



## **SPECIAL REPORT**

On the role of the Ombudsman Institution  
regarding the Migration issue.

Tirana, July 2016

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## **1. Instead of the Introduction.**

The meaning of the word “asylum” is related to the word “sanctuary”, which in Albanian means “sacred environment”. And indeed, is there any more sacred place than the one where an endangered life feels saved? If we tracked through the etymological history of the term, the right of asylum (often used as a “right to political asylum”) is a legal concept that comes from ancient Greece, which sanctioned that a person persecuted by his country, could be protected by another sovereign authority, whether a foreign state, a church or a shrine. Being a well-known term by the Egyptians, Greeks and Jews, this concept was also adapted into the modern Western tradition, which offers us significant cases and examples. Thus, Descartes (René Descartes) went as a refugee to Holland, Voltaire (François-Marie Arouet) to England, and Hobbes (Thomas Hobbes) to France. As such many similar others have been; still are and will be. With pain we have conveyed the images of little Ajlan stranded in the cold waters of the sea, during the efforts of his parents to escape from the horrors of war. What could Ajlan have become when he grew up? Without many illusions, even if he became a simple factory worker, somewhere in Germany, Canada or elsewhere, definitely he did not deserve to be pursued by the uncertainty of his own land so as to be swallowed by the waters of the world sea. However, this event brought a moment of reflection and the world reflects that is why it is there. Europe contributes, that is why it is there. As part of them Albania also helps that is why it is there.

“Cogito ergo sum” – “I think, therefore I am”, said the asylee Dekart, inspiring the enlightener under the pseudonym “Voltaire”, as well as the philosopher Hobbs, who, with the theory of “social contract” laid the foundations of the modern political philosophy of the times we live in. All this would not have any added value, without considering the almost epic context of the present day crisis of migrants, which has set Europe, but not only, before a historic crossroads. Values such as solidarity or humanity, as the most valuable contribution that the state has borrowed from religion up to their structural and functional division at the present time, today are undergoing a serious challenge, certainly not unprecedented, but really hard to social peace and internal cohesion that guarantees the respect of the individual's social contract with the state.

What is required today is the commitment on a case-by-case basis, individual after individual, state after state, and furthermore as a whole old continent to face proportionally with concrete opportunities, the consequences of a crisis that does not leave out responsibilities, even for inaction on time, all the European countries, especially those of the “Union”, to which we aspire to integrate. The question that arises today is specific: What will be done with the millions of refugees without names wandering the streets and floating seas? More specifically yet what if a part of such human hemorrhage would also find a path through our country?

Today we are facing the fact, when everyone, including the Ombudsman and its counterparts in other countries, do not have the luxury to analyze the causes and recommend ways to prevent the exodus occurred. We had the opportunity to do it, as we tried to do it long ago, but today there is no time to demand an explanation why this or that government, this or that minister, this or that parliament, this or that international partner did not hear us.

Today is required the management of emergency, specific and feasible consequences. Only after this we could be thinking about long-term policies dealing with security, social and economic integration, schooling and education of newcomers. This will be the real pressure, even greater than the current one. It is proper the preparation for the worst, and this means that we should not be surprised to long queues at the border, at centers of asylum seekers or work offices tomorrow.

Someone can remember the precedent with the evacuations and welcoming of the Kosovo people in the late '90's, but this is not the case and the core of the problem, because Albania still continues to be a country that exports migrants, while it may be required to import such one.

We as the Ombudsman institution encourage and welcome any governmental and intergovernmental meeting that serves to the drafting of a strategy and action plan for any situations that may be established by refugees, whether they can enter from the closure of the borders of another Balcan country, or whether they can come to us as the fulfillment of the terms of any agreement between Albania and the region or certain countries.

Looking at the crisis primarily as a political problem, Europe now appears that “de facto” has revised the Dublin Regulation, described as an “unfair mechanism”, because, basically, as intended to regulate migratory flows, the main burden of handling refugees was left to the countries at the external border of the continent, to the first stations where refugees arrive, such as: Bulgaria, Greece, Hungary, Italy, Malta, Spain. We are not talking about countries which are not members of the EU yet, such as: Albania, Macedonia, Serbia, but the fact is that these are not less affected as pathways.

The extent, to which Albania could have been affected in specific figures, could be revealed by the state police reports. What is worth stating and stopping here is that we as a country must be not only prepared both politically and

administratively to manage such situations. It can also happen the coming of Albanian returnees and potential foreign refugees.

Since the crisis erupted, Europe has been set in motion to realize large-scale establishment and good functioning of the asylum and immigration systems. This would not only save human lives, but would create premises for achieving a greater unity between the European Union and the Western Balkans, as the states' parties agreed when they joined each other as members of the Council Europe. In specific terms, European countries are now required to provide more secure legal paths to help the refugees either through humanitarian visa or through family reunions. As estimated, such facilitating mechanisms, not only help refugees avoid life-threatening ways, but also avoid a rich source of human trafficking, which thrives in such situations of crisis.

Questions also arise about independent institutions such as the Ombudsman and similar ones in the field of human rights, especially regarding the system of handling complaints and mediation. Beyond modesty, about the Ombudsman this crisis has been a product expected and officially warned since a long time, through recommendations and special reports to Parliament. However, it would not be productive to remain here and to wash our hands, saying: "I did my part, but you did not listen". Responsibility obliges us to have our facilities ready, as we do have available the legal basis in terms of handling potential complaints or prevention of inhuman and degrading treatment. This is true for Albanian citizens, as well as those for foreign or stateless persons, temporary and permanent residents in Albania.

In this context, not only the sensibilization of the public opinion to the crisis of migrants is intended to reveal as the product of any institutional activities. Better than anyone, this resulted from the tragic pictures of minor and adult refugees in the Mediterranean waters, a rather symbolic blue background for the flag of the United Europe. Together we would realize something specific so that local returnees not leave, as well as foreign incomers find a safe shelter, then such commitment is worth it. We can affirm in principle that the current crisis is an opportunity, where we Albanians can prove our worthiness to be integrated in Europe, not only as consumers of European values, but also as their promoter.

In the end, it is worth quoting Mr. Nils Muižnieks, once with a personal past as a child of asylants, now Commissioner for Human Rights of the Council of Europe, who refers to the crisis in question and says: "Protection of refugees is both a moral and legal obligation. It is not an easy task, but neither is it impossible. We must do more to protect those who flee wars and persecution. With political will, Europe can hold true to its values".

## **2. The role of the Ombudsman in the situation of migration flows.**

In the context of the unprecedented crisis situation in the vast space of the Mediterranean, as a complex, problematic and challenging situation in many respects for the activity of the Ombudsmen, the handling of the Ombudsman's double function takes a special importance for the protection of rights and the promotion of rights for good governance, as well as the response and overcoming of difficulties and challenges in the situation of global crisis, with economic, political dimensions deriving from migration flows in Europe and the risk from terrorism.

Nowadays, solidarity, partnership and sharing of responsibilities are certainly required among the countries of origin, transit and destination - to manage the crisis and to guarantee the rights of refugees, asylum-seekers and irregular migrants.

The Ombudsman as part of the big family of the Ombudsmen has the duty to raise his voice and ask that human rights are not adversely affected and neglected, while there was observed a tendency of governments of countries affected by this phenomenon to overcome the negative effects of their policies and reforms. These obligations can not be avoided, modified, suspended or postponed. On the contrary, they become even more indispensable in times of crisis. Throughout all the activity developed by us, the essence of the work and the determining priority is related to protecting and respecting the rights of vulnerable groups and communities at risk. Especially today it is time that our society in general and the state in particular, turn their heads to the poor.

Furthermore, even in the fight against terrorism, our role is important, as it should be focused on the protection of the human rights and fundamental freedoms in relation to the measures and actions that the state undertakes and may undertake in this context, as well as for the protection of the victims of terrorism.

As Ombudsman, with a dual role in protecting the rights and promoting the right to good governance, our activity requires the respect for the principles of impartiality, confidentiality, professionalism and independence, in protection of rights and freedoms of the individual, and in accordance with the Paris principles. Compliance with these principles requires an active role combined with a prominent proactivity, an adequate exhaustion of legal means subject to the mandate and function of the Ombudsman and an activity closely cooperating with civil society, media, and international partners.

The Ombudsman, whether in normal situations, but rather in the context of deep social crises and armed conflicts, represents the basis of values and principles of

democracy, rule of law and good governance. Our all-time challenge has been and is the efficiency of our activity and institutional commitments.

Today all of us are facing an unprecedented crisis of migration, which presents to us complex challenges in both immediate current context, and in the long run. On the one hand, in the immediate context we should guarantee basic rights to immigrants who arrive or may arrive in the territory of Albania. An adequate response requires dynamic coordination of actors locally, regionally and internationally, aiming at the mobilization of the financial, logistical and human resources in order to assist all those requiring international protection. And it is of fundamental importance that the framework of policies and specific action to comply with the obligations deriving from international legislation for the human rights and specifically for the refugee status - including herein the 1951 Geneva Convention and its Protocol of 1967.

A major concern remains the profiling of refugees based on nationality and failing to guarantee the right of access to asylum procedures without discrimination. Failure to comply with international legislation has significantly affected vulnerable groups, including children, women, the elderly, victims of torture, persons with disabilities, LGBTI, etc.

*“According to data from Eurostat, between January and July 2015, nearly 133,000 children sought asylum in the European Union - with an average of 19,000 children every month. In every four asylum seekers, one was a child”.<sup>1</sup>* The situation looks alarming when according to Eurostat, in 2015, 88 300 asylum seekers in EU member states were unaccompanied minors, who are exposed to additional risks to health, rape, exploitation and trafficking.

It is in this situation that the engagement of the Ombudsman is vital to monitor the situation of human rights, investigation of abusive practices and their prevention, awareness of the authorities to implement the standards and obligations in the field of human rights, as well as contribution to inter-institutional dialogue and public discourse in order to raise awareness and counteract to the speech of hate, racism and xenophobia.

On the other hand, in the long-term plan we face the integration challenge, whether the integration of asylum seekers into their new homes in host countries, or the integration of citizens who have returned to their countries of origin. In this process, we need clarity and foresight to integrate new Diasporas in host countries, in order for them to be a productive part of the economy and an added richness for cultural diversity in host societies. Furthermore, broad coordination

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<sup>1</sup> According to UNICEF, 25/09/2015.

and support with necessary resources are required for the integration of illegal immigrants who are repatriated - considering that for a large part of them, their life savings have been absorbed by human traffickers, who have “capitalized” their hardship and their dreams. This process must guarantee human dignity, basic rights and respect for the principle of “non-refoulement”.

It is impossible that various countries deal individually with this migration crisis. Therefore we specifically evaluate the high-level dialogue and cooperation between the EU and Turkey, including the allocation at the beginning of February 2016 of the 3 billion € fund to address the immediate humanitarian needs.

It is no exaggeration to say that our country in this situation should make every effort that the policies and undertaken actions implement the standards and obligations arising from legislation in the field of human rights. Furthermore, it is not excessive to say that, an expansive interaction should be provided with civil society “grass roots” and international non-governmental organizations in the field of human rights. In fact, close cooperation with civil society and media community is very important, in view of awareness and counteraction of hatred speech, stigmatization, racism and xenophobia - which threaten not only people in need of international aid, but meanwhile erode the principles and values of tolerance, coexistence and diversity within our societies.

These partners have valuable expertise and instruments and mechanisms of action that are necessary for a wider geographic and demographic impact.

Referring to the crisis of migration, the Ombudsman as part of the big family of Ombudsmen, in addition to protecting the rights of people in need for international protection, has also the challenge of protecting the rights of nationals of the home country, in the position of transit countries, or destination countries. It is worth emphasizing that for reasons of security and social instability from the escalation of the situation, in transit or destination countries, there are increased risks for the existing standards in the field of human rights and fundamental freedoms. The Ombudsman has a vital role to avoid the erosion of these fundamental principles and values.

We now face the permanent challenge of efficiency in the local institutional context. Sharing information, sharing the best practices and experiences of our work are valuable not only to address the current humanitarian crisis, but also the complex integration process. Mutual support, sharing of information, exchange of good practices and work experiences among regional ombudsmen and beyond and mutual cooperation serve our joint empowerment and provides coherent and synergic commitments. It is of paramount importance that in addition to state authorities, local civil societies and international organizations, institutions of the



Ombudsman to be present and accessible by persons in need of international protection.

In the dual function as a protector and promoter of human rights, the Ombudsman has an essential role for the design of the human rights in the institutional dialogue and in the broad social dialogue. Our action is necessary and serves as an added value of all required contributions today, to overcome the serious situations threatening the observance of human rights and freedoms.

The institution of the Ombudsman, within the specific constitutional role to prevent infringement, protection and promotion of human rights and fundamental freedoms, has paid and is paying special attention to addressing issues that relate to the measures taken for the handling of Albanian citizens seeking asylum in other European countries, back in the Republic of Albania and their reintegration, as well as measures taken for potential asylum seekers of other states, the actual area of the war in our country.

We have been currently introduced with the plan of contingency measures, denominated, respectively, “Preparatory Plan for a possible mass influx of migrants at the border of Albania”, drafted in September 2015 by an inter-ministerial working group. But this is a document that has not yet taken its final form of approval with a legal act by the Council of Ministers, therefore, any discussions of its contents would not have value, meanwhile we highlight that the Ombudsman was neither consulted, nor notified in advance by the responsible institutions on the content of this document.

*Within the role as a protector and promoter of human rights, the Ombudsman is focused on the following commitments:*

- Strengthening of activity and the attention in particular that, in addressing the issues of the rights of migrants/refugees coming from places of war, to be respected the universal and inalienable nature, as well as the international standards of human rights, in order to have an effective approach to these rights, by punishing and at the same time not to tolerate the inhuman consequences stemming from this situation.
- Commitment in monitoring and exercising of positive and continuing pressure to the Government and other state institutions in order to fulfil the obligations and international standards of human rights and legislation on refugees, by intensifying our ex-officio investigations, inspections and our presence in countries dealing with reception or accommodation of refugees, as well as the maximalization of utilization of legal means in the exercise of our functions.
- Providing and ensuring maximum access to complaints, or addressing issues within the handling competence by refugees and migrants for our institutions and

coordinating actions for their jurisdictional transfer between counterpart institutions in the region and beyond in order to provide a quick and effective response to these complaints.

- Close coordination with all active actors, particularly with civil society and intensification of our actions in order to increase the guarantees and resources to address the needs of children, women, persons with disabilities, the elderly, LGBTI, and victims of torture and victims of trafficking. A multidimensional coordination will be also ensured for the rights of unaccompanied children, so as to meet their specific requirements and to facilitate family reunion.

- Wide engagement in campaigns of raising awareness on the rights of migrants and refugees, strongly punishing the phenomenon of xenophobia, hatred speech and discrimination and promoting intercultural dialogue.

### **3. The legal basis for the institutional activity of the Ombudsman**

Existence and institutional activity of the Ombudsman relies on the legal basis that allows for the establishment, operation and defines its jurisdiction and powers. The Constitution of the Republic of Albania,<sup>2</sup> is the basic normative act in this sense. Meanwhile, the United Nations Convention against Corruption provides an active dimension within the promotion of human rights, especially in preventive work in the fight against corruption.<sup>3</sup>

The daily activity of the Ombudsman is regulated by Organic Law No. 8454 dated 4.02.1999 “On Ombudsman”, as amended. This law provides that the Ombudsman, in addition to the specific tasks in its provisions may also perform other duties specified in special laws.<sup>4</sup> Activity in specific areas recognizes normative acts as regulatory basis, as the law that recognizes to the institution, the quality of the National Mechanism for Prevention of cruel or degrading Torture Treatment or Punishment.<sup>5</sup>

The internal functioning of the institution is provided on the basis of sublegal acts, such as the Internal Regulation and Code of Conduct, or other legal and sub-legal acts for the regulation of employment relations.

In its activity, the Ombudsman is guided by the principles of impartiality, confidentiality, professionalism and independence, in protection of rights and freedoms of the individual. Independence of the institution is a feature, guaranteed

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<sup>2</sup> See Articles 60-63 of the Constitution of the Republic of Albania.

<sup>3</sup> Although the fight against corruption is not explicitly mentioned in the Ombudsman's mandate, it is part of his work during the monitoring activity of the administration. In the spirit of the Convention of the United Nations against Corruption, ratified by the law no. 9492, dated 13.03.2006 by the Parliament, the Ombudsman's activities comply with preventive measures against this phenomenon. In Chapter 2, in particular Articles 7 and 8, relating to the public sector and the tasks cited in the context of preventing the Convention, it is noted that many of the practices of the Ombudsman in the world are targeted in this context. Furthermore, in Article 8, it is stated that party states, meaning the Ombudsman as well, should promote values conveying standards and respect the right for good management.

<sup>4</sup> See the third paragraph of Article 2, Law no. 8454 dated 4.02.1999 “On the Ombudsman”, as amended.

<sup>5</sup> See Law no. 9888 dated 10.03.2008 “On some amendments and addenda to the law no. 8328 dated 16.04.1998 “On the rights and handling of the convicted with imprisonment”, as amended.

first of all in the anticipation as an independent institution, expressly provided in the Constitution.<sup>6</sup>

The basic feature of the Ombudsman is the independence from the government and from any political influence. The Ombudsman in Albania provides opponence for good governance, but it is not in opposition to the Government. This is the essence of the philosophy for the functioning of this institution.

This principle is guaranteed in the selection criteria of the Ombudsman, term of his office mandate, and immunity enjoyed immunity after being elected to office, as well as criteria of its dismissal.<sup>7</sup>

Guarantee of this independence is the prohibition made to the Ombudsman in the exercise of his duty, in order to not become involved in any political party, not to perform any other political, state or professional activities and not to take part in the management bodies of social, economic and trade organizations, with the exception of the exercise of the right as the author of teaching.<sup>8</sup>

A very important element of such independence is the relation established between this institution and the Assembly of Albania.<sup>9</sup> A specific of this relation results from the fact that the Ombudsman has a separate budget, which is proposed at the Permanent Commission of Economy, Finance and Privatization, in order to be further submitted for approval at the Assembly, in conformity with Law no.8379 dated 29.07.1998 “On drafting and implementation of the state budget”, a budget which is self-administered.

Furthermore, the determination of the structure and organization of the office, as a competence of the Ombudsman is a legal element, which guarantees its independence.<sup>10</sup>

Two other features impartiality and professionalism,<sup>11</sup> are closely linked with one another in the framework of protection of human rights.

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<sup>6</sup> In the theory of administrative law, it is recognized the fact that the provision expressly stated in the Constitution of certain state bodies shows a greater consistency of them, since technically any changes required in their way of functioning, in jurisdiction or competence, it is necessary the procedure of qualified majority voting rather than by a simple majority.

<sup>7</sup> . In Articles 61 and 62 of the Constitution and more specifically in Articles 3-9 of the Law No. 8454 dated 4.02.1999 “On the Ombudsman”, there are set all the criteria of selection and dismissal of the Ombudsman, the 5-year term, which exceeds the mandate of the members of the Assembly who elect him in the office, while he enjoys the immunity of the judge of the Supreme Court and his salary is equal to that of the Chairman of the Supreme Court.

<sup>8</sup> These provisions are made in Article 61/4 of the Constitution, and in Article 10 of the Law no. 8454 dated 4.02.1999 “On the Ombudsman”, as amended.

<sup>9</sup>The Ombudsman is liable to submit to the Assembly the annual report of his activity or to report before it when this is required by the Assembly, and ask the Assembly to be heard for issues that he deems important. These provisions are made in Article 63/1/2 of the Constitution and Articles 23, 26 and 27 of the Law no. 8454 dated 4.02.1999 “On the Ombudsman”, as amended.

<sup>10</sup> See Article 35, the second paragraph of the Law no. 8454 dated 4.02.1999 “On the Ombudsman”, as amended.

<sup>11</sup> The selection criteria for the election of the Ombudsman, the Commissioners and the fact that the staff of the Ombudsman is part of the civil service, shows about a legal framework that guarantees the professionalism and impartiality of this institution. Indication of legal guarantee for impartiality and professionalism is also the discretionary competence that the law “On the Ombudsman” gives the latter to begin the consideration of certain issues on its own initiative, otherwise known as “ex-officio”.

The principle of confidentiality finds his direct expression, in the second paragraph of Article 12, Law “On Ombudsman”, which states: “The Ombudsman must maintain confidentiality if he deems necessary, and if so requested by the person making the complaint, request or notification”. Naturally, the application of this principle, but also of other principles analyzed above, finds its regulation in the bylaws that are the competence of the Ombudsman, as well as the Internal Regulation or Code of Ethics.

Beyond protecting the rights of citizens from injustice and abuses of administration or public officials, the Ombudsman conducts what is called *culture of good governance*, which means good management, openness, transparency and accountability of public administration.

The procedures followed for the review of a case include the undertaking of investigational processes requiring explanations from administration bodies and the prosecution office; search of information or confidential documents, entry and inspection at any time of the public administration bodies, prisons, detention facilities, hospitals, asylums, orphanages and any other places where there is evidence of violation of human rights, etc.

The main legal instrument of this institution remains recommendation, which with the amendments incurred by the Law “On the Ombudsman” is presented as an official act with suspensive effect.<sup>12</sup>

This legal framework guarantees the functioning of the Ombudsman, as a national institution for the protection of human rights, in accordance with the Paris Principles.<sup>13</sup>

On such functional basis, the Ombudsman institution has a special place in addressing the issue of respect for human rights in the context of the complex crisis created by migration flows. However, and despite the active and proactive role that he can play, there are a number of other issues that may arise as a barrier to the comprehensive coverage of the issue of handling migration flows in the country.

These problems are related to:

- Lack of sufficient human capacities to cover expansive issues and migration flows,
- Lack of mitigation infrastructure in tools and the insufficiency of funds,
- Potential geographic extent of the concentration of migration flows within the country,

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<sup>12</sup> Article 21 of the Law “On the Ombudsman” inter alia provides that the presentation of recommendations suspends irregular acts or actions until the review of this recommendation and the provision of response to the Ombudsman, failing to consider the recommendation within 30 days suspends the illegal or irregular acts or actions.

<sup>13</sup> The commitment of the United Nations for the establishment of national institutions for the protection of human rights, which begins in 1946, experienced a very important development with the Workshop organized by the General Assembly of the UN in October 1991, in Paris. In this activity, several principles were outlined for enhancing the effectiveness of the work of national institutions for the protection of human rights, which are otherwise known as the Paris Principles.

- Hindering access of migrants and refugees for the submission of complaints to the Ombudsman institution
- Non-recognizing the legitimacy and the lack of legal framework guaranteeing the financial independence and effective functionality of the Ombudsman.

#### 4. The right to asylum in the Republic of Albania.

In the Republic of Albania it is guaranteed the right to asylum to a foreigner, or a stateless person, who, owing to the fear founded on persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion, is outside the country of his nationality or previous habitual residence and has no opportunity or desire to seek the protection of that country, as a result of these events and because of this fear. According to the Law no.121/2014 “On Asylum in the Republic of Albania”, “**Asylum**” is a form of international protection that the Republic of Albania provides to refugees, while the “**Asylum seeker**”<sup>14</sup> is any foreign or stateless person, who expresses in any manner that he does not want to return to his country, as well as any foreign or stateless person who has submitted an application for asylum in the Republic of Albania, for which a final decision has not yet been taken. According to the law, “**the Refugee**”<sup>15</sup> is a foreigner or a stateless person, who, owing to well founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion, is outside the country of his nationality or previous habitual residence and has no opportunity or desire to seek the protection of that country, as a result of these circumstances, in accordance with the requirements of Article 1 (A) of the Geneva Convention.

Legally, an asylum seeker is a person who has applied for asylum in the Republic of Albania and is waiting for a decision by the authorities responsible for his/her application. However, a refugee has already received a positive decision by the responsible authorities to his or her request for asylum. So even as regards the rights a refugee, having a positive response of the relevant authorities, he has more rights than asylum seekers.

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<sup>14</sup> According to the provisions of the Law no.121/2014 “On Asylum in the Republic of Albania”, “**Application for asylum**” means any statement of a foreigner or stateless person, expressed in any way at any time before the competent authorities at border crossing points or within the territory of the Republic of Albania, which requires international protection under international conventions and Albanian legislation; “**Application for asylum**” is the official request of the foreigner or stateless person before the authority responsible for asylum and refugees, which is considered as a request for international protection under the Geneva Convention of the UN, “On the Status of Refugees”.

<sup>15</sup> According to the provisions of the Law no.121/2014 “On Asylum in the Republic of Albania”, “**Status of the Refugee**” is the recognition by the authority responsible for asylum and refugees in the Republic of Albania of the foreign national or stateless person as a refugee.

The Constitution of the Republic of Albania provides that, “*the foreigners have the right of accommodation in the Republic of Albania according to law*”.<sup>16</sup>

The Universal Declaration of Human Rights, dated December 10, 1948, Article 14, states that: “*Everyone has the right to seek and to enjoy in other countries asylum from persecution. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations*”.

The Republic of Albania adheres to the Convention “On the Status of Refugees”, signed in Geneva on 28/07/1951, and the protocol “On the Status of Refugees”, signed in New York on 31.1.1967. At the UN convention it is adhered by decree of the President of the Republic no. 200, dated 3.6.1992. Subsequently, Albania signed and ratified the agreement between the Government of the Republic of Albania and the UN High Commissioner for Refugees, through Law no. 7833, dated 22.6.1994, proclaimed by the Decree of the President of the Republic with nr.878, dated 6.7.1994. It was also ratified the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the reduction of statelessness, recognizing some international and regional instruments on human rights, which are also important for the protection of refugees.

Through these acts, Albania is ranked alongside those countries legally civilized, promoting and spreading the values of humanity and becoming part of the international conventions such as the Geneva Convention of 1951 and the Protocol of New York in the field of asylum by creating an effective asylum system.

In view of Law no. 121/2014 “On Asylum in the Republic of Albania”,<sup>17</sup> and referring to the international law, with the term “*asylum*” is meant the protection offered in the form of refuge from the Republic of Albania to persons who are subject to persecution in their country of origin, guaranteeing human rights and fundamental freedoms. The Republic of Albania has already an asylum system for which we are working more and more, in order to approach to European standards, achieving full operation of the procedures in the determination of refugee status for asylum seekers.

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<sup>16</sup> See Article 40 of the Constitution of the Republic of Albania.

<sup>17</sup> Law no. 121/2014 “On Asylum in the Republic of Albania” was approximated with these directives:

- Council Directive 2001/55/EC, dated 20 July 2001, “Minimum standards for granting temporary protection in cases of massive flows of displaced persons and on measures promoting a balance of efforts between Member States in the reception of these people and dealing with the consequences”.
- Council Directive 2003/9/EC, dated 27 January 2003/9/EC, “On the determination of minimum standards for the reception of asylum seekers”.
- Council Directive 2003/86 /EC, dated 22 September 2003, “On the right of family union”.
- Council Directive 2005/85/EC, dated 1 December 2005, “On the determination of minimum standards of the procedures in member states for granting and removing the refugee status”.
- Directive 2011/95/EU of the European Parliament and of the Council, dated 13 December 2011, “Standards for the qualification of third country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees and persons eligible for additional protection and the content of the protection granted”.

In the process of assessing the eligibility for membership of the Republic of Albania in the EU, although in the final evaluation of Member States experts, the legislation on asylum was assessed positively, some recommendations are given in the evaluation report in the interest of improving it, such as the obligation for providing refugees with documents.

The authority responsible for asylum issues is the only authority recognized by law for taking decisions administratively for granting and denial of refugee status in the Republic of Albania. Among the main goals, dealing with policies on asylum and serving to strengthen the capacity of the Albanian state so as to ensure implementation of the commitments and community obligations of the EU in the operation of all components of the asylum system is the correct application of the international legal principle recognized by the customary international law of non-refoulement and other rights of asylum seekers and refugees by law enforcement agencies, as well as equal treatment with citizens of third countries residing legally on the territory of Albania.

*a) The rights of asylum seekers:*

The totality of the rights provided for asylum seekers is specified from these main determinations;

- The Right of non-refoulement, rejection, extradition or removal outside the Republic of Albania of persons who have obtained or sought asylum or other forms of protection as specified in the law.
- The foreigner whose asylum application has been refused by the authorities responsible for asylum and refugees, is not expelled or is not deported outside the Republic of Albania before exercising or giving legal opportunities for the exercise of procedural rights and guarantees provided by law, except when the law provides otherwise.
- Asylum seekers entering illegally in the territory of the Republic of Albania cannot be prosecuted for illegal border crossing, on condition that they appear before the relevant authorities within 10 days from the date of entry into the territory of Albania.
- In any case, the asylum seeker is guaranteed the right to contact UNHCR.
- In case of detention or arrest, the asylum seeker is held in facilities separate from other persons, except as provided by law.
- In accordance with the norms of international law on the rights of children, in the case of unaccompanied minor asylum seekers under the age of 18, they can not be placed in penitentiary institutions, except in extreme cases. In any other case, relevant and appropriate measures for children are taken for them.

- The asylum seeker and members of his family, who arrived in the Republic of Albania together with the asylum seeker has the right to stay in the Republic of Albania, until the completion of proceedings initiated by him.
- If the asylum seeker does not understand the language in which the proceeding is developed, an interpreter in a language he understands is provided.
- The Authority responsible for asylum and refugees has an obligation to make available to the asylum seeker a copy of this law and all bylaws in its implementation, as well as copies of documents such as residence permits, in an official language of the UN, which might be understandable for them.
- The right to housing, food, health care and other public services for strictly personal needs, provided in the state reception center for asylum seekers.
- Asylum seekers benefit health care services, according to the applicable Albanian legislation on health care.
- Asylum seekers may also benefit humanitarian aid.
- Minor asylum seekers are accommodated together with their parents or adult family members responsible for them.
- Minor asylum seekers benefit full health services, such as the Albanian minor citizens.
- Asylum seekers are provided with the certification of the application submission for asylum; a temporary residence permit, issued by the authorities to foreigners, according to procedures established by law for foreigners, which serves as an identification document; work permit.

- Minor unaccompanied asylum seeker

- For unaccompanied minor asylum seekers a guardian should be appointed according to the rules and procedures anticipated by the legislation.
- The asylum application of an unaccompanied minor should be handled immediately. To the extent possible, the children of a family should be kept together.
- The Authority responsible for asylum and refugees should conduct the asylum application procedure, taking into account the degree of physical and mental maturity of the child and, where necessary, the juvenile to be heard in the presence of a psychologist.

b) The rights of refugees

The totality of the rights provided for asylum seekers is specified from these main determinations;

- A refugee in the Republic of Albania enjoys legal status, in accordance with the Albanian Constitution and the Albanian legislation, the section of the Final Act of the Conference of Plenipotentiary to the UN convention of 1951, "On the Status



of Refugees” and other international agreements where Albania is a party, and all the rights the Albanian legislation recognizes to foreigners.

- A refugee is provided with a permanent residence permit and a special work permit. A refugee has the right to obtain a work permit for special occasions since the receipt of status and enjoys the same legal opportunities in the labor market as an Albanian citizen.
- A refugee is provided with an electronic identity card and travel document.
- A refugee in the Republic of Albania has the right to education in public institutions, the same as an Albanian citizen.
- A refugee has the right to equal social treatment as an Albanian citizen, in accordance with the relevant legislation of the respective institutions. In terms of law, the social treatment means:
  - \* social insurances;
  - \* economic aid;
  - \* health insurances.
- A refugee in the Republic of Albania has the right to enjoy legal options for obtaining housing, as an Albanian citizen.
- Family members of refugees, who have benefited from family union decision, have the same rights as the applicant for:
  - \* education in public educational institutions;
  - \* employment and self-employment;
  - \* professional counseling and training

*c) Obligations of asylum seekers and refugees*

- The asylum seeker and the refugee are obliged to implement the Constitution, the legal system and the legal framework of the Republic of Albania.
- The asylum seeker and the refugee are obliged to cooperate with the competent state bodies of the Republic of Albania and to comply with their measures and instructions.
- Asylum seekers and refugees can not create, join or support and act on political groups or other organizations that threaten the order and security of the Republic of Albania.
- The asylum seeker in the Republic of Albania is prohibited to engage in activities that violate public order and national security and could affect the relations of the Republic of Albania with other countries.
- The asylum seeker in the Republic of Albania should not act against the principles and goals arising from UN treaties and conventions ratified by the Republic of Albania and international public law.
- The asylum seeker must give any information, which is deemed that he is aware of, when requested by the authority responsible for asylum and refugees and serves for making a proper and right decision based on his application for asylum.

- The asylum seeker should be available to the authority responsible for asylum and refugees, during the whole procedure of reviewing the application for asylum.

*d) Temporary protection*

Temporary protection granted to foreigners who massively come to the Republic of Albania from the country in which, due to a war or a situation of general violence, violation of human rights, when the country they came from, cannot guarantee their protection.

The foreigner, who enjoys temporary protection, may file at any time application for asylum.

The authority responsible for asylum and refugees gives temporary protection for a 1-year period, if reasons are in place; it may be extended automatically for a period of 6 months, but not more than 3 years.

*- The rights and obligations of foreigners under temporary protection*

The foreigner who has been granted temporary protection is entitled for:

- a) housing;
- b) to be guaranteed the basic living and housing conditions;
- c) health care;
- ç) primary and secondary education;
- d) legal advice;
- dh) freedom of religion;
- e) work.
- ë) for family reunion

A foreigner who has been granted temporary protection shall be provided with accommodation, in accordance with the legislation in force.

A foreigner under temporary protection is issued a certificate and a temporary residence permit under the conditions and criteria established for asylum seekers, to the extent that is appropriate.

A foreigner applying for asylum during the temporary protection can not use the rights of asylum seekers, as long as the temporary protection lasts. The referred provisions apply to the extent that fit well to foreigners under temporary protection.

*e) Application procedures, terms and appeal for asylum seekers*

The foreigner asking for asylum in the Republic of Albania should:

- submit a request for asylum to the competent police authorities in border crossing points or within the territory of the Republic of Albania;
- meet the asylum application at the authority responsible for asylum and refugees and meet the asylum application.

The asylum seeker should complete the application for asylum as soon as possible.<sup>18</sup> He is informed no later than 15 days from the date of submission of application for asylum, regarding the procedure for granting asylum, the rights and obligations that he has during the procedure, on the possibility to contact and to have legal assistance from representatives of the UNHCR and representatives of other organizations to protect the rights of refugees, and health care. The only authority for granting, deprivation and exclusion from the right to asylum and international protection is the structure at the Ministry responsible for asylum and refugees.

*The National Commission for Asylum and Refugees* is the only competent authority to decide on appeals against the decisions of the authorities responsible for asylum and refugees.

At the time of filing the application for asylum, the responsible authority for asylum and refugees informs the asylum seeker about the procedures for obtaining the refugee status and allows him contact with a legal representative, a specialist in the issues of refugees, for free legal services.

For the period until the final decision on the application for asylum, the asylum seeker is allowed to stay in the territory of the Republic of Albania. The person, who has applied for asylum, cannot seek a residence permit with another motive, under the law for foreigners.

The asylum seeker should be listened about his asylum application by the authority responsible for asylum and refugees, who should consider the situation and the circumstances in which the applicant is found.<sup>19</sup> The asylum seeker at any stage of the procedure, is accompanied, advised or represented by a legal specialist on refugee issues.

A female asylum seeker, if possible, is heard and questioned by female officers of the authority staff responsible for asylum and refugees. A minor, unaccompanied asylum seeker is heard and questioned in the presence of a psychologist or an adult who knows the nature of the child or who enjoys his confidence.

The asylum seeker should explain the facts, where the reasons and motives rely for his persecution or violation of human rights, and provide the necessary data, including information on the place of residence, the route, stops in other countries and potential requirements for asylum in other countries, as well as other data

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<sup>18</sup>Application for asylum is made in writing. If the person does not understand the language in which the procedure takes place, he is provided with an interpreter in a language he understands. Application, in addition to the identity, must contain the reasons for which the asylum seeker seeks protection in the Republic of Albania.

The asylum seeker is obliged to submit all personal data and to fill in all the relevant forms, made available by the responsible authority for asylum and refugees. Once a person chooses to seek asylum in the Republic of Albania, he is offered the opportunity to be housed in the National Reception Centre for asylum seekers near Tirana. There he is given to fill out a form with questions about the person's biographical data and a description of the history it has.

<sup>19</sup>The Asylum seeker is notified in writing about the determination of the date of hearing, which can not be later than 21 days from the date of submission of a complete application to the authority responsible for asylum and refugees.

required for the clarification of the case circumstances. At the hearing, a representative of UNHCR may also take part.

The hearing of asylum seekers is not public and the confidential development of this session must be guaranteed. Persons participating in the process of reviewing the application for asylum are:

- a) the legal representative or guardian of the unaccompanied minor;
- b) the guardian of an adult with disabilities.

The authority responsible for asylum and refugees takes a decision on the basis of the relevant statements of the applicant, obtained under the provisions of this law. In taking the respective decision, the relevant authority responsible for asylum and refugees is based on the principle of confidentiality and the presumption that the asylum seeker is right, and takes into account the recommendations presented by UNHCR.

The authority responsible for asylum and refugees takes a decision within 30 days from the date of hearing of asylum seekers and delivers without delay to asylum seekers and UNHCR a copy of the decision, but, in any case, not later than 5 days from the date of decision taking. If the asylum application is accepted, the authority responsible for asylum and refugees informs the asylum seeker on the conditions of asylum and that the refugee status can only be revoked in accordance with Article 45 of the Law.

In case the application for asylum is rejected, the authority responsible for asylum and refugees informs in writing the asylum seeker of the decision of an individual and reasonable nature, which includes the right of the subject to appeal, the body where such appeal can be submitted and the time within which he can exercise this right.<sup>20</sup>

An asylum seeker, whose application for asylum has been refused or not accepted or the decision on the refugee status has been revoked, is subject to removal from the territory, pursuant to the law on foreigners. Families who have benefited from family reunion with a foreigner are also at the same time subject to removal.

All decisions on granting, revocation, termination or removal of the refugee status, additional protection status, as well as any other decision-taking act of the authority responsible for asylum and refugees may be appealed to the National Commission for Asylum and Refugees, within the terms and according to the procedures provided by the Code of Administrative Procedures. The decision of the National Commission for Asylum and Refugees may be appealed to the competent court for administrative matters, in accordance with the legislation in force.

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<sup>20</sup> Against the decision on the non-acceptance of application for asylum, the asylum seeker can appeal within 15 days to the National Commission for Asylum and Refugees. The National Commission for Asylum and Refugees takes a decision within 30 days from the filing of the complaint

## **5. Recommendation No. 16 of the European Commission against Racism and Intolerance (ECRI), on the protection from discrimination of the current irregular migrants**

Recommendation no. 16, was adopted by the European Commission against Racism and Intolerance (ECRI), on 16 March 2016. Its purpose was to address a worrying issue of discrimination, which is causing great pain to a considerable number of migrants, who are present today irregularly, in the member countries of the Council of Europe

On this basis, according to a broad definition given in the recommendation, with *“current irregular migrants” should mean individuals - women, men and children – present in a Member State that is not their country of origin, who do not meet or do not further meet, according to the domestic law, the conditions for entry or residence in a member country.*

In the recommendation it is noted that all migrants, including current irregular migrants, have rights, including herein the civil, political, economic, social and cultural rights; recalling that international law sets minimum standards in this regard, which must be guaranteed without discrimination by member states.

Through this recommendation, among others, it is called and reminded that those people, who are categorized by Member States as irregular current migrants, and in particular children are among all persons subject to state measures, the most vulnerable, and therefore they require special attention for the protection of their rights, human rights. Likewise, the recommendation brings the attention that the fight against racism, racial discrimination, xenophobia, antisemitism and intolerance is an integral part of the protection and promotion of indivisible, universal rights of every human being, without distinction.

The European Commission against Racism and Intolerance recommends to governments of member states:

- To take measures that all current irregular migrants - women, men and children - are fully protected from all forms of discrimination, including the adoption of legislation for this purpose in accordance with relevant international instruments, including relevant recommendations of the General ECRI Policy,
- To respect the fundamental rights of current irregular migrants, inter alia in the fields of education, health care, housing, social assistance and social insurance, labor protection and justice,
- Sharing rules and immigration control, the provision of services and respect for the rights of current irregular migrants, within their jurisdiction, in order to provide assurance that these rights are guaranteed to such immigrants and to facilitate the authorities, whose responsibilities have another direction (such as in the areas of education, health care, housing, social

assistance and social insurance, labor protection and justice), from the intervention of regulatory immigration authorities and institutions.

- To protect the personal data of all persons, including current irregular migrants, in accordance with international obligations and ensure that all state authorities have specific individualized powers, based on grounded suspicion of criminal activity by nominated individuals or on the basis of national security, before seeking personal data protected by the right to respect privacy,
- To recognize and affirm obligations, related to current irregular migrant children within their jurisdiction and give the assurance that, all policies affecting current irregular migrants, are developing in the framework of the obligation to respect the rights of the child, in particular the principle of the best interests of the child,
- To ensure that current irregular migrants have full and non-discriminatory access to administrative and judicial means, including those against private sector such as owners or employers without the risk of transferring their personal data or other information to immigration authorities for the purposes of regulating and controlling immigration,
- Compatibility with the spirit of the Resolution of the General Assembly of the United Nations, no. 3449 (Plenary Meeting 2433, 9 December 1975), on measures to respect human rights and dignity of all migrant workers and with the Resolution 2059 (2015) of the Parliamentary Assembly of the Council of Europe on the criminalization of irregular migrants: a crime without a victim, and the indecision as “illegal” of those immigrants who have entered or are present in a member country without the permission of immigration.

A special attention in this recommendation is paid to legal means and appeal paths that must be provided to current irregular migrants in case of violation of their rights, and the role of specialized bodies or institutions, which can and should assist them in these cases.

Reference is made in this case to the institutions, whose activity field is the fight against racism, xenophobia, antisemitism and intolerance at national level, which obviously includes the institution of the Ombudsman. Likewise, the recommendation encourages civil society, as an important source of assistance for people in need, providing its ancillary services to the migrant category cited above.

**6. On the monitoring of the situation regarding illegal foreigners, asylum seekers/refugees in Albania, as well as operations of return of the Albanian asylum seekers, in other European countries.**

The institution of the Ombudsman in the role of the National Mechanism for Prevention of Torture (NPM) under the monitoring of policies and measures being taken for immigration issues, the return of Albanian citizens after the most recent migration in the countries of Europe and measures taken for their reintegration, as well as the measures taken and asylum procedures for potential asylum seekers, coming from other countries that are current war zones to our country, has performed the following activities:

1. The voluntary and involuntary repatriation processes of Albanian citizens from Schengen zone countries have been monitored.

NO.	INSPECTED INSTITUTION	PURPOSE OF INSPECTION	DATE OF INSPECTION
1.	Border Police Commissariat, Rinas	Monitoring of repatriation operations	29.01.2015
2.	Border Police Commissariat, Rinas	Monitoring of repatriation operations	24.03.2015
3.	Border Police Commissariat, Rinas	Monitoring of repatriation operations	28.05.2015
4.	Border Police Commissariat, Rinas	Monitoring of repatriation operations (voluntary)	04.09.2015
5.	Border Police Commissariat, Rinas	Monitoring of repatriation operations	15.09.2015
6.	Border Police Commissariat, Rinas	Monitoring of repatriation operations	16.09.2015
7.	Border Police Commissariat, Rinas	Monitoring of repatriation operations	01.10.2015
8.	Border Police Commissariat, Rinas	Monitoring of repatriation operations	14.10.2015

In this context, NPM has participated in the proceedings of the accompaniment on the plane of two repatriation operations of illegal immigrants from the Schengen area with the aim monitoring procedures of departure from the territory of EU member states and Schengen area countries of Albanian citizens, for whom a decision on repatriation has been given, and monitoring of compliance with the Charter of Fundamental Rights, and the Constitution of the Republic of Albania, which ensure respect for the human dignity of all persons participating in the repatriation program:

- 1.1 On the date of 29.01.2016, a NPM representative was invited by the Border and Immigration Department of Albania in cooperation with the French party and Frontex, to be part of the involuntary return operation conducted by a “charter” plane with destination Albania-Lille, France-Duesseldorf, Germany-Albania. According to the operational plan coordinated by Frontex and in accordance with Article 8 (6) of the Return Directive 2008/155/EC of the European Parliament, in respect of

the fundamental rights under the Directive cited above, 43 Albanian citizens were returned to the territory of the Republic of Albania.

1.2 On the date of 26.04.2016, FRONTEX in collaboration with the Directorate of Border and Migration Police, the French party and NPM in the role of the observer, coordinated the repatriation operation of Albanian citizens from France, Belgium and Germany. A NPM representative travelled by “charter” plane from Tirana to Lilles, France, and monitored the procedures of submission in Lilles, and during the flight Lilles-Tirana, the procedures and implementation of the operational plan in the flight and accompaniment of persons on board. Upon arrival in Tirana, at 16:07, a summary informational meeting was held which was attended by the Director of Border and other senior executives of the Border and Immigration Police, Frontex representatives and representatives of the French and German Embassies and NPM expert. According to the operational plan coordinated by Frontex and in accordance with Article 8 (6) of the Return Directive 2008/155/EC of the European Parliament, in respect of the fundamental rights under the Directive cited above, 58 Albanian nationals were returned to the territory of the Republic of Albania.

2. Monitoring was carried out in the centers where irregular foreigners and asylum seekers/refugees are treated in the territory of Albania and border crossing points. On the basis of such monitorings, the respective recommendations were prepared and delivered.

NO.	INSPECTED INSTITUTION	PURPOSE OF INSPECTION	DATE OF INSPECTION
9.	Center closed for Foreigners, Kareç	Monitoring Visit	18.03.2015
10.	Center closed for Foreigners, Kareç	Investigation	19.03.2015
11.	Center closed for Foreigners, Kareç	Investigation	20.03.2015
12.	Center closed for Foreigners, Kareç	Investigation	24.03.2015
13.	Border Police Directorate Durrës	Monitoring Visit	28.05.2015
14.	Border Police Directorate Han i Hotit, Shkodër	Monitoring Visit	02.06.2015
15.	Center closed for Foreigners, Kareç	Monitoring Visit	17.09.2015



16.	National Reception Center for Victims of Trafficking, Linzë	Monitoring Visit	25.09.2015
17.	Border Police Directorate Korçë (Kapshticë)	Monitoring Visit	30.09.2015
18.	Border Crossing Point “Tre urat”	Monitoring Visit	06.10.2015
19.	Border Crossing Point “Qafë Botë”	Monitoring Visit	06.10.2015
20.	Border Crossing Point “Kakavijë” GOS	Monitoring Visit	07.10.2015
21.	Regional Border Directorate Gjirokastër	Monitoring Visit	07.10.2015
22.	Border Police Directorate Kukës	Monitoring Visit	20.10.2015
23.	Border Police Directorate Dibër	Monitoring Visit	20.10.2015
24.	Border Police Directorate Vlorë	Monitoring Visit	23.10.2015
25.	Police Commissariat Rinas	Monitoring Visit	10.12.2015
26.	Border Crossing Point “Kakavijë” GOS	Monitoring Visit	17.03.2016
27.	Regional Border Directorate Gjirokastër Spot of Special Operational Group GOS (Kakavijë)	Monitoring Visit	17.03.2016

3. Contacts were held with UNHCR representatives, diplomatic missions in Albania, as well as other international organizations operating in Albania in the field of human rights, with a view to updating information and coordinating action plans.

- Ongoing meetings of the Ombudsman and NPM, with foreign bodies/representations.
- Work was performed with UNHCR to design leaflets on the rights of asylum seekers and refugees.

4. Work was performed on informing institutions and public on the level of handling citizens, the categories mentioned above, in an official way through the publication of recommendations and annual reports, as well as through printed media and audio-visual media.

- Delivery of specific recommendations (i.e., on the hunger strike of foreigners in the Closed Center Kareç);

- Recommendations at the end of visits;
  - Annual Report of the Ombudsman, year 2014;
  - Special Report of the MKP, year 2014;
  - Press Conference on the Special Report of the NMP, year 2014;
  - Publications of recommendations in the Ombudsman's Journal;
  - Television Program with the participation of the General Director of Migration Mr. Merepeza, the representative of the Parliamentary Commission for human rights, Ms. Vasilika Hysi, and UNHCR Commissioner, Mr. Hortenc Balla.
5. It was addressed the issue of health services at the centers during the Workshop organized on 29-30 June 2015, by the Ombudsperson Institution, through NPM, with representatives of the health group of South East Europe Network Mechanisms in Albania, as well as the Directorate of Migration and Border, etc.
  6. A cross-sectoral working group was set up in order to follow the development and design of materials for institutional attitudes.
  7. An official letter was delivered on 08 September 2015, to the President of the European Commission, on the migration crisis by the President of the Association of Mediterranean Ombudsmen, (AOM) Mr. Igli Totozani.
  8. The Ombudsman Institution, in the role of the National Mechanism for Prevention of Torture (NPM) and with support of the project *"Support of Denmark to the Albanian people - Closer to local communities, civil society and media (2012-2015)"* on 29th and 30th October 2015, developed a two-day activity with the theme:

"The handling of asylum seekers, refugees and migrants returning to Eastern Europe - Discussions about common concerns and monitoring standards." The main purpose of this event was that together with representatives of National Mechanisms for the Prevention of Torture, various international organizations and Albanian state authorities, to discuss the common challenges of monitoring the standards of handling irregular migrants and refugees in South-East European countries and further, in the region. Experts from national machineries from countries Austria, Bosnia-Herzegovina, France, Hungary, Kosovo, Croatia, Montenegro, Macedonia, Serbia, Slovenia, Albania, representatives of the European Committee for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment (CPT), the Sub-Committee for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment (SPT), the Association for the Prevention of Torture (APT), European Agency for the

Management of Operational Cooperation of External Borders of the Member States of the European Union (Frontex), the Agency of the United Nations for Refugees (UNHCR), Presence in Albania of the Organization for Security and Cooperation in Europe (OSCE ), and the Directorate General of State Police, Border and Migration in Albania participated in this event in order to discuss and share experiences on the handling of returning asylum seekers, refugees and migrants.

The activity of the first day entitled “The challenge, concerns, and the need for common monitoring standards of South-East Europe mechanisms in the context of migration” was drafted in the form of Workshop in order to enable Mechanisms to discuss in three working groups, respectively on:

- The conditions and handling of detainees:
  - \* The essential difference between monitoring prisons and detention centers where the immigrants are found;
  - \* The importance of developing a comprehensive set of specific detention standards and monitoring strategies;
    - \* Legal assistance;
    - \* Health services;
    - \* People in vulnerable situations or with special needs;
      - Victims of trafficking;
      - Children and the elderly; etc.
    - \* Material conditions;
    - \* Security and Order.
- The practice of monitoring repatriation operations:
  - Monitoring the process of returning migrants by land, sea and air;
  - Challenges in unified approach in conformity with standards during monitoring.
  - Best practices in monitoring return operations;
  - Methodology of monitoring:
    - Establishment of monitoring benchmarks;

At the end of the Workshop, based on the discussions made about the best monitoring practices, it was concluded on a common approach to the main concerns encountered during the NPM's work on site, in fulfillment of their mission.

The second day activity entitled “Towards common standards for monitoring the handling of asylum seekers, refugees and illegal immigrants in South East Europe”, was developed in the form of the Conference, and it was led by the Albanian Ombudsman. Discussions were held on:

- Albanian Approach to migration crisis;
- Results of Workshop mechanisms on common concerns and unified monitoring standards;
- The Guidelines of the Council of Europe on handling migrants and asylum seekers;
- The Role of Mechanisms in the crisis of refugees and irregular migrants;
- Monitoring of detention sites, where irregular migrants are held and handled;
- Link between irregular migration flows and protection of refugees;
- Importance of a cross-dimensional approach to the issue of migration;
- Role of mechanisms in handling migrants and refugees in Europe, in detention centers, in closed centers or accommodation in collective camps.
- Assistance and need for independent external monitoring.

9. On the dates of 04-08.04.2016, at the premises of the Academy of Security and International Airport “Mother Teresa”, it was held an in-depth training of operational forces of the Border and Migration Police, by Frontex regarding the operations of forced return of illegal immigrants from the Schengen area. This training was planned in the framework of further integration of the Border and Immigration Police of Albania into Frontex police activities in the field of implementation of the Schengen agreement, etc. Based on the fruitful cooperation between Frontex and the Ombudsman, through the NPM and the involvement of the latter in the role of European monitor in joint operations of return, in respect of the Return Directive of the European Parliament, an expert of NPM was part of the group of Frontex trainers and lecturer in training modules, “Fundamental rights, Code of Conduct of Frontex, Local Laws and Standards, System of Monitoring Return Operations”, etc. In addition, the expert of NPM also participated in the practical training on board of an aircraft at the airport and in the final stage of conclusion and evaluation of trainees.

From monitoring the process of determining refugee status and the asylum procedure, the Ombudsman reached the conclusion that:

- Decisions of the Directorate for Asylum have taken into account satisfactorily the opinion of UNHCR, as a specialized agency of the UN for Refugees;
- The selection procedure applied by the Border Police often has drawbacks related to the categorization of persons, their accommodation and handling during interviews, lack of reliable interpreters, especially for people who

come from countries whose languages are less prevalent in the world, as well as long-standing trend of Border Police to interpret on the spot, if the person has any chances to be recognized the refugee status or not, and therefore the tendency not to categorize someone as asylum seeker, regardless of the demand of the person on the risks in the country of origin, or his categorical refusal to return there.

- The Asylum Directorate has numerous restrictions on its ability to collect information from the countries where the asylum seekers come from and consequently recognition of the situation in these countries remains shallow and decisions lag in excuses.
- Despite the legal provision, the meeting for determining whether or not a person is a refugee is not held in a collegial manner and therefore, neither UNHCR is invited to participate in them.
- Albania's capacity to host refugees is represented by the Center of Karreç, which does not exceed 170 beds (it has no official capacity that takes into account space standards). Therefore the system is very vulnerable in case of refugee flows, such as the one of people from Syria that Europe has been experiencing lately.

**7. Statistics of Albanian citizens returning from countries of the European Union during the second semester of 2015, and during the first 3 months of 2016**

In the framework of monitoring of activities and actions that have been performed by the Ombudsman in order to monitor the plan of measures adopted by the Albanian government for handling upon return to our territory of Albanian asylum seekers in other countries of Europe and their reintegration, information has been requested from the General Directorate of Border and Migration at the Directorate of State Police, about the following questions:

1. What is the number of returned Albanian citizens from European countries for the second semester of the year 2015?
2. Which countries have they returned from and what is the number of returnees, for each country?
3. What is the total number of Albanian nationals returned voluntarily during this period of time?

4. What is the total number of Albanian citizens mandatorily returned during this period of time?

5. What is the number of returnees, according to the following groups?

- a) Women;
- b) Men;
- c) Minors from age 0-18.

6. What is the number of returned persons, who had been proclaimed wanted by the Albanian authorities?

7. Furthermore, we have asked for the delivery of the data as per above about the month of January 2016 and following, for each month of the year 2016.

The General Directorate for Border and Migration with letters no. 933/1 Prot., dated 29.02.2016 and no. 1881/1 Prot., dated 19.04.2016, informed us as follows hereunder:

1. The number of returned Albanian citizens from European countries for the second semester of 2015 is **20776 persons**.

2. The total number of Albanian citizens returned voluntarily during this period of time is **7544 persons**.

3. The total number of Albanian citizens returned mandatorily (deportation category) during this period of time is **13232 persons**.

4. The number of returnees in mandatory manner (deportees) from each European country is:

France	908;
The United Kingdom	679;
Italy	490;
Switzerland	510;
Belgium	275;
Germany	2081;
Holland	102;
Sweden	255;
Norway	325;
Greece	6932
Luxemburg	19;
Denmark	64;
Hungary	16;

Slovenia	50;
Spain	42;
Portugal	4;
Austria	32;
Czech Republic	1
Bosnia Herzegovina	1;
Finland	107;
Croatia	14;
Iceland	27;
Montenegro	50;
Macedonia	231;
Serbia	17.

Meanwhile the number of voluntary returnees is 7544 people, of which 5802 adults and 1742 minors.

5. The number of forced returnees during the first semester of the year 2015, according to the following groups:

a) Females **1169**, *out of whom, 20 minors*;

b) Males **11916**, *out of whom, 127 minors*;

c) Minors aged 0-18 **years old are 1889**, *out of whom, 1742 volunteers and 147 forced*.

6. About the number of returnees who had been proclaimed wanted by the Albanian authorities ***there are no data***.

7. The number of returnees for the month of January 2016 is **2807 persons**, *out of whom, 1224 returned voluntarily and 1583 returned forcedly*.

8. The number of returnees according to age groups is:

a) Females **218 persons**;

b) Males **2319 persons**;

c) Minors **347persons**, *out of whom 270 volunteers and 77 with force*.

9. The number of returned Albanian citizens from European countries for the first quarter of 2016 is **8621 persons**.

10. The total number of Albanian citizens returned voluntarily during this period of time is **3668 persons**.

11. The total number of Albanian citizens returned mandatorily (deportation) during this period of time is **4983 persons**.

12. The number of returnees in mandatory manner (deportees) from each European country is:

France	361	persons
The United Kingdom	305	
Italy	302	
Switzerland	249	
Belgium	142	
Germany	999	
Holland	77	
Sweden	134	
Norway	66	
Greece	2084	
Luxemburg	2	
Denmark	37	
Hungary	26	
Slovenia	28	
Spain	15	
Portugal	0	
Austria	22	
Czech Republic	0	
Bosnia Herzegovina	4	
Finland	38	
Croatia	2	
Iceland	7	
Montenegro	16	
Macedonia	87	
Serbia	7	
Poland	6	
Bulgaria	1	
Kosovo	10	

13. About the number of returnees during the first quarter of the year 2016, who had been proclaimed wanted by the Albanian authorities ***there are no data***.

Likewise, we have approached various institutions with requests for official information on plans and specific measures that have been developed and are being implemented for handling upon return to our territory of Albanian asylum seekers, in other countries of Europe, and their reintegration into our society. More specifically, we addressed:



- *The Minister of Foreign Affairs* demanding explanations regarding the plan of measures that could be adopted and is being implemented by the Ministry of Foreign Affairs, for this purpose, with a copy of it attached. In the information requested, we have raised the question whether there were identified the categories and age groups of persons involved in the action plan and what were the specific programs providing support for their reintegration, as well as everything else related to this matter.
- *State Inspectorate of Labour and Social Services*, asking for the plan of specific measures and programs providing support for the reintegration of Albanian asylum seekers in other European countries, returnees or potential refugees, and everything else that had to do with this matter.
- *The Minister of Social Affairs and Youth*, asking for the plan of measures that could have been adopted and was implemented by the Ministry of Social Affairs and Youth, and its subordinate structures, with a copy of it attached. In the information requested, we have raised the question whether there were identified the categories and age groups of persons involved in the action plan and what were the specific programs providing support for their reintegration, as well as everything else related to this matter.
- *The Minister of Defense*, asking for the plan of measures that could have been adopted and was implemented by the Ministry of Defense, and its subordinate structures, with a copy of it attached. In the information requested, we have raised the question whether there were identified the categories and age groups of persons involved in the action plan and what were the specific programs providing support for their reintegration, as well as everything else related to this matter.

In response to our requests, information was delivered only from two institutions and respectively:

- The Head Inspector of the State Inspectorate of Labour and Social Services (ISHPSHSH) informed us with letter no. 389/1 dated 24.02.2016 that ISHPSHSH is to fulfill its mission about the control of legal provisions regulating the work field. While it stresses the fact that returned asylum seekers, Albanian or foreign asylum seekers citizens enjoy all the rights granted to them by the Albanian legislation covering the area of employment, while they are employed.
- The Secretary General of the Ministry of Foreign Affairs informed us with letter no. 2124/1 dated 29.02.2016, that the Ministry of Foreign Affairs has not approved a plan of measures about Albanian asylum seekers repatriated, and about foreign citizens seeking asylum in our country, highlighting the fact that this ministry is not the authority dealing with requests for asylum.

Based on the official information submitted by the responsible state institutions we have found that, starting from 1 January 2016, there is no strategic document

adopted by the Council of Ministers for the reintegration of Albanian citizens returned from other countries of Europe, as the strategy adopted for this purpose, for the period 2010-2015, ended its period of validity.

On the basis of these findings, the Ombudsman institution prepared and submitted a recommendation, with letter no. 185 dated 14.06.2016, to the Prime Minister of Albania. Through this recommendation it is emphasized the need for drafting and adopting the new National Strategy for the reintegration of returned Albanian citizens and a detailed Action Plan for this purpose.

The content of this recommendation is given as follows:

***“Honorable Mr. Prime Minister,***

Following our institutional cooperation for improving the implementation and observance of constitutional and legal rights of citizens in accordance with international standards we present to you the following concerns.

The Ombudsman addressed by several official documents to various institutions, so that they can receive official information on plans and concrete measures to be implemented for handling upon return to our territory of Albanian asylum seekers and their reintegration, and the follow-up of the procedures for seeking asylum in our country by citizens of other countries (currently war zones). Specifically we approached the Ministry of Foreign Affairs, the State Inspectorate of Labour and Social Services, Ministry of Social Affairs and Youth, as well as the Ministry of Defense asking for the action plan that could be adopted and was being implemented by these institutions, as well as their subordinate structures, with a copy of it attached, whether there were identified the categories and age groups of persons involved in the action plan and what were the specific programs providing support for their reintegration, as well as everything else related to this matter.

In response to our requests, official feedback was received from only two institutions:

- The Head Inspector of the State Inspectorate of Labour and Social Services informed us with letter no. 389/1 dated 24.02.2016 that ISHPSHSH is to fulfill its mission about the control of legal provisions regulating the work field. While it stresses the fact that returned asylum seekers, Albanian or foreign asylum seekers citizens enjoy all the rights granted to them by the Albanian legislation covering the area of employment, while they are employed.
- The Secretary General of the Ministry of Foreign Affairs informed us with letter no. 2124/1 dated 29.02.2016 that the Ministry of Foreign Affairs has not approved a plan of measures about Albanian asylum seekers repatriated, and about foreign citizens seeking asylum in our country, highlighting the

fact that the Ministry of Foreign Affairs is not the authority dealing with requests for asylum.

The Ombudsperson Institution finds that the migration problem in Albania, but also beyond, is present and different from the time it was drafted the Strategy “*On the integration of returned Albanian citizens, 2010-2015*” and its Action Plan” adopted with the Decision of the Council of Ministers no. 461, dated 09.06.2010. The National Strategy “*On the integration of returned Albanian citizens, 2010-2015*” and its Action Plan” for the specifics of the migration situation in the Republic of Albania at the time when it was drafted, served as an important platform to orient policies towards the returnees to those of the EU, as well as to provide solutions to the issues of reintegration for the period in question.

Further strengthening of capacities in terms of migration management requires not only continuity through a new strategy and a new action plan, but also an approach of current policies in this field with those of the EU. The successful implementation of the objectives of the strategy and the measures of its action plan could play an important role in capacity building for the management of reintegration policies of Albanians returned recently from different countries.

The Ombudsman observes that our country currently has no National Strategy for the reintegration of returned Albanian citizens, neither a detailed action plan its effective implementation. Sectoral strategies can determine particles of state policies within the handling of people back, but they do not fully address this major issue for the Albanian reality. It is our judgment that management towards reintegration cannot be performed with partial and spontaneous measures, without having a wide range of policies and measures drafted and consulted with stakeholders and factors in this area, as well as in accordance with international standards. The Ombudsman considers that the lack of this strategy will give rise to a violation of the rights of the Albanian citizens, returning after their attempts to migrate to various countries, especially if we consider the fact that they do not further enjoy the good and the conditions they had before undertaking specific actions for their emigration.

As per above, based on Article 63/3 of the Constitution of the Republic of Albania, which states that: “*The Ombudsman is entitled to make recommendations and propose measures when observing violations of human rights and freedoms by public administration*”,

### **WE HEREBY RECOMMEND:**

Drafting and adopting the New National Strategy for the reintegration of Albanian citizens returned and a Detailed Action Plan.

Regarding the review of this recommendation and the attitude towards it, we kindly ask you to inform us within the legal term of 30 days, in conformity with Article 22 of the Law “On the Ombudsman”, as amended.

*Having confidence in Your understanding and cooperation”,*

## **THE OMBUDSMAN**

**Igli TOTOZANI**

### ***8. Regional and international dimension***

Regional and international dimension of the commitments of the Ombudsman Institution on such problems has identified the following priority areas:

- Cooperation within regional and international organizations/networks of Ombudsman and NHRI Institutions, including AOM, AOMF, IOI, ENNHRI, etc.
  - Bilateral cooperation with homologous institutions in the Western Balkan region, as well as in European Union countries;
  - Interaction with organizations and intergovernmental/supranational institutions, especially the UN, IOM, the Council of Europe and EU structures;
  - Interaction with the diplomatic community of representations accredited in Tirana;
  - Partnership with local civil society and international non-governmental organizations, operating in Albania and region countries.
- 
- Given the high profile of the commitment of the Ombudsman in a number of international organizations of Ombudsmen (President of AOM, Member of the European Board of IOI and Board Member of AOMF), the activities in the framework of the respective organizations have had a prominent and specific coverage:
  - AOM (Association of Mediterranean Ombudsmen) represents a priority platform of commitments, having countries of origin, transit and destination in the vast space of the Mediterranean. AOM's statement on Migration Crisis, adopted by the General Assembly dated March 10, 2016, is an important reference document for regional/international activities of the organization. At the same time, this Statement presents principles and standards of human rights, which must be respected by government and intergovernmental actors in the migration crisis management, as well as guides individual and collective efforts of the Ombudsman institutions.

Within the AOM it is in the process of establishment the Working Group on Migration which will focus on the preparation of analyzes of the situation/comparative studies, collection of statistics, and the development of guidelines and standards of good practice. The Institution of the Ombudsman of Albania has a key role in coordinating the work of this Working Group and it is expected a close interaction with experts/counterparts in member institutions of the AOM; commitments in the framework of the Working Group on Migration Issues at our institution will constitute an important contribution to the Working Group of AOM, and vice versa.

Since all Western Balkan countries are already members of AOM, the organization also enables activities in the regional countries that are part of the so-called “Balkan itinerary”. On 21-23 February 2016, with the initiative of the Ombudsman in his capacity as the President of AOM, a high-level delegation (AOM President, Vice President of AOM also the Ombudsman of Spain, as well as a representative from the Secretariat AOM liaised to the Ombudsman of France), conducted a site visit in the transit point for immigrants in Tabanovce (Macedonian northern border with Serbia), where from September 2015 until the visit 700,000 immigrants were recorded. ***Following this agenda, in September 2016 the high-level delegation will conduct a site visit to a refugee center in Greece.*** These activities have an outstanding value for recognizing the specifics of the concrete conditions on site, interaction with local and international non-governmental actors, sensibilization of public opinion through communication with the printed and visual media, as well as the prospect of Ombudsman to the situation of refugees towards governmental and intergovernmental authorities.

As part of AOM, referring to the decisions taken by the General Assembly gathered in Malta during the month of March 2016, the possibilities of establishing a focal regional point of AOM liaised to the institution of the Ombudsman of Macedonia, to monitor the situation and facilitating interaction with actors on site are being considered.

An important part of efforts to protect and promote human rights within the framework of the migration crisis is also the issuance of official statements and positions of AOM. In September 2015, as the President of AOM, the Ombudsman addressed a letter to President of the European Commission to express the availability of the extensive network of member institutions to contribute to overcoming the crisis through an approach based on human rights. In response, the office of the President of the European Commission assessed the will expressed for partnership and cooperation. During February 2016, AOM spoke to problematic developments in the field on

profiling of immigrants based on nationality, especially referring to cases registered in Macedonia. This attitude was in resonance with the statements issued by important bodies, such as the office of the High Commissioner for Human Rights at the UN, as well as the office of the Commissioner for Human Rights of the Council of Europe. AOM continuously monitors the situation and evaluates that drafting of Statements for emergency situations constitutes an important instrument for broad awareness, as well as for the pressure of actors on site so as to comply with obligations arising from national and international legislation on human rights.

The new website of AOM, which is officially launched in June 2016 as well as the E-newsletter (AOM Newsletter) provide the possibility of sharing information in the extensive network of member institutions, as well as the promotion of activities conducted by individual members and those in organizational level, best practices, etc.

Within the annual cycle of Rabat training program, organized by AOM, aimed at strengthening institutional capacity and facilitating exchanges of experiences, it is provided that the next session of training (to be held in October 2016) focus in issues of security deontology, vis-à-vis, the migration crisis.

At the initiative of the Ombudsman in his capacity as the President of AOM, three other networks of Ombudsmen, with prominent importance on the international stage - AOMF, IOI and FIO - agreed and committed to development in Tirana of a high-level conference, on the dates of 7-8 September 2016. In the focus of this activity there will be challenges of approach based on human rights in handling the migration crisis in the short term and the long term. It is estimated of special importance that Tirana Conference on Migration conclude with a Statement, which could be delivered, inter alia, to the General Assembly of the UN, held annually in September.

- AOMF (Association des Ombudsman et Médiateurs de la Francophonie) also represents an important organization in terms of emergency crisis of migration and especially in terms of children's rights in the context of this crisis. With a view to creating synergies and optimization of resources, in addition to partnerships for the organization of the Conference in Tirana on Migration (wide cooperation between AOM, AOMF, IOI and FYI), the holders of AOM and AOMF agreed to establish a joint working group with focus on the protection and promotion of children rights in mixed migration flows. The Working Group, AOM-AOMF, is in the process of constitution and ***it is expected to begin its activity within the month of September 2016.***
- IOI (*International Ombudsman Institute*) also represents a particularly important organization referring to the emergency migration crisis. On 26-27 April 2016, the Ombudsman in his capacity as the President of AOM

and Member of the IOI's European Board participated in the conference "*Current Challenges of Human Rights: Threats faced by Ombudsmen*". This event held in Barcelona brought together about 100 Ombudsmen and concluded with an important reference document focused in guaranteeing the rights within the migration crisis, the protection of democracy and the rule of law through an approach based on human rights. The conclusions of this activity constitute an important background for the next Conference to be held in Tirana in September 2016. Taking into account the specific coverage of IOI as a worldwide organization of Ombudsman Institutions, interaction within the organization has a special value to advance the concerns and alternatives from the perspective of Ombudsmen.

Moreover, in the framework of the IOI, the institution of the Ombudsman has submitted a draft proposal referred to the call for projects/initiatives by IOI for the European region, with a focus on cross-border cooperation of institutions in the Balkan region that are members of AOM. The draft proposal focuses on facilitating access to asylum procedures, as well as informing migrants of their rights and the opportunity to turn to the Ombudsman Institutions in cases when their rights are violated by state authorities in transit or destination countries. The draft proposal presented by the Ombudsman is estimated by IOI as an important project to rely financially on; Considering that the project is in resonance with a proposal submitted by the Institution of the Ombudsman in Greece, following the suggestion by IOI, possibilities of cooperation are being estimated for the implementation of this project through a partnership between the Ombudsman of Albania and the Ombudsman of Greece.

Besides AOMF and FYI (*Federacion Ibero-Americana del Ombudsman*), IOI also responded positively to the initiative of AOM and was engaged in co-organizing Tirana Conference on Migration, which will be held in Tirana on 8-9 September 2016.

- Close cooperation with important international organizations / institutions, including the Council of Europe (CoE) and the mechanisms within it (particularly the Office of the Commissioner for Human Rights, as well as ECRI), the UN system and UN mechanisms (especially the Office of the High Commissioner for Human Rights / UNHCHR, as well as the Agency for Refugees / UNHCR, as well as Children's Emergency Fund / UNICEF), IOM etc.

Continuous exchange of information, participation in activities organized by these important stakeholders (conferences, training, seminars), as well as their representation in activities organized by the Ombudsman is of great importance to the institutional agenda referred to the crisis of migration. The Ombudsman will continue communication, consultation and continuous interaction with their senior representatives, as well as support

cooperation and interaction at the staff level, depending on emergency issues and topics.

- Mechanisms within the European Union/TAIEX. Over the past year, the institution of the Ombudsman opened the onset of the activities with a focus on migration crisis, organized by homologous institutions in the region. After developing the international seminar “Ensuring the rights of persons in need of international assistance”, held in Tirana in November 2016, a series of events followed up such as the Belgrade Conference, the meeting of Thessaloniki etc. The seminar organized by the Ombudsman was conducted through partnership and funding of TAIEX program from the European Commission. In the framework of TAIEX, during the month of April 2016, the institution of the Ombudsman of Macedonia held a regional seminar with focus on security deontology issues, especially regarding the use of force by law enforcement officials, referred to the migration crisis. In this event, the institution of the Ombudsman was represented by the National Mechanism for Prevention of Torture (NPM). It is estimated the importance of exploring cooperation opportunities within the TAIEX program for the organization of an international seminar in Albania in October 2016 with a focus on themes that respond to the emergency situation in the Western Balkan region.

- *Diplomatic Community.* In the general overview, communication and the continuous consultation with the community of diplomatic missions accredited in the country constitute an important aspect of the international dimension (the representatives of the EU countries, which are implicated by the crisis of migration; and the EU delegation in Tirana take particular importance). This interaction enables the exchange of information, delivery of concerns and consultation on handling complex issues of migration crisis.

In the case of Albania, considering the high number of immigrants registered in the major destination countries in the EU, cooperation with the diplomatic community has an outstanding value referred to guaranteeing the rights of the Albanian citizens in the process of repatriation, as well as supporting the process of their reintegration. In this regard, the activity of the Ombudsman Institution is considered a key element on the quality of the NPM, including cooperation with FRONTEX.

Important reference documents for the development of cooperation in the bilateral and multilateral cooperation against the challenges and problems of mixed migratory flows include:



- *Declaration of AOM on the Migration Crisis (Annex 1)*. This statement is of strategic importance for the structuring of activities within the organization in which the Ombudsman of Albania plays a central role after the re-election as the President of AOM from the General Assembly in Malta in March 2016. This document directs the activity of the AOM Working Group on migration crisis, partnerships with homologous networks/organizations, and constitutes an important background for the following positions/statements that AOM may issue referring to the migration crisis.
  
- *Thessaloniki's Action Plan (Annex 2)*. This document addresses a wide range of issues associated with mixed migration flows, including cooperation between various governmental and non-governmental actors, interaction with the media community, raising awareness on the rights of migrants, countering hatred speech, racism and xenophobia, etc. In the framework of the Action Plan of Thessaloniki, the Ombudsman has defined points of contact with the institution, in charge with keeping the communication and progress of cooperation with the counterparts in other countries (mainly from the Western Balkans and the EU). In order to promote this document rich in themes and possible modalities of engagement for dealing with short-term and long-term challenges, the Ombudsman during the month of April 2016 held an auditorium with representatives of civil society and the international community in the country. Depending on developments along the "Balkan Itinerary", the Ombudsman Institution will utilize the Thessaloniki Action Plan, as a practical document for cross-border bilateral initiatives and multilateral regional initiatives.
  
- *Declaration of Belgrade on Migration (Annex 3)*. This statement issued by the conference of national institutions of human rights (NHRI) and Ombudsmen, held in November 2015 in Belgrade, represents a document that outlines general principles and standards of human rights, which should be protected and promoted towards mixed migratory flows. The statement is particularly important for structuring the contributions/interaction of the Ombudsman Institution within ENNHRI's organization that has widely promoted this document.
  
- *Conclusions of Barcelona Conference (Annex 4)*. Published after the end of the activity that brought together about 100 Ombudsmen during April 2016, this document sets out succinctly the challenges for the institutions of the Ombudsman in the light of the current dynamics of the migration crisis, including, inter alia, the issues of "dilemma" between the rights and security, threats faced by the Ombudsman institutions, etc.
  
- *Declaration of Paris on Children and Migration Crisis (Annex 5)*. This statement was adopted at the conclusion of the event organized by the

Council of Europe, ENOC (*European Network of Ombudsmen for Children*) and the Protector of the Rights of France, held on June 28, 2016, in Paris. In the focus of this document are the children's rights guaranteed by the Convention on the Rights of the Child, while the statements/positions held by important organizations of the Ombudsman are evoked, such as IOI, AOM and AOMF. The Declaration affirms primary directions of commitments from institutions of Ombudsmen, and calls on government and inter-governmental authorities for a coherent and far-sighted approach, for the mobilization of necessary resources and support of sustainable solutions, which respect the basic rights provided by international legislation in force.

- (*Future*) *Declaration of Tirana on Migration*. In the framework of Tirana Conference on Migration, a high-level event that the Albanian Ombudsman will chair and host in Tirana on 8-9 September 2016, it is anticipated the adoption of a Joint Declaration on Migration. Since the initiative of the Ombudsman in his capacity as the President of AOM has been embraced by 3 networks/organizations widespread internationally (respectively AOMF, FIO and IOI are involved as co-organizers under the conduct of AOM), Tirana Declaration on Migration will be an important reference document regarding the perspective of Ombudsmen related to migration crisis. Tirana Declaration will be also forwarded, among others, to the annual General Assembly of the UN, which is held during the month of September, following the activity of Tirana. The statement will be also widely circulated in the organizational network of national institutions of human rights (GANNHRI/ENNHRI, etc.), as well as its extensive network of governmental/intergovernmental actors in the context of the EU and internationally.

The main directions of cooperation and interaction in regional and international context include:

- Dynamic Communication regarding developments on site and emergency situation, sharing information/statistics and analysis on mixed migratory flows;
- Promotion of good practices and positive results achieved by individual and institutional commitments in bilateral and multilateral level;
- Provision of visibility on the issues and difficulties encountered by the institutions of the Ombudsman, with the aim of effective pressure of governmental and inter-governmental actors to take appropriate measures to guarantee the rights of immigrants, in accordance with the obligations deriving from domestic and international legislation in the field of human rights;

- Information and awareness of public opinion on the rights of immigrants and migration crisis specifics, subject to the counteraction of hatred language, racism and xenophobia;
- Optimization of available resources and creation of synergies through joint initiatives and activities at cross-border bilateral level and multilateral regional and international level;
- Facilitation and expansion of cooperation of the Ombudsman institutions with local civil society and non-governmental international organizations which are present in countries of origin, transit and destination.
- Valorization and factorization of the perspective of Ombudsman institutions and NHRIs in the discourse and agendas of important governmental and inter-governmental/supranational actors, with the aim of advancing the approach based on human rights;
- The preparation of studies, manuals of good practice and analysis which will be of assistance to governmental, intergovernmental and non-governmental actors in addressing the short-term and long-term challenges of migration crisis;
- Organization and participation/representation in activities of cross-border regional and international character, of different formats (conferences, seminars, training, etc.) with a focus on the issues, challenges and opportunities related to mixed migratory flows.

## **9. Prepared recommendations:**

Approach to migration flows in the territory of the Republic of Albania and the preparatory and systemic measures to be taken by the Albanian government and all the other actors in this situation, have consequently brought some findings during the activity of the Ombudsman, which led the specific recommendations addressed to the relevant state institutions.

Besides the recommendation presented above, on the drafting and adoption of the New National Strategy for the reintegration of returned Albanian citizens and a Detailed Action Plan, the following recommendations have been also submitted;

***\*The recommendation for taking immediate and necessary measures for handling existing and future flows of migrants and refugees in Albania in accordance with national and international instruments.***

**To: SH.T.Z. Edi Rama  
Prime Minister of Albania**

**To: Mr. Saimir Tahiri  
Minister of Internal Affairs**

**Mr. Genc Merepeza**  
**General Director of Border and Migration**

Honorable Mr. Prime Minister,

The issue of handling the crisis of refugees and migrants in Europe today is a matter of human rights and it should encompass in a comprehensive manner the state policies of the host or transit countries, as well as those countries that are likely to be affected by this unprecedented crisis in the vast space of the Mediterranean. This crisis of migration is related to the severe violation of human rights in the regions covered by armed conflict and plagued by poverty, moreover in their further aggravation as a result of the failure of the transit and destination countries for a coherent and coordinated response based on the necessary financial, human and logistical resources.

In this concerning humanitarian situation, solidarity, partnership and sharing of responsibilities between the countries of origin, transit and destination, for crisis management and guaranteeing of the rights of refugees, asylum-seekers and irregular migrants, are the values and guidelines of an individual and common interaction for overcoming the challenging situation created. These principles today have a critical importance for dealing with the crisis in several related areas: to guarantee the basic rights of immigrants and the management of the humanitarian crisis, to ease the migration flows and fight against human trafficking, as well as integration of immigrants into the new host societies that would welcome them or their integration after their repatriation to their countries of origin.

This crisis which requires a global response and interaction presents complex challenges in both immediate current context, and in the long-term plan. Humanitarian handling of refugees and migrants is an obligation for each country, the same as the recognition of the rights pertaining to them under the Universal Declaration of Human Rights, the Convention of 1951 relating the Status of Refugees and its Additional Protocol of 1967 and the Council of Directives of the European Union no. 95 of the year 2011 and no. 32 and 33 of the year 2013. Our country cannot be avoided by these obligations, modify, suspend or postpone them, but should rather handle them as even more necessary in times of crisis.

Values and principles of solidarity, human rights and fundamental freedoms cannot represent only “discourse exercises”, but they should be guiding our reflection and vision in facing the migration crisis. We must realize that there are the serious violations of human rights in countries and regions involved in armed conflict and plagued by poverty that push hundreds of thousands, millions of people, to feed the massive migration flows.

Measures undertaken by states that are incompatible with European standards of human rights, not only are detrimental to social cohesion, but they are actually

ineffective and counter-productive for crisis management. It is really required a “paradigmatic” change in relation to migration give an end to the “race” of European countries to return migrants and to raise walls, wire netting and other barriers.

In connection with the existing and expecting flows of migrants and refugees, a present and unquestionable phenomenon in today's Europe, Albania remains in a state that is still unprepared properly. While ideas for the development of potential host, registration and assistance centers for transit passing are numerous, no specific steps have been taken to have such reception facilities. Given the need for cooperation with international organizations specialized in this field, greater transparency is required in this regard in order to allow the general public and society to be well-informed, which will bring simultaneously the reduction of any xenophobic opinions.

The spirit of solidarity and standards of human rights should be in the focus of commitments of the political leadership and joint action. There is not excessive to say that, a wider interaction should be ensured with civil society and international non-governmental organizations in the field of human rights. These partners have valuable expertise and the instruments of action mechanisms that are necessary for a wider geographic and demographic impact.

While a large number of people is continuously seen attempting to cross the territory of several European Union countries by any means, being more welcome in these places, the Albanian asylum authorities do not follow the same rhythm and meaning with these developments. Individuals caught illegally passing the border in order to come or to leave Albania, even though they are clearly part of these flows, even though seeking protection from the Republic of Albania and are clearly in terms of benefitting such defense, are denied completely or postponed endlessly the entering into asylum procedures, what ultimately leads to the return to the countries they came from and the violation of the “non-refoulement” principle.

This panorama appears while in a regional context and beyond of the crisis, it remains a rather great concern the profilization of refugees based on the nationality and failure to guarantee the right of access to asylum procedures, without discrimination. This concern also involves the fact that failure to comply with international legislation has significantly affected vulnerable groups, part of the migratory flows, including children, women, the elderly, victims of torture, persons with disabilities, LGBTI, etc. The entire process should guarantee human dignity and basic rights, avoiding the return to countries where their safety is not guaranteed.

In the context of deep social crisis and armed conflicts, the Ombudsman Institution as a guarantor and promoter of human rights and fundamental freedoms, which represent the soles of the values and principles of democracy, rule of law and good governance, plays an important role in this handling. For this purpose, the Ombudsman Institution in the role of the National Mechanism for Prevention of Torture and in close cooperation with the Agency of the United Nations for Refugees in Tirana (UNHCR), has monitored continuously the Reception Center of Irregular Foreigners in Albania and Asylum Seekers Centre, border crossing points, and has seen closely the points which are deemed possible to build reception or assistance camps for the transit of persons in need of international protection.

From inspections at reception and detention centers mentioned above, it is observed that their capacity in space and in financial and human resources is insufficient, not only for cases of massive inflows, but also for cases of gradual increase in the number of asylum seekers or irregular migrants in a short time.

Furthermore, from the inspections at border crossing points, as well as the possible points – reception or assistance camps for the transit passing of migrants, also confirmed by sources of the Border Police, it was observed that there are many challenges to be overcome - even in an emergency context, so that they are perceived as functional centers not only for the short-term registration and assistance to persons in need, but also as residential centers which would enable a longer stay of persons in need of international protection in them.

From the explanations and predictions made by officers of the Border Police, from information obtained through the media and information from other countries, it is clear that a great number of people, mostly Syrians, enter every day in Greece and from there they depart in order to pass through the Western Balkan countries – potentially including Albania, to certain countries of the European Union. These people, especially those from Syria, are clearly people in need of international protection and they should be handled as refugees, whether they want to stay in a certain place or not. Consequently, it is necessary to have a regional and European understanding about the humanitarian handling of more than 4 million refugees from that country. We emphasize that their intention to move towards some countries of the EU should not prejudice the handling that should be provided, especially deeming the urgent need for humanitarian aid, but it is precisely this purpose that should be determining the way of designing and building reception or profilizing centers, according to each case.

In these conditions it is necessary that the Republic of Albania to take the necessary measures for the reception and handling of persons in need of international protection, that appear on the borders, or caught within its territory. Humanitarian handling of refugees and migrants is an obligation for each country, as it is the recognition of the rights pertaining to them by the aforementioned acts. In fulfillment of the dual function as protector and promoter of human rights, the institution of Ombudsman calls for solutions that have an approach based on

human rights, and giving assurances that the response of the Republic of Albania to the crisis of immigration and security issues should not affect standards of human rights, in the position of a transit country, or of a destination country.

As per above and pursuant to point 3, Article 63 of the Constitution of the Republic of Albania which states that:

*“The People's Advocate has the right to make recommendations and to propose measures when he finds violations of human rights and freedoms by the public administration”*; Article 21, letter “b” of the Law no. 8454 dated 04.02.1999 “On the Ombudsman”, as amended, which states that:

*“The Ombudsman makes recommendations to remedy the violations at the administrative body, which according to him has caused violations of human rights and freedoms;*

and based on Article 74/1, letter “b”, of the Law no. 8328, dated 16.04.1998 “On the rights and handling of the convicted with imprisonment and the detained”, as amended, where, inter alia, it is provided that:

*“The Ombudsman through the National Mechanism for the Prevention of Torture has these powers:*

*b) submits recommendations to the relevant authorities, in order to improve the treatment and conditions of the persons deprived of their liberty and to prevent torture and cruel inhuman and degrading treatment or conviction”*,

### **WE HEREBY RECOMMEND:**

1. Albania should welcome with solidarity and humanism, any foreign citizen, who needs international aid.
2. The Government of the Republic of Albania continues to promote regional initiatives to enable coordination of treatment and providing assistance to the Western Balkans. The migration crisis, which the countries of the region are dealing with, have deep roots and require political decisions, but also a deeply human approach by all stakeholders and implementers, based on respect for human rights. Regional cooperation among different countries should be encouraged deeming with interest not only the quota for each country, but also the respect for the refugee status, as well as coordination in the recording, handling and providing of long-term solutions for refugees. The best solution is only the solution of issues in their source; therefore the Albanian government should see this solution with priority and dedicate to it all the appropriate means. Any security policy undertaken in this situation must not violate human rights.
3. The Government of the Republic of Albania should enable first of all, the recognition of these persons before the law by providing them with the necessary basic documentation for a range of administrative processes related to their status on its territory, but that is a precondition to enable a functional separation of humanitarian aid.

4. The Government of the Republic of Albania should declare, in accordance with the Law “On the Asylum in the Republic of Albania”, the recognition of temporary protection due to the massive influx for persons coming from countries with a common and globally recognized persecution background, which determines the likelihood that persons are in terms of the need for international protection. Refugees and immigrants should be granted individually the effective access to asylum procedures, without discrimination.
5. To be ensured a multidimensional interaction to counteract towards the speech of hatred, racism and xenophobia which has consequences for the situation of the rights of immigrants and at the same time causes the erosion of fundamental values and principles of diversity, tolerance and coexistence in our society.
6. The whole process should be completely transparent and with a view to ensure a close cooperation of the Government of the Republic of Albania with national and international stakeholders, particularly with the civil society and international non-governmental organizations operating in our country, in order to strengthen the guarantees and resources for the needs of vulnerable groups, part of the migratory flows, including children, women, the elderly, persons with disabilities, LGBT and victims of torture.
7. Commitment for special treatment regarding unaccompanied minors, part of the migratory flows, in order to guarantee their fundamental rights, to respond to their specific needs and to facilitate the process of family reunion.
8. The Bodies of Justice and State Police should diligently treat the phenomenon of people caught trying to leave the Albanian territory with false documents, sensitive to their needs for international protection, since these persons may be refugees. This view point should aim to determine their position in the context of migration flows and separation from treatment such as other cases of the use of false documents.
9. To be strengthened with material base and translation services the teams performing the respective administrative procedures for illegal foreigners at the border, or at the regional border directorates in order to ensure the opportunity that, every foreigner who is found illegally in the Albanian territory, clearly understand his rights and state clearly whether he is seeking asylum in the Republic of Albania. In such a case, to be ensured immediate connection with the asylum authorities of the Republic of Albania.
10. The persons who are given a removal order to be executed by them voluntarily, to be left available the deadline set by law for this purpose, not being forced to leave the territory they entered from irregularly.
11. To enable full and independent monitoring and supervision of the application of the selection procedure, as well as the reception or humanitarian assistance conditions at transit centers, from civil society, or by separate bodies of executive power, such as UNHCR , IOM, etc.
12. Facilitating access to complaints filed by refugees and immigrants for the institution of the Ombudsman regarding the violation of their rights by the



responsible authorities in our country, in order to ensure a rapid and effective response to these complaints.

13. Against the long-term challenge of integration, the development of sound integration policies by the Government of the Republic of Albania, allowing new Diasporas to be a productive part of the economy and an added value for the diversity of companies welcoming them.
14. To be followed up the approach of non-expelling people coming from unsecured locations within the territory of the Republic of Albania, in the situation of migratory flows.

## **THE OMBUDSMAN**

**Igli TOTOZANI**

***\* Recommendation to improve the conditions and treatment of asylum seekers, at the National Reception Centre for Asylum Seekers.***

**To:           The Director of the National Reception Centre for Asylum Seekers  
              Ms. Alketa Hila**

The Ombudsman in the role of the National Mechanism for Prevention of Torture (NPM), conducted a general inspection at the National Reception Centre for Asylum Seekers, on 03.10.2014. The main objective of this visit was to assess the conditions of QKPA, the quality of treating the persons housed in, and measures taken to address the problems encountered during the previous inspection.

In the composition of the inspection team were: Ms. Jorida Rustemi, Head of NPM - psychologist, Ms. Alma Alibali Vice Commissioner - psychiatrist and Ms. Irena Taga, Vice Commissioner - lawyer.

The visit took place in a very good spirit of cooperation. The director of the institution gave the opportunity to the experts of the inspection team to have access within rules and without difficulty to all the people and facilities they had to monitor.

After being introduced with the findings of the inspection team, the Ombudsman has a constitutional and legal obligation to submit final conclusions, by reference to the following:

### ***Preliminary Notes***

This was the periodic monitoring visit of the Ombudsman at the National Reception Centre for Asylum Seekers in 2014. At the time of inspection at the premises of the institution there were 30 people; 5 families and 7 individuals of

different nationalities (Kosovo, Turks, Bulgarians, etc.) The official capacity of the center is 150 people.

In accordance with the monitoring procedure, the inspection team initially held a meeting with the director of the institution, who was declared ready for cooperation in fulfilling the purpose of inspection. During the meeting, the inspection group, originally requested information regarding the rights and treatment of people at the center, as well as about the treatment by the institution of the problems encountered in the previous inspection in this institution.

The director of the institution informed the experts that the National Reception Centre for Asylum Seekers is an open center, which accommodates asylum seekers in the Republic of Albania. She informed that a good part of the recommendations of the previous year, have been taken seriously into consideration and fulfilled within the financial possibilities that this center has.

### ***Treatment***

The objective of the work of the monitoring team was the collection of information on the treatment of asylum seekers accommodated in the center, in identifying cases of physical force use beyond the limits provided by normative acts or psychological pressure against this category. The information received from the conversation in group and privately with asylum seekers, the monitoring team found no flagrant case of torture or excessive use of force.

At the National Reception Centre for Asylum Seekers at the time of the inspection, there were no complaints about treatment, nutrition or other issues related to the attitude of people in this center. They expressed concern over the issue of clothing, which despite the efforts of the staff of this institution were insufficient.

### ***Protection Measures***

All persons accommodated in the National Reception Centre for Asylum Seekers who were interviewed by the inspection group, claimed that they could leave whenever they wanted from the institution and that they could develop their own personal activities without problems.

It was observed by the monitoring team that it was also a problem expressed by the staff of the center the absence of a lawyer, who had to address the documentation that each individual housed in the center required, taking into consideration the fact that this center accommodates foreign citizens. Another unsolved problem is also the long-term stay of people in this center. From the interviews conducted, it resulted that a considerable part of the families living in the center had more than 7 years staying there. The inspection group said that long-term stay in such a center, even though it is open, does not help in the integration of these families in the society.

Regarding security issues, the National Reception Centre for Asylum Seekers, despite being a center open to asylum seekers, was equipped with surveillance cameras outdoors only, not in the living facilities. Meanwhile the security of center facilities is made through a private security company. The system of cameras is monitored by the security officer.

### ***Material conditions***

The center consisted of six on-storey-building where two of them were used as administrative offices, one building was a canteen, one was a library, laundry, showers, warehouses and the rest was dormitory for the asylum seekers.

It should be highlighted that, following the NPM recommendations a year ago, the director of this center made possible the absorption of funds in order to reconstruct a part of the premises. The inspection group attended closely the ongoing works in some residential facilities as well as the completed facilities. The latter included rooms with 2-3 beds, with new bedding, fitted with wardrobes and drawers, as well as tables. In one of the buildings, the living areas were structured with two-bedroom apartments and a well equipped bathroom with shower.

Taking into consideration the fact that in the center there may also be a large flow of people, shared toilets and showers have been already completed, with new and functional equipment.

In general, residential rooms had natural and artificial light and they were equipped with the necessary furniture. It was not observed the presence of insects or rodents.

In general, in all the interviews conducted, the inspection team found that there was a lack of supply of asylum seekers with bedding, other means of personal and common hygiene, but there were also problems with the underwear and clothing.

Running water supply was unlimited in schedule and there were no problems with electricity either. For the latter, there was a generator in case of power interruption.

There was a laundry, which operated according to a schedule graphic for persons accommodated in the center.

The institution had no central heating system. Consequently, during the winter, heating was performed with other tools provided by the center's staff, as it happened during the summer, too.

There was an outpatient setting (doctor's room), who, the same as the rest of the center was being reconstructed. In addition, there was a considerable amount of medicines, made available to asylum seekers in case of emergency or first aid.

The monitoring team found that there was an outside environment, which was used for basketball and mini-football, but there was no playground for children.

The National Reception Centre for Asylum Seekers also had a library, which served as a hall for computer courses. The environment of the library was clean and orderly with a significant number of titles, as well as computer, all of them in working condition.

The inspection team noted that the kitchen and canteen of the center were relatively clean and tidy. The daily menu was displayed. 3 meals a day were offered for adults and 4 meals a day for children. Food samples were kept in a refrigerated environment. As noted on site by the inspection team and from the interviews made with asylum seekers accommodated in the center, the food was of a high quality. At the time of the inspection there were no special requirements associated with the diet, although the staff was prepared for this issue, too.

### ***Activities***

Taking into consideration the fact that this center is open, the accommodated persons were free to work, to get out of the center, or to perform other personal activities. Despite this, the staff of the center occasionally organized joint activities, such as birthdays, going to swimming pools in summer, football and basketball matches, etc.

This center had signed an agreement with the Ministry of Education regarding the 9-year-education of children accommodated in this center. From interviews with the children themselves, the inspection group was informed that they attend school regularly.

The library functioned and had a considerable number of titles. Borrowing and returning of books was done by putting relevant information in a personal card.

Furthermore, in the canteen premises there was a common environment for the attendance of television programs.

According to the approved organizational structure, the center has only one psychologist and a social worker, leaving out crucial positions to the nature of its operation such as teachers, guardians, lawyers and at least one more social worker and one more psychologist. Taking into consideration the fact that families were also accommodated at this center and have been there for several years, and the manner of operation of this center, the inspection group found that the staff is too small to meet the needs of the center, despite the fact that the head of the institution and the current staff worked in shifts to cover at least the major part of the day.

During the review of documents, the inspection group noted that the center's staff had worked hard to create a fundamental electronic registry for all persons housed in the center. In addition, it was also prepared a fundamental

secreted registry, except the electronic one. Each of them had a specific folder with all the required documentation.

### ***Health Service***

The organizational structure of the center did not anticipate either dentist or doctor, therefore, this service is not offered by the center's staff. However, following the reconstruction of the premises of the center, it was provided a separate room for the doctor with all the necessary equipment. At the time of inspection, because this room was being reconstructed, the medications, including the emergency ones, were found in a different locked environment.

Health services were provided by the family doctor of the Health Center No. 10, which covers the area where the center is located. From the interviews conducted, the inspection group was informed that this service is timely provided, as required. Regarding the stomatological service, it is provided under the procurement procedures.

The institution did not have an ambulance. But, in emergencies, they used the cars of the center for transporting asylum seekers to the hospitals. Moreover, health cards were open for all asylum seekers accommodated in the center, and the reimbursement scheme for medications was fully operational. Reimbursable medicines were benefitted with the same practice as the other citizens of the Republic of Albania. While nonrefundable medications were purchased according to public procurement procedures.

The institution did not have an autoambulance. But, in emergencies, the cars of the center were used for transporting asylum seekers to hospital. In addition, health cards were open to all asylum seekers accommodated in the center, and drug reimbursement scheme was fully operational. Reimbursable medicines were benefitted with the same practice as other citizens of the Republic of Albania. Meanwhile nonrefundable medical drugs were purchased by public procurement procedures.

As per above and pursuant to point 3 of Article 63 of the Constitution of the Republic of Albania stating that: *"The Ombudsman has the right to make recommendations and propose measures when observing violations of human rights and freedoms by public administration"*; Article 21, letter "b" of the Law No. 8454 dated 04.02.1999 "On the Ombudsman", as amended, which states that: "The Ombudsman makes recommendations to remedy the violations of the administrative body, which according to him has caused violations of human rights and freedoms; and under Article 74/1 point "b" of the Law No. 9888 dated 10.03.2008 *"On some addenda and amendments to Law no. 8328 dated 16.04.1998 On the rights and handling of prisoners"*, which provides inter alia that: *"The Ombudsman through the National Mechanism for the Prevention of Torture has the following powers:*

b) make recommendations to the relevant authorities, in order to improve the treatment and conditions of persons deprived of their liberty and to prevent torture and treatment or cruel, inhuman and degrading conviction”.

### **WE HEREBY RECOMMEND:**

1. Measures to increase the staff of this center with a minimum of one social worker, a psychologist, a teacher, a guardian, a lawyer and medical staff. The latter should be minimally part time.
2. Measures for the completion of the reconstruction of the internal living environment of the center.
3. Measures for the drafting of an agreement with the Ministry of Social Welfare and Youth regarding the provision of opportunities for vocational training in Vocational Training Centers under the Ministry, as well as employment opportunities at the Regional Employment Offices, again, under this ministry for all interested persons housed in QKPA.
4. Measures for handling persons accommodated at QKPA with economic aid, as provided in Law no. 10060, dated 26.01.2009, “On some amendments and addenda in the law no. 8432, dated 14.12.1998, “On Asylum in the Republic of Albania”.
5. Measures related to the supply of clothing according to the season and age groups of persons accommodated in the center.
6. Measures for the social integration of persons accommodated in the center, which should be reflected in a shorter stay term of these persons in the premises of this center.
7. Measures for the establishment of a playground for children.
8. Measures for guarding this center with personnel from DPPSH.

Regarding the attitude and measures you will take for the implementation of this recommendation, we kindly ask you to inform us within a 30-day-term according to Article 22 of the Law No. 8454 dt. 04.02.1999 “On the Ombudsman”.

*Trusting in your understanding and cooperation.*

**THE OMBUDSMAN**

**Igli TOTOZANI**

***\*Recommendation to improve the conditions and treatment of asylum seekers, at the National Reception Centre for Asylum Seekers, Babrru, Tirana***

The Ombudsman in the role of the National Mechanism for Prevention of Torture (NPM), conducted a general inspection at the National Reception Centre for Asylum Seekers on 17.09.2015, aiming at the verification of the implementation of the applicable legal framework for asylum seekers. In the composition of the inspection team were the Vice Commissioners of the National Mechanism for Prevention of Torture, Alma Alibali (psychiatrist, leader of the inspection team), Jorida Rustemi (clinical psychologist), director of NPM, Ira Papagjika (lawyer), Alfred Koçobashi (lawyer). After being introduced with the findings of the inspection team, the Ombudsman has the constitutional and legal obligation to submit final conclusions, by reference to the following:

### ***Preliminary Notes***

The periodic monitoring visit of the Ombudsman at the National Reception Centre for Asylum Seekers (QKPA) Babrru, Tirana for the year 2015 was performed in conformity with the monitoring procedure of NPM. The scope of the visit was the collection of information regarding the rights, conditions and treatment of asylum seekers at the institution, and the verification of the implementation level of the recommendations made by the Ombudsman through letter No. 201401745 Prot. K1/I42-2, dated 19.11.2014, with subject: “It is recommended the improvement of conditions and treatment of asylum seekers at the National Reception Centre for Asylum Seekers”.

From the information collected on site, during the conduct of confidential interviews with persons treated at this center and with the staff of the institution, as well as through the verification of documents, objects, equipment and premises, it resulted that only two recommendations have been implemented; the one on the completion of the reconstruction in the internal premises of the center and the one related to the supply with clothing according to the season and group ages of persons accommodated in the center, meanwhile all the other recommendations, which shall be mentioned in the following points of this document, remained unrealized.

QKPA with an official capacity of 170 persons, at the time of the inspection visit accommodated 27 persons, of whom 20 were adults and 7 children. The latter were accommodated at this center along with their families, 5 in all. The citizens of different nationalities who were found at this center were from Afganistan, Bulgaria, Armenia, Kosovo, Turkey, etc.

### ***Treatment***

The objective of the work of the monitoring team was the collection of information on the treatment of asylum seekers accommodated in the center, in identifying cases of physical force use or psychological pressure against this

category. The information received from the conversation in group and privately with asylum seekers, the monitoring team found no flagrant case of torture or use of force.

At the National Reception Centre for Asylum Seekers at the time of the inspection, there were no complaints about treatment, nutrition or other issues related to the attitude of people in this center.

### ***Protection Measures***

The National Reception Centre for Asylum Seekers is an open center, and as such, all persons accommodated in this center who were interviewed by the inspection group, affirmed that they could leave whenever they wanted from the institution and that they could develop their own personal activities without problems.

A still unsolved problem of this center remained the organizational structure of this institution, including the deficiencies observed in the inspection one year ago. A lawyer was still absent at this institution, who was required to deal with the part of documentation for each individual accommodated in the center, taking into consideration the fact that this center also houses foreign citizens. In addition, it has not been made the addition into organic of the psychologist, social worker, guardian or teacher, an indispensable staff to assist the asylum seekers to help in their integration in the society.

Regarding security issues, the premises of the National Reception Centre for Asylum Seekers continued to be monitored by a private company and not the Directorate of State Police (DPSH), stipulated in point 5 of the DCM no. 262, dated 23.04.2004.

The rights and obligations of the persons accommodated in this center were not displayed, but the staff of this institution affirmed that they had been informed about them only verbally.

The treatment of asylum seekers in this center with economic aid, anticipated in Article 54 point 2/b of Law no.121/2014, "On Asylum in the Republic of Albania" remained a right not implemented yet.

### ***Material conditions***

The center consisted of six on-storey-building where two of them were used as administrative offices, one building was a canteen, one was a library, laundry, showers, warehouses and the rest was dormitory for the asylum seekers.

The inspection group observed that some of the living premises had been reconstructed and provided with 2-3 new beds, with new bedding, wardrobes, drawers, and tables. Taking into consideration the fact that in the center there may also be a large flow of people, shared toilets and showers have been already completed, with new and functional equipment.



Running water supply was unlimited in schedule and no problems were observed. The laundry was operational, and it was put into use according to a schedule for the persons accommodated in the center.

There was no central heating in the institution.

Outdoor premises were used for basketball and football, they were in good conditions and a small playground was arranged for children.

The library, which served as a hall for computer courses was functional, and it was used by the residents of this center. It was clean and orderly with a significant number of titles, as well as with 6 computers, but one of them was not operational.

The kitchen and canteen of the center were clean and tidy. The daily menu was displayed, according to which 4 meals were provided for children and 3 meals for adults. Food samples were stored in a refrigerated environment. As noted on site by the inspection team and from the interviews made with asylum seekers accommodated in the center, there were no complaints relating food and its quality.

### ***Activities***

Taking into consideration the fact that this center is open, the accommodated persons were free to work, to get out of the center, or to perform other personal activities. Despite this, the staff of the center occasionally organized joint activities, such as birthday parties, going to swimming pools in summer, football and basketball matches, etc.

Vocational courses continued to be missing at this center.

According to an agreement that this center has entered with the Ministry of Education, the asylum seekers at school age, at this center, are provided with 9-year-school education, pre-university education and university education, the one who had been attending respectively “Vllazërimi” 9-year-school, Paskuqan (3 students), “Eqerem Çabej” high school (3 students), and the University of Agriculture, Tirana (1 student).

Television programs were attended in the premises of the canteen, where a common TV premises was found.

According to the organisational structure, the center continued to have only one psychologist and one social worker, leaving out crucial positions to the nature of its operation such as teachers, guardians, lawyers and at least one more social worker and one more psychologist. Taking into consideration the manner how this center functions, and the fact that there were families living at this center, the inspection group concluded that the staff is too small to meet the needs of the center, despite the fact that the head of the institution and the current staff worked in shifts to cover at least the major part of the day.

### ***Health Service***

The organizational structure of the center did not anticipate either dentist or doctor, therefore, this service is not offered by the center's staff, but from the health center of Babrru, and in case of consultations with specialist doctors, this service was provided by the Central Polyclinic.

It was reconstructed an environment anticipated as a doctor room, provided with medications according to the needs.

Regarding dental services: they are provided under the procurement procedures, according to which it would be selected a dentist to provide such services.

The institution did not have an ambulance. But, in emergencies, they used the cars of the center for transporting asylum seekers to the hospitals.

All asylum seekers accommodated at the center were provided with health booklets and the reimbursement scheme for medications was fully operational. At the time of inspection, there were no chronic patients accommodated at this center.

As per above and pursuant to point 3 of Article 63 of the Constitution of the Republic of Albania stating that: *"The Ombudsman has the right to make recommendations and propose measures when observing violations of human rights and freedoms by public administration"*; Article 21, letter "b" of the Law No. 8454 dated 04.02.1999 "On the Ombudsman", as amended, which states that: "The Ombudsman makes recommendations to remedy the violations of the administrative body, which according to him has caused violations of human rights and freedoms; and based on Law no. 121/2014 "On Asylum in the Republic of Albania", the Ombudsman through the National Mechanism for the Prevention of Torture has the following powers:

*b) makes recommendations to the relevant authorities, in order to improve the treatment and conditions of persons deprived of their liberty and to prevent torture and treatment or cruel, inhuman and degrading conviction".*

### **WE HEREBY RECOMMEND:**

-Measures for increasing the organizational structure of this institution with one lawyer, one social worker, one psychologist, one teacher, one guardian and medical staff, taking into consideration the fact that, when this center accommodates in full capacity of 170 persons, the need for additional personnel results mandatory.

-Measures for the display of rights and obligations of the beneficiaries of this center in conformity with international standards.

-Measures for the drafting of an agreement with the Ministry of Social Welfare and Youth regarding the provision of opportunities for vocational training in Vocational Training Centers under the Ministry, as well as employment

opportunities at the Regional Employment Offices, again, under this Ministry for all interested persons housed in QKPA.

-Measures for handling persons accommodated at QKPA with economic aid, as provided in Law no. 121/2014 “On Asylum in the Republic of Albania”.

-Measures for guarding this center with personnel from DPSH, according to point 5 of the DCM no. 262, dated 23.04.2014.

Regarding the attitude and measures you will take for the implementation of this recommendation, we kindly ask you to inform us within a 30-day-term according to Article 22 of the Law No. 8454 dt. 04.02.1999 “On the Ombudsman”.

*Trusting in your understanding and cooperation.*

## **THE OMBUDSMAN**

**Igli TOTOZANI**

***\*Recommendation to improve the conditions and treatment of irregular foreigners at the Closed Centre for Foreigners, Kareç***

**To: Vice Director General of State Police,  
Department for Border and Migration  
Mr. Genc Merepeza**

**Director of the Closed Center for Foreigners, Kareç  
Mr. Pashk Tusha**

The Ombudsman in the role of the National Mechanism for Prevention of Torture (NPM), conducted a general inspection at the Closed Center for Foreigners, Kareç, on the dates of 05 and 18.11.2014. The main objective of these monitoring visits was to assess the conditions of the Center, the quality of treating the persons housed in, and measures taken to address the problems.

In the composition of the inspection team were: Jorida Rustemi, (Head of NPM - psychologist, leader of the inspection team), Alma Alibali (psychiatrist), Irena Taga (lawyer), Vice Commissioner at the National Mechanism for Prevention of Torture, accompanied by Mr. *Hortenc Balla*, Head of Office of the UN High Commissioner for Refugees in Albania (UNHCR), and Mr. Nathaniel Haft, political Officer at the American Embassy.

The visit took place in a very good spirit of cooperation. The director of the institution gave the opportunity to the experts of the inspection team to have access within rules and without difficulty to all the people and facilities they had to monitor.

After being introduced with the findings of the inspection team, the Ombudsman has the constitutional and legal obligation to submit final conclusions, by reference to the following:

### ***Preliminary Notes***

The Closed Center for Foreigners, Kareç was established with the DCM no. 1083, dated 28.10.2009, pursuant to Article 100 of the Constitution and point 2 of Article 83 of the Law no. 9959, dated 17.7.2008 “On Foreigners”, aiming at the housing of irregular foreigners in the territory of the Republic of Albania, towards whom a detention measure has been taken in conformity with the applicable legislation. The Closed Center is a structure under the Directorate of Migration and Reacceptance, at the Department for Border and Migration, at the General Directorate of State Police, at the Ministry of Interior. The Internal Regulation of the Center was approved with the Order of the General Director of the State Police.

This was the first monitoring visit of the Ombudsman at the Closed Center for Foreigners, Kareç. On the first day of inspection, in the premises of the institution, there were 64 foreign citizens, of whom 55 citizens from Syria, 6 citizens from Eritrea, 1 from Ukraine, 1 from Nigeria and 1 citizen from Iraqi. 54 of them were under the re-acceptance process from the Greek state, 9 were without documents and 1 was in a trial. On the second day of inspection, there were 61 persons. The official capacity of this center is 125 persons.

In conformity with the procedure of monitoring development, the inspection team initially performed a meeting with the head of the institution, who showed himself ready for cooperation in order to fulfil the scope of the inspection. During the meeting, the inspection team initially asked for information regarding the rights and handling of persons at the center, and the manner of handling the problems encountered by the institution. The head of the institution informed the group of experts about a range of problems on the operation of the center, and the manner of their approach. For this purpose, an external working team had been set up, which was in the process of drafting this report.

A major problem was related to the cases of foreigners’ escape from the center as a consequence of the physical conditions of the building and the perimeter wall, and the limited number of the security staff. Up to the day of the visit, several cases of escape had occurred with a total number of 30 people, 22 of whom were caught and returned to the Center. The Director of the Center had asked from the superior authority to take measures for the increase of Institution’s security, but no specific steps had been taken yet.

Another problem was related to the impossibility to prevent infectious health problems through an adequate medical evaluation at the time of acceptance at the institution, due to the lack of a doctor in the organization structure, a function which was covered by a head-nurse, and secretary and archivist. Relating this matter the inspection team was informed that, two weeks before the first visit

at this institution, the staff had noted cases with itching problems, which after diagnostification by the Directorate of Public Health Durrës, Sector of Hygiene, had resulted to be Scabies. We highlight that for this diagnosis, the staff of the Institution that had direct contact with foreigners, was informed for the first time on the monitoring day on 05.11.2014. After the observation and diagnostification made, several measures were taken for the treatment and medication of the cases revealed with Scabies. The persons, who had manifested symptoms of this disease, were applied medications for local application with Benzyl Benzoate 200ml/ bottle, for the first time, while for other times – as affirmed by the head-nurse – upon their request. The clothes of foreigners had been washed by washing machine and dried in environmental conditions, while the protocol to prevent the spread of this disease anticipates the extirpation of clothes, when they are not washed in high temperatures and when they are not dried in mechanic dryer of clothes. According to the Director, on 24/09/2014<sup>1</sup>, the Directorate of Public Health Durrës, Sector of Hygiene performed the disinfection of all the internal premises of the institution.

Consequently as per above, the monitoring group decided not to enter the internal regimen on the first monitoring day, but receive written and verbal information by the staff, and contact the foreigners in outdoor premises of aeration. In order to verify the internal premises of the Institution, it was re-established another monitoring group, consisting of Ms. Jorida Rustemi and Mr. Hortenc Balla on 18.11.2014.

### ***Treatment***

During both monitoring visits, the objective of the work of the monitoring team was the collection of information on the treatment of foreigners housed in the center, in identifying cases of physical force use beyond the limits provided by normative acts or psychological pressure against this category. The information received from the conversation in group and privately with asylum seekers, the monitoring team found no flagrant case of torture or excessive use of force.

At the Closed Center for Foreigners, Kareç, at the time of the inspection, there were no complaints by the foreigners about treatment as convicted in Albania by settling them in a closed center, without granting them the possibility to take temporary leave for several days so as to enable them to escape from the territory of Albania, a practice also known in other countries of the region.

A complaint from the contacts of the inspection team with foreigners was the absence of a translator in their language (Arabic), which made communication, introduction with the regulation and their rights more difficult, as well as the daily communication and the performance of activities. Daily communication was realized through staff in English language, with foreigners who knew it, who served as translators for others. In order to address such concern, the director of the institution had made efforts to provide the staff with a

list of 60 words and basic expressions in English, written in the pronunciation form, with translation into Albanian for each of them.

As for the treatment in the Center, the main concerns were related to food portion, manner of cooking, and the type of assortments used (not in conformity with their religion). This concern was addressed with hiring a new cook, which was verified on the second day of the monitoring visit. The portion, however, remained the same (350 grams of bread per day).

Another concern was the issue of clothing, bedding and means for personal hygiene, which, notwithstanding the efforts of the staff of this institution, resulted insufficient to fulfil the needs of the foreigners accommodated. In order to deal with such concerns, the institution had demanded donations; meanwhile the foreigners were enabled to prepare individual lists with requests for products, which were addressed to the psychologist of the institution, which made possible their purchase outside the institution with payment from the personal funds of foreigners, including the respective invoice.

In absence of cartophonic devices, the telephone calls were made possible through cards with impulses from the personal mobile of the psychologist. The latter had declared the number as subject to the foreigners of the Center. The detained foreigners were grateful for the assistance given by the psychologist upon the approval of the Director of the Institution, but they complained about the number of minutes they could talk, as the price per impulse with their countries of origin resulted to be very high.

Other complaints were related to the impossibility to be informed on what was happening outside the center and in their countries of origin in absence of television and satellite equipment.

In addition, there were also complaints about the lack of cultural, entertaining and sports activities. The only sports activity was the one with a ball in a field inappropriate for games on foot. Activities for minors, children and women were absent.

### ***Protection Measures***

According to the Regulation for the establishment and operation of a Closed Center and Internal Regulation of the Center, the detained foreigners at this center have the right to benefit individual medical, legal and social assistance, meanwhile in the organizational structure of 24 persons at this center, there was not anticipated the presence of a doctor, lawyer or psychologist. To some extent, the work of the lawyer was performed by the Director of the Institution, the work of doctor was carried out by the head-nurse, while for covering the function of the psychologist, it had been employed a sociologist, which in fact enjoyed the appreciation and confidence of all foreigners contacted and the staff, as he fulfilled the vital needs of foreigners and functioned as a liaison and regulatory element between the two parties at the institution.

The reception and physical control system functioned with specialists for reception and interviewing. In the center there were also personal folders of detained foreigners, the register of acceptances at the center, the register of meetings, the register of entries into / exits from the center, the register for service service handing over and the minutes for taking over personal items and monetary values. The premises where monetary values and personal items were deposited and they operated according to the regulation. From the verification and inspection of documents, no irregularities were observed. Everything was registered in the respective register.

Regarding security issues, the Closed Center for Foreigners, Kareç, was equipped with surveillance cameras indoors and outdoors, but not in the living facilities. None of the outdoor cameras was functional. The system of cameras is monitored by the security officer of the operative hall.

Visits with family members, lawyers, diplomatic representatives, etc., took place according to the provisions in the regulation.

Security measures with isolation were given by the Director of the Institution for a period of not longer than 24 hours, and this measure was implemented in the isolation rooms. On the inspection days, there was no foreign citizen with this measure. The measures were mainly given with exclusion from joint activities.

A special sector existed for foreign females and minors, separated from the sector of males. In family cases, the foreigners were accommodated with their relatives. As for the functioning of the system complaint/request, they were made verbally from the foreigners to the psychologist or to the security officer of the shift, who took measures to notify the director of the institution. The latter responded within 24 hours.

At the institution, there were five premises anticipated for meetings with family members, but they were empty and did not function as such.

### ***Material Conditions***

This center consisted of a two-floor building, a part of it anticipated for administrative offices and the remainder with a regime of 24 dwelling rooms, 4 isolation rooms, a library, a laundry, showers, recreational area, warehouse and aeration outdoors.

The inspection team visited the rooms, which were provided with basic materials and toilets for each of them. The rooms were anticipated for 2, 4 and 8 persons respectively. The dwelling rooms had natural and artificial light. No cases of persons sleeping neither on the ground, nor in the presence of insects or gnawers were observed.

Artificial lighting was problematic inside and outside the institution. The generator that this center was provided with required services. Ventilation was made possible, but heating remained a problem, since the furnace had not been put into operation as it consumed 24liters per hour.

Throughout the regime, it was obvious the problem of humidity, mainly as a consequence of problems with the waterproofing of the terrace at the Institution and lack of heating.

Showers were realized in 2 joint showers, which were provided with boilers in order to enable warm water. The showers were made according to a schedule, but they resulted insufficient to fulfil the needs in conformity with the capacity of the Center.

In general, in all the interviews conducted, the inspection team observed that there were no absences in the supply of asylum seekers with bedding, but there was necessity for sheets, blankets and towels. The Institution supplied shampoo, soaps and razors, but there were problems with the supply of clothing, including shoes and other means of common hygiene.

A washing machine served as a laundry for all the foreigners, while the drying of clothes was made in the recreational area for children and adults, which had lost its function.

There was an ambulatory area (room of the head-nurse), kept clean, but poor in medications for chronic and acute diseases.

The monitoring group observed that there was an aeration space outdoors, which was used for walking and ball games, but since it was with heavy grass and bushes, it was not appropriate for “football pitch”. There was no playground for children.

The Closed Center for Foreigners also had a library, which had a Bible, Koran, a book about terrorism, etc, in a total of 40 items. Neither the regulation for the organization of the center’s operation, nor its internal regulation was found in the library.

At the center, there was a worship area, which did not function as such.

The inspection team observed that the kitchen of the center and the canteen were relatively clean and tidy. The canteen had 16 tables and 44 chairs, while the dishwasher was missing in the kitchen, as well as other facilitation materials. The daily menu was displayed. Food samples were held in cupboards, hence, not in refrigerator.

At the institution, there was no shop to enable purchases. These were provided, as described above by the psychologist of the institution with purchases outside the institution.

### ***Activities***

Aeration at this institution was allowed in the minimum anticipated, 2 hours per day, from 11.00’’ to 13.00’’, including the sports activity.

Detained foreigners had the possibility to conduct religious rites in worship areas, where an imam from Vlora served time after time.

The library mainly functioned for religious books, since the other books were in Albanian.



According to the approved organizational structure, the center had only specialists for acceptance and interviewing; leaving out crucial positions to the nature of its operation such as psychologists, educators and lawyers. Taking into consideration the fact that families were also accommodated at this center, the inspection group concluded that the staff is too small to meet the needs of the center, despite the fact that the employees of the institution made maximal efforts to cover the needs.

### ***Health Service***

The organizational structure of the medical staff at this institution consisted of one full-time head nurse. The organizational structure of the center did not anticipate a doctor, making the diagnostification and the adequate treatment of health issues rather difficult. The organizational structure did not anticipate either the dentist position, hence this service was not provided by the staff of the center.

The cases with infectious diseases were treated by the Sector of Hygiene, at the Directorate of Public Health, Durrës.

The institution did not have an autoambulance. But, in emergencies, they used the cars of the center for transporting foreigners to the hospitals.

Regarding the provision of medications to this institution, they were scarce for the treatment of chronic and acute diseases.

From the observation of documentation of the assistant doctor at this institution, two registers were in place, one for visits and one for medication, which were completed correctly. In addition, from all the foreigners who were held at this institution, only three of them were provided with cards, out of whom, one was diagnosed with Depressive Neurosis and two others with Neurotic Condition, who received the relevant medication with anxiolytic and hypno-sedative. In the second monitoring visit, the group observed that efforts had been made by the head nurse in order to provide all the foreigners with health cards.

As per above and pursuant to point 3 of Article 63 of the Constitution of the Republic of Albania stating that: *“The Ombudsman has the right to make recommendations and propose measures when observing violations of human rights and freedoms by public administration”*; Article 21, letter "b" of the Law No. 8454 dated 04.02.1999 *“On the Ombudsman”*, as amended, which states that: *“The Ombudsman makes recommendations to remedy the violations of the administrative body, which according to him has caused violations of human rights and freedoms; and under Article 74/1 point “b” of the Law No. 9888 dated 10.03.2008 “On some addenda and amendments to Law no. 8328 dated 16.04.1998 On the rights and handling of prisoners”*, which provides inter alia that: *“The Ombudsman through the National Mechanism for the Prevention of Torture has the following powers:*

b) makes recommendations to the relevant authorities, in order to improve the treatment and conditions of persons deprived of their liberty and to prevent torture and treatment or cruel, inhuman and degrading conviction”.

### **WE HEREBY RECOMMEND:**

- Measures to increase the staff of this center with a minimum of one social worker, one psychologist, one translator of Arabic language, a lawyer and a doctor. The latter should be minimally part time.
- Measures for the supply with bedding, clothing and provision of common personal hygiene of all foreigners who are accommodated at this center.
- Measures related to the supply of clothing according to the season and age groups of persons accommodated in the center.
- Measures for providing all the rooms of foreigners with wardrobes and drawers in order to keep personal items.
- Measures to provide the institution with cartofonic devices, as provided in the regulation of the institution.
- Measures to provide indoor and outdoor recreational premises with the relevant equipment for sports activities for infant and children foreigners accommodated in the center.
- Measures for provision with televisions of common indoor premises and connection with satellite antenna so as to enable the information of foreigners with events from their countries and worldwide events in languages they understand.
- Measures for decorating the buildin, inside and outside for disinfection reasons.
- Measures for the waterproofing of the terrace in order to prevent humidity at the institution.
- Measures for putting into operation the cameras of the external perimeter.
- Measures to increase the security of window and fencing frames.
- Measures for the storage of food samples in refrigerator.
- Measures for the provision of a dishwasher and facilitating materials for the kitchen of the institution.
- Immediate measures in order to provide a doctor and a dentist in the organizational structure of the health sector so that comprehensive and efficient health service is provided at the institution.
- Immediate measures for the supply of the Institution with emergency pills and medications for chronic diseases.

Regarding the attitude and measures you will take for the implementation of this recommendation, we kindly ask you to inform us within a 30-day-term according to Article 22 of the Law No. 8454 dt. 04.02.1999 "On the Ombudsman".

*Trusting in your understanding and cooperation.*

**THE OMBUDSMAN**

**Igli TOTOZANI**

***\*Recommendation to improve the conditions and treatment of irregular foreigners at the Closed Centre for Foreigners, Kareç***

**To: Minister of Interior  
Mr. Saimir Tahiri**

**Director of the Closed Centre for Foreigners, Kareç  
Mr. Gëzim Goqi**

The Ombudsman in the role of the National Mechanism for Prevention of Torture (NPM), conducted during 2015 a series of inspections at the Closed Center for Foreigners, Kareç. The main objective of these monitoring visits was to assess the conditions of the Center, the quality of treating the persons housed in, and measures taken to address the problems.

The staff of the institution provided to the experts of the inspection team the opportunity to have access within rules and without difficulty to all the people and facilities they had to monitor.

After being introduced with the findings of the inspection team, the Ombudsman has the constitutional and legal obligation to submit final conclusions, by reference to the following:

***Preliminary Notes***

The Closed Center for Foreigners, Kareç was established with the DCM no. 1083, dated 28.10.2009, pursuant to Article 100 of the Constitution and point 2 of Article 83 of the Law no. 9959, dated 17.7.2008 “On Foreigners”, aiming at the housing of irregular foreigners in the territory of the Republic of Albania, towards whom a detention measure has been taken in conformity with the applicable legislation.

The Closed Center is a structure under the Directorate of Migration and Reacceptance, at the Department for Border and Migration, at the General Directorate of State Police, at the Ministry of Interior. The Internal Regulation of the Center was approved with the Order of the General Director of the State Police.

In the premises of the institution, during the inspection there were 92 foreign citizens, of whom 4 female foreign citizens. The official capacity of this center is 125 persons.

In conformity with the procedure of monitoring development, the inspection team initially performed a meeting with the head of the institution, who showed himself ready for cooperation in order to fulfil the scope of the inspection. During the meeting, the inspection team initially asked for information regarding the rights and handling of persons at the center, and the manner of handling the problems encountered by the institution.

Regarding the monitoring visit in 2014 about the problems observed in the center, there were observed that;

- For the prevention of cases of foreigners' escape from the Center, a problem observed in the monitoring visit in 2014, preliminary measures were taken by the security staff and infrastructural interventions were made by adding 6-steel frame-doors and 370 meters of barbed wire in the aeration premises.
- It still remains problematic the fencing wall of the building, which does not contain security elements, as it is easily penetrable and monitoring cameras continue to be out of function in the external perimeter of the building.
- There were partially eliminated the problems related to the prevention of infectious health problems by undertaking periodic disinfections at the Center and through an adequate medical evaluation at the time of acceptance at the institution by the nursing staff, which, according to the evaluation of cases, performed further delegation procedures for diagnostification at the Regional Hospital in Durrës.
- But, we highlight that this Center continues to be missing in its composition the presence of a doctor in conformity with "Regulation for the establishment and operation of a Closed Center" Article 1 "Medical Assistance" point 1, point 2 a, and Article 5 "Medical Inspection" which states that "The doctor of the Center or the doctor contracted by the Center is informed about the health condition and medical needs of the detained foreigner and takes care, if required, for an appropriate treatment" and medical assistance was absent 24 hours inside the Center". Regarding such problems, in the institutional response with letter No. 345/1 dated 04.03.2015 by the Director of the Center, on the recommendations of the Ombudsman relating the problems in health service observed in the following inspection, a response was given relating a study carried out for health services and it was demanded an increase to the current institutional organizational structure for medical personnel, which had not been previously realized and at present this function was covered by the head nurse.
- Furthermore, it was noted that the problems on the deficiencies of providing foreign citizens with clothing and accommodation means, rights provided in the "Regulation for the establishment and operation of the Closed Center" Article 9 "Clothes and sleeping means", were eliminated. The foreigners were provided with bedding, new mattresses, blankets, accommodation means in the living premises and hygiene-sanitary products, through aids provided by UNCHR and the Albanian Red Cross.

### ***Treatment***

During the monitoring visit, the objective of the work of the inspection team was the collection of information on the treatment of foreigners housed in the center, in identifying cases of physical force use beyond the limits provided by normative acts or psychological pressure against this category. The information received from the conversation in group and privately with foreigners, the

monitoring team found no flagrant case of torture or excessive use of force, but there were complaints related to the duration of isolation cases which varied up to 10 days.

It is still ongoing the complaint related to the assistance of a translator in their language (Arabic), a right provided in the “Regulation for the establishment and operation of the Closed Center” Article 14 point 3, “Information of the detained foreigner”, regarding the presentation with the regulation, their rights and legal ways to appeal against detention or problems that the foreign citizen may have during his stay in the center. Daily communication was realized through the staff in English language with the foreigners who knew it, who served as translators.

Food treatment of foreigners at this Center was made on the bases of normatives approved by the Ministry of Interior, Ministry of Health and Order of DPP No.1812/1, dated 26.08.2010 and DCM no. 702 dated 21.08.2013, the main concerns set out by foreigners were related to food portion, manner of cooking, and the type of assortments used. The foreigners expressed discontent about food quota and menu, which did not have variety. At present, the food quota per person was 250 ALL and the foreigners affirmed that the food quantity anticipated by the relevant authorities was not sufficient.

Other complaints were related to the impossibility to be informed on what was happening in their countries of origin in the absence of televisions with satellite equipment.

In addition, there were also complaints about the lack of cultural, entertaining and sports activities. The only sports activity was the one with a ball in a field inappropriate for games on foot and table tennis. Activities for minors, children and women were absent.

### ***Protection measures***

According to the Regulation for the establishment and operation of a Closed Center and Internal Regulation of the Center, the detained foreigners at this center have the right to benefit individual medical, legal and social assistance. Even though there were made some additions to the institutional organization structure recently, and specifically 3 employees in the role of the service body and 1 cook/kitchen employee, it was observed that health, psycho-social and legal sectors have deficiencies.

At present, this center has 28 employees and the presence of a psychologist and lawyer is necessary as a right provided in the “Regulation for the establishment and functioning of the Closed Center” Article 14 point 2 and Article 1 points 1 and 2 “Legal Assistance”, and for the institutional specifics. These functions at the time of monitoring were performed by the social employee and the management staff.

In addition, we clarify that in the institutional organizational structure of the Center for foreigners, in the reflection of the structure and function, there are no denominations in supporting services for the psycho-social and legal staff.

The premises of this center cover a considerable area and the presence of a sanitary employee was insufficient.

The reception and physical control system functioned with specialists for reception and interviewing. In the center there were also personal folders of detained foreigners, the register of acceptances at the center, the register of meetings, the register of entries into/exits from the center, the register for service service handing over, and the minutes for taking over personal items and monetary values.

It was observed that the register of service taking over-handing over was inappropriate and there were missing the columns presenting all the elements and basically the description of events and the measures taken, which are superficially described. The security employees, possessing this register affirmed that this was not a contemporary format and the columns in it were not appropriate for detailed reporting.

The premises where monetary values and personal items were deposited and they operated according to the regulation. From the verification and inspection of documents, no irregularities were observed. Everything was registered in the respective register.

Regarding security issues, the Closed Center for Foreigners, Kareç, was equipped with surveillance cameras indoors and outdoors, but not in the living facilities. None of the outdoor cameras was functional. The system of cameras is monitored by the security officer of the operative hall. Furthermore, the emergency bells in the bedrooms of foreigners did not function.

Security measures with isolation were given by the Director of the Institution and there are 4 isolation premises at this Center. Isolation premises had sufficient space, high walls, and windows with proper size for light and hidrosanitary means.

The doors were made of steel and not of a contemporary format and with sharp edges, which constituted risk for the self-damage of foreign citizens during the stay in isolation. Isolation rooms were not provided with alarm system allowing the foreigner to shout a staff member according to the regulation "Security Measures" Article 7.

Furthermore, it was observed that in the orders for disciplinary ban, there were legal discrepancies referring to the time schedule and breaches provided in the Regulation for the Closed Center. In the execution orders, there were observed cases of 3 to 10 days of isolation measures.

Even though the majority of these orders were not recent ones, we emphasize that the General Regulation clearly stated the exceeding of 72 hours in the isolation rooms and specifically "Security Measures" Article 6.

At the time of inspection, there were no foreign citizens in the isolation rooms.

A special sector existed for foreign females and minors, separated from the sector of males. In family cases, the foreigners were accommodated with their relatives.

As for the functioning of the system complaint/request, this center possesses a register reflecting the complaints of foreigners. The register contained columns specified on the complaint and their solution and referred to the social employee or security officer, which took measures to notify the director of the institution and immediate solution of the complaint.

Visits with family members, lawyers, diplomatic representatives, etc., took place according to the provisions in the regulation.

### ***Material conditions***

This center consisted of a two-floor building, a part of it anticipated for administrative offices and the remainder with a regime of 24 dwelling rooms, 4 isolation rooms, a library, a laundry, showers, recreational area, warehouse and aeration outdoors.

The inspection team visited the rooms, which were provided with basic materials and toilets for each of them. The rooms were anticipated for 2, 4 and 8 persons respectively. The dwelling rooms had natural and artificial light. No cases of persons sleeping neither on the ground, nor in the presence of insects or gnawers were observed.

Artificial lighting was problematic inside and outside the institution. The generator that this center was provided with required services. Ventilation was made possible, but heating remained a problem, since the furnace had not been put into operation as it consumed 24liters per hour.

Throughout the regime, it was obvious the problem of humidity, mainly as a consequence of problems with the waterproofing of the terrace at the Institution and lack of heating.

Showers were realized in 2 joint showers, which were provided with boilers in order to enable warm water. The showers were made according to a schedule, but they resulted insufficient to fulfil the needs in conformity with the capacity of the Center.

A washing machine served as a laundry for all the detained foreigners, which was insufficient in relation to the number of foreigners in the center.

There was an ambulatory area (room of the head-nurse), kept clean, and supply with medications for this service has been recently performed subject to demands.

The aeration premises were actually used for sports games as well; the employees of the center confirmed that works were being carried out for the establishment of a sports field. There was no playground for children.

The Closed Center for Foreigners also had a library, which had religious literature, but it was poor with publications in Arabic language. Neither the

regulation for the organization of the center's operation, nor its internal regulation was displayed in the library.

At the center, there was a worship area, which did not function as such and most recently a prayer area has been established for the practitioners of Muslim faith.

The inspection team observed that the kitchen of the center and the canteen were relatively clean and tidy. The canteen had 16 tables and 44 chairs, while the dishwasher was missing in the kitchen, as well as other facilitation materials. The daily menu was displayed. Food samples were stored in the fridge.

At the institution, there was no shop to enable purchases. These were provided, as described above by the social worker of the institution with purchases outside the institution.

### ***Activities***

Aeration at this institution was allowed in the minimum anticipated, 2 hours per day, from 11.00'' to 13.00'', including the sports activity. However, during the visits made at the center during the year 2015, it was observed that the breach of this right occurs due to the limited number of security staff.

According to the approved organizational structure, the center had only specialists for acceptance and interviewing; leaving out crucial positions to the nature of its operation such as psychologists and educators. There were missing programs with approved work plan by the social staff, since, at present, there was only one employee which had multi functional duties in the follow-up of foreigners' problems. At present this employee was on maternity leave.

Taking into consideration the fact that people with trauma of various types, families displaced from countries at war, etc. come to this center, the inspection team concluded that psychosocial staff must conform to legal provisions in the Regulation for the Closed Center, in order to meet the needs of foreign citizens in psycho-social terms and the improvement of their psychological during their stay at the center, a right provided for in the Regulation on the establishment and functioning of the Closed Center, "Social Assistance, Leisure and General Development", Article 1 and Article 2.

### ***Health Service***

The organizational structure of the medical staff at this institution consisted of one full-time head nurse. The organizational structure of the center did not anticipate a doctor, making the diagnostification and the adequate treatment of health issues rather difficult. The organizational structure did not anticipate either the dentist position, hence this service was not provided by the staff of the center.

The cases with infectious diseases were treated by the Sector of Hygiene, at the Directorate of Public Health, Durrës.

The institution did not have an autoambulance. But, in emergencies, they used the cars of the center for transporting foreigners to the hospitals.



Regarding the provision of medications to this institution, they were improved in comparison with the observations in the monitoring of the year 2014 and this process was carried out through tendering by the center on the needs according to cases for the treatment of chronic and acute diseases.

From the observation of documentation of the assistant doctor at this institution, two registers were in place, one for visits and one for medication, which were completed correctly. In addition, the foreigners who were held at this institution were provided with cards.

As per above and pursuant to point 3 of Article 63 of the Constitution of the Republic of Albania stating that: *“The Ombudsman has the right to make recommendations and propose measures when observing violations of human rights and freedoms by public administration”*; Article 21, letter "b" of the Law No. 8454 dated 04.02.1999 “On the Ombudsman”, as amended, which states that: *“The Ombudsman makes recommendations to remedy the violations of the administrative body, which according to him has caused violations of human rights and freedoms; and under Article 74/1 point “b” of the Law No. 9888 dated 10.03.2008 “On some addenda and amendments to Law no. 8328 dated 16.04.1998 On the rights and handling of prisoners”, which provides inter alia that: “The Ombudsman through the National Mechanism for the Prevention of Torture has the following powers:*

b) makes recommendations to the relevant authorities, in order to improve the treatment and conditions of persons deprived of their liberty and to prevent torture and treatment or cruel, inhuman and degrading conviction”.

### **WE HEREBY RECOMMEND:**

- Measures to increase the staff of this center with a social worker, a psychologist, a translator of Arabic language, a lawyer, a security officer and a sanitary worker, aiming at the compliance with the rights of foreigners in the Republic of Albania, in conformity with the legislation in force.
- Immediate measures to anticipate a doctor and a dentist in the organizational structure of the health sector so that the institution be provided with full and efficient health service.
- Measures to provide indoor and outdoor recreational premises with the relevant equipment for sports activities.
- Measures for provision with televisions of common indoor premises and connection with satellite antenna so as to enable the information of foreigners with events from their countries and worldwide events in languages they understand.
- Measures for the waterproofing of the terrace in order to prevent humidity at the institution.
- Measures for putting into operation the cameras of the external perimeter.

-Measures for the provision of a dishwasher and facilitating materials for the kitchen of the institution.

-Measures for immediate changing of the doors in the isolation rooms, putting into operation as soon as possible the security cameras in this environment, implementation of isolation timelines in accordance with the Regulation for the Closed Center and installation of the alarm system in each isolation room, in order to avoid unwanted situations.

-Immediate measures in order to provide a doctor and a dentist in the organizational structure of the health sector so that comprehensive and efficient health service is provided at the institution.

Regarding the attitude and measures you will take for the implementation of this recommendation, we kindly ask you to inform us within a 30-day-term according to Article 22 of the Law No. 8454 dt. 04.02.1999 “On the Ombudsman”.

*Trusting in your understanding and cooperation.*

**THE OMBUDSMAN**

**Igli TOTOZANI**

## **10.Declaration of the Ombudsman for Media:**

### ***PRESS RELEASE***

30 October 2015

The Ombudsman, in his role as the National Mechanism for Prevention of Torture, organized the two-day event, the Workshop and Conference on: Standards of Joint Monitoring for the treatment of Asylum Seekers, Refugees and Migrants in South East Europe”. This event was attended by important representatives of international institutions in the field of human rights, Network for the Prevention of Torture Mechanism in Southeastern Europe, the Committee on the Prevention of Torture, the Subcommittee on Prevention of Torture, the Council of Europe, the OSCE Presence, UNHCR, the Albanian government authorities, as well as Ombudsmen from the countries of our region. Discussions focused on unified ways of dealing with migratory crisis in the region.

The Ombudsman, Mr. Igli Totozani, referring to the expected situation of refugees coming into the Albanian territory of refugees, escaping from war zones, mainly Syrians, expressed the position of the institution and a series of special demands addressed to the special structures of the Albanian state.

The Ombudsman, Mr. Igli Totozani, said that Albania is a candidate country for membership, with full rights in the European Union and as such, it should react and behave as a European country with all the citizens in need, who will enter its

territory to escape from war. “Every human being entering the territory of Albania should be given protection and should be treated according to international conventions and laws in force. The rights of each individual are part of the Ombudsman’s competence. Të gjithë refugjatët që do të vijnë në Shqipëri duhet të trajtohen si të barabartë me qytetarët shqiptarë. All refugees coming to Albania should be treated as equal with Albanian citizens. They should be guaranteed human rights and intact human dignity”, Mr. Totozani said. The Ombudsman called in particular for the treatment and protection of children, especially those unaccompanied, expected to arrive in Albania with the flow of refugees from Syria.

The Ombudsman has a special monitoring structure that will function on site in order to monitor the reception conditions by the Albanian state, for these citizens trying to escape the war, leaving their country. Monitoring of the Ombudsman will also include state structures, so that they provide all refugees with legal possibilities and facilities that are guaranteed to them by international Conventions, where the state has adhered.

Mr. Totozani also stressed that it is very important the regional and wider cooperation in all Eastern Europe, regarding this problem. Even the fact that this migratory flow is a situation that requires coordination and comprehensive inclusion to ensure the protection of freedoms and rights for people in need, but also evocation of humanism values in our society. The Ombudsman has also launched several recommendations to the Directorate for Border and Migration so as to ensure reception capacities and dignified accommodation for refugees. Meanwhile, work continues to monitor Albanian asylum seekers return home from various countries of Western Europe.

## ***PRESS RELEASE***

17 March 2016

The Ombudsman, Mr. Igli Totozani, together with a group of experts from the institution, inspected today, the situation on site in case of a possible flood of migration to Albania, in the border area of Kakavija and Gjirokastra.

Mr. Totozani met with leaders of the Directorate of Border and Immigration in Kakavija and Gjirokastra, and with senior officials of the Prefecture.

The Ombudsman highlighted that “Albania should be open to any individual who seeks international protection. Migratory flows are, first of all, a matter of human rights. The response of the state to the crisis of migration and security issues should not affect standards of human rights. In this regard, Albania has the obligation to apply the principles and standards of human rights guaranteed in international conventions, accepted and ratified by the Albanian state”.

According to Mr. Totozani, Albania should be prepared, with a concrete and efficient plan to deal in a dignified manner, with a potential flow of migrants and refugees; therefore we welcome to be provided with a specific plan for this situation by the government.

“The government, the special structures for the protection and provision of public order, civil society, media have a very important role in the fight against prejudice, stigmatization, xenophobia, with the goal of cultivating the most human values, especially if we face a difficult challenge, that of the demonstration of human solidarity for people who desperately try to escape war and suffering”, Mr. Igli Totozani, the Ombudsman, said, in a meeting with representatives of local government and civil society organized in Gjirokastra. Mr. Totozani added that the involvement of state institutions in this matter should be transparent and all-inclusive.

"Considering civil society as a very important ally, Mr. Totozani, invited the representatives of these organizations to offer volunteering and solidarity, in the event of a flow of immigrants to our country. The Ombudsman asked them to monitor the work commitment of the government and institutions imposed by law, in order to guarantee the rights of every individual. Meanwhile, he appreciated the importance of close cooperation with international organizations and partners. Mr. Totozani noted the necessity of information exchange between civil society and the Ombudsman about the situation on site, but also cooperation with local authorities and emergency headquarters.

Sensibilization of the society about this situation was considered by Mr. Totozani, as a crucial element in the case of dealing with a flow of people movement seeking help and support.

The Ombudsman said that the regional office of the institution will work with an uninterrupted service in the border areas, if we face a migratory flow. The Ombudsman has already a specific plan for the monitoring and treatment of this issue, based on the plan approved in February of this year, in Thessaloniki, together with other Ombudsmen in the region, and in the Resolution of the Organization of Mediterranean Ombudsmen (AOM).

## ***PRESS RELEASE***

07 April 2016

The Ombudsman, Mr. Igli Totozani sent a recommendation to the Prime Minister, Edi Rama, on handling the refugee crisis. Immediate and necessary measures are required to be taken through this document so as to address the existing and potential flows of migrants and refugees in Albania, in accordance with national and international instruments.

In this recommendation Mr. Totozani states as following:

1. Albania should welcome with solidarity and humanism every foreign citizen in need of international protection and aid.

2. The Government of the Republic of Albania should keep on promoting regional and broader initiatives to enable coordination of treatment and providing assistance in the Western Balkans. The migration crisis, which the countries of the region are faced with, is a deep-rooted one and requires political decisions, but it also requires a deeply humane approach by all stakeholders and decision-makers, based on respect for human rights. Regional cooperation among different countries should be encouraged by looking with interest not only the quotas for each country, but by respecting the refugee status as well as coordinate efforts to record, handle and provide durable solutions for refugees. The best solution to the crisis is only the solution of the issues at their very source, and that's why the Albanian government should prioritize this solution and assign to it all appropriate means. Any security policy and decision made in this situation, must not infringe upon human rights.
3. The Government of the Republic of Albania must first enable the legal recognition of these persons, by providing them the necessary background documentation for a range of administrative processes related to their status in our territory, which is also a precondition for the functional distribution of humanitarian aid.
4. The Government of the Republic of Albania has to declare, in accordance with the Law "On Asylum in the Republic of Albania", the recognition of temporary protection status due to the massive influx of persons coming from the countries with common background and globally recognized persecution, which determines the likelihood that these persons meet the conditions for international protection. Refugees and immigrants should be granted effective access to individual asylum procedures, without discrimination.
5. A multidimensional interaction must be ensured to counteract hate speech, racism and xenophobia, which generate consequences for the situation of the rights of immigrants and at the same time erode fundamental values and principles of diversity, tolerance and coexistence in our society.
6. The whole process should be completely transparent and aiming at ensuring close cooperation of the Government of the Republic of Albania with national and international stakeholders, particularly civil society and international non-governmental organizations operating in our country, to strengthen the guarantees and resources to the needs of vulnerable groups, part of the migratory flows, including here children, women, the elderly, persons with disabilities, LGBT and victims of torture.
7. Commitment to special treatment of the unaccompanied minors, part of the migratory flows, to guarantee their fundamental rights, to meet their specific needs and facilitate family reunification process.

8. The law enforcement bodies and State Police should carefully address the phenomenon of people caught while trying to leave the Albanian territory with allegedly forged documents. We have to be sensitive to their needs for international protection, since these persons might be refugees, and this approach should aim at determining their position in the context of migration flows and excluding them from the treatment as in other cases of persons using forged documents.

9. Strengthening informational-intended materials and translation services teams, who perform administrative procedures related to irregular aliens at the border or at the regional border directories, so that every foreigner found illegal in Albanian territory, could clearly understand his/her rights and state clearly whether he/she is seeking asylum in Albania or not. In such a case, immediate connection with the asylum authorities of the Republic of Albania should be ensured.

10. Persons who are delivered a removal order, expected to be executed by them voluntarily, must be given a deadline as set by law for this purpose, without being forced to leave through the territory they crossed over in a non-regular way.

11. Independent monitoring and observance of the application of the selection procedure, as well as the reception conditions or humanitarian assistance at transit centers, by the civil society or bodies separate of executive power, such as there are UNHCR, IOM etc, should be enabled.

12. Facilitation of access to complaints lodged by refugees and immigrants with the People's Advocate institution, regarding the violation of their rights by the authorities in our country, in order to ensure a rapid and effective response to these complaints.

13. In terms of long-term integration challenges, the Government of the Republic of Albania must develop sound integration policies, which would allow migrants and refugees to be a productive part of the economy and an added value for the diversity of our society.

14. A non refoulement approach should be applied for people from non-secure countries entering the territory of the Republic of Albania in the situation of migratory flows.

This recommendation of the Ombudsman, addressed to the Prime Minister of the Republic of Albania, is based on the following reasoning:

“The issue of handling the crisis of refugees and migrants in Europe today is a matter of human rights and should comprehensively encompass state policies of the recipient or transit countries, as well as the countries likely to be affected by this unprecedented crisis in the vast space of the Mediterranean area. This migratory crisis is a consequence of severe violation of human rights in the regions involved in the armed conflicts and plagued by poverty, further

aggravated due to the failure of the transit and destination countries to provide a coherent and coordinated response supported by necessary financial, human and logistical resources.

In this disturbing humanitarian situation, the solidarity, partnership and sharing of responsibilities between countries of origin, transit and destination are namely the values and guidelines for both an individual and collective interaction, to overcome the challenging situation and guarantee the rights of refugees, asylum-seekers and irregular migrants. There are precisely these principles of critical importance today in order to handle the crisis in several intertwined areas, so as: to guarantee the basic rights of immigrants and handle the humanitarian crisis; to ease the migration flows and combat human trafficking as well as to integrate immigrants into the new receptive societies or in the countries of origin after their eventual repatriation.

This crisis, which requires a global response and interaction, represents certain complex challenges in both immediate, current context and in the long run.

Humanitarian treatment of refugees and migrants is an obligation for each country, as it is the recognition of the rights belonging to them based on the Universal Declaration of Human Rights, the Convention of 1951 related to the Status of Refugees and its Additional Protocol of 1967, the Directives of the European Union Council, namely no. 95, 2011, and no. 32 and 33, 2013. Even our country cannot avoid, modify, suspend or postpone these obligations, but rather it should consider them as more necessary in times of crisis.

The values and principles of solidarity, human rights and fundamental freedoms cannot be identified with some "rhetorical exercises" only, but should rather be a real guide for our reflection and vision while coping with migration crisis. We must realize that these very serious human rights' violations in the countries and regions involved in armed conflicts and plagued by poverty, are the real causes of pushing hundreds, thousands and millions of people to feed the massive migratory flows.

The measures actually taken by states, being incompatible with the European standards of human rights, not only are detrimental to social cohesion, but still are ineffective and counter-productive for crisis management. A "paradigm" shift is really needed concerning the migration, in order to come to terms with the "competition" of European countries, seeking to return the migrants back and raise walls, wire fences or other barriers.

In relation to the existing and expected flows of migrants and refugees, already an actual and unquestionable phenomenon today, Albania is still remaining not properly prepared. While the ideas for establishing potential reception centers for registration and transit assistance cases are numerous, no any concrete step is taken on the ground for such facilities to be provided. Considering the need for cooperation with international organizations specialized in this field, a greater transparency should be granted to allow the general public and society to get informed, which would simultaneously reduce any xenophobic opinion.

The spirit of solidarity and standards of human rights must be on the focus of commitment and joint action of political leadership. Still, it's no exaggeration to say that a broader interaction with civil society and international non-governmental organizations in the field of human rights, should be ensured. These partners possess the valuable expertise and proper instruments and mechanisms of action, necessary to have a greater geographic and demographic impact.

While it keeps being evident that a great number of people attempt to cross by any means the territory of several European Union countries, and furthermore are welcomed, the Albanian asylum authorities do not seem to keep up with the same pace and sense of these developments. The individuals caught while illegally crossing the border to arrive to or leave Albania, even though being clearly part of migratory flows seeking protection and fully in terms of benefiting this protection, are completely denied or endlessly postponed the asylum procedures, which ultimately would lead to their return to the places they came from, thus violating the principle of "non-refoulement".

The panorama appears like this in a time when in a regional and wider context of the crisis, a too big concern remains profiling of refugees based on their nationality and failure to guarantee their right of access to asylum procedures, without discrimination. In addition to this concern is also the fact that failure to comply with international legislation has significantly affected vulnerable groups, part of the migratory flows, herein including children, women, the elderly, victims of torture, persons with disabilities, LGBTI etc. This process as a whole should guarantee human dignity and basic rights, by avoiding their return to the countries, where their safety is not guaranteed.

In the context of deep social crisis and armed conflicts, the Ombudsman institution plays an important role as a guarantor and promoter of human rights and fundamental freedoms, which represent the subsoil of the values and principles of democracy, rule of law and good governance. To this purpose, the People's Advocate Institution, in the role of the National Mechanism for Prevention of Torture and in close cooperation with the Agency of the United Nations for Refugees in Tirana (UNHCR), has continuously been monitoring the Treatment Center of Irregular Foreigners in Albania and Asylum Seekers Centre, border check points, and has closely monitored the points seen as possible places for building camps of reception or assistance to transit the persons in need for international protection.

From our inspections at reception and detention centers mentioned above, it comes that their space capacity and financial and human resources are insufficient, not only at any eventual case of massive inflows, but also in the case of any gradual increase within a short time of the number of asylum seekers or irregular migrants.

The inspections at border crossings as well as the possible points – camps of reception or assistance to transit the migrants, as confirmed by the sources of the Border Police - have also shown that many challenges are to be overcome even in



terms of any emergency context, so that they are perceived as functional centers not only for short-term registration and assistance of persons in need, but also as residential centers, which would enable a longer term accommodation for the persons seeking international protection.

Based on the explanations and predictions of the Border Police officers, on information obtained through the media or from other countries, it is clear that a great many people, mostly Syrians, enter every day in Greece and from there depart to pass through the Western Balkan countries, including potentially Albania, to certain countries of the European Union. These people, especially from Syria, are clearly people in need of international protection and should be treated as refugees, whether they want to stay in a certain place or not. Consequently, it is necessary to have a regional and European understanding about the humanitarian treatment of more than 4 million refugees from the country they are still staying in. We emphasize that their intention to move towards some countries of the EU, should not prejudice the treatment which should be provided, particularly considering the urgent need for humanitarian aid. It is precisely this purpose, which should be determining on how to be conceived and built reception centers or profiling cases.

In these conditions it is necessary for the Republic of Albania to take the necessary measures for the reception and treatment of persons in need of international protection, who appear on the borders or get caught within its territory. Humanitarian treatment of refugees and migrants is an obligation for each country, the same as it is the recognition of the rights belonging to them under the aforementioned acts.

In fulfilment of its dual function as protector and promoter of human rights, the People's Advocate Institution urges for solutions based on human rights approach and giving assurances that the answer of the Republic of Albania to the crisis of immigration and security issues should not adversely affect human rights standards, despite of its being a transit or destination country”.

## **11. Conclusions:**

- The Ombudsman, in its dual function as protector and promoter of human rights, plays an irreplaceable role in the design of human rights in the institutional dialogue and expansive social dialogue. The activity of the Ombudsman is necessary and serves as an added value of all required contributions today, in order to overcome the serious situations threatening compliance with human rights and freedoms. The vision of the Ombudsman requires that the policy framework and specific action of the Albanian state in the approach towards current crisis of migration, respect the obligations arising from international law on human rights and in particular, on the status of refugees, including the 1951 Geneva Convention and its Protocol of 1967.

- The essence of the work and the determining priority of the Ombudsman's activity, in the situation of unprecedented migration crisis is linked to the protection and respect of the rights of vulnerable groups and communities at risk. Today, more than ever, it is time that our society in general and the state in particular, turn the head to the poor.
- The commitment of the Ombudsman is vital to monitor the situation of human rights, the investigation of abusive practices and their prevention, awareness of the authorities to implement the standards and obligations in the field of human rights, as well as the contribution to cross-institutional dialogue and public speech in order to raise awareness and counteract the language of hatred, racism and xenophobia. The active role combined with a prominent proactivity requires an adequate exhaustion of legal means subject to the mandate and function of the Ombudsman and an activity closely cooperating with civil society, media, and international partners.
- An unprecedented migration crisis poses complex challenges in the both current immediate context and in the long run. In the immediate context, we should guarantee the basic rights to immigrants who arrive or may arrive in the territory of Albania, while in the longer term we deal with the challenge of integration, whether the integration of asylum seekers in their new homes friends in host countries, or the integration of persons returned to their countries of origin. This process must guarantee human dignity, basic rights and respect for the principle of “non-refoulement”.
- The Ombudsman, in addition to protecting the rights of people in need of international protection, has also the challenge of protecting the rights of nationals of the home country, either in the potential position of transit countries or destination countries.
- It is of paramount importance that in addition to state authorities, local civil societies and international organizations, the institution of the Ombudsman to be present and accessible by persons in need of international protection.
- There are a number of issues that may arise as a barrier to the Ombudsman in dealing with this situation, referring to the lack of sufficient human resources; lack of facilitating infrastructure and financial resources; geographic extent of possible concentration of migratory flows; lack of access of migrants and refugees to the Ombudsman; and difficulties hindering the effective functionality of the Ombudsman.
- The normative existing domestic framework guarantees the right to asylum of the foreigner, or a stateless person, who, owing to the well founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion, is outside the country of his nationality or former habitual residence and he has no opportunity or desire to seek the protection of that country as a result of these events and because of this fear. However, in the process of assessing the eligibility for

membership of the Republic of Albania in the EU, some recommendations have been given in the interest of improving this legislation.

- Recommendation no. 16 has a special importance in addressing the issue of migrants, part of migration flows; it was adopted by the European Commission against Racism and Intolerance (ECRI) on 16 March 2016, on the protection of current irregular migrants from discrimination.
- The Ombudsman in the role of the National Mechanism for Prevention of Torture (NPM) under the monitoring of policies and measures being taken for immigration issues, the return of Albanian citizens after the most recent migration in European countries and measures that are being taken for their reintegration, as well as the measures undertaken and asylum procedures for potential asylum seekers from other countries, current war zones, in our country, has developed and is developing an intense activity.
- In more specific terms, from the up-to-date monitoring, the Ombudsman reached the conclusion that:
  - a) Decisions of the Directorate for Asylum have satisfactorily taken into account the opinion of UNHCR, as a specialized agency of the UN for Refugees;
  - b) The selection procedure applied by the Border Police has often drawbacks related to the categorization of persons, their holding and handling during interviews, lack of reliable interpreters, especially for people who come from countries whose languages are less prevalent in the world, as well as long-standing trend of Border Police to interpret on the spot, if the person has any chances to be recognized the refugee status or not, and therefore the tendency not to categorize someone as asylum seeker, regardless of the demand of the person on the risks in the country of origin, or his categorical refusal to return there.
  - c) The Asylum Directorate has numerous restrictions on its ability to collect information from the countries where the asylum seekers come from and consequently recognition of the situation in these countries remains shallow and decisions lag in excuses.
  - d) Despite the legal provision, the meeting for determining whether or not a person is a refugee is not held in a collegial manner and therefore, neither UNHCR is invited to participate in them.
  - e) Albania's capacity to host refugees is represented by the Center of Karreç, which does not exceed 170 beds (it has no official capacity that takes into account space standards). Therefore the system is very vulnerable in case of refugee flows, such as the one of people from Syria that Europe has been experiencing lately.
- From the monitoring of the plan on measures approved by the Government, on handling upon return to our territory of the Albanian asylum seekers in other European countries and their reintegration, it is observed that for the

period: the second semester of 2015 and the first quarter of 2016, the number of Albanian citizens returned in the country, is **29397 persons**.

- On the basis of the monitoring performed and the information received from the responsible state authorities, it is noted the absence of a national strategy for the reintegration of Albanian citizens returned from other European countries, as well as an Action Plan for its implementation.
- The main directions of the Ombudsman's activity, in the regional and international context include:
  - Dynamic Communication regarding developments on site and emergency situation, sharing information/statistics and analysis on mixed migratory flows;
  - Promotion of good practices and positive results achieved by individual and institutional commitments in bilateral and multilateral level;
  - Provision of visibility on the issues and difficulties encountered by the institutions of the Ombudsman, with the aim of effective pressure of governmental and inter-governmental actors to take appropriate measures to guarantee the rights of immigrants, in accordance with the obligations deriving from domestic and international legislation in the field of human rights;
  - Information and awareness of public opinion on the rights of immigrants and migration crisis specifics, subject to the counteraction of hatred language, racism and xenophobia;
  - Optimization of available resources and creation of synergies through joint initiatives and activities at cross-border bilateral level and multilateral regional and international level;
  - Facilitation and expansion of cooperation of the Ombudsman institutions with local civil society and non-governmental international organizations which are present in countries of origin, transit and destination.
  - Valorisation and factorization of the perspective of Ombudsman institutions and NHRIs in the discourse and agendas of important governmental and inter-governmental/supranational actors, with the aim of advancing the approach based on human rights;
  - The preparation of studies, manuals of good practice and analysis which will be of assistance to governmental, intergovernmental and non-governmental actors in addressing the short-term and long-term challenges of migration crisis;
  - Organization and participation/representation in activities of cross-border regional and international character, of different formats (conferences, seminars, training, etc.) with a focus on the issues, challenges and opportunities related to mixed migratory flows.
- Among the general recommendations so far, prepared for an adequate approach to migration flows, it is separated the recommendation for taking immediate and required measures for handling in accordance with national

and international instruments the existing and expecting flows of migrants and refugees in Albania. This recommendation aims to align maximally the international spirit of solidarity and standards of human rights in dealing with the crisis situation, with the expectations of handling the potentially occurring situation in Albania. Effectively, Albania remains in a state still unprepared properly. Meanwhile ideas for the development of potential reception, registration or assistance centers for transit passing are numerous; no specific steps have been taken on site in order to have such facilities of reception.

- The Ombudsman in the role of the National Mechanism for Prevention of Torture and in close cooperation with the Agency of the United Nations for Refugees in Tirana (UNHCR), has monitored continuously the Reception Center of Irregular Foreigners in Albania and the Center for Asylum Seekers, border crossing points, and has closely seen the points which are seen as possible to build reception or assistance camps for the transit passing of persons in need of international protection.

From the inspections at reception and detention centers, it was observed that their capacity in space and in financial and human resources is insufficient, not only for cases of massive flows, but also for cases of gradual increase in the number of asylum seekers, or irregular migrants within a short time. From the inspections at border crossing points, as well as potential points – reception or assistance camps for the transit of migrants, confirmed by sources of the Border Police, it was found that there are many challenges to be overcome – whether in the emergency framework, in order that they be perceived as functional centers not only for short-term registration and assistance to persons in need, but also as residential centers, which would enable a longer term of persons in need of international protection in them.

- In these conditions it is necessary that the Republic of Albania take the necessary measures for the reception and handling of persons in need of international protection, appearing on the borders, or caught within its territory. Humanitarian handling of refugees and migrants is an obligation for each country, as well as the recognition of the rights pertaining to them by the aforementioned acts.

## **ANNEX 1**

### **AOM Malta Declaration on Migration**

10<sup>th</sup> of March 2016, Valetta – Malta

*We*, the Ombudsman and Mediator Institutions gathered on the occasion of the 9<sup>th</sup> Meeting of the Association of the Mediterranean Ombudsmen (AOM), on 9-10 March 2016 in Valletta, the Republic of Malta;

*Recognizing* the relevant international law in the sphere of human rights and fundamental freedoms and the obligations of state parties to uphold the norms and standards contained therein,

*Recalling* the AOM Tirana Declaration of 27 June 2014, on migration and asylum in the Mediterranean region,

*Affirming* the commitment of Ombudsman and Mediator institutions to protect and promote human rights and fundamental freedoms without borders, in view of the distinct role of our independent institutions in the domestic and international institutional landscape,

*Concerned* about the humanitarian situation about the migration crisis in the larger Mediterranean area, linked to gross violations of human rights in regions plagued by armed conflicts and poverty, and further aggravated as a result of the failure of transit and destination countries to build a coherent and coordinated response with mobilization of necessary financial, human and logistical resources,

*Acknowledging* that particular relevance of AOM for the current crisis, in view of its geographical outreach including countries of origin, transit and destination of the migrants and refugees,

*Hereby declare as follows:*

1. AOM encourages all its associate Ombudsman and Mediator Institutions to engage in monitoring and pressuring State and non-governmental actors to abide to standards and obligations stemming from international human rights and refugee law, including the Geneva Convention of 1951 and its Protocol of 1967.
2. AOM asks all the States to guarantee that refugees and migrants avail of effective access to rights including asylum procedures without any discrimination.
3. AOM calls on local and international stakeholders to counter hate speech, racism and xenophobia, which have a bearing on the rights situation of refugees and, at the same time, erode the fundamental values and principles of diversity, tolerance and coexistence for our societies.
4. AOM engages to work closely with key local and international stakeholders, importantly civil society and INGOs operating in affected countries, to increase guarantees and resources addressing the needs of vulnerable groups, including children, women, the elderly, persons with disabilities, LGBTI, victims of torture.
5. With particular reference to unaccompanied children, Ombudsman and Mediator institutions shall cooperate amongst them, as well as with competent authorities in order to guarantee the fundamental rights of minors, address their specific needs and facilitate family reunification.
6. So as to provide effective and timely follow up on complaints and grievances of refugees and migrants as a result of state authorities in transit or destination countries, Ombudsman and Mediator institutions commit to pursuing close communication and interaction regarding the transfer of cases for competency among Ombudsman and Mediator member institutions.
7. In fulfilling their dual function as defenders and promoters of rights, Ombudsman and Mediator Institutions call for a human rights based approach, so as to ensure that State responses to the migration crisis and security concerns do not jeopardize human rights standards for citizens in countries of transit and destination.
8. In light of the longer-term integration challenge of integration, Ombudsman and Mediator Institutions urge States to develop sound integration policies that

enable new diaspora to become productive for the economy and an added value for diversity of the societies hosting them.

9. For the returnees to their countries of origin, Ombudsman and Mediator institutions call upon state and intergovernmental actors to provide meaningful support for their integration, while ensuring a dignified process of return and avoiding repatriation in countries of origin where their safety is not ensured.

## **ANNEX 2**

### **Refugee/migrant crisis and human rights Regional joint action plan of Ombudsman institutions**

As agreed by the Ombudsmen/National Human Rights Institutions' representatives of  
Albania, Austria, Croatia, Greece, Kosovo \*, Former Yugoslav Republic of  
Macedonia, Serbia, Slovenia, and Turkey



*\*This designation is without prejudice to positions on status and is in line with UNSCR 1244 and ICJ Advisory opinion on the Kosovo declaration of independence*

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## Workshop – Thessaloniki, 19th February 2016

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## **Fundamental principles**

### *Belgrade Declaration*

#### *Belgrade declaration*

- All states have an obligation to ensure full observance of international and regional human rights instruments, including the UN 1951 Geneva Convention relating to the status of refugees; the European Convention on Human Rights; the UN Convention on the Rights of the Child; and the relevant OSCE Human Dimension Commitments.
- Refugees and migrants are entitled to protection against any discrimination and against any incitement to discrimination.
- Each state has a duty to carry out its respective national commitments in line with international law.

The following Action Plan is focused primarily on joint activities of Ombudsman institutions in the area of protection and promotion of the rights of refugees/migrants. Every participating institution shall plan its respective activities with the aim of fulfilling the agreed goals, mission and tasks in the framework of the Belgrade Declaration, taking into consideration available resources and mandate within each national context.

## **I. Thematic synergies**

### **a. Access to asylum**

- Investigate, establish and explain how the current situation deprives or not potential asylum seekers from the possibility to exercise their right and apply for protection
- Monitor the current state of affairs and recommend state authorities to take measures to guarantee effective and fair access to asylum, including the establishment of an effective individual assessment procedure before a person is returned to the country from which they have crossed the borders or country of origin.
- Comprise comparative study on procedures and rules applied by respective states and make it available by means of user-friendly charts and tables
- Monitor progress, number of applications and protection statuses granted, and publish in annual and special reports respective numbers, trends and indicators
- Develop “asylum guide” in languages refugees understand, and put it in place in refugees/migrants facilities and entry/exit points
- Monitor the availability of asylum related information at entry/exit points

- Monitor the efficient participation of asylum officers to registration/reception procedures
- Propose improvement, adoption and implementation of international and national legal frameworks for regulating the situations of mass influx of displaced persons in Europe

#### **b. Protection of unaccompanied children and other vulnerable persons**

- Develop common standard procedures and rules regarding proper screening to all newcomers in order to distinguish the more vulnerable (children, accompanied or not or separated, pregnant women, victims of torture, victims of trafficking, elderly, people with disabilities, people of bad health, people discriminated against because of their gender, sexual orientation or gender identity etc).
- Draft and disseminate group-specific lists of particular needs in order to safeguard their rights in particular with respect to housing, medical and legal needs
- Investigate, establish and explain how the rights of each group are or are not safeguarded and ask states to take group-specific measures
- Launch comparative study on procedures and rules applied by respective states and make it available by means of user-friendly charts and tables with the aim to highlight best practices and formulate common standards
- Encourage states to plan ahead and possibly allocate in advance already existing resources and infrastructure (hospitals, social workers etc) to the protection of vulnerable groups
- Advise on training to be provided to officials likely to come into contact with victims of torture or trafficking
- Develop mechanism to constantly verify that unaccompanied children are not subjected to detention and are promptly escorted to suitable hostels where appropriate treatment according to their age and needs is offered.

#### **c. Phenomena of ill-treatment and exploitation of migrants/refugees. Forced return procedures**

- Engage pro-actively in fact finding regarding cases of ill-treatment, exploitation and other violations of human rights which come to the Ombudsman's attention by any means; encourage complaints and launch own initiative investigations
- Encourage and facilitate complaint by making available fiches as well as posters and leaflets on the Ombudsman's work to be available in all refugee- migration camps and reception/registration centres,

including hotspots

- Make regular visits by the Ombudsman's staff to ensure visibility, as well as monitoring of the daily operation of such camps
- Allocate sufficient resources and introduce fast-track and efficient investigation of said cases taking into account the mobility of the alleged victims
- Publicize regularly lists of complaints/cases of ill-treatment and exploitation, highlight possible patterns, and emphasize on positive or negative reaction of the competent authorities without prejudice to personal data protection rules
- Info exchange between ombudsman institutions as well as contacts with the volunteers/NGOs involved, to ensure exploitation or ill-treatment phenomena will be thoroughly investigated without prejudice to personal data protection rules
- Advise on training to be provided to state officials and Ombudsman staff about prevention of ill-treatment and improving skills for identification of victims of ill-treatment and exploitation
- Monitor forced returns to the effect that CPT and other human rights standards are applied and observed. Additional safeguards should be defined for the protection of vulnerable groups

#### **d. Hate-speech and xenophobia**

- Launch common initiative against most popular myths regarding refugees/migrants' impact on economy/society of the host countries
- Compile common speaking/defensive points and FAQs arranged by sector and subject
- Establish pool of public speakers readily available to engage in public debates when and where needed
- Address cases of verbal abuse and offensive language used by officials
- Encourage complaints and launch own initiative investigations
- Advise on training officials likely to come in contact with refugees and migrants
- Organise public events to raise awareness and share best practices

#### **e. The role of local communities and local administration**

Linking the refugees and migrants to the community is crucial for the success of provisional structures of reception and a sine qua non requirement for the integration of refugees and migrants on a more permanent stay.

- Encourage the establishment of network and facilitate regular meetings of representatives of host towns/regions to share practices, problems and coordinate responses, promote understanding of refugee

- and migrant issues and reach workable solutions for their reception
- Encourage municipal facilitators and social welfare offices to be established in places of acute refugee/migrant segregation
  - Comprise and disseminate comprehensive guide for local and regional authorities including basic principles, legislation, best practices, and proposals for coordinated action
  - Organise seminars and conferences on migrants' and refugees' integration and their economic and social rights, including adequate shelter, health care, food, water, sanitation, child and family protection

## **II. Horizontal synergies (relevant to all points above)**

### **f. Cross-border cooperation**

- Investigate and highlight typical cases where lack of cross-border cooperation between states amounts to jeopardizing refugees/migrants rights through joint activities of national Ombudsmen
- Establish contact points, early warning mechanisms and standard coordinated rules of reaction/engagement (e.g. complaint mechanisms, fact finding visits on the spot) regarding irregular flows of refugees/migrants, potential humanitarian crisis, and human rights violations within national Ombudsmen offices
- Make data available to the respective Ombudsman institution
- Identify and promote best practices in cross-border cooperation
- Ensure that states provide and put in place common standard procedures and practices regarding border checks and crossings safeguarding human rights and avoiding where possible duplication. The above mentioned procedures and practices should address issues such as identification of vulnerable persons, developing temporary cross-border facilities with effective access to food, water, shelter and basic clothing under any circumstances.
- Identify and investigate in particular phenomena of withholding documents by frontier, police or immigration authorities to be officially registered

### **g. Campaign/networking (Observatory)**

Information to refugees/migrants:

- Comprise a comprehensive list of all Ombudsman services (regarding complaints etc) available at each country including contact details and make that list available (in English, French, Arabic, Farsi, Pashto etc) in the form of a uniform poster at all border crossings and refugee/migrant centres.
- Where not already available, write, edit and publish leaflet/brochures (in English, French, Arabic, Farsi, Pashto etc) offering information on rights of refugees/migrants, national and EU procedures, contact details

of institutions/NGOs, and other relevant information. Provide information on applicable local laws and regulations as well as customary and moral norms, as to prevent any misunderstandings and offences arising from differences in legal and cultural context.

- Establish a common call centre and international call number for information regarding complaints in cooperation with the civil society or international organisations active in the area.

Communication to general public (campaigning):

- Launch common radio/TV campaign on rights of refugees/migrants and obligations of national/regional/local authorities

- Encourage research on economic impact of refugees/migrants to host countries to combat misinformation, prejudice and xenophobia

- Engage pro-actively in public debate by means of publishing articles in newspapers/websites, participating in TV/radio discussions etc to combat xenophobia and challenge hate speech

Information sharing/networking (observatory):

- Promote synergies between the Ombudsman institutions

- Participate proactively in Ombudsmen regional networks/observatories to monitor the situation on the ground and provide constant updates on routes, procedures and logistics

- Establish contact persons in every Ombudsman's service to share, coordinate and manage information in the context of the present Action Plan

- Establish data bank and internal website, in English, to facilitate the above

Information to and from national authorities:

- Participate in networks and observatories such as national bodies monitoring refugee/migrant flows, hate speech, racist attacks etc

- Advise on draft legislation and influence change of the existing practices of national authorities

- Establish information channels regarding refugees/migrants number and location of arrivals, reception centres, logistics etc

- Engage in regular contacts and fact finding missions on the spot

Information to and from supranational institutions and NGOs:

- Establish constant information channels regarding refugees/migrants number and location of arrivals, reception centres, logistics etc

- Make available Ombudsman's leaflets, brochures to organizations working on the ground and encourage dissemination

### **Implementation/follow up**

The Ombudsmen shall appoint two contact persons per institution with the aim of coordinating and facilitating joint follow up actions needed to implement the Belgrade declaration as detailed in the Action Plan. The group of contact persons (provisionally called "Action Group") will exchange information on individual Ombudsman activities and discuss regularly by means of mail list messages and live web meetings and other IT assisted tools, all proposals for actions, joint activities and best practices.

The Action Group shall present within three months upon agreement of the Action Plan detailed proposals regarding the logistics of the following priority actions:

- establish a minimum list of requirements with a view to rendering the Action Group operational,
- draft and constantly update a rolling working plan
- launch a comparative study on procedures and rules applied by respective states,
- compile a comprehensive list of all Ombudsman services available at each country of the region,
- launch and maintain data bank and internal website.

## ANNEX 3

### *Ombudsman/National Human Rights Institutions*

#### **Declaration on the Protection and Promotion of the Rights of Refugees and Migrants**

**WE**, Ombudsmen/National Human Rights Institutions’ representatives, attending a Conference entitled “Ombudsman/National Human Rights Institutions: Human Rights Challenges in Refugee/Migrant Crisis” on 23-24 November 2015 in Belgrade, the Republic of Serbia<sup>21</sup>;

**RECALLING** appropriate international and regional instruments to which our countries have acceded, in order to safeguard the human rights and fundamental freedoms of migrants<sup>22</sup> and refugees<sup>23</sup>, without discrimination, including based on nationality;

**RECOGNISING**, as set out in the Universal Declaration of Human Rights, the inherent dignity and the equal and inalienable rights of all individuals as the foundation of freedom, justice, peace and security, and in building solidarity on the national, European and international level;

**CONFIRMING** our shared responsibility to realise the promotion and protection of the rights of migrants and refugees, as well as the responsibility of states to ensure adequate resources for Ombudsman/National Human Rights Institutions to fulfil their mandates in this regard, while ensuring that their independence is fully respected;

**RECOGNISING** the sovereignty of states in determining their own migration/refugee policy, including exercising control of their borders, but also recognising that all states are subject to compliance with international and European human rights obligations, in particular in providing appropriate procedures for determining the right to seek and enjoy asylum, for determining the conditions under which migrants and refugees may remain, and the obligation to ensure that the principle of “*non-refoulement*” is respected;

**REALISING** that basic features of the present situation of urgency include the constant large numbers of arrivals, the overload of asylum and reception infrastructures in many of the receiving and transit countries, the lack of comprehensive policies at European level, and insufficient implementation of those that exist;

**ACKNOWLEDGING** also the need to address effectively violations of the human rights of migrants and refugees wherever such cases occur;

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<sup>21</sup> As listed at Annex 1.

<sup>22</sup> Throughout this Declaration, ‘migrants’ shall include all migrants, regardless of migration status.

<sup>23</sup> Throughout this Declaration ‘refugees’ shall include all individuals in need of international protection.



**ACKNOWLEDGING** the concerns of the receiving and transit states over acceptance of high numbers of migrants and refugees;

**WELCOMING** the 2030 Agenda for Sustainable Development (UNGA 70/1) which recognises the positive contribution of migrants for inclusive growth and sustainable development; as well as the need for international cooperation to ensure safe, orderly and regular migration involving full respect for human rights and the humane treatment of migrants, of refugees and of displaced persons;

**RECOGNISING** that terrorism and other security concerns cannot reduce the fulfilment of all human rights, including those of migrants and refugees, and that terrorism must not be attributed to any specific religion, nation or ethnic group;

**REITERATING** that Ombudsmen/National Human Rights Institutions are dedicated to enhancing the promotion and protection of human rights of migrants and refugees, especially those that are vulnerable, as well as to enhance the quality of their reception, in accordance with international and regional human rights standards and including a gender perspective;

**HEREBY DECLARE AS FOLLOWS:**

## **GENERAL PRINCIPLES**

### **1. *Respecting Human Rights of Refugees and Migrants***

We remind all states affected by the large number of arrivals of migrants and refugees of their obligation to ensure full observance of international and regional human rights instruments, including the UN 1951 Geneva Convention relating to the status of refugees; the European Convention on Human Rights; and the relevant OSCE Human Dimension Commitments. Refugees and migrants are entitled to protection against any discrimination and against any incitement to discrimination. We emphasise that each state has a duty to carry out its respective national commitments in line with international law;

### **2. *Ensuring Full Access to the Asylum Procedure***

All states along the migratory routes dealing with migrants and refugees must respect the principle of *non-refoulement*; and ensure, without discrimination on any ground, the unhindered access to fair, prompt, effective, and gender-sensitive asylum procedures, safeguarding the best interests of the child; the right to information; and the right to an effective remedy;

### **3. *Protection of Rights through Cross Border Cooperation***

All states receiving large numbers of migrants and refugees should closely cooperate and establish channels to exchange reliable information in order to provide a humanitarian response and to secure human rights

compliant reception of migrants and refugees who are staying or transiting through their territories;

4. *Prevention of Inhuman and Degrading Treatment*

All states dealing with migrants and refugees must adhere to their commitments deriving from the ratified international and regional treaties regulating deprivation of liberty as a last resort and forced return, so as to prevent inhuman or degrading treatment of migrants and refugees. Competent Council of Europe and United Nations human rights bodies have urged states to avoid detention of migrants, and refugees Detention of migrant children should be fully eradicated. All cases of physical or other abuse of migrants and refugees must be promptly and fully investigated and the perpetrators brought to justice.

5. *Strengthening integration measures and family unity*

All state authorities should support family unity and develop and implement long-term integration measures, such as educational strategies, labour market policies and social integration measures, with non-discriminatory participation in public and political life.

6. *Promoting and Protecting Economic and Social Rights*

States should ensure migrants' and refugees' effective access to economic and social rights, including adequate shelter, health care, food, water, sanitation, child and family protection, as well as the swiftest possible integration into mainstream education, where relevant.

*Ensuring Safeguards for Vulnerable Groups*

7. All states dealing with migrants and refugees should identify and provide for the particular needs of vulnerable groups in order to safeguard their rights, such as: children (accompanied, separated and unaccompanied); victims of torture, sexual violence or human trafficking; persons at risk of statelessness; LGBTI; traumatized persons; persons with intellectual and/or physical disabilities; and older persons; with due attention to gender-specific aspects of human rights issues arising.

**COMMITMENTS BY OMBUDSMAN / NATIONAL HUMAN RIGHTS INSTITUTIONS <sup>24</sup>**

Having in mind the scope of this situation of urgency, we recognize a need to focus our efforts towards protection and promotion of the rights of migrants and refugees in accordance with international and regional human rights standards. For that purpose the Ombudsman/National Human Rights Institutions commit to:

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<sup>24</sup>These commitments should be understood and implemented only in accordance with whichever mandate(s) Ombudsman/National Human Rights Institutions have in their respective countries

1. Promote the possibility to lodge complaints with the Ombudsman / National Human Rights Institutions, and encourage refugees and migrants to use this opportunity in cases where they believe their rights are violated, and lodge ex officio investigations whenever doubt arises that human rights might not be fully respected.
2. Utilise as much as possible visits and presence on the spot, and other monitoring methods, as one of the important powers available to the Ombudsman / National Human Rights Institutions for the purpose of collecting relevant information and evidence so as to advise on draft legislation and influence change of the existing practices of national authorities as well as for resolving complaints filed by refugees and migrants.
3. Engage in awareness raising and in dissemination of accurate information on the human rights of refugees and migrants, especially in the current context and growing xenophobia.
4. Strongly oppose any public statements of state officials and politicians which constitute or encourage hate speech and discrimination practices, and urge the authorities to take all necessary measures in order to prevent it.
5. Condemn and oppose publicly the violation of migrants' or refugees' rights and encourage the spirit of tolerance and compassion for refugees and migrants, including ensuring their protection in reception centres and other accommodation facilities.
6. Partner with and encourage civil society organisations to cooperate nationally and regionally in order to protect human rights; provide humanitarian assistance; promote understanding of refugees and migrants, including through media; and to engage in intercultural dialogue and joint advocacy activities.
7. Stimulate regional, transnational and global cooperation and action on comprehensive migration policies, insisting that the human rights dimension of this phenomenon must not be overridden by security measures and the protection of borders.
8. Collaborate with relevant international and regional human rights mechanisms, and make appropriate use of support and assistance available.
9. Cooperate regionally, including through relevant regional networks to reinforce our work at both the national and regional level, and also to cooperate cross-regionally, to promote and protect the human rights of migrants and refugees.

## ANNEX 4

The Ombudsman of Catalonia, in the framework of the International Ombudsman Institute, gathered in Barcelona on 26<sup>th</sup> and 27<sup>th</sup>, April 2016 about one hundred European ombudsmen and also from the rest of the world to discuss some of the current human rights challenges and the role of the Ombudsman before these challenges. This event has received the cooperation of La Caixa Foundation and the City Hall of Barcelona. These are the main conclusions.

1. The democratic state and the rule of law must combine security and freedom, which are not antithetical, but complementary. This must be done on the basis of a full enjoyment of rights and assuming that their limitations based on security criteria or other criteria should be interpreted restrictively and external controls independent of the executive should be carried out. In this external control the judiciary plays a crucial role, but also other guarantee institutions such as the ombudsmen.

In this context, during the Seminar we have analysed the threats to rights that are justified on our security: disproportionate punitive responses; suppression of criminal guarantees, contrary to the principles of "a due procedure"; persecution of crime based on ethnic profiling; invasion of privacy through new technologies. In the most extreme cases, creation of legal loopholes and secret prisons, "CIA flights" and greater tolerance of torture and mistreatment of people accused of serious crimes against security, under an unrestricted context of an increase in the powers of the secret services.

Before terrorist attacks like those we have recently experienced, the ombudsmen must defend that criminal laws are sufficient and should be implemented rigorously but also with all guarantees: to perpetrators and accomplices but not against people who share physical appearance, nationality, religion or political affiliation with them. We must also remember that our democratic constitutions recognize absolute rights, which can not be suspended nor restricted under any circumstances, such as the prohibition of torture. And to limit the rights that can be modulated it is necessary to respect strictly formal and material requirements, which in no case should involve emptying them of content. These requirements imply predictability, legality, necessity and proportionality of the measures taken.

To sum up, the European ombudsmen should act as a counterweight to eventual excesses of public power on the basis of full respect of international human rights standards.

2. In our second session, it has been highlighted that migrants and refugees are human beings, not objects nor goods, but full human rights holders. Regardless of the sovereignty of each State regarding the control of migration flows, it should not be forgotten that sovereignty is exercised within the framework of respect for human rights and ratified international treaties, including the Geneva Convention of 1951 and other relevant treaties.

In this context, the ombudsmen believe that it is essential to require the EU and its Member States to have the widest generosity in the admission of refugees, at least in the terms proposed by the European Commission. They should recognize human rights to all refugees, from the moment they apply for that status. This includes: prohibition of mistreatment and collective immediate returns; full and prompt access to health services and others on equal terms; human and respectful treatment by law enforcement agents; strict justification for restrictions on freedom of movement; need for a comprehensive support to migrants and refugees, etc.

Special consideration should be given to the rights of children and adolescents, especially those unaccompanied, in particular with regards to their right to education, medical and psychological care, and family reunification.

In addition, all procedural guarantees for granting asylum and the non-refoulement guarantee should be recognized to refugee applicants. For many of us, the EU agreement with Turkey is reportable, because it is recognized as a "safe" country for refugees, which is far from true for most of them. Finally, governments should promote decisive action against xenophobia and intolerance, which, in line with migration and refugee arrivals, are growing dangerously in Europe.

Therefore we ask the ombudsmen to monitor the respect by the governments of the rights of refugees, both on an individual basis as in the camps where they are grouped. A task that should be carried jointly, as the ombudsmen in Mexico and in Central America do, or the Eastern Balkans since the Belgrade Declaration, or like the network practices of ombudsmen for children, ENOC. With a comprehensive and humane approach.

3. In the XXI century there has been an exponential increase of the Ombudsman institutions and its powers, but this institution has also been put in the crosshairs in the most fragile regimes in democratic terms. These issues have been addressed in the third and fourth sessions of the Seminar.

3.1 The IOI has more partners than ever: state, regional and even local

Ombudsmen. With general and specific powers. And in some cases, new mandates such as the fight against homophobia and transphobia; control of public services or general interest, even if they are provided by private companies; mediation in consumer disputes; prevention of torture and inhuman or degrading treatment of people deprived of liberty; or evaluation of transparency and good democratic governance. In some countries, the Ombudsman gets higher levels of intervention in the legislative process or as a legitimized party in constitutional processes.

But, on the other hand, privatizations and outsourcings are putting fundamental rights in the hands of private companies poorly controlled by the governments.

That is, they are putting the rights on the market.

The glaring inequalities between citizens and service providers of general interest as well as the guarantee of basic supplies should be areas of concern and action of the ombudsmen, which are responsible for defending the basic rights of the most disadvantaged sectors of society.

Also, new powers, through the creation of new institutions or the enlargement of existing functions, have been endowed within a framework of economic and social crisis and austerity policies that have impacted on Europe for almost a decade.

These policies have had a strong impact on social rights, including access to public health systems, social security and pensions, unemployment benefits, etc. All these situations violate the European Social Charter, which is a fundamental instrument that ombudsmen should use in their resolutions and disseminate among public authorities.

3.2 Austerity has also been the alibi in some countries to eliminate or drastically reduce Ombudsman institutions or their resources, limiting their capacity for effective action. A phenomenon that has to be added to the democratic regression of other States, which has also resulted in the rejection of uncomfortable reporting; defamatory statements against office holders; the suppression of Ombudsman institutions and dismissal of uncomfortable office holders. In other contexts, such as the African, threats can reach to life and safety of the ombudsmen and their family.

In the Seminar, therefore, we have recalled that an independent Ombudsman provided with adequate human and material resources is key to the proper functioning of a democratic state. An Ombudsman has the responsibility to be strong and rigorous, and maintain high standards of oversight of public policies with regards to human rights.

It must persevere, cooperate and win the trust of the public. In sum, with these standards, the Ombudsman is the guarantee and proof of the existence of a political system that respects the rule of law and fundamental human rights. Hence our commitment as an international

association of defenders to take joint action in defense of this institution wherever it is threatened.

Barcelona, 27th April 2016

## **ANNEX 5**

The Declaration of Paris, 28<sup>th</sup> June 2016

We, Ombudsmen and Mediators, defenders of the rights of children, gathered in Paris on June 28, 2016 in the framework of the meeting “Children, Europe, Emergency. Protection and the future of migrant children: a challenge for Europe”;

Recalling that the Ombudsmen and Mediators play a crucial role in the protection of human rights and fundamental freedoms, and that they must address the issues of protection of the children rights in accordance with the provisions of the Convention on the Rights of Children (CRC), adopted by the General Assembly of the United Nations with resolution 44/25, dated November 20, 1989, and particularly the principles of the best interests of the child and non-discrimination, the right to life, the right to survival and development, the right to express their opinions freely, and the right to special protection,

Recalling the various works of the Ombudsmen and Mediators, the European Network of Ombudsmen for Children (ENOC), the Association of Mediterranean Ombudsmen (AOM), the Association of Ombudsmen and Mediators of the Francophonie (AOMF), the International Institute of Ombudsmen, but also the works of the European Union and its agencies, the Council of Europe, the recommendations of the United Nations, and considerable experience of the NGOs present on site;

Particularly concerned about the situation of migrant children present in Europe, and especially that of minors unaccompanied or separated who are blocked in Greece after the signing of the EU-Turkey agreement and closing of borders by the Former Yugoslav Republic of Macedonia;

Concerned due to the large gaps in national and local EU policies to take seriously into consideration the needs of the highest interest of these children and to ensure their protection;

Recalling that migrant children are first of all vulnerable children and that it is the responsibility of states, as well as moral and legal responsibility of each of us to protect them from many risks that can be posed to them during their journey of migration, mainly from the risks that can be posed by illegal border crossing, the risk of separation from families, abductions, violence, sexual abuse and traffickers of human beings;

Recalling that respect for the fundamental and inalienable principles and rights pertaining to them should be fully integrated into national policies, as well as in the elaboration and implementation of legislation and national procedures that affect or impact these children, in accordance with the provisions of the Convention for the Rights of Children and its additional protocols, the European Convention on Human Rights, the Charter of Fundamental Rights of the European Union, the Convention of the Council of Europe for the protection of children from exploitation and sexual abuse, as well as any instruments or international or European standard applicable in this field;

Recalling that the guarantee for effective access of child migrants in the entirety of their fundamental rights, without discrimination, is an essential prerequisite for their integration into the host society, and that everywhere consistent policies should be developed in order to enable young people to develop and build their life projects;

Conscious that the response cannot be other than European and international in front of the great expansion of migratory movements and issues in our respective countries;

We, Ombudsmen and Mediators, defenders of the rights of children;

#### **I. Commit:**

1. To develop and disseminate tailored information tools (on the rights and procedures as well as the relevant bodies in each country) for migrant children and the staff working with them. These tools should be accessible to them and translated into many languages.
2. To strengthen cooperation between Ombudsmen and Mediators in the protection and promotion of the rights of migrant children, and to particularly develop the exchange of information for an efficient follow up of children files requiring protection or family reunion, in order to speed up review procedures.
3. To look after the promotion of international and European instruments in the field and cooperation with European and international bodies in our respective countries.
4. To take care for the implementation of this declaration in our respective countries.

#### **II. We immediately ask for the following:**

1. All states and the European Union should develop and facilitate the legal migration ways to avoid the risks that children may face using these illegal migration networks, and particularly should examine the requirements for family reunion.



2. All states and the European Union should establish an adequate and reliable identification and registration system for migrant children on their arrival in Europe and in every stage of their journey through a harmonized collection of basic data (name, name, age, nationality, gender, accompanied or not by a legal representative, entry point).
3. All states, the Council of Europe and the European Union should establish an enhanced cooperation between them in order to ensure an effective follow up of the path of these children and to protect them from extinction, violence, neglect, trafficking or exploitation. To this end, the states should take measures for their protection by building mechanisms for prevention, guidance and follow-up so as to respond to every case of disappearance of migrant children.
4. All states should end any form of detention or isolation of migrant children, whether accompanied or not, and whatever the procedure followed for them.
5. All states should guarantee appropriate reception conditions for migrant children taking into account their basic needs, providing continuous assistance and accompaniment, which aims at the development, protection from any form of danger and violence, taking into account their cultural values. This assistance should mainly include safe accommodation, where to be able to find the security that their vulnerable situation requires.
6. All states, the Council of Europe and the European Union should guarantee all children, from the moment of arrival and during all phases of their migration journey, effective access to all fundamental rights, and in particular, access to care adapted to their physical as well as psychology needs and education, just like all the other children that host countries have in their jurisdiction.
7. All countries necessarily assign a guardian or a legal representative, independent and qualified to effectively protect the interests of unaccompanied or separated children, and this, from the time of their registration by accompanying, advising and representing them at authorities and during procedures affecting them until they join their family or obtain a suitable protection.
8. All public authorities should provide all children, and particularly in the context of all administrative and judicial procedures, with free, specific and complete information on their rights, adapted to the age and language they can understand, with the help of an interpreter.
9. All States should guarantee children the right to be heard on all issues of interest and in particular in any court or administrative proceeding affecting them, in accordance with Article 12 of the Convention on the Rights of Children.

10. All states, the Council of Europe and the European Union should facilitate and fund an appropriate formation for all the personnel related to migrant children (social employees, caregivers, physicians, psychologists, police officers, border guards, judicial authorities, lawyers, professors ...), together with, if necessary, the help of European and international instances, which will enable them to have the required knowledge and tools to respect the fundamental rights of these children, and to understand the specific needs and of the cultural identity of these children.

11. All states and the European Union should facilitate enhanced cooperation in order to facilitate and accelerate the exchange of information, improving in this way the capacity of handling files of child migrants, requests for family reunion or arranging them in order to be quickly offered protection and legal certainty.

12. All states should make more efforts for cooperation and coordination between them and civil society organizations and international organizations on site, in order to determine and identify clearly a chain of responsibilities in terms of reception, assistance and protection of migrant children.

13. All states and the European Union should implement the commitments undertaken so far, particularly the resettlement scheme from which all unaccompanied children should benefit.

14. All states should strengthen the powers and means of action for all institutions protecting the rights of children and, if necessary or when absent, to empower them to handle individual requirements.

15. The Council of Europe, the European Union and the states should adopt a global plan of measures for all migrant children, accompanied or not, in order to ensure, at European and national level, the effectiveness of an approach based on children's rights in all future actions.

16. The European Union should support the states in the establishment of the integrity of mechanisms and measures in order to ensure that migrant children are guaranteed access to all rights. We invite all stakeholders, European organizations and NGOs to distribute and promote this statement.