.

Despite the provision in Law that the PA is elected no later than 30 days from the mandate termination, the current PA has ended her mandate on 17.06.2022. She has remained in the exercise of functions until the election of a new PA, as provided by Article 9, paragraph 1 of the LPA<sup>56</sup>. This is in line with international Recommendations. It is important to note here that the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE) recommended that the members of the decision-making body of an NHRI remain in office until the appointment of their successor, in order to ensure an adequate transfer of functions and ensure the continuity of the institution (Opinion NHRI-ISL/301/2017)" .Similarly, the Venice Commission stated in one of its opinions that the head of an NHRI should remain in office until the start of the new NHRI, in order to avoid periods without leadership by the NHRI (Opinion No. 540/2009)"<sup>57</sup>.

As said, according to article 61, paragraph 4 of the Constitution "People's Advocate may not take part in any political party, carry on any other political, state or professional activity, or take part in the management organs of social, economic and commercial organizations". Thus, it was with strangeness that it was reported by the press in the working week in Tirana, that the Parliamentary Leader of the opposition, announced two candidates for Ombudsman and said that he had previously verified, among other things, their political loyalty.

It was also later known that there is a gentlemen's agreement between the main Albanian political parties that the candidate proposed by the opposition is elected, this issue is considered to be of concern as it conflicts with the transparency required by the selection process for candidates for Ombudsman, in accordance with points 6 and 7 of the Venice Principles.

**In conclusion**, the constitutional and legal framework applicable to the election and dismissal of the PA and the Commissioners affords the independence and democratic legitimacy of the Institution. The qualified majority required for the election of the PA (60% and 84 votes out of 140 deputies) ensures that the PA is elected by a wider spectrum of deputies and not only from majority party which best guarantees their independence. However, the current situation inspires concern as an environment of political impasse in the re-election of the new PA is created.

It was also later known that there is a gentlemen's agreement between the main Albanian political parties that the candidate proposed by the opposition is elected. This issue is considered to be a matter

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<sup>53</sup> Article 62 of the Constitution

<sup>54</sup> Article 7 of LPA.

<sup>55</sup> Article 61 (4) of the Constitution and Article 10 of the LPA.

<sup>56</sup> Article 9 (1) of LPA "(...) the People's Advocate shall hold office until the election of a new Ombudsman."

<sup>57</sup> <http://ennhri.org/wp-content/uploads/2020/10/ENNHRI-Opinion-on-Transitional-Arrangements-in-the-context-of-the-Selection-and-Appointment-of-the-Head-of-a-National-Human-Rights-Institution.pdf>

of concern as it conflicts with the transparency required by the selection process for candidates for Ombudsman, in accordance with points 6 and 7 of the Venice Principles.<sup>58</sup>

### **Transparency and accountability**

In addition to what has already been mentioned in the previous sections, regarding PA's legal framework, which ensures a reasonable level of transparency, the PA is obliged to present an annual report to the Parliament, until the 30<sup>th</sup> of April<sup>59</sup>. This Report describes the PA's activity in the previous year, including the description of the most relevant cases, recommendations issued, inspections carried out and other activities to promote human rights. The NPM has its own section in the Annual Report.

The PA also submit special reports to the Parliament, having from 2015 to 2019 submitted 10 Special Reports on various issues and, in the last two years, sent 8 Special Reports to the Parliament<sup>60</sup>. All of those special reports, even if not discussed, have been made public in the website of the PA.<sup>61</sup>

In this regard, it was also mentioned that special reports are made public in presentation sessions held with civil society and media, even before the discussion by the Assembly. This is something that does not happen with the annual report, although the concrete issues followed by the PA have been made public individually in the PA website and press releases, during the previous year.

The annual report of the PA is reviewed by the Parliament within three months from its submission and special reports are discussed within 2 months. If these reports are not discussed by the Parliament, within the deadlines set out, the PA has the right to publish them, and only in this case<sup>62</sup>.

In fact, after submitting the annual report on the activity of the PA, or the special report to the Parliament, it is the latter that publishes the reports, after reviewing them within the legal deadlines. Normally, the Parliament publishes the annual report in his website, as soon as received, so the PA stated that after that date he/she can discuss it in public. Since the special reports of the last two years have not been discussed in Parliament, the PA took the initiative to publish them on its website and held public sessions of presentation of some of them, as mentioned.

It caused some strangeness that the PA do not publish his/her Annual Activity Report, before sending it to the Parliament as said. Effectively, as an independent institution the PA should publish his/her own report, not being dependent of the Parliament to that and not having any restriction in discussing it before the Parliament made it public. In this regard, the PA reported that " (...), in the framework of the legal amendments that are to be proposed by the PA, this issue will be presented as an amendment, to avoid any negative interpretation or doubt that may arise in the future." <sup>63</sup>

About this section, it should also be noted that, following to the decision of the Parliament no. 49/2017, "on the Establishment of a Mechanism for the Systematic Monitoring of the Follow-up and Implementation of the Recommendations of Independent Institutions", (Mechanism) the PA officially informs periodically the Parliament about the recommendations that he/she has made to public authorities, as well as the status of their implementation. In the meeting held with the Mechanism, it was transmitted that, in order to promote the implementation of the recommendations, the Mechanism promotes meetings between the public entities and the independent entities and hold

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<sup>58</sup> The process of election of the PA was in the general calendar of the Parliament but there is no date indicated for that action, according to the calendar published for the December Parliamentary sessions (5, 15 and 22/12).

<sup>59</sup> Article 26 and 28 of the LPA.

<sup>60</sup> Article 27 of the LPA. None of these Special Report was discussed by the Parliament, what in the meeting with the Parliament was attributed to the lack of quorum for that purpose, due to the recent political instability in the country.

<sup>61</sup> Some of them, also in English,

[https://www.avokatipopullit.gov.al/media/manager/website/reports/CHILD%20RIGHTS%20IMPACT%20ASSESSMENT%20\(CRIA\).pdf](https://www.avokatipopullit.gov.al/media/manager/website/reports/CHILD%20RIGHTS%20IMPACT%20ASSESSMENT%20(CRIA).pdf)  
<https://www.avokatipopullit.gov.al/media/manager/website/reports/VIOLENCE%20AGAINST%20WOMAN%20IN%20POLITIC.pdf>

<sup>62</sup> Article 28 of the LPA.

<sup>63</sup> See "Comments of the People's Advocate Institution regarding the European Commission's Assessment mission report" .

appeals and hearings of the public entities. In the case of non-acceptance of the recommendations, without any proper justification, the Mechanism may propose the political accountability of the of the person in charge of the entity.

The Mechanism works with a Platform that contains all the information on the recommendations and where the status of their implementation is monitored. This **platform is not currently available to the public**, but it is expected to be. Finally, it was transmitted that, considering all the recommendations of the independent entities monitored by the Mechanism, there was an increase in the level of implementation of the recommendations in the last 4 years, what didn't happen in PA's data, as we will see.

The PA has a website on which his/her activity is publicised, like the annual and special reports<sup>64</sup>, recommendations, examples of handled case, events and news about initiatives<sup>65</sup>. There is information on the internal organisation, human resources and the institution's budget. Moreover, it provides access for citizens to file complaints online. On this page, there is also an informative video about the mandate and role of the PA, reporting, for instance, the cases and ways in which citizens can address PA for the violation of their rights by public entities. The PA also has an account on social media Facebook.

Finally, the PA has a mobile app where citizens can complain and send photos, videos/audio to support their complaint. The app is interactive and used also by the PA to send information about the status of the complaint. Further, it gives information on the PA role, the protected civil rights and provides examples of positive changes based on the PA recommendations. In the period January-December 2021, the PA received 9.6% of all complaints through this app.

**In conclusion**, the legal framework of the PA ensures transparency and his/her accountability, being the PA obliged to submit annual activity reports to the Parliament, which elects him/her. In addition, the PA promotes a culture of transparency in information, publishing his/her activities on the website, in social networks and presenting them in public sessions, such as those to present the special reports. It should be mentioned the good practice of launching the APP. It must, however, be mentioned that as an independent institution the PA should publish his/her own report, not being dependent of the Parliament to that and not having any restriction in discussing it before the Parliament made it public.

Also, there is still **room to improve the functioning of the Mechanism, in particular by making the platform available to the general public.**

### **Engagement with stakeholders and civil society**

Civil society organisations are involved in the selection process for candidates for Commissioner, as provided by law<sup>66</sup>. In the meeting with NGOs, the participation in this process was described by an NGO representative, who also mentioned that they are always invited to the special report presentation and to other PA's activities.

The PA frequently participates in trainings, meetings, discussions, round tables, with representatives of NGOs, promoting joint activities with them. He/she does the same with the International Donors, namely in the area of human rights defense. For example, one of the analysed cases (case 1) concerning restrictions on the right of assembly, was raised by someone present in a round table with NGOs "on the right of peaceful gathering in pandemic". During the pandemic period, the PA also participated in

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<sup>64</sup> Some of them also available in english, like Annual Reports since 2017 to 2021 and Special Reports on Child Rights and Violence against women.

<sup>65</sup> [www.avokatipopullit.gov.al](http://www.avokatipopullit.gov.al)

<sup>66</sup> Article 33 (5) of the LPA.

various activities online with different NGOs, where the situation of the rights of national minorities was analysed and discussed.

The meetings held with the International Donors and NGOs resulted in a good perception of the PA Institution. It can thus be said that civil society relies on the PA and sees him/her as a proactive institution. It can be noted, however, that in some cases, as for example, the case related to the willingness to register children born with artificial insemination as having two mothers<sup>67</sup>, the PA approach, well justified legally, created a certain division within the civil society due to lack of understanding and different cultural perspectives. Thus, this case demonstrates the difficult environment the PA is working in, having the PA recognized that the issue needs “to be addressed more broadly and should create new and more comprehensive balances in our society”<sup>68 69</sup>.

Finally, in the meeting with International Donors, the need for more staff and funds was again mentioned so that the PA can better perform the functions required by its broad mandate.

## Impact

In the year 2020, the PA issued 256 recommendation, 142 recommendations or 55% of them were accepted, 24 recommendations or 9% of them were rejected, 34 recommendations or 13% of them are unanswered<sup>70</sup>. In 2021, out of 1256 recommendations, only 29% have been implemented, while 71% are not implemented, within 16% without answer. Recognizing that this number is high, the PA addressed a total of 28 requests to the public administration institutions for implementation of the recommendations, without any effective result. Also, the data from the Mechanism of Monitoring the recommendations confirm a decrease in the level of acceptance of the recommendations of the PA in recent years. From 63% in 2019, 30% in 2020, 17% in 2021 to 13% until the end of October 2022.

The situation is more worrying at the level of local authorities, as the PA refers: “Public administration bodies at the local level have an extremely low level of cooperation and interaction and do not fulfil the legal obligation to provide explanations and information to the People's Advocate within the legal deadline, a situation that has been observed year after year”<sup>71</sup>.

Also, the Commission Report on Albania 2021 mentions that “The administration’s performance is still poor when it comes to implementing recommendations from the Ombudsperson, showing a decreasing trend in the reporting period”<sup>72</sup>.

In this regard, the situation is more favorable to the NPM, with most of the recommendations for the year 2021, in 76 inspection reports, being accepted.

It was transmitted by the PA, at the meeting held in its central offices in Tirana, that the lack of response by public authorities remains a concern and this issue has been continuously brought to the attention of the Albanian Parliament, in the Annual Reports and through intermediate reports. It is concluded, therefore, that the response and degree of implementation by the Public Administration institutions of the PA recommendations inspires concern. Efforts should be made by the PA and Parliament to improve this situation, and it seems that the measures taken so far are not enough<sup>73</sup>.

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<sup>67</sup> See point 2 of this Report “Assessment of the case -processing”.

<sup>68</sup> Annual Report of the PA 2021, page 156.

<sup>69</sup> And also at the Comments “the PA “(...) recognize the fact that this is an ongoing human rights battle that has still to be won in Albania, however the progress is substantial.”

<sup>70</sup> The data are collected from the Annual Report of the PA 2020 (page 155)

<https://www.avokatipopullit.gov.al/media/manager/website/reports/Annual%20report%202020%20english.pdf> and 2021 (page 168),

<https://www.avokatipopullit.gov.al/media/manager/website/reports/PA%202021%20Annual%20Report.pdf>

<sup>71</sup> Annual Report 2021, page 78.

<sup>72</sup> [https://neighbourhood-enlargement.ec.europa.eu/albania-report-2021\\_en](https://neighbourhood-enlargement.ec.europa.eu/albania-report-2021_en)

<sup>73</sup> In its “Comments on the report of evaluation based on the meeting of 25-28 October 2022”, the Minister of State for Parliament Relations (MSPR) informed that “(...) we are working to draft an Order of the Prime Minister with the aim of establishing a network of coordinators in each Ministry that can report with accuracy and quality the implementation of the recommendations from independent institutions especially for People’s Advocate and Supreme State Audit to translate this obligation into the executive level This order will put an obligation



## Public perceptions

In the meetings held with international donors (Council of Europe, OSCE, Embassies) and NGO'S there was mention of the projects developed in common with the PA and his/her contribution towards a better understanding of human rights and increased participation of citizens. All highlighted their good relationship with the PA and that between the PA and the civil society. The role of the PA as a body for the defense of citizen`s rights was also highlighted, in recent years, when, due to the ongoing judicial reform, the courts were at a standstill, as was the case with the Constitutional Court and the High Court. Also, at the meeting held, the NGOs mentioned, as examples of joint activities, visits with the PA to prisons, promotion of different awareness-raising activities and the launch of two manuals on children's rights, besides being involved in the discussion of special reports.

**In conclusion**, international donors and civil society organizations see the PA as a respected and very proactive organization and one that includes them in his/her activities. Thus, it can be concluded that the level of independence and public trust in the PA is high. This conclusion also resulted from the other various meetings<sup>74</sup>.

## Other relevant issues

The paragraphs b) and c) of the Article 21 of the LPA, which provide for the **suspension "of the improper or illegal acts and proceedings"**, is not being effectively applied by the public entities, as well as paragraph b of Article 24 of the LPA. This was explained by the fact that the Administrative Code does not have a provision that recognizes that rule and that there are no applicable fines for these situations. As the suspensive effect of administrative acts<sup>75</sup> is a judicial competence, its necessity and adequacy to the Albanian constitutional and legal framework must be considered.

## 2. Assessment of the case-processing

The way in which the PA processes the cases was evaluated by analysing 4 cases: one ex-officio-case, raised by an NGO (202003159-our case 1); an Amicus Curiae-request for an opinion from the Administrative Court of first instance of Tirana (case 3); one other case about restriction of vote (202100616- case 4), on the basis of a complaint from a group of organisations representing Albanian emigrants in Greece; and, the final one, an inspection conducted by the NPM (202200192/3- case 9).

<sup>76</sup>

In the first case analysed, the PA began his/her investigation in order to verify the existence of disproportionate and unjustified limitations to the right of assembly. The public entity in question was heard and the PA examined the collected information and verified its constitutional and legal, national and international framework. As a result, the PA issued a recommendation to change the illegal regulation. The legal and factual argumentation was considered correct. However, the PA had to request a response from the public authority three times, before it received a reply after 4,5 months (the legal deadline is 30 days-Article 22 LPA). The recommendation was not implemented and later the part of the rule in question, which referred to "political manifestation", was annulled by the Court. In the court action brought by Child Rights Centre Albania, the PA Recommendation was used as an opinion Amicus Curiae. In view of the Court's decision, the PA's process was archived, which was

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to all the executive institutions (ministries and agencies under the executive) to report regarding the implementation of independent institutions' recommendations. This order will be followed by a methodology of reporting recommendations and unification of reports in a standard model." Also, it was informed in the Comments that "The monitoring of the implementation is in force and the MSPR together with the relevant Directory (Directory of Monitoring Services of PA's) in Parliament will work for the enhancement of the regulatory procedures of reporting. "

<sup>74</sup> The Balkan Barometer 2021 report – supported by the Regional Cooperation Council ranked the People's Advocate in Albania among the most trusted institutions by the public opinion. <https://www.rcc.int/pubs/122/balkan-barometer-2021>

<sup>75</sup> Added in LPA by Law 9398, dated 12.05.2005.

<sup>76</sup> Given the specific nature of each case, they will be referred to separately.



considered appropriate as the freedom of political assembly was the focus of the process and the issue was resolved by the Court's intervention.

In the Amicus Curiae case<sup>77</sup>, an Opinion was issued by the PA, considered adequate and based on the best interests of the children in question.

This Opinion concludes that:

*“Our family legislation does not allow the registration of two mothers as parents of a child in the registry of civil status, so in this context it should be taken into account the fact that the court does not create a new norm but interprets and applies the relevant legislation in force for the regulation of the case at trial. In this context, we think that the gender-based approach to family ties should be re-evaluated in our society to include the realities of people who would not like to identify their gender identity in the register in relation to the child. The exclusion of the possibility to be identified without specifying gender, but only with the word parent is a right that emphasizes the affective reality that members of a legal family or de facto family create with children and the affection and obligations they assume towards the child. Our society has evolved and as we said above in the evolution of the conception of the child, the parent, parenting and the responsibility for their well-being, taking over the well-being of the state when they don't have parents or when the parents can't take care of them. Meanwhile, in the case under trial, the Albanian society, for an artifice, risks guaranteeing this right to babies A and H. The exclusion of same-sex couples from marital status (the right to marry) or even the right to de facto cohabitation from the Family Code also excludes them from all those rights and responsibilities that come exclusively with being married. or even in actual cohabitation.”*

The Opinion of the PA was not upheld by the Court, “as not based on the law”. As the appeal is pending, the PA has decided not to issue any Recommendation having forwarded his/her Opinion to the Parliament. As the PA says *“The ultimate opinion of the PA is that there is a need to have an incidental judgment on this matter (i.e., the judge should refer the case to the Constitutional Court for the latter to declare part of the law unconstitutional). It is our opinion that the children should enjoy the same right to benefit from the care of 2 parents, regardless of the gender of the parent.”*

The PA's justification for not having done more in this situation was the fact that an appeal was pending before the Administrative Court and he/she was waiting for the decision of the Court, thus applying here Article 14 of the LPA. Another justification given at the meeting at the PA headquarters was that Albanian society was not yet prepared for substantial changes in this matter, as said above<sup>78</sup>. However, that article only states that the PA “(...) **may** ...terminate the investigation of a case if the same case has been decided or is being scrutinized by public prosecutor or a court”, not preventing or prohibiting the PA from acting, pursuant to Article 24 a) and/or c) of the LPA, i.e. by issuing a recommendation or by putting the Constitutional Court in motion to invalidate the legal act that leads to violation of human rights.

Though, in this concrete situation, the PA couldn't turn to the Constitutional Court to invalidate the legal act because the Law no 8577, dated 10.02.2000 “On the organization and functioning of the Constitutional Court of the Republic of Albania” states (Time Limit to submit an application) that the Ombudsman's application to the TC to check the conformity of a law or other normative acts with the

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<sup>77</sup> At issue was the impossibility of registering children born by artificial insemination as having two mothers.

<sup>78</sup> In its Comments to this Report the PA also states, about this issue, that “However we recognise the fact that this is an ongoing human rights battle that has still to be won in Albania, however the progress is substantial.” The PA also argues in this regard that “The Albanian Ombudsman institution has formally requested to the Parliament the recognition of the right of self-determination of sex and the right to same sex marriage. The acts of support are numerous (...) . In our view, the way how the Ombudsman may address a certain issue are different, request for legislative amendment is one of them, in our view less stronger than the address and emphasise of said fact in the Annual Report. The annual report is the most reviewed, consulted and publicized act of the Ombudsman that is presented to the Parliament, and it does not present only a compilation of recommendations and activity during the previous year, but the position of the Ombudsoffice vis a vis a certain human right. Therefore we don't believe that the issuance of a new recommendation requesting to legislative amendments of the law on civil register will bring any different result on the matter.” See also note 46.

Constitution or international agreements can only be submitted **within two years from the entry into force of the act** (Article 50, no 1). It turns out that the law in question is the "Law on Civil Status", Law no 10129, dated 11.05.2009. Thus, since the law came into force more than two years ago, the request for consideration of its constitutionality cannot be activated by the PA. This limit time to submit an application is also applied to the members of the Assembly (not less than one-fifth of Members of the Assembly have also the right to recourse to the TC).

However, the courts may submit a petition at any time, where in the course of examining a concrete judicial case, under Article 145 paragraph 2 of the Constitution, they have found the anti-constitutionality of a law or normative act. (no 3), that's why the PA alleged that "the judge should refer the case to the Constitutional Court for the latter to declare part of law unconstitutional".

In conclusion, it is understood that the PA could not have appealed to the Constitutional Court to verify the compliance of the Law with the Constitution, but the PA should continue the work on this case, by proactively using all the means in its power, including consider to issue a legislative recommendation to amend the Law, pursuant to Article 24, a) of the LPA.

Reinforcing this conclusion is the fact that the PA develops an important activity to protect and raise awareness of the rights of the LGBTIQ community in Albania, which it recognizes is often the victim of discrimination and intolerance. In this regard, the PA itself concludes that "(...) drafting specific legislation on the recognition of changed gender identity, amending the Criminal Code and the Family Code, combined with promotional activities by the relevant institutions is the right approach to enhancing protection and respect for the rights of this community"<sup>79</sup>.

In assessing the action of the PA regarding the **mandatory quarantine** issued by Order no. 219, dated 19.04.2021<sup>80</sup>, "For the quarantine of persons coming to The Republic of Albania from The Republic of Northern Macedonia and Greece" and consequent restriction of the right to vote, the urgent action of the PA was noted. In fact, the Recommendation concerning the disproportional restriction on the right to vote was issued to The Minister of Health and Social Protection, in 2 days. The PA considered that the Order in question constituted an obstacle and made it impossible the participation of Albanian citizens living in Greece and Northern Macedonia to exercise their fundamental right to vote.<sup>81</sup>

The PA publicised the Recommendation requesting the annulment of the Order in the media, published it on the website and social networks, and gave several interviews to promote its acceptance. Such actions were not sufficient, as the recommendation was not accepted. In this case the response occurred when the Ministerial Order was no longer in force.

As the PA acknowledges, the order "On the quarantine of persons coming to the Republic of Albania from the Republic of North Macedonia and Greece" was approved at a time when the Central Election Commission has failed to guarantee the effective exercise of the right to vote of Albanian immigrants in the countries where they live and reside, outside of Albania." Also, as the PA states in its Comments "(...) The Constitutional Court, in its decision on this matter, concluded that it is not merely the inaction of the Central Election Commission (KOZ) that has caused this issue but the content of the relevant provision in the Electoral Code that gives rise to this problem." Thus, it is understood that, in addition to the recommendation done in the concrete case, the PA should consider other general recommendation to the Central Election Commission to ensure the effective exercise of the right to vote of emigrants in the countries where they live.

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<sup>79</sup> As the PA states "Although the Constitution of the Republic of Albania guarantees the basic rights and freedoms of every person, the LGBTIQ community continues to experience discrimination and intolerance, which are encountered within the family, and further escalated in society, work environments, school, and public life in general." See Annual Report on the activity of the PA 2021, pages 121-123, about this issue. <https://www.avokatipopullit.gov.al/media/manager/website/reports/PA%202021%20Annual%20Report.pdf>

<sup>80</sup> This case refers to the right to vote of Albanian emigrants who intended to enter the territory to participate in the central election of may 21st 2021.

<sup>81</sup> In this regard, the PA met with the Chairman of the State Commissioner of Elections, demanding the resolution of the issue, met with the representatives of the association "Diaspora for Free Albania", which brought the action to the Constitutional Court and participated as an interested party in this action. The PA position was accepted by the Constitutional Court.

The inspection of NPM to Lezha Penitentiary Institution (Case 9) was carried out in 17/02/22 to assess the conditions of the institution, according to NPM's annual inspection plan. NPM also had previous visits between 2019-2021 to monitor the works in that Institution, before the transfer of detainees there. The PA notified the competent entities that he/she would visit the new facilities after this transfer, not indicating the date of this visit, which appears to be appropriate. Following these visits, the NPM issued recommendations, namely to increase the institution's clinical and administrative staff. At the expert meeting with the Prisons Directorate, it was communicated that a new personnel organisation chart had been approved in the previous week, in line with the PA's recommendation. This was confirmed by consulting the organisational structure in question given at the meeting. However, the PA had not been informed of this acceptance, despite all public entities having responded previously to the recommendation.

In general, most of the recommendations of NPM sent in 2021 were accepted and are well received. Namely, the Prisons Directorate finds that the NPM's work has contributed to the improvement of the penitentiary system.

Finally, the PA, as a rule, verifies the measures that are being taken and follows up on the recommendations that have not been answered in a timely manner. As means of dissemination, the PA publishes the recommendations on its website, in the annual report and on social networks. He also gives interviews to the media, as in the case of the mandatory quarantine.

In **summary**, taking into account the cases described above, it is understood that the action of the PA was adequate in order to fulfil the citizen's rights. In general, the PA took the measures that proved necessary in order to resolve the various issues, according to international standards<sup>82</sup>. However, as mentioned, in two of the cases examined, the PA could continue the work, namely by issuing a legislative recommendation to amend the Law on civil status and in general the Family Law and The Family Code.

Also, concerning the vote of emigrants, a general Recommendation could be considered to the Central Election Commission in order to assure the exercise of vote of Albanian emigrants in the countries where they live.

From the analysis of the cases, it is also concluded, that the question of the answer by the public entities and the implementation of the recommendations is still a matter where there is room for improvement and which must be followed with attention. For instance, in the first case (limitations to the right of assembly, the public entity replied only after 4,5 months. In the case of the restriction of vote (case 4), the answer was given to the PA after the Order had passed its legal force and regarding the Recommendation of the NPM (inspection to Lezha Penitentiary Institution), its recent acceptance was not known by the PA, at the date of the meeting in the field mission (October 2022).

## Recommendations

### A/ OMBUDSPERSON INSTITUTION

- 1- The Article 5 LPA (Term of office) should expressly provide that re-election only operates once. Therefore, the rule should be changed/added, in line with the Venice Principles.
- 2- To function effectively, the PA must have appropriate funds in order to guarantee independence and to choose priorities. Thus, the PA must continue to request from the competent authorities the financial and human resources needed to fully carry out the functions that fall within its broad mandate.
- 3- Visits to prisons and other places of detention are not subject to any legal restriction, prior authorization or information. Thus, the PA should recommend an amendment so as to eliminate the segment of the Article 19/1 LPA, according to wish prior notice to any inspection visit is required.

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<sup>82</sup> Namely points 16, 17 of the Principles of Venice and Principles of Paris

- 4- As an independent entity, the PA must publish his/her annual report with full independence from its presentation to the Parliament. Consequently, an amendment to Article 28 LPA must be proposed.
- 5- Efforts must be made, in order to make public entities aware of the obligation to respond to the PA, according to Article 22 of the LPA.
- 6- Regarding the degree of implementation by the public administration of the PA's recommendations, efforts should be made to increase this level, by reinforcing the Follow-up and monitoring its implementation.
- 7- Regarding the vote of emigrants, in general, in the countries where they live, the PA should continue the work and consider a Recommendation to the Central Election Commission to ensure the exercise of the right to vote of Albanian emigrants on Albanian elections, in those countries.
- 8- In the Amicus Curia case the PA should continue the work, by proactively using all the means in its power, including consider to issue a legislative Recommendation to amend the Law" on civil status", the Family Law and The Family Code, in order to increase the level of human rights protection.

#### **D/ GOVERNMENTAL BODIES / STATE AGENCIES / RESPONDENT AUTHORITIES<sup>83</sup>**

8. The PA must be provided with adequate funds to fully carry out its functions, in particular to be able to hire all the necessary staff.
9. With regard to the workers of the PA regional delegations, who carry out functions that correspond to permanent needs, they must be admitted as civil servants, ending with their annual hiring.
10. The legal obligation of the public entities to respond to the PA's recommendations with reasoned explanations, must continue to be reinforced.
11. The monitoring of the implementation of the PA's recommendations should continue to be strengthened

#### **E/ PARLIAMENT**

12. The Article 5 LPA (Term of office) should expressly provide that re-election only operates once. Therefore, the rule should be changed/added, in line with the Venice Principles.
13. Appropriate funds must be allocated to the PA so that he/she can fully carry out his/her competences and in particular to enlarge his/her human resources, with all the required staff.
14. With regard to the workers of the PA regional delegations, who carry out functions that correspond to permanent needs, they must be admitted as civil servants, ending with their annual hiring.
15. The role played by the Mechanism of Monitoring the Recommendation of Independent Institutions must continue to be improved, in particular allowing the Platform to be freely accessible to the general public.
16. Visits to prisons and other places of detention are not subject to any legal restriction or prior authorization or information. Therefore, the segment of the rule of Article 19/1 of the LPA, when referring to the obligation to inform "in advance the head of the institution", must be eliminated.
17. As an independent entity, the PA must publish its annual report not being conditioned to the discussion of it by the Parliament. Consequently, an amendment to Article 28 of the LPA must be considered.
18. Considering that paragraphs b) and c) of Article 21 of the LPA, that provides for the suspension "of the improper or illegal acts and proceedings", is not being effectively applied by the public

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<sup>83</sup> Regarding the Recommendations 10 e 11, see note 74.

entities, as well as paragraph b of Article 24 of the Law, its necessity and adequacy to the Albanian constitutional and legal framework must be discussed.

19. Efforts should be made with the Central Election Commission to ensure that Albanian emigrants can exercise in general the right to vote in the countries where they live.

**F/ HORIZONTAL RECOMMENDATIONS**

20. The PA must be provided with adequate funds to fully carry out its functions, in particular to be able to hire all the necessary staff.
21. The level of acceptance of the PA's recommendations must continue to be improved, namely by reinforcing their monitoring.
22. Awareness of the duty to respond to the PA's recommendations should continue to be promoted, as well as adequate justification for its non-implementation.

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*The present report has been written and submitted by **XXXXXXX and XXXXXX**  
to the EU Commission on the XXXXXXXX.*  
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