



# ANNUAL REPORT

## on the activity of the People's Advocate in 2022

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## **FOREWORD BY THE PEOPLE'S ADVOCATE**

As we present to you this Annual Report of the People's Advocate of Albania, even this year we intend to transform this space into an oasis of reflection on the importance of human rights in our society. Albania, like many other countries, remains a society in transition in its arduous journey from totalitarianism to democracy. This transition calls for substantial and comprehensive change in our way of thinking and behaving as a society. While legal reforms move ahead at a satisfactory pace, the approach centred on human rights is not keeping up.

Our still unfinished transition to democracy warrants that we embrace the principles of human rights, listen to one-another and work together towards the common goal.

There is no clearer and more evident proof of the efficiency and functionality of a democracy than the space it gives and the respect it shows to the most disadvantaged and the respect it shows for them. One of the social groups that still does not have its place and role in society are women. As a woman, mother, sister, daughter, leader of the most important human rights institution in the country, I believe that more attention should be paid to issues of effective gender equality. Albania made significant progress in empowering women over the years, thanks in part to the 2008 Law on Gender Equality in Society. It provided a solid legislative framework for equality between women and men, introducing gender quotas in elected and appointed decision-making positions, establishing a gender equality mechanism at the central and local level, and improving the collection of gender disaggregated data. However, the application of this law has not been fully effective due to many factors.

Obviously, the Gender Equality Law suffered these years from the lack of implementation of anti-discrimination provisions, leaving many women to confront discrimination without the legal safeguards they are entitled to.

By this lens, the revision of the Gender Equality Law is a critical step towards achieving gender equality and empowering women in Albania. Fourteen years after its adoption, it is time to reflect on the continued effectiveness of this law in promoting and protecting the rights of all women and girls living in Albania.

The revision of this law is included in the National Strategy for Gender Equality 2021-2030 as a key step in fostering the promotion of an equal and fair gender society. The People's Advocate, standing side by side and interacting with important actors in the fight to advance human rights such as the UN in Albania, which also presented a document with concrete positions and proposals for the new law, hopes that a wide public dialogue is soon launched on the need to further develop gender equality.

Albania should ensure that its domestic legislation on gender equality and non-discrimination is fully aligned to the EU acquis on gender equality.

We must work together to advocate the need for gender quotas in all sectors and to promote the continued representation and participation of women in public life. We also need effective accountability systems for the gender equality mechanism, clear administrative and judicial complaints mechanisms to ensure the enforcement of anti-discriminatory gender measures, systematic links to the National Strategy for Gender Equality and related costs to allow relevant investments.

The People's Advocate is fully committed to supporting this process and accelerating the progress towards the Sustainable Development Goals in Albania. We as an institution, with the support of UN Women, will serve as Femicide Watch Centre as of 2023 and will report yearly on this phenomenon which is unfortunately still a global social scourge.

We must work together as a society to guarantee the respect and protection of human rights, so that democracy grows strong roots in Albania.

Let us work together towards a society where human rights and democracy are not just utopic ideals, but a reality for all Albanians.

## CHAPTER 1

### Legal and institutional framework

The People's Advocate institution operates in accordance with the Constitution and Law "On the People's Advocate", amended (by Law no. 155 dated 27.11.2014) to introduce significant changes in Articles 2 and 29 of the Law that clearly define the People's Advocate as the promoter of the highest standards of human rights and freedoms in Albania. The People's Advocate was vested with a twofold mandate: *to protect and promote human rights*.

National Human Rights Institutions (NHRIs) as bodies mandated by the Constitution and independent from the government and with a wide remit in the area of human rights, are a key player in the protection and promotion of these rights, democracy and rule of law. These institutions work with the government, the parliament, the judiciary, the civil society organizations and human rights advocates. Besides, those are established and operate under the UN Paris Principles and Venice Principles which require NHRIs to play their role independently and promote respect for human rights, democratic principles and the rule of law in all circumstances, including in emergency situations.

Rule of law and human rights are interconnected and mutually complementary principles: a fair regime of rule of law is vital to the protection of human rights and it can be fully fledged only in an environment that protects human rights. Independent and effective operation of NHRIs in any country is an indicator of the rule of law in place. Shortcomings in the independence and formal and functional effectiveness of NHRIs indeed take a toll on their ability to effectively deliver their mandate and play their role as part of the checks and balances that sustain the rule of law.

While the specific mandate of every NHRI may vary, its general role is to promote and protect human rights, including civil, political, economic, social and cultural rights and address discrimination in all its forms. Given the wide remit of their mandate, any NHRI selects the strategic priorities to guide their work based on objective criteria relevant to the national context.

NHRIs are unique regardless of their specific mandate, insofar as their independence, pluralism, accountability and effectiveness are periodically assessed and subject to international accreditation performed by the GANHRI Subcommittee on Accreditation (SCA) supported by the Office of the UN High Commissioner for Human Rights. This international accreditation checks the compliance by each NHRI with the UN Paris Principles and international standards on independent and effective functioning of NHRIs. This accreditation reinforces NHRIs as key interlocutors on the field for the right holders, civil society organizations, State actors and international bodies.

People's Advocate reports directly to the Assembly and the main scope of its mandate includes all human rights and freedoms sanctioned in the Constitution, laws and international legal instruments on human rights and freedoms ratified by the Republic of Albania. This reporting is in view of the accountable information that the People's Advocate must make to enable the Assembly to assess the policies in improving the human rights standards in the country.

The role of the People's Advocate as envisaged in the relevant legislation is to influence directly and indirectly all the decision-making processes in society that affect the freedoms sanctioned in the Constitution and other legislative acts of the Republic of Albania, and the generally recognized principles and norms of international law. This legislation makes the People's Advocate the pivotal national point and the centre of expertise for human rights and freedoms, in close connection and cooperation with all the State structures and civil society.

People's Advocate has its own solid tradition of interacting with citizens. It acts as champion of citizens' rights and mediator between them and the public administration, having the possibility to fulfil its role on promotion of open governance in two ways.

First, through adherence to open government principles itself, proactively, as a constitutional body. This is reflected in its public transparency at the highest level, informing the public of the activities organized and their generated efficiency, and also encouraging constitutional bodies to effectively fulfil their constitutional mandates.

Second, through consistent efforts to create a more cooperative spirit with the decision-maker rather than just criticizing its activity. This spirit is created through recommendations in the formulation of government policies for an *open governance* and the contribution can reach even further by assisting the executive power in rolling out the information campaigns on these strategies and initiatives.

The People's Advocate is increasingly becoming not only a vocal institution but also indispensable for the protection of citizens' rights and the promotion of accountability by government bodies. PA is placing increasing emphasis on exercising its mandate as a vanguard of protecting citizens' rights and promoting accountability by government bodies. This has become more evident considering the need for an open and accountable government.

Acting within the jurisdiction and powers recognized in the Constitution and in its organic law, the People's Advocate through review of complaints seeks to improve the quality of life of Albanian citizens and simultaneously improve governance and *administrative education* of the overall public administration.

There is growing demand by the citizens to have the People's Advocate intervene or

take an institutional position regarding matters of high public interest. This is a responsibility that the People's Advocate seeks to exercise and deliver in accordance with its constitutional mandate - despite its limited capacities.

In conclusion, it is worth noting the Recommendation adopted by the Committee of Ministers of the Council of Europe on the *development and strengthening of National Human Rights Institutions (NHRIs)*. The Committee of Ministers recommends that the CoE Member States establish, maintain and strengthen an independent NHRI in accordance with the Paris Principles, ensure a conducive environment and co-operate with them.

The Recommendation also encourages the CoE Member States to explore ways of developing a stronger role and meaningful participation of NHRIs and European Network of National Human Rights Institutions (ENNHRI) in the Council of Europe. This recommendation represents an instrument that introduced new standards and encourages good practices by acknowledging the role of NHRIs and also civil society organizations and human rights activists.

## **CHAPTER 2**

### **Implementation of the Assembly Resolution for 2021 by the People's Advocate**

In the context of evaluation of the activity of the People's Advocate for 2021, the Assembly of Albania adopted the relevant Resolution on 21.7.2022 in which it recommended *inter alia* to the People's Advocate to take a series of measures related to the exercise of its constitutional and legal functions.

Pursuant to this Resolution, the People's Advocate took the following actions during the period July-December 2022 based on its mandate as the highest national institution for the promotion, prevention of violations and protection of human rights:

#### **1. Intensify institutional response with added public visibility for recommendations that are not implemented or for public authorities that do not cooperate, in order to foster public trust in this constitutional institution.**

The recommendation implementation rate by the public administration institutions persists to be a concern for the People's Advocate. Besides the positive steps and initiatives over the years, much remains to be done in this direction, and not only, by the public administration at central and local level (particularly in terms of implementation of recommendations), and also by the Assembly of Albania as the legislative body where the reports compiled by the People's Advocate are presented and discussed.

This is the reason why the People's Advocate constantly monitors the implementation



rate of the recommendations addressed to the public administration bodies through updated information that becomes part of the periodic and annual reports.

A new section is introduced on the official website containing the unaddressed recommendations, the competent institutions and those that failed to reply concerning the recommendations sent to them by the People's Advocate. This ensures access and visibility to any citizen or interested entity, respecting the rules of transparency and personal data protection.<sup>1</sup>

## **2. Inform the Assembly of the institutions that fail to respond to addressed recommendations and include those institutions in the annual and periodic reports.**

As you are aware, in implementation of the Assembly's Decision no. 134/2018, "On the approval of the Manual for Annual and Periodic Monitoring", the People's Advocate has periodically informed (in electronic and written form) the Assembly of Albania on the recommendations that it has addressed to public institutions, and on the status of their implementation.

Also, based on the Assembly's Decision no. 49/2017 "On the establishment of the Mechanism for the systematic monitoring of the follow-up and implementation of the recommendations by independent constitutional institutions and those established by law", the People's Advocate has respected the obligation to periodically post on the interinstitutional platform all the recommendations addressed to public administration institutions, the status of their implementation and the competent institutions.

Based on this Resolution, the People's Advocate has sent the Assembly detailed information (16 November 2022) concerning the institutions that fail to respond to the recommendations addressed to them. Also, the People's Advocate will include this updated information even in the annual or periodic reports.

## **3. Intensify info sessions across 9-year and high schools across the country, intended to improve the students' knowledge of their fundamental rights and the People's Advocate efforts in protecting those rights, in order to increase the number of complaints /requests coming directly from children.**

During the period January-December 2022, the People's Advocate organized 40 *Open Days* with the participation of students, teachers and parents across the country, specifically in Tirana (e.g., 9-year schools "Ali Demi", "Skënder Çaçi", "Niket Dardani", "Hasan Prishtina", "Tirana jonë" and "Faik Konica", the general high school "Ismail Qemali", etc.) and in 9-year schools in Durrës, Shijak, Vorë, Krujë, Elbasan, Kamëz, Krrabë, Paskuqan, etc.

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<sup>1</sup>See the link for more information:  
<https://www.avokatipopullit.gov.al/media/manager/website/media/Regjistri%20i%20insittucioneve%20qe%20nuk%20kan%20kthyer%20pergjigje%20si%20dhe%20nuk%20kane%20zbatuar%20rekomandimet%20e%20AP.pdf>.

The aim of these promotion events was to improve the knowledge of students and teachers about the children's rights sanctioned in the Constitution, in the UN Convention on the Rights of the Child (CRC) and in the Law no. 18/2017 "On the rights and protection of children". Besides, during these promotional events, the Commissioner and the SPPCR informed the students and teachers about the People's Advocate work and role in protecting, monitoring and promoting the rights of children and youth under 18 years old in the Republic of Albania.

For this purpose, brochures and other information materials on the rights of children and the People's Advocate efforts in protecting them were distributed in schools. During promotion, we paid particular importance to the consultation with children and listening to their opinions on issues that affect their rights and well-being. In addition, we had the chance during these events to collect complaints directly from children or teachers which resulted in an increased number of complaints handled by SPPCR.

As a member of the European Network of Ombudspersons for Children (ENOC), the People's Advocate through SPPCR participated in the ENOC Annual Conference on *19-21 September* and presented the People's Advocate efforts in protecting and promoting the rights of children in Albania. During the proceedings of this Conference, we supported the implementation of the provisions sanctioned in the Convention on the Rights of the Child concerning the right to a healthy environment (Article 24).

#### **4. Continue with the inspections/monitoring by the Section for Protection and Promotion of Children's Rights and increase the number of recommendations from this Section with the aim to protect the rights of children.**

Ten *inspections/monitoring visits* were organized during January-December 2022 (besides the open days reported above) after which *30 recommendations* were addressed to public administration bodies to guarantee and protect the rights of children and three special reports<sup>2</sup> were presented. From the official communication and monitoring of their implementation, we inform that the recommendations addressed by the Section for Protection and Promotion of Children's Rights were accepted by the competent institutions which took measures to implement them.

By the financial support of UNICEF, the People's Advocate through its Section for Protection and Promotion of Children's Rights monitored the child protection system and their rights in the seven municipalities most affected by the earthquake of 26 November 2019, namely Shijak, Durrës, Krujë, Tiranë, Kamëz, Kurbin and Lezhë.<sup>3</sup>

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<sup>2</sup> Special reports: "Child support policies, food obligation for children", "Impact assessment on the rights of children during COVID-19", and "Impact assessment on the rights of children from climate change".

<sup>3</sup> Post-Disaster Needs Assessment, Volume A, the Government of Albania, the European Union, the United Nations agencies, and the World Bank 2020

In conclusion of the monitoring/inspection visits, the People's Advocate addressed the relevant recommendations to these seven municipalities and the public administration bodies at central level (Ministry of State and Reconstruction, Ministry of Finance and Economy, Ministry of Health and Social Protection, National Agency for Territory Planning, National Agency for Civil Protection, General Directorate for Civil Status, Regional Directorate for Pre-University Education) based on the identified issues concerning the protection of children during the earthquake period and the civil emergency situation.

By the support of the organization *Save the Children*, on 19 July 2022, we launched the impact assessment report on how rights of children in Albania are affected by climate change. This report assessed and analysed the impact that climate change protection policies have on children, both on their life and health and from the perspective of their participation in decision-making and consultation processes.

On 18 November 2022, on the occasion of the World's Children's Rights Day (20 November), the People's Advocate with the support of UNICEF organized the promotional event to launch the special report "Children's Rights Impact Assessment (CRIA-Covid-19)".

In addition, the People's Advocate organized the round table *"Engaging the Survivors of Sexual Violence and Trafficking in Improving the Justice System"* on 23 December 2022 in cooperation with the organization "Different and Equal". This is a new working approach in the context of strengthening our cooperation with the civil society that for the first time led to the establishment of the Advisory Panel of Survivors of Sexual Violence at our institution.

## **5. Enhance the awareness-raising and information efforts in the regional offices in order to promote and encourage respect for rights, freedoms and legitimate interests of individuals and promote their protection mechanisms.**

Given that the National Human Rights Institutions are conceived and act as leading institutions in the promotion and protection of human rights, the issues related to the promotion, information and awareness-raising on human rights and the PA role are part of the People's Advocate mandate, based particularly on international human rights standards.

Our regional offices have continued to strengthen the appreciable presence of the People's Advocate closer to the citizens in these regions, through continuous work of its representatives on the ground, providing citizens with the necessary information on the PA role and functions, receiving complaints and forwarding them promptly to the sections to be examined by the experts, and responding to citizens within the shortest time possible. Their presence in those regions has not only bridged the distance, but also brought the People's Advocate closer to the citizens.

The promotional campaigns and field work of regional representatives comprised an

important part of their daily work, aiming to further increase and strengthen citizens' trust in the People's Advocate not only as a goal to be achieved, but also as satisfaction and responsibility. The field work relies on preliminary planning for each representative, by drafting and implementing monthly plans that identify the activity and the issues identified.

The regional offices of the People's Advocate have proven to be very effective and have met the People's Advocate expectations; these promote this institution and the protection of human rights in all the geographical areas where these offices operate. The constantly increasing number of complaints is the indicator showing the effectiveness of the PA regional offices and consequently the increased public trust in these offices.

The People's Advocate pays particular importance to the capacity building of local staff to be proactive and deliver services. For this purpose, the organized training events, seminars, participation in conferences have built professional capacities, improved performance and ethics and service quality delivery to citizens. We maintain sustained and consistent communication with citizens about the scope of their complaints and guide them of paths/channels to follow so that their rights are reinstated.

The PA regional offices continuously organize activities to promote the PA mandate as a key promoter of citizens' rights and PA role, specifically:

- ✓ meetings and participation in various activities with representatives of civil society organizations at central level, including representatives of associations of Egyptian and Roma communities, disability rights associations, organizations promoting women's rights, etc.;
- ✓ promotional events and open days at municipalities and administrative units in regions where they distributed *inter alia* particular leaflets that the People's Advocate prepared on the rights of citizens;
- ✓ active representation in print and audio-visual media at local level to promote the regional office(s) and the PA mandate;
- ✓ promote the activity of regional offices on social media.

Some specific events intended to promote the regional offices and the People's Advocate are listed below:

- ✓ Organization of open days and meetings with representatives of various organizations at local level in the regions of Berat, Gjirokastrë, Vlorë, Kukës, Shkodër, etc. and in their administrative units;
- ✓ Participation in the event organized by Berat Municipality in partnership with UNDP-Albania on the International Roma Day;
- ✓ Participation in the meetings with the Members of the Municipal Task Force ROMACTED in the Pogradec and Vlorë Municipalities;

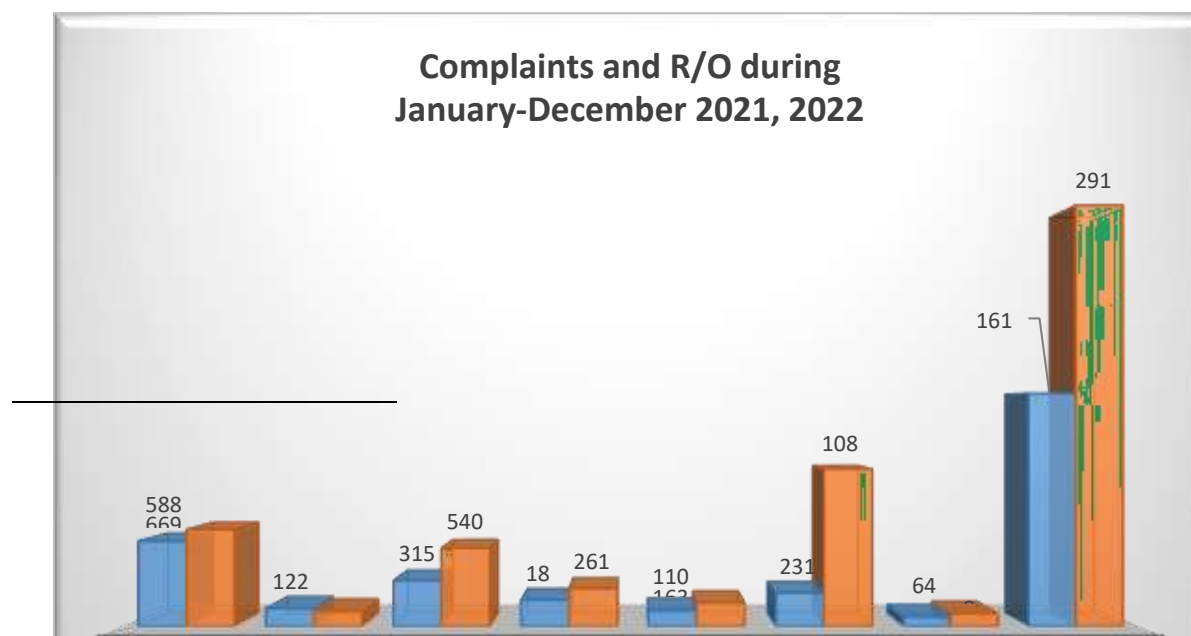
- ✓ Participation in the event organized by the Center for Rights to Labour;
- ✓ Participation in the event organized by Shkodër Municipality in the framework of the International Day for Street Children;
- ✓ Participation in fairs and various initiatives in the regions of the Republic of Albania;
- ✓ Participation in the meeting organized in Vlorë by the organization "Social Justice" on the possibility to obtain primary and secondary legal aid, with members of Roma and Egyptian communities;
- ✓ Participation in various activities organized by Youth Centers, etc.

Furthermore, it must be highlighted that the representatives of regional offices are employees hired on temporary contracts (6 hours a day). It is indispensable that they become part of the structure and organizational set-up of the People's Advocate and work full time. This recommendation was highlighted even by the GANHRI (Global Alliance for Human Rights) Subcommittee on Accreditation when it awarded "A" status to the People's Advocate (December 2020).<sup>4</sup>

Below is a comparative view of the complaints received by the Local Offices during 2022 and 2021.

Total complaints + R/O		RO Sarandë	RO Dropull	RO Berat	RO Vlorë	RO Kukës	RO Pogradec	RO Shkodër	TOTAL
	2021	588	122	315	180	110	231	64	1610
	2022	<b>669</b>	<b>104</b>	<b>540</b>	<b>261</b>	<b>163</b>	<b>1086</b>	<b>88</b>	2911
Change		14%	-15%	71%	45%	48%	370%	38%	81%

Below is the graphic representation of the figures above:



## 6. Engage in the preparation of an action plan for information on and promotion of protection mechanisms dedicated to rights and freedoms, with particular focus on citizens from vulnerable and marginalized groups of society.

In exercising its constitutional mandate for the promotion, protection and prevention of violation of the legal individual rights and freedoms, the General Section designed an action plan<sup>5</sup> with the aim of informing and raising awareness about the human rights protection mechanisms, with a special focus on citizens who are part of the vulnerable and marginalized groups of society.

This action plan defines measures/activities intended to improve the citizens' knowledge of their fundamental rights, their access to information and access to the People's Advocate, including persons from remote areas, persons without internet access, the elderly and persons with other challenges to access, as well as to raise awareness on the role and mission of the People's Advocate and enhance its visibility and confidence in it.

In this view, the People's Advocate organized activities during this year such as *Open Days* in the Municipalities of Dropull, Gjirokastrë, Pogradec, Pustec, Korçë, Berat, Vlorë, Përmet, Kolonjë, Kukës, Has, Shkodër, Malësi e Madhe and Lezhë, in order to meet the citizens and obtain their complains near their residences, hold awareness-raising sessions on the People's Advocate role as guardian of human rights and freedoms, and inform them on the rights they enjoy.

Aiming to enhance cooperation and consolidation of efforts in the protection and promotion of human rights, round tables and meetings were organized in these cities with the organizations that protect the groups in need and representatives of State institutions (central and local) that provide services to citizens.

The citizens, civil society organizations and State administration employees attending these meetings were distributed brochures and other information materials on the work of the People's Advocate in protecting and promoting the rights of vulnerable groups in Albania.

Discussion meetings were organized with students and professors at the University "Fan. S. Noli" in Korçë and the University "Eqrem Çabej" in Gjirokastrë. These meetings were intended to have a more in-depth perspective of the issues concerning the higher education and to strengthen cooperation in addressing these issues to the competent bodies.

The audience had the chance to obtain extensive information on the PA role and

<sup>5</sup> Action Plan is attached to this information.

functions, how it handles the complaints filed by the citizens and how the citizens can access this institution, as an instrument to reinstate the violated rights and freedoms. Concerns for students were discussed at these meetings, such as tuition fees, accommodation in dormitories, conditions and infrastructure, quality of academic teaching, etc.

In order to improve the living conditions of vulnerable groups and individuals, including persons with disabilities, the elderly, the victims of sexual and gender-based violence and to ensure respect and implementation of the social services standards at the Social Care Institutions, residential and ambulatory centres, the People's Advocate conducted inspections in Residential Development Centres<sup>6</sup>, in the Daily Centres for the Elderly<sup>7</sup> and in the Centres for Victims of Violence<sup>8</sup>. During the inspections, discussion meetings were organized at these centres with the managers, staff and beneficiaries who attend and/or are accommodated in these institutions.

Following the inspections, the People's Advocate drafted and sent recommendations to the competent authorities in order to guarantee the rights of beneficiaries to quality services in line with social services standards in the Social Care Institutions. These recommendations were sent to the Ministry of Health and Social Protection, Mayors, Regional Councils, State Social Service, State Inspectorate of Labour and Social Services.

After these organized meetings, the representatives of our institutions gave interviews to the local media to inform and further raise-awareness among citizens to address the problems they encounter with the State institutions.<sup>9</sup>

These activities also sought to consolidate public access to the People's Advocate in the context of enhancing its credibility.

## **7. Continue cooperation with the Commission for Protection from Discrimination through concrete projects to coordinate and joint efforts aiming to raise awareness on protection from and prevention of violations.**

As we have previously informed, the cooperation of the People's Advocate with the Commissioner for Protection from Discrimination has been fruitful and involved all those sensitive topics that both institutions may address in the context of respecting the

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<sup>6</sup> Development Center in Korçë, on 13.04.2022.

Development Center "I am like You" in Berat, on 21.09.2022.

<sup>7</sup> Daily Social Center "Joint Home" in Berat, on 22.09.2022.

Daily Center for the Elderly in Kukës, on 07.10.2022.

<sup>8</sup> Emergency Center for abused women and girls, in Kukës, on 07.10.2022.

Psycho-social Center "Vatra" in Vlora, on 29.09.2022.

Emergency Center for Victims of Domestic Violence in Saranda, on 19.08.2022.

Emergency Center for Victims of Domestic Violence in Pogradec, on 17.08.2022.

Crisis Management Center for Cases of Sexual Violence, LILIUM Center, on 11.08.2022.

National Center for Treatment of Victims of Domestic Violence, on 04.08.2022.

<sup>9</sup> Links of interviews:

<https://youtu.be/Tp5XNXmGZDs>

<https://www.facebook.com/watch/?v=862012841483149>

<https://www.youtube.com/watch?v=8oHE5EsXz04>

<https://www.facebook.com/watch/?v=418214030385078>

right to equality before the law and fight against discrimination of any form. Besides, this cooperation has been synergic in the organization of joint work at the regional offices set up by the People's Advocate and the Commissioner for Protection from Discrimination in various cities.

Precisely to keep on with the consolidation of this institutional approach, the People's Advocate and the Commissioner for Protection from Discrimination continued to deliver joint training events in various fields of law even during 2022, intended to build staff capacities at the regional offices of the People's Advocate and CPD, strengthen cooperation between them and improve the quality of services provided to citizens.

As a follow-up to the training cycle delivered before, *on 30.06.2022*, the People's Advocate in cooperation with CPD organized the online training on the topic "*People's Advocate and its role in protecting the rights of Persons with Disabilities*". This training event sought to build the capacity of staff in the Regional Offices of both institutions in the field of protection of the rights of persons with disabilities, and to strengthen cooperation between them.

Based on the agreement and training events delivered during the reporting period, the regional offices of the People's Advocate referred *11 cases* to the representatives of the CPD regional offices and the same number was referred by the CMD regional offices to those of the People's Advocate.

Two special reports were drafted in cooperation with the Commissioner for Protection from Discrimination during this period, on the topics "*Violence against women in politics*" and "*Assessment on access and household use of social transfers*" which were sent for information to the Assembly of Albania by end-December 2022.

As we have previously informed, both institutions continue to play an active role under the Cooperation Agreement for the establishment of the *No Hate Alliance* whose aim is to engage the main actors involved in prevention of hate speech in order to coordinate and join efforts to raise awareness and advocate as a single front against this phenomenon.

In this context, *No Hate Alliance* held an event at Elbasan University on *28 February 2022* on the occasion of the 12th anniversary of the adoption of the law on protection from discrimination, attended by the Head of the People's Advocate Ms. Erinda Ballanca and the Commissioner for Protection from Discrimination, Mr. Robert Gajdja.

### **CHAPTER 3**

#### **Evaluation of the situation of human rights observance by the public administration**



### 3.1 Summary of the activity of the PA Sections during 2022

#### ➤ *Special Section*

The Special Section as part of the People's Advocate institution focused dynamically on some issues related to the guaranteeing and protection of fundamental rights and freedoms of citizens from actions or omissions of law enforcement bodies.

During 2022, in the cases (complaints and *ex officio* cases) that we completed the administrative investigation and proved that the citizens' complaints were founded, *41 recommendations* were issued from which 92 addressed to law enforcement bodies of the public administration and 14 to the attention of other bodies, in a total of *113 sub-recommendation points* to be implemented by them.

*Rights of imprisoned persons* have been at the focus of our work because of their isolation from the rest of society. Some complaints or concerns addressed by them to the People's Advocate involve: the right to employment and remuneration for work performed; health treatment particularly for prisoners with chronic illness; transfer procedures; the right to continue the high and higher education while serving the sentence; the right to information, etc. Pursuant to Law no. 81/2020, one of the important legal acts adopted during 2022 that determined the rules to guarantee the rights of prisoners is the General Regulation of Prisons. We note that the bulk of our opinions and suggestions were reflected in this by-law.

Also, the administrative investigation of *complaints from penitentiary administration employees* was at the focus of our work, because those are closely linked to the service these employees provide to prisoners. Problems in the penitentiary system cannot be addressed without taking into account the difficulties posed on those in direct contact with persons deprived of freedom, those who contribute daily to the management of prisons.

The scope of complaints and *ex officio* cases managed by the People's Advocate *against the structures of the Ministry of Interior and State Police* has been diverse; the conclusion for some of them was that the fundamental rights were not respected and PA sent the relevant recommendations. Amongst them, there are cases of illegal take-ins or holding citizens beyond the time necessary to verify them; inaccurate time noted down in the registry for the arrest in *flagrantia delicto* of the correct time that the persons suspected of a criminal offence; failure by police to notify the family members of persons taken in, or not letting them communicate with their families on their own phone; police actions not reflected in the minutes, or failure to provide a copy of minutes; illegal arrests or detentions; unethical behaviour by police officers when approaching citizens; unlawful administrative sanctions imposed by Traffic Police officers; violation of the right to enrolment and education at the Security

Academy; violation of the rights of foreigners in Albania, such as refusal to enter our country or refusal to issue a stay permit to them; detention in the closed centre without first applying the alternative measures; detention beyond the legal time-limit; violation of the legal rights of State Police officers because they are not paid the overtime hours, allowances and transfers, etc.

Functioning of the *justice system* at all levels continued to demonstrate difficulties throughout 2022. The effects of the judicial reform increased the workload even this year, attributed to vacancies due to the dismissal of a significant number of judges and their non-replacement. In some cases, handled by us, PA noted procrastination of court proceedings, late reasoning of decisions, postponed adjudication of new cases, etc.

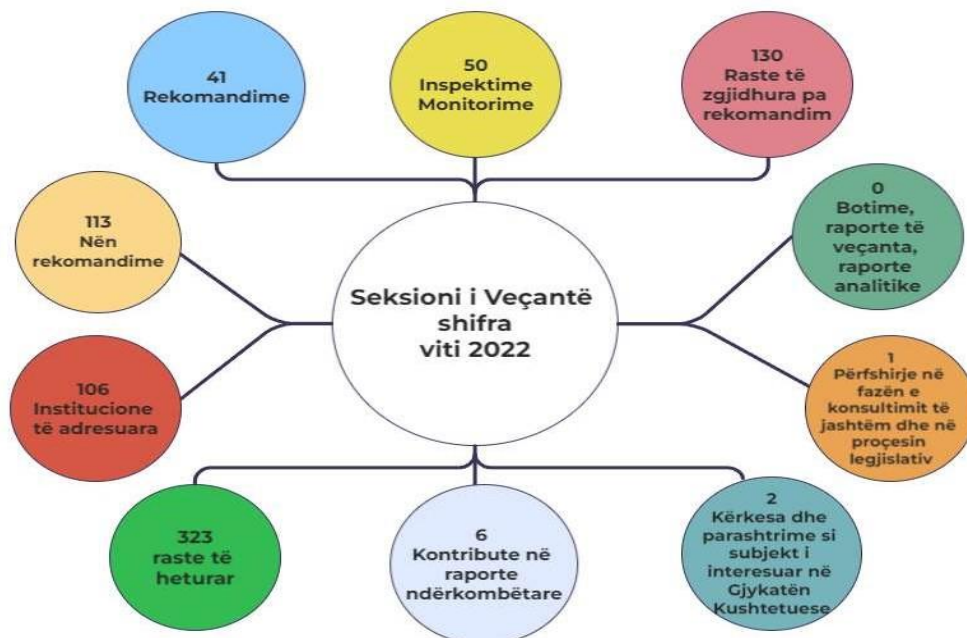
In exercising its constitutional and legal powers for the protection of the rights, freedoms and legitimate interests of citizens, the People's Advocate closely followed the discussions and public debates on the *new judicial map* proposed by the High Judicial Council and the Ministry of Justice. The People's Advocate considers that this proposal does not improve access to justice for citizens, especially for vulnerable groups, so PA recommended to the competent bodies to revisit the proposed judicial map in the framework of the right to fair trial – but our recommendations were not accepted.

The People's Advocate considers that upon the adoption of the new judicial map, the Ministry of Justice must necessarily set these objectives in order to guarantee access to justice for citizens: increase the number of primary *legal aid service* provision centres and ensure strict implementation of judicial orders by Bar Chambers for provision of secondary legal aid. This holds true particularly for vulnerable groups who will incur added costs in attending court hearings and fully enjoy their legal and constitutional rights.

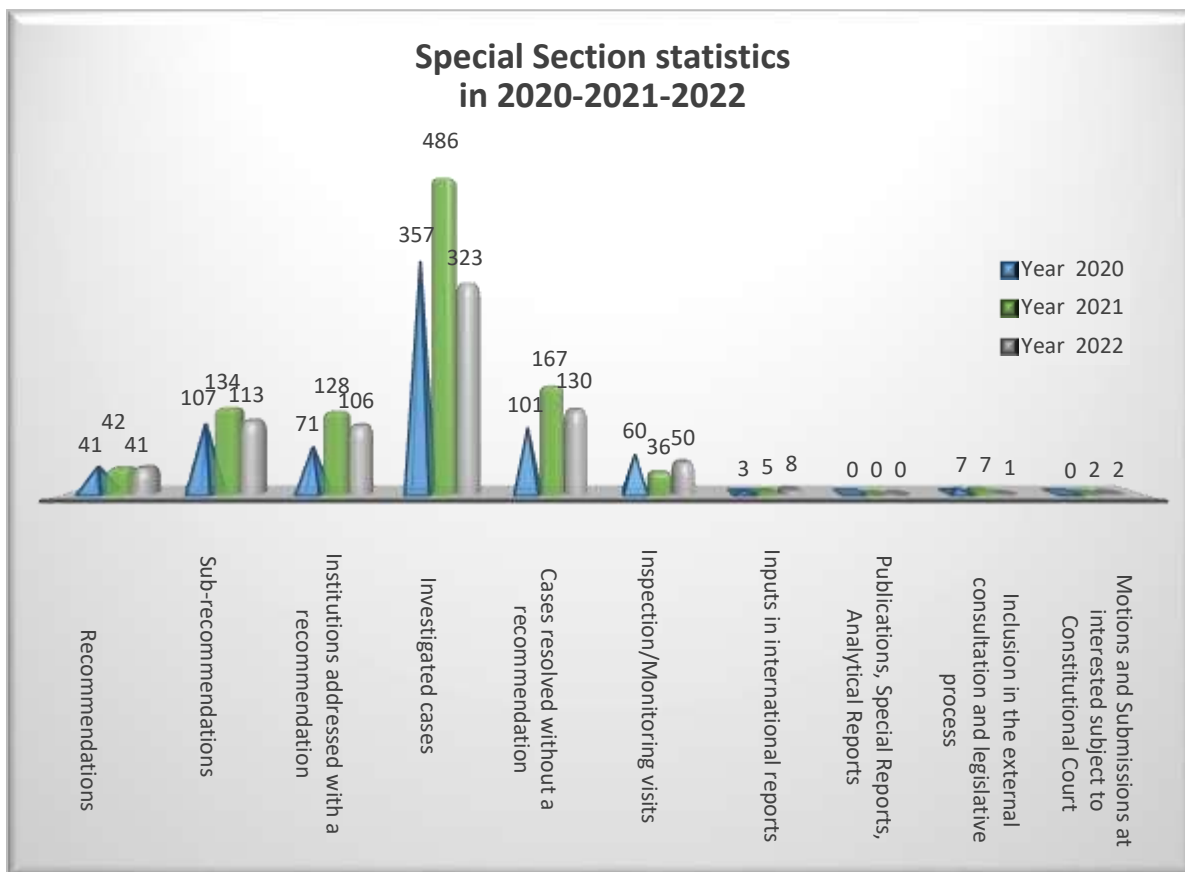
We paid extra attention to the verification of citizens' issues and complaints against the *prosecution service* such as: unjustified procrastination of criminal investigations; problems in the application of procedural provisions for the rights of parties to criminal proceedings, namely failure to give access to the acts and evidence (casefile) underlying the criminal charges; failed or delayed notification of the prosecution office's decisions to the parties, mainly to the person reporting a criminal offence, particularly in cases where the decision is to terminate criminal proceedings; failure to provide information about the status of a filed criminal report; delayed notification of the parties to criminal proceedings, etc. Also, we noticed that the prosecution offices registered the criminal reports filed by suspects for alleged physical ill-treatment by the State Police officers during apprehension, take in to the police premises or during obtainment of their statement. In the course of the investigative actions, criminal proceedings were joined into a single one and the investigation was handled by the same prosecutor, a problem that has been addressed and triggered several

recommendations sent to the respective prosecution offices.

We have paid particular importance not only to the payment of compensation instalments to *former political prisoners and their heirs*, but we also extensively raised



the need for legal changes and the adoption of by-laws to introduce additional rights that this category must enjoy. Also, based on concerns raised at roundtables discussing transitional justice issues and rights of persons persecuted by the communist regime, we sent a recommendation to encourage cooperation among the competent structures for the identification and preservation of the burial sites of persons disappeared during the communist regime, and to refrain from giving permits for use, exploitation and construction of various objects on those locations and sites.



➤ *National Mechanism for Prevention of Torture (NPM)*

The National Mechanism for Prevention of Torture conducted inspection visits in penitentiary institutions without prior notice, in *26 prisons, 36 police units, 3 centres, 3 psychiatric hospital and 4 elderly homes*.

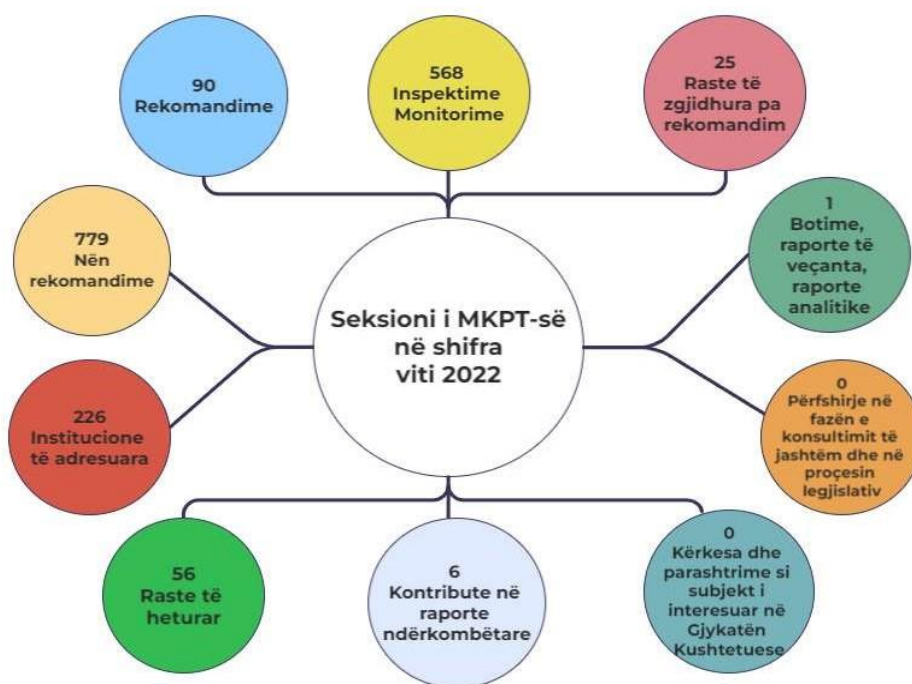
The entire activity above resulted in *90 recommendations* and intensive official correspondence to clarify many details and phenomena noticed during the inspections. The purpose of these visits and inspections was to assess the progress made by competent authorities in implementing the NPM recommendations and observance of the rights of prisoners and persons deprived of freedom, as these rights are guaranteed by the international acts and domestic legislation. Besides this, NPM paid importance to the promotion of human rights in cooperation with the Prison Administration and the State Police.

NPM handled *31 complaints and 14 ex officio cases*, specifically 25 complaints against prisons (alleged violence, lack of medical treatment and medicaments, lacking living conditions, overpopulation in prisons, etc.) and 6 complaints against police (alleged violence, unfair take-in, etc.), whose administrative investigation resulted in *10 recommendations* sent to the relevant institutions.

During the reporting period, NPM published *1 special report*, specifically the People's Advocate Report on the implementation of recommendations to Albania made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) that was addressed to the Assembly of the Republic of Albania.

NPM in cooperation with the Border Police and Migration Directorate and FRONTEX continued to monitor constantly the voluntary and forced repatriation of Albanian citizens from EU countries and Schengen area, in order to duly transfer them under a repatriation decision from the territories of the EU member states, resulting in 33 repatriation operations in 2022.

Implementation of the Cooperation Agreement signed with UNHCR in the context of the joint project *Refugees and Asylum-seekers in SEE countries* continued smoothly during 2022. It focuses on border control and protection of refugees in the south of Albania, (Gjirokastrë, Sarandë, Përmet) and southeast (Korçë, Devoll Bilisht), as there was presence of refugees in the border points of Kapshtica (Korçë) and Gërhot (Gjirokastrë). In this regard, PA is drawing up a Monitoring Report *On observance of rights and freedoms of irregular migrants, refugees and asylum-seekers in Albania for 2022* based on the NPM findings from periodic inspections in the Temporary Reception and Accommodation Centres for Irregular Migrants in Kapshticë, Korçë and Gërhot, Gjirokastrë and the constant monitoring by two PA external experts for border and refugees in these two areas.



#### ➤ Administration Section

The Administration Section focused its efforts even in 2022 on monitoring some of the most important fundamental human rights guaranteed and enshrined in the Constitution of the Republic of Albania and in the European Convention on Human Rights and its additional protocols.

For complaints and *ex officio* cases for which whose administrative investigation proved that the citizens' complaints were fair, the PA compiled 37 recommendations and

addressed them to 80 public administration bodies, with a total of 79 *sub-recommendations/points* to be implemented by them.

*Property rights* persistently remain a major setback to the overall economic development of Albania. The real estate market has to constantly cope with multiple challenges that predominantly stem from the lack of a clear and functional system for the management of property rights. Correct specification of property rights and well-documented registration of immovable property are paramount to the long-term design and improvement of urban planning and infrastructure upgrade, providing the necessary room for the implementation of government reforms.

The property management system, in order to be efficient, must guarantee ownership and possession of property by the legitimate owners and serve the enhanced sustainability of the immovable property sector, reduction of land disputes, facilitation of real estate transactions and improved good governance. The chaotic reality of immovable property in the country and the property rights concerns voiced by stakeholders have reinforced attention on the importance of the effectiveness of reforms and on the efficiency of State agencies dealing with these issues.

*Execution of final decisions* rendered by courts is considered an integral part of the fair trial and the State has the obligation to organize an effective execution system both in law and in practice, ensuring that court decisions are executed without undue delays.

*The right to fair trial/due process of law* is enshrined in Article 42 of the Constitution and in Article 6 of the European Convention on Human Rights. An important element of fair trial is also the execution of final court decisions. For this, it must be noted that the operative clause of the decision must be clear and comprehensible to the bailiff or other bodies entrusted with its execution.

So, the aim is to have a system in place that ensures easy execution and avoids generation of conflicts even during this phase. On the same note, the European Court on Human Rights has consolidated the position in its case-law that the execution of a court decision is an integral part of the notion of fair trial, sanctioned in Article 6 of the Convention. This was elaborated at best in the case *Hornsby v. Greece*.

Article 6 of the Convention is about a fair trial, i.e., equality among the parties and of the means available to them, a tribunal established by law that is independent and impartial, the right to a lawyer, even *ex officio*, or to defend oneself, expedited and public trial, presentation of evidence and witnesses, right to interpretation in the preferred language, and other elements considered as components of Article 6. However, there is nothing about the execution of court decisions as a separate element of fair trial.

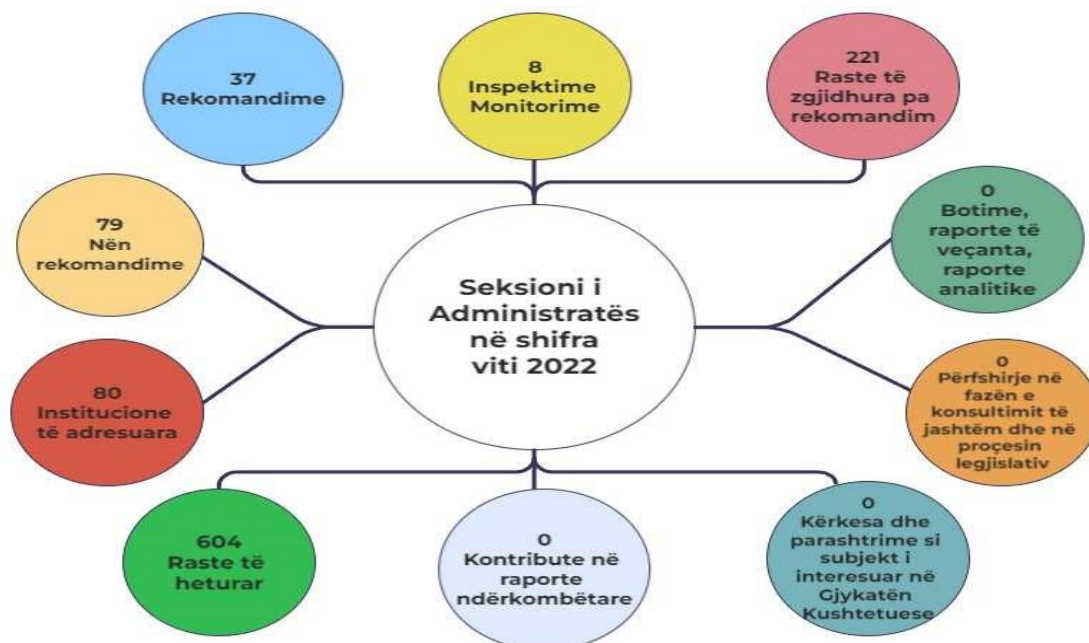
*Right to housing and shelter* as one of the acute social issues continued to be at the focus of the Administration Section throughout 2022. Having analysed the social programmes, the main issue is the lack of transparency in legal procedures for services provided by the municipality in the *context of its social policies* to the categories in need, such as:

- for inadequate living conditions in dwellings;
- need for immediate reconstruction;
- floods;
- problems following expropriations in the context of the reconstruction programme and in line with the Normative Act no. 9 dated 16.12.2019 "*On copying with consequences of natural disasters*", such as delays in the examination of files and lack of transparency in making decisions then passed to LGU bodies for collegial approval, etc.

This right has been dealt with in its complexity by this Section also following the complaints/*ex officio* cases from citizens affected by the November 2019 earthquake for issues not resolved by the competent authorities; these issues entail property rights and expropriation of individual dwellings for public interest and social housing.

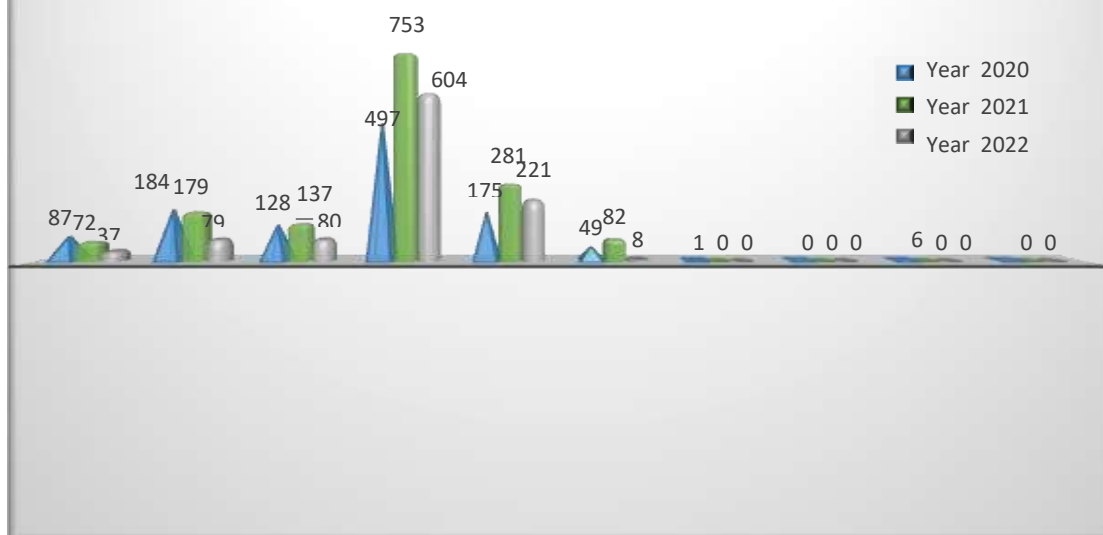
*Regulation of labour relations* and the right to a due process of law in administrative procedures are key issues handled by the Administration Section in its examination of the complaints /requests concerning dismissals, release from duty, transfers and appointments in State administration, filed by persons who enjoy the civil servant status or not. Also, the Section drew and addressed the relevant recommendations for cases deriving from labour relations, both at central and local level.

*Consumer protection* is another field of law where the Administration Section played proactive role in official meetings with executives of OSHEE (Power Corporation) and UKT (Water Utility) on problems reported. The Section carefully analysed the explanations and documentation provided by the institutions and often concluded that there is room to improve the procedure and possibility to reinstate the infringed rights.





### Administration Section figures in 2020-2021-2022



#### ➤ *Section for Protection and Promotion of Children's Rights*

Even in 2022, guaranteeing the respect of children's rights in the context of the special State protection that children enjoy, and the principle of the best interest of the child, have been the focus of the activity of the Section for the Protection and Promotion of Children's Rights, within the constitutional and legal mandate of the People's Advocate, in handling every case. Participation of children in our activities in educational institutions, but not only, has enabled them to express themselves freely on issues that concern them in accordance with their age and maturity, and it has enabled us to listen to their views and opinions.

This has improved the results of our work, reflected in the continuous increase of the number of complaints addressed by children directly to the People's Advocate. We believe and hope that this work practice will also be used by other State administration bodies, as an added value that guarantees the child's right to participation. More promotional activities with and for children were performed in order to educate and raise awareness of their rights.

In the case registration system there are 223 *cases, complaints, requests, ex officio cases* with the scope of children's rights handled, of which 79 *ex officio cases*. Even during this year, the institution built on its goal to increase the number of complaints and requests coming directly from children reaching 92 during 2022.

Handling of cases with public administration bodies indicate that issues affect a significant number of children. Participation, listening to and respecting the child's opinion also makes it possible to realize the other rights of the child.

Regarding the measures taken during the Covid-19 pandemic, the Section for the Protection and Promotion of Children's Rights highlighted the normative acts issued to cope with the situation<sup>10</sup> and evaluated how the restrictive measures impacted the children and youth in these three aspects:

- ✓ *right and access to education;*

<sup>10</sup> Based on the study of the member institutions of ENOC with the financial support of UNICEF. This report started in 2021 and was published in 2022.



- ✓ *right and access to social protection care;*
- ✓ *rights of children in conflict with the law.*

At the end of this evaluation, all the PA findings and recommendations were presented during 2022 to the relevant State administration bodies at the central and local level, so that they take measures for the future.

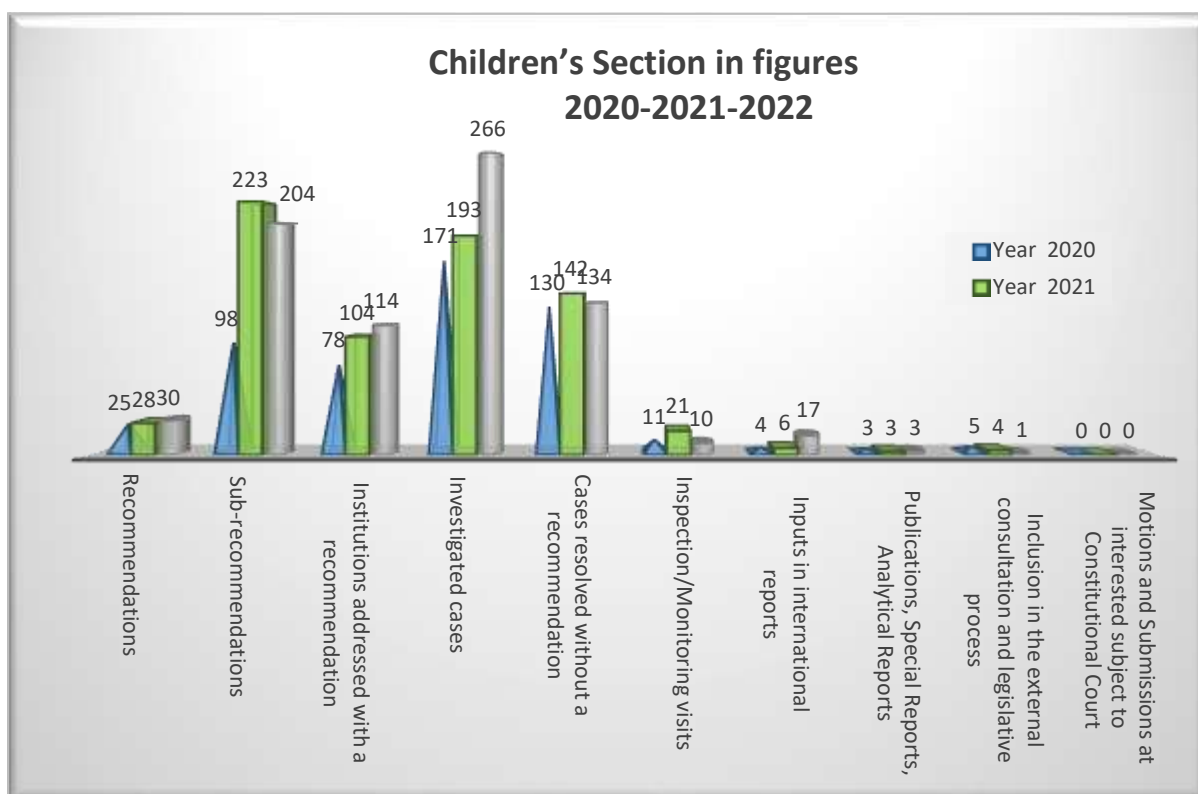
In terms of protecting the children's rights during the emergency situation, the Section for the Protection and Promotion of Children's Rights monitored the local government units affected by the earthquake of 26 November 2019.

The findings and recommendations of this inspection/monitoring process were addressed at the end of 2022 to the competent institutions and public administration bodies at the central and local level, so that they take measures to guarantee the rights of children during civil emergency situations or natural disasters.

In 2022, the Section for the Protection and Promotion of Children's Rights conducted independent administrative investigations and addressed *30 recommendations* to public administration institutions at the central and local level and *drafted 3 special reports*.

In the context of membership in ENOC (European Network of Ombudspersons for Children), the children representing our country participated in the ENYA project to draw up recommendations related to climate justice. The recommendations addressed by the youngsters from Albania and other 19 European countries were presented at the ENYA Forum (European Network of Young Advisors).

ENOC's recommendations will enable the drafting and issuing of guidelines by the Council of Europe, which will reflect a comprehensive strategic approach for the respect, protection and fulfilment of children's rights, particularly those related to climate justice. The membership of the Kosovo Ombudsman as an associate member of ENOC became possible thanks to the continuous support provided by the People's Advocate. This membership makes it possible for the voice of Kosovo's children and youth to be heard at the international level.



➤ *General Section*

The General Section as part of the People's Advocate continued to pay particular attention to vulnerable groups, communities and individuals at risk, who are susceptible and unprotected. The systemic approach to identified issues represented the main focus of sent recommendations in the areas of the right to education, right to healthcare, rights of persons with disabilities, rights of the elderly to social protection, rights of national minorities, rights of women and LGBTI community, economic aid and the right to a health

environment.

During 2022, in the cases (complaints and *ex officio* cases) that we completed the administrative investigation and proved that the citizens' complaints were founded, 51 *recommendations* were addressed to 141 public administration bodies, in a total of 132 *sub-recommendations/ points* to be implemented by them.

In the light of the new international and national strategic framework, the Section recommended the drafting of concrete integration and inclusion plans for Roma and Egyptians at the level of local governance, to make them feel part of a diverse, all-inclusive and democratic society.

The economic aid remained very low compared to the basic monthly sustenance expenses, according to the majority of complainants. Regarding the right to benefit from the social security system, the problems continue to be the same or similar to those reported in previous years, where a significant number of complainants raise the issue that they do not receive a response for their requests, verification of seniority and the low old-age pension amount.

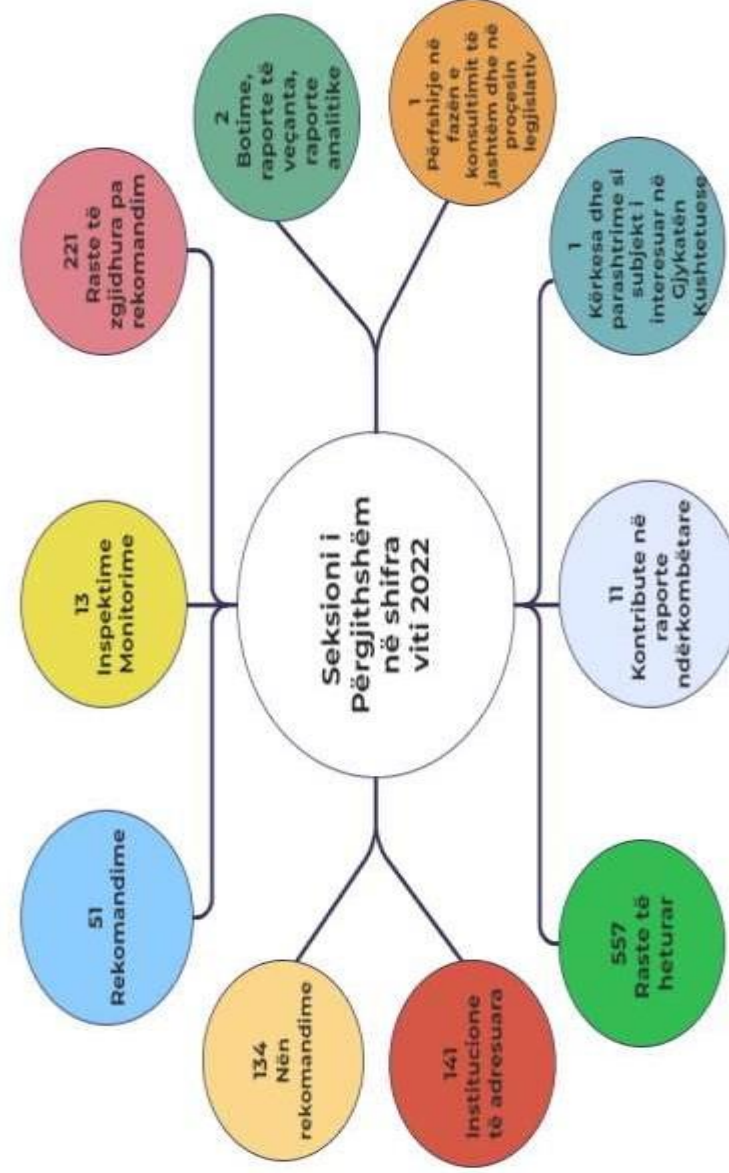
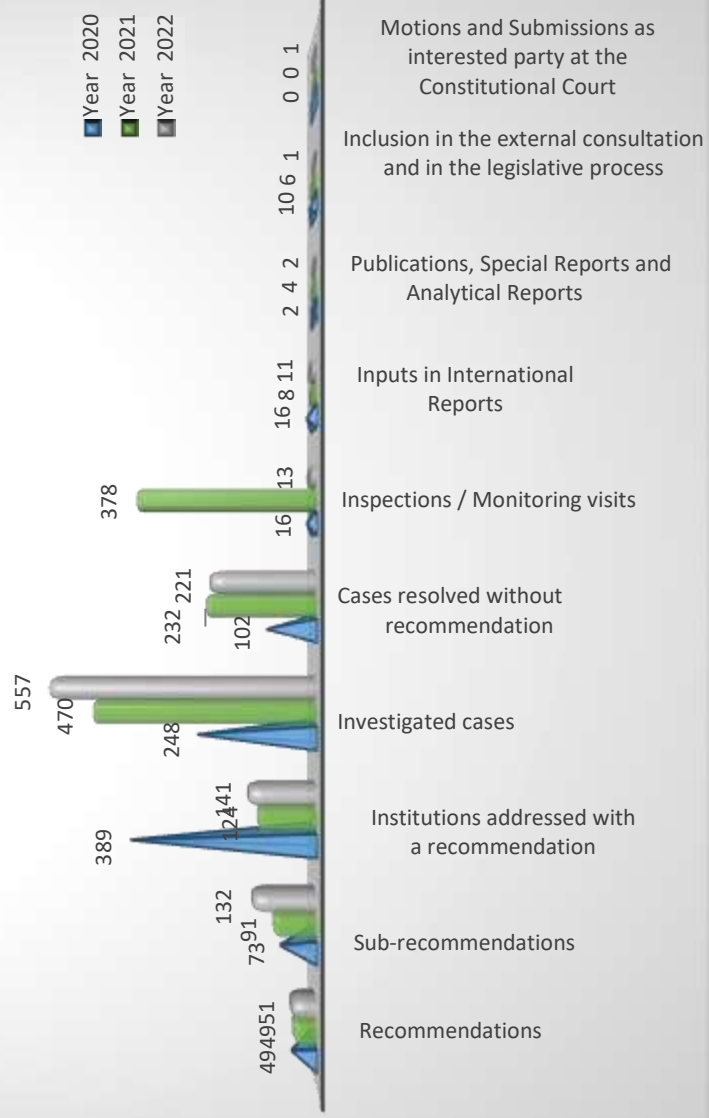
The continuation of the Covid 19 pandemic highlighted, in the framework of respect for the right to quality health care, the fact that poor and financially vulnerable individuals faced high additional economic costs in terms of health care.

The problems identified for persons with disabilities have been numerous. They consisted in these needs: supply of food packages and economic support to persons with disabilities, especially those living in remote areas or homeless persons who are disabled, periodic verification of the health status of the beneficiaries accommodated in Residential Social Care Institutions, encouraging the increased use of the sign language in official public communications, and accessibility in road infrastructure for persons with disabilities.

The LGBTI community continued to face added problems during 2022, such as deteriorating economy, employment, housing and security, and ability of the LGBTI community to meet their basic needs. High systemic unemployment among LGBTI community members is attributed to discrimination, bullying and abandonment of the education system by the LGBTI community.

Reception of the People's Advocate recommendations by public authorities indicates their sensibility to human rights and the level of the culture of good governance in place. Our goal continues to be putting positive pressure on our public administration in order to contribute to the achievement of the highest standards in the respect and effective exercise of human rights and freedoms.

## General Section in figures 2020-2021-2022



### 3.2 Rights of persons deprived of freedom<sup>11</sup>

The findings presented below are the result of independent administrative investigations<sup>12</sup> by the People's Advocate in verifying the individual complaints presented by both the prisoners and their family members, concerning the respect for the rights of persons deprived of freedom in the institutions for the execution of criminal decisions (penitentiary institutions). Examination of the individual complaints of prisoners and the relevant conclusions have a generalizing character in many cases.

The last report raised an issue that has been the scope of our work for many years and remained unresolved despite our continuous efforts, i.e., non-issuance of the legal act for the cash remuneration for work performed by prisoners.<sup>13</sup> The Decision of the Council of Ministers no. 602 dated 13.10.2021 "*On special rules for the employment of prisoners, working conditions, duration and remuneration for it*" approved in 2021 determined *inter alia* the payments for prisoners' work in favour of the prison administration and private entities. We requested information from the General Directorate of Prisons, the Ministry of Justice and the Ministry of Finance and Economy about the implementation of this DCM during 2022, whether they had allocated the necessary budget for the remuneration of the prisoners' work. From the response we received from the Ministry of Justice<sup>14</sup>, after the coordination of these three institutions for the budget, labour contracts were concluded for 340 employed prisoners /detainees according to the needs and organigramme approved by the institution for 2022, and payments were made to 170 prisoners/detainees until November 2022 because the others do not have an ID Card and are waiting to be issued one and then proceed with the opening of a bank account. Some penitentiary institutions are waiting for the second-tier banks to open the accounts for this employed category. Further, we received information that pursuant to this DCM there are currently 8 prisoners employed in the private sector, as operators in the commercial units of the penitentiary institution, who obtain remuneration from these companies. Recognizing the efforts so far, we still believe that this number of employed prisoners/detainees is relatively low,<sup>15</sup> therefore, more substantial and proactive actions are needed to resolve this issue and effectively ensure the prisoners' right to employment, so that they not only acquire and develop working skills and professional knowledge, but also receive money for work done.

A prisoner's complaint triggered our in-depth inquiries on the *transfer procedure* for Albanian citizens brought to Albania to serve the rest of their sentence rendered by a foreign court. The complainant said that he became aware of a decision from an Albanian court that convicted him in absentia to life imprisonment, by the end of the proceedings for the recognition of a judgement rendered by the Court of Winchester Kingdom that notified him the transfer to Albania, while he was in prison in England. Upon transfer to our country, he was unable to challenge the decision due to lack of legal knowledge and unaffordability of a lawyer. We requested information from the authorities involved in the procedure for the recognition of the foreign judgement and transfer

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<sup>11</sup> This field of law is covered by the Special Section at the People's Advocate.

<sup>12</sup> During 2022, the number of ex officio cases and complaints administered from prisoners or their family members is 76 and from penitentiary staff is 3.

<sup>13</sup> In 2013, PA sent a recommendation to the Ministry of Justice to draw a draft DCM on the definition of criteria for the remuneration of work done by prisoners and send it promptly to the Council of Ministers for approval. The responses we received over the years from the Ministry of Justice and the General Directorate of Prisons may be summarized in that the draft DCM on labour remuneration was at a permanent studying procedure.

<sup>14</sup> Response from the Ministry of Justice sent in November 2022.

<sup>15</sup> There were around 5,500 prisoners and detainees in 2022, referring to the inspections by the People's Advocate.

of this citizen to Albania. In conclusion of our administrative investigation, having analysed the documentation in its entirety and the international agreement in force about the transfer of prisoners and the legislation governing this field, the People's Advocate established that: the institutions involved in the procedure for the recognition of the foreign judgement did not coordinate among them to ensure that the prisoner be transferred only after the decision of the Albanian court became final, and that there is room to improve the transfer procedure so that it effectively ensures fair trial, specifically the exercise of the right to appeal by the parties against a court decision to a high court. Looking at the growing engagement of our institutions and their foreign counterparts to transfer the Albanian prisoners, the expectation is that the number of such cases will increase. Therefore, taking the initiative from this case, we recommended<sup>16</sup> to the Ministry of Justice, the General Prosecution Office and the High Judicial Council to *analyse this case and take measures to ensure that the institutions involved in the procedure to recognize a foreign judgement take measures to coordinate their administrative and procedural actions in order to ensure that the Albanian citizen to be transferred to our country to serve the rest of the sentence rendered by a foreign court has the right to be represented before the Albanian Court by a defence lawyer of his/her choosing and to exercise the right to appeal.*

Regarding the transfer of Albanian citizens to serve the remaining sentence in penitentiary institutions in Albania, the People's Advocate received a complaint by another citizen who expressed the concern that the procedure for his son was dragged. In order to meet the aim of prison sentence, that is rehabilitation and reintegration of prisoners in the family, social and economic life, the Law no. 81/2020 "On the rights and treatment of prisoners and detainees" stipulates in Article 39(5) that the prisoners, as a rule, must be accommodated in prisons near the place of abode of their families. The Convention of the Council of Europe *on the transfer of convicted persons* ratified through Law no. 8499 dated 10.06.1999 precisely serves this aim. By ratifying this Convention, Albania committed to cooperation with other countries and enabling Albanian citizens to serve their prison sentence in our country. During the examination of this complaint, we learned about the general approach of the Ministry of Justice concerning the transfer of Albanian prisoners serving their sentence abroad. According to the Ministry of Justice, a considerable number of convicted Albanian citizens wait to be transferred to our prisons and granting these requests is not just a procedural or administrative matter, but it involves penitentiary policies, free space in the penitentiary system, relations with various countries and the estimation of added financial costs to accommodate each prisoner in our prisons in conformity with current European standards. As for this case, the Ministry of Justice gave us just general information that the reason is the overcrowding in our prisons,<sup>17</sup> but did not provide any information about the capacity and population in Tropoja prison which is closest to the place of abode of his family, or any other prison. Based on this case, we presented our findings<sup>18</sup> to the Ministry of Justice giving our opinion that there must be added attention and commitment by the Albanian authorities to create the necessary accommodation space and ensure the transfer of Albanian citizens wishing to serve their sentence in prisons in our country.

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<sup>16</sup> For more information, see the relevant recommendation on the PA official website. <https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20per%20koordinimin%20ndermjet%20institucioneve%20te%20perfshira%20ne%20proceduren%20e%20njohjes%20se%20vendimeve%20e%20huaja%20penale.pdf>.

<sup>17</sup> Meanwhile, the General Directorate of Prisons declares that it has free capacity.

<sup>18</sup> For more information, see the relevant recommendation on the official website of the People's Advocate. <https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20per%20transferimin%20e%20A.S%20nga%20burgu%20i%20Kosoves%20ne%20nje%20burg%20e%20Shqiperise.pdf>.

Referring to the legal framework on the rights and treatment of prisoners, we note a positive novelty introduced by Law no. 81/2020 "*On the rights and treatment of prisoners and detainees*", that is the *prisoner's right to continue the high and higher education* while in prison.

The People's Advocate inquired into a complaint filed by a prisoner who claimed that he was not provided the opportunity to complete higher education. He explained that while free, he attended a public university in Tirana, but his arrest as suspect for the commission of two criminal offences interrupted his studies. After he was convicted by final court decision, he expressed interest to continue the studies and addressed the General Directorate of Prisons to continue higher education, but his right to education was not guaranteed.

The administrative investigation of this case showed that the prisoner had been given the opportunity to continue his studies through the online platform for the 2022-2023 academic year, but the General Directorate of Prisons and the prison encountered difficulties in ensuring that he attended the online lectures 3-4 hours every day, due to lacking infrastructure capacities and the action plan at the prison. Also, PA found that the by-law on the rules governing the education is not yet drafted, while it had to be issued no later than 3 months from the entry into force of Law no. 81/2020 "*On the rights and treatment of prisoners and detainees*". The law tasked the Minister of Justice and the minister responsible for vocational education and training to issue this legal act.

On our part, we recommended<sup>19</sup> to the Ministry of Justice and the Ministry of Education to take measures and coordinate their efforts to draft and issue this by-law and define therein the rules for the high and higher studies to take place in penitentiary institutions, and take measures to calculate a budget dedicated to the effective exercise of the prisoners' right to high and higher education.

A fair number of complaints handled by us involve the *health treatment of prisoners*. According to Law no. 81/2020 "*On the rights and treatment of prisoners and detainees*",<sup>20</sup> the medical staff must periodically examine all the prisoners based on a schedule designed by the prison directorate, and the prisoners with chronic illnesses are entitled to healthcare services - in line with the standards applicable to this category - at the specialized institutions outside the prison system.

Regarding the health treatment of the category of prisoners with chronic diseases, we checked whether a detainee at "Jordan Misja" prison in Tirana diagnosed with *diabetes mellitus* had been accompanied for the necessary tests and examination to determine the stage of his illness. In conclusion of our inquiries, we established that the prison had not planned the periodic examinations for the detainee diagnosed with *diabetes mellitus*, in breach of the Guide on the Diagnosis, Classification and Treatment of Diabetis Melliuts, and it had not kept minutes every time that the detainee refused to be taken for examination, according to the prison, in line with the General Regulation of Prisons. In this regard, we must highlight that our recommendations and suggestions were reflected during the drafting and approval of the new General Regulation of Prisons,<sup>21</sup> as this by-law stipulates that: the prisoner's refusal of medicine or medical examinations shall be documented in the minutes to be signed by him and the prison staff and, if the prisoner refuses to sign the minutes, this document shall be signed by more than one employee and administered at the legal service with an internal register number, so that this

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<sup>19</sup> For more information, see the relevant recommendation on the official website of the People's Advocate. [https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20per%20arsimimin%20ne%20burgje\\_yTR1hIJ.pdf](https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20per%20arsimimin%20ne%20burgje_yTR1hIJ.pdf).

<sup>20</sup> Specifically, based on Articles 41(10) and 42(9) of Law no. 81/2020.

<sup>21</sup> DCM no. 209, dated 06.04.2022 "On the approval of the General Regulation of Prisons".



action can be timely identified.

The Guide on Diagnosis, Classification and Treatment of Diabetes Mellitus published in 2019 by the Compulsory Health Insurance Fund contains the table with the periodic examinations that the person with diabetes mellitus must make. We consider that the methodology of this table must be applied by the penitentiary physicians in planning the visits of prisoners diagnosed with diabetes mellitus.

We also focused on the administrative investigation of complaints from the penitentiary administration employees, as closely linked to the services they provide to prisoners. Problems in the penitentiary institution cannot be addressed thoroughly unless the difficulties of those in direct contact with persons deprived of freedom and giving daily contribution in the management of prisons are accommodated. Rights enjoyed by the penitentiary administration staff is in our remit, but above all their treatment is reflected in the relations with prisoners. Penitentiary staff complained mainly for not receiving allowances when seconded outside the working centre or far from their place of abode, lacking uniforms, deductions in the monthly salary of penitentiary nurses and reduced payment for overtime, or no severance payment when removed from duty. We concluded the administrative investigation on a complaint by a penitentiary prison employee for not receiving the severance payment, but this problem was resolved during our examination thanks to the measures taken by General Directorate of Prisons itself.

Another issue handled by the People's Advocate was the fact that some police staff of Lezhë penitentiary institution seconded in 2018-2019 to the Operational Force of the General Directorate of Prisons had not received the allowance (per diems), and this was against the applicable legislation. We recommended to Lezhë penitentiary institution<sup>22</sup> and the General Directorate of Prisons to take the necessary measures and calculate and distribute the allowance to the police officers seconded during that period.

In conclusion, it is important to highlight the improved cooperation with the Ministry of Justice and the General Directorate of Prisons and particularly the dedicated structures set up to evaluate the recommendations of the human rights institutions.

### **3.3. Respect of human rights by State Police<sup>23</sup>**

The scope of complaints and ex officio cases handled by the People's Advocate during 2022<sup>24</sup> that were against the structures and employees of the Ministry of Interior and State Police was diverse, but mainly holding people in police stations illegally or beyond the required time-limit to clarify the reason/circumstances; failure to indicate the real time in the register about the arrest in flagrancia delicto or taking in persons suspected of a criminal offence; failure by the police to notify the families of persons held in police station or not allowing them to communicate on their own phones; failure to keep evidence or provide evidence of actions performed by the police officers; illegal arrests or hold-ins; unethical behaviour of police officers in approaching citizens; illegal administrative sanctions imposed by Road Police officers; breach of the right to admission

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<sup>22</sup> For more information, see the relevant recommendation on the PA official website.

<https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20per%20dietat%20e%20disa%20punonjesve%20te%20policise%20se%20IEVP%20Lezhe%20te%20komanduar%20ne%20DPB%20ne%20vitin%202019.pdf>.

<sup>23</sup> This field of law is covered by the Special Section at the People's Advocate.

<sup>24</sup> Number of ex officio cases and complaints administered during 2022 is 71.



and education at the Security Academy; violation of the rights of foreign citizens in Albania, such as refusing entry, refusing issuance of stay permit, or detention in the closed centre without first applying the alternative measures; keeping persons in detention beyond the legal time-limit and failure to provide protection and an interpreter during the procedural actions; breach of the legal right of State Police officers related to failure to pay overtime, per diems and transfer allowances, etc.

Some of the constitutional and legal rights for which recommendations were addressed during 2022 include:

✓ *Right to physical integrity and dignified treatment*

During 2022, our institution administered several complaints and initiated cases proactively following incidents disclosed in the media about physical and psychological violence and excess of force in gatherings/rallies organized by political entities or different civic groups, taking them in police stations, questioning or arresting/detaining them as suspected perpetrators of criminal offences. In cases where the ascertained violations did not contain criminal elements but represented disciplinary violations, we addressed recommendations to the State Police structures to initiate disciplinary proceedings and impose administrative sanctions, and take technical-organizational measures to train the police officers and prevent such incidents from happening in the future. Some of these complaints and cases included:

A case initiated *ex officio* following the publication on some visual and print media from 07.12.2022 onwards of footage and photos of a citizen G.Sh arrested for a criminal offence. He appears at the Trauma Hospital in Tirana, handcuffed, swollen and lying down on a bed, receiving medical treatment. Then he appears again with handcuffs on the right hand signing a document drawn up by the State Police officers present there. These videos and photos prove the undisputable fact that the arrestee G.Sh. was constantly handcuffed at the Trauma Hospital and quite probably tied to his bed.

The People's Advocate strongly condemned his assault on the citizen Mr. S.B. Our institution has continuously expressed our public position against any form of physical and psychological violence by both the State employees and citizens against representatives of State bodies and political entities. In any case, we are for judicial punishment of any illegal actions by any person.

Despite the legal position of the arrested person G.Sh., the People's Advocate analysed this publicized case and drew the attention on the negative phenomenon that seriously undermines the fundamental individual rights, that is handcuffing detained /arrested or convicted persons while hospitalized.

Our analysis of the applicable legal framework concluded that handcuffing hospitalized persons arrested or detailed by the State Police is not in conformity with the law. This conduct is in blunt violation of our Constitution (Articles 17,25 and 28/5); Article 3 of the European Convention on Human Rights *not to be subject to torture or inhuman or degrading punishment or treatment*; the standard case-law of the European Court on Human Rights; the Standard Procedure titled

*Treatment and security of persons arrested /detained at the State Police premises, identification and resolution of their requests and complaints"* approved by Order no. 925 dated 18.07.2019 of the General Director of State Police.

Also, the Committee for the Prevention of Torture (CPT) of the Council of Europe has stated that the practice of keeping prisoners handcuffed in the hospital is a degrading act towards individuals and should be replaced with other alternative security measures. For the above, we recommended<sup>25</sup> to the General Directorate of the State Police and the Tirana Local Police Directorate: take immediate measures to guarantee the human and non-degrading treatment of the arrested citizen G.Sh., by removing the handcuffs and not holding him tied during medical treatment; make an in-depth and objective analysis of this case, allocate responsibility and initiate the disciplinary procedure against police officers who committed the legal violations; take immediate measures to acquaint the State Police officers with the Standard Procedure titled *Treatment and security of persons arrested /detained at the State Police premises, identification and resolution of their requests and complaints"* approved by Order no. 925 dated 18.07.2019 of the General Director of State Police; generalize this case across all the local and central State Police structures to prevent repetitions in the future of such cases of violation of fundamental human rights by the police officers. *These recommendations were welcome and accepted.*

✓ *Taking in citizens in the State Police premises, observance of legal requirements and their rights*

Taking in citizens in police premises is a frequent administrative action in the daily activity of the local police structures<sup>26</sup>. This action takes place for both administrative violations and where a person is suspected of having committed a criminal offense, resulting in the restriction of freedom. For these reasons, the State Police must exercise this right strictly in accordance with the requirements laid down in the State Police law and in the standard operating procedure *Rules on the treatment of citizens taken in police premises*, approved by Order no. 894, dated 19.07.2022 of the General Director of State Police. Several complaints and inspections made against the State Police bodies confirmed a significant number of persons taken in, particularly during gatherings/rallies.

Due to the lack of take-in facilities in some local police structures or inadequate conditions in them - in light of the law and in the standard procedure cited above - such as the lack of spaces, natural lighting and necessary furniture to sit down, hygiene-sanitary conditions, etc., bringing in citizens to the State Police premises triggers additional concerns on top of psychological ones. Despite the improved take-in facilities in some commissariats and police stations, the problem persists in some commissariats in Tirana, namely commissariats no. 2, 3 and 4, where the number of taken-in citizens was very high. We can mention some cases in which the take-in procedure resulted in legal violations:

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<sup>25</sup> For more information, see the relevant recommendation on the PA official website.

<https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandimi%20drejtuar%20DPP%20Shtetit%20dhe%20DVP%20Tirane%20per%20G.Sh.pdf>

<sup>26</sup> Take-in means taking citizens in the police premises, health institutions, rehabilitation centers, detention centers or in other institutions against their will, based on Articles 109 and 122(1) of Law no. 108/2014 "On State Police".

- The complaint by the citizens A.G., G.L., Sh.G.(D.), V.C.(D), L.I.(D.), A.I. and Z.I., claiming that some Tepelenë Police Station officers had committed illegal actions against them, such as entering their apartment, taking them in the police station, taking their mobile phones and not allowing them to communicate with their relatives and the lawyer.

Having examining this case, we found that the actions of the police officers - such as entering their apartment, inspection of the scene, taking in the complainants and other procedural actions - relied on the request and criminal report filed by the citizens A.H. and V.D. who lived in the apartment subject to ownership dispute. The purpose of entering the apartment was to follow up on the criminal report in line with the applicable legislative acts governing the activity of the State Police and the judicial police, and to prevent any serious escalation between the conflicting parties.

However, taking the mobile phones from the persons taken in the police premises is not correct, because it runs counter to the spirit of the Standard Operating Procedure *Rules on treatment of citizens taken in police premises*. The mobile phones in this case were neither illegal nor dangerous items that could have jeopardized their life, the life of the police officers, or the security of the institution /commissariat. Besides, we established that the police officers who processed the complainants had not compiled the minutes – therefore had not provided a copy to the persons taken in – for the processing steps with the citizens. This action /omission is in blunt violation of Article 109/5 of the Law "On State Police" and Chapter VII, paragraph 1, letter "a.3" of the Standard Operating Procedure mentioned above.

For this case, we recommended<sup>27</sup> to Gjirokastrë Local Police Directorate and to the General Directorate of State Police to: take the necessary measures to initiate the disciplinary proceedings against the police officers who processed the citizens; take the necessary measures to conduct frequent checks in all the local police directorates for compliance with the rules/requirements while taking in citizens in the police premises and observance of the legal rights of citizens taken in, including the compilation of the minutes (report) and provision of a copy to those citizens; deliver continuous training to State Police officers to get acquainted with the legislative acts governing their activity, the take-in procedure and observance of the legal rights of those persons; and generalize this case across the local police structures to prevent repetition of such cases in the future. *The recommendations were welcome and accepted.*

- The People's Advocate carefully monitored the protests in many cities in Albania in March 2022, against the increased prices of some products. The media featured persons in civilian clothes physically restraining the protesters and handing them over to the police officers in uniform to be taken to the police premises.

Many citizens raised concerns calling these actions unlawful, because police officers in civilian clothes cannot be identified and this may result in disobedience to their orders.

Following the investigation of this case initiated *ex officio* and the analysis of the applicable legal framework, we came to the conclusion that the legislation does not establish prohibitions for police officers in civilian clothes to physically restrain people and to take them in the State Police premises, provided that they are suspects of a criminal offence. However, we noticed that these

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<sup>27</sup><https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20drejtuar%20Kom%20Pol%20Tepelene%20dhe%20DVP%20Gjirokaster%20per%20Z.I.pdf>.

police officers did not visibly carry and show their badge during the apprehension and take-in of citizens, as required by Article 37(5) of the State Police Regulation approved with VKM no. 750, dated 16.09.2015 and the practice of the European Court on Human Rights.

Furthermore, we found out that the General Directorate of the State Police had not approved special rules for central and local police officers who are assigned public duties in civilian clothes for crime investigations, pursuant to Article 37(5) of the State Police Regulation.

Based on the above, we recommended<sup>28</sup> to the General Directorate of State Police to: draft and approve a standard procedure pursuant to Article 37(5) of the State Police Regulation for the rules to be followed by local or central police officers engaged in public duties without a uniform for the investigation of crimes, and, reflect in these rules the practice of the European Court of Human Rights on specific cases; take measures to train the central and local police officers engaged in public duties without a uniform for the investigation of crimes or in cases where they intervene to arrest or take in persons suspected of a criminal offence, so that the police officers identify/introduce themselves as such by showing the badge. *The recommendations were welcome and accepted.*

✓ *Constitutional right to individual freedom*

Freedom is one of the fundamental constitutional rights of every person guaranteed by Article 27 of our Constitution and Article 5 of the European Convention on Human Rights. For these reasons, cases of deprivation and restriction of freedom are exhaustively defined in Article 27(2) of the Constitution and in the provisions of the Criminal Procedure Code. According to Article 111 of Law no. 108/2014 "On the State Police", a police officer shall arrest and detain a person in line with the provisions of the Criminal Procedure Code.<sup>29</sup>

Article 251 of this Code sets forth that judicial police officers and agents, whose attributes are also enjoyed by State Police employees in the cases provided for in paragraph 1, are obliged to arrest citizens, while in the cases of paragraphs 2 and 3, arrest is an action at their discretion. Whereas Article 253(2) of the Criminal Procedure Code entitles the judicial police officers to carry out the arrest on their own initiative, provided that it is not possible to wait for the prosecutor's order due to the urgency of the situation. It is precisely in these cases that police officers may abuse this legal right to the detriment of citizens. According to Article 255 of the Criminal Procedure Code, in any arrest in *flagrante delicto* or detention of citizens, judicial police officers have the obligation to immediately notify the prosecution office with jurisdiction over the location where the arrest or detention took place; let the arrested or detained person know that he is under no obligation to make statements and if he speaks, whatever he says can be used against him in court;

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<sup>28</sup> <https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20per%20hartimin%20dhe%20miratimin%20e%20regullave%20lidhur%20kryerjen%20e%20detyrave%20te%20punonjesve%20ne%20publik%20pa%20uniforme.pdf>.

<sup>29</sup> Referring to Article 251(1) of this Code, judicial police officers and agents shall mandatorily arrest whoever is caught in *flagrante delicto* committing or attempting to commit a crime with intent, punishable by law by not less than five years in prison. Paragraph 2 of this same article stipulates that the judicial police officers and agents shall be entitled to arrest whomever is caught in *flagrante delicto* committing or attempting to commit a crime with intent, punishable by law not less than two years in prison, or committing a criminal offence by negligence punishable by law not less than 10 years in prison as maximum term. Further, paragraph 3 of the same article stipulates that in cases of necessity, due to the gravity of the fact or danger posed by the offender, substantiated by a separate document, the judicial police officers and agents shall be entitled to arrest anyone in *flagrante delicto*, even if the requirements under paragraph 2 are not met.

inform the detainee or the arrested person of his right to choose a defence counsel and immediately notify the defence counsel selected or, when the case is, the one appointed ex officio; record in the minutes (records) the date, time and name of the judicial police officer who carried out the arrest or detention; immediately inform the arrested person about the reasons of the arrest or detention and about his rights, according to Article 34/b of this Code; with the consent of the arrested or detained persons, the family members must be notified without delay, while when the arrested or detained is a minor, the parent or guardian must be notified and the rules of the Juvenile Justice Code are applied

The complaints received by our institution raise claims on illegal arrests/detentions, failure to provide a legal counsel, failure to notify family members, failure to accurately record the time/moment of their arrest in *flagrante delicto* or their detention, etc. For some complaints, after the investigation, we found legal violations in several cases related to the recorded time in the minutes of the arrest in *flagrante delicto* or detention. These violations are mainly in cases where the person is caught in the act and taken in the police premises, or during administrative verifications performed by the police officers, or when they apprehend a person suspected of a criminal offence or who is declared wanted due to a prison sentence rendered against him in absentia. The person is arrested or detained on the basis of the evidence and the administered documentation, but the time of arrest/detention in the records in these cases is the time when the records/minutes are compiled and not the moment when he is deprived of freedom.

Let us clarify that it is not in the PA remit to evaluate the legal validity of arrests and detentions by judicial police officers, as this is a legal attribute of the prosecution office and the court, but the People's Advocate evaluates whether the procedural legal safeguards have been guaranteed to these citizens. In this sense, we reacted and made recommendations when we established that the legal obligations related to the respect of the rights of arrested/detained persons provided for in Article 255 of CrPC have not been fulfilled. In handling the citizens' complaints, we found that the police officers attribute a big number of criminal offences to the arrested persons, particularly in gatherings. Then, during the investigation and trial, it turned out that they were accused and convicted for one or two criminal offenses and not for all those referred by the judicial police. Similarly, this same problem was noticed during the validation and imposition of the remand orders by the Court. During mass arrests, the courts imposed much lighter security measures than "pre-trial detention". This fact proves that most criminal offences attributed to them were unfounded and fictitious, intended to justify the arrests made and intimidate citizens so that they do not to participate in gatherings and other mass activities to express their grievances and to demand their rights. The People's Advocate holds that the arrest in *flagrante delicto* or detention must be applied by the judicial police in exceptional case and as a last resort for persons suspected of petty crimes. This last measure must be applied in accordance with the criteria and conditions defined in articles 228, 229 and 230 of the Criminal Procedure Code and in line with the security needs, the gravity of the fact and the sanction related to the criminal offense, and when other measures are not appropriate due to the social dangerousness posed by the criminal offence and the offender. In the meantime, the fact that the arrest of a person brings social, economic and psychological consequences on the person himself, his family and his social circle, it should be carefully and responsibly assessed.

It is important to emphasize that the institution of the People's Advocate is not against the prosecution and punishment of the perpetrators of crimes. But we express our inspection-derived legitimate concern that mass arrests/detentions in the security facilities, especially at Tirana Local Police Directorate where the arrested persons are accommodated, resulted in overcrowding. For these concerns, we are referring to the following cases:

- Complaint filed by citizen B.A. who owned a car and worked as a taxi driver holding a valid license issued by Tirana Municipality. On 22.03.2022, he drove three foreigners from Tirana to Kukës and was stopped by a police patrol upon arrival in Kukës. Then he was taken to Kukës Police Commissariat and arrested for the criminal offence *aiding illegal border crossing* and both his taxi cab and documentation were seized. Kukës District Court examined the motion filed by the prosecution office and decided to set him free under the remand order *obligation to appear twice a week to the judicial police*.

From the answers received from the Kukës Local Police Directorate, Kukës Prosecution Office and Kukës District Court, we found that the taxi driver was arrested in *flagrante delicto* suspected of the criminal offence *aiding illegal border crossing*. A criminal case was registered against him and the court decided to impose on him the remand order *obligation to appear before the judicial police*. Later, the prosecution office filed a motion with Kukës District Court to dismiss the criminal case no. 121/2022. The court granted this motion, dismissed the criminal case and the decision became final.

Having reviewed this complaint and the answers, we concluded that in cases where the taxi drivers are suspected of this crime, the suspicions must be based on concrete evidence. In committing this criminal offense, the subjective side of the criminal offense is very important, which is guilt (intent, in this type of criminal offense) and the speculative intent. In this case, the judicial police and/or the prosecution body had not collected any evidence to create probable cause against the citizen B.A. that he committed the criminal offense provided for by Article 298/1 of the Criminal Code and on the basis of which he was arrested in *flagrante delicto* and criminally prosecuted.

Besides, we found that the first investigative actions such as the verification /inspection of telephone communications and vehicles took several months, making them ineffective and causing legal, economic and psychological consequences on the complainant.

Based on the above, we recommended<sup>30</sup> to Kukës Local Police Directorate and Kukës Prosecution Office to: prosecute for the criminal offence *aiding illegal border crossing* only in cases where they have probable cause and strong evidence that it has been committed; in cases where restrictive remand orders and seizure of vehicles and documentation of suspected persons are imposed, the investigative actions such as verification of phone communications and inspection of vehicles and documentation must be completed within a reasonable and quickest time possible. *The recommendation was made in December 2022 and we are waiting for a response.*

- During the review of a citizen's complaint against Durrës Police Station for unjust arrest and the failure to reflect the real time in the records/minutes of the arrest in *flagrante delicto*, we found that the recorded time of his arrest – in the arrest minutes which are one the documents

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<sup>30</sup><https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20drejtuar%20DVP%20Kukes%20dhe%20Prok.%20Kukes%20lidhur%20me%20fill.%20e%20procedimeve%20per%20taksistet.pdf>.

administered in the criminal file - was incorrect, because it indicated the time when the minutes were compiled and not the actual time of his arrest. The time difference between the factual time and the one reflected in the *flagrante delicto* arrest minutes was 5 hours and 30 minutes.

Referring to Articles 144 and 250 of the Criminal Procedure Code, the recording in the minutes of the moment (hour) of the arrest in *flagrante delicto* or detention is an important element on the basis of which the detention period starts to be calculated. Based on Article 258(1) of the Criminal Procedure Code, the 48-hour within which the prosecutor requests the remand order to the Court commences precisely at the moment (hour) of arrest or detention.

Also, we found that the procedural materials from the Durrës Police Station were sent to the prosecution office beyond the deadline stipulated in Article 255/1 of the Criminal Procedure Code. Compliance with the legal obligation to notify the prosecutor immediately is important because it is closely related to the prosecutor's obligation to request - within 48 hours of the arrest or detention - the validation of the arrest and the remand order from the Court having jurisdiction over the location where the arrest or detention took place. Failure to comply with this deadline renders the arrest or detention void.

For this reason, we recommended<sup>31</sup> to Durres Local Police Directorate to: take the necessary measures to analyse this case, allocate the responsibilities, change the practice about recording the time of the arrest in *flagrante delicto*, ensure that judicial police officers send the procedural materials to the prosecution office promptly in all cases of arrests in *flagrante delicto* or detention, and generalize this case across all the subordinate structures so that it is not repeated in the future. *The recommendations were welcome and accepted.*

✓ *Guaranteeing the right to exercise the profession and report events by media professionals during gatherings*

The freedom of media is guaranteed by Article 22(2) and (3) of our Constitution. Often the freedom of a society is estimated by the freedom of media and press, because the media has a pivotal role in the real-time and objective information of the public on events occurring in society.

Freedom of the media also means the right of the media to supervise the work of the government and other central and local institutions. By having such freedom, the media is able to report on the efforts made by the competent authorities in combating organized crime, corruption and various affairs, nepotism in public institutions, etc., and such efforts or results are considered concrete achievements in a democratic society. But while exercising their duties, the media workers came across various difficulties and became the target of physical and psychological abuse and were hindered to do their job by various private and State entities.

These problems were encountered by media workers when reporting on gatherings, as they were hindered to do their job by the State police officers in many ways, taking them in police premises or deleting the videos and photos made by the journalists. Assaults against journalists and other media actors represent a serious violation of human rights, because these actions not only target

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<sup>31</sup><https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20drejtuar%20DVP%20Durres%0per%20I.H.pdf>.



them as individuals, but deprive the public members from obtaining information and consequently this restricts public debate as the heart of any pluralistic democracy. In response to the alarming and unacceptable level of threats against journalists and media actors in Europe, and taking into account the detrimental effect of threats on the functioning of a democratic society, the Committee of Ministers of the Council of Europe adopted the Recommendation CM/Rec (2016) 4 in April 2016 on the protection of journalism and the safety of journalists and other media actors.

This problem was noticed even in a publicized case during the clashes between Roma and Feyenoord soccer fans on 25.05.2022 in Tirana. A State Police officer stopped the on-duty photo-journalist G.Sh. and forcibly took his camera and ordered him to delete the photos of clashes between the police and the fans. According to the media, he had his journalist badge hanging around his neck at the time he was taking pictures. He also stated that the police officers returned his camera after talking to the spokesperson of the State Police, but he was forced to delete some photos with the claim that they showed the faces of the police officers.

The media published the reaction of the General Director of State Police who stated that he requested that this case be investigated by the Directorate of Professional Standards and the Department of Public Security.

We concluded that the follow-up of this case by the relevant State Police structures was not done with due dedication. These structures do possess the required human and technical capacities to identify the police officer who took the camera from the journalist G.Sh. and forced him to delete some of the photos.

We reached this conclusion also from the analysis of several other earlier similar cases in which police officers behaved incorrectly and unethically with journalists during communications at various events where journalists were present. Among these we can mention:

- An article published by the online media "Lapsi.al" on 06.01.2022 about the violence inflicted by the special forces (RENEA) on the ABC correspondent S.Sh. in Shkoder in the presence of his two children;
- The journalist B.B. of TV Fax News was taken in the Tirana Local Police Directorate on 9 March at 23:25 hrs., after he went near the premises of the Ministry of Interior to report on a gathering organized by some citizens in support of the Turkish citizen S.S.
- Many journalists were taken to police stations during the protests organized in December 2020 after the murder of the late K.R., namely the journalist Xh.M. of *RTV Ora*, the chief editor-in-chief Q.Xh. of *Koha Jonë*, the journalist A.M. of *Syri TV* in Durrës, and the media worker Sh.D. of *Durrës Lajm*, and we have referred these cases to Tirana and Durrës Local Police Directorates.

It is important that the reaction of the State Police in these cases is not limited to public statements. It must ensure that the events do not repeat themselves and that the measures taken are effective.



For the above, the People's Advocate recommended<sup>32</sup> to the General Directorate of the State Police: State Police structures ought to take immediate measures to guarantee the media staff the right to practice the profession and report events at gatherings or other activities of this kind; make an in-depth, objective and professional analysis of the causes of the unethical behaviour of police officers towards journalists; deliver ongoing training to police officers so that they allow journalists to carry out their profession and mission and behave ethically when communicating with them; punish police officers who commit violations against journalists and media workers with disciplinary measures proportional to the violations; and generalize these cases across the State Police structures in order not to be repeated in the futures.

✓ *Protection of rights of foreigners in the territory of the Republic of Albania*

Based on Article 2 of Law no. 8454, dated 04.02.1999 "On the People's Advocate", the PA exercises its legal mission also for the protection of the rights of foreigners who are regular residents or not in Albania, refugees, asylum-seekers and stateless persons located in the territory of the Republic of Albania, from the illegal and irregular actions or omissions of the Albanian public administration bodies.

In recent years, a considerable number of citizens from different countries, mainly from Asia, entered Albania with the purpose of staying here or moving to the EU countries. They leave their countries of origin due to extreme poverty, the war, etc. Along with other problems, they may be traumatized by the serious events in these societies or in their families, finding themselves in these circumstances, often without financial income and necessary clothing; they deserve increased humane care, especially from State structures. Besides, these structures have the obligation to respect all the legal rights guaranteed to them by the Constitution of the Republic of Albania, the International Conventions and other legislative acts in force in our country. During 2022, we received several complaints from regular or non-regular foreign citizens for alleged violation of their legal rights by the State Police structures.

Among these cases for which a recommendation was made, we can mention the complaint of three Iraqi citizens O.D., A.U. and N.S., who wrote that they had illegally entered the territory of the Republic of Albania in 2017 and applied for asylum. After their application for asylum was granted, they moved together to an apartment in Tirana. Afterwards, they were provided with a ten-year residence permit from the Tirana Migration and Border Directorate and found job in various companies. In December 2020, they were arrested by the Tirana police for reasons still unknown and sent to the Closed Centre for Foreigners (CCF) in Karreç, based on the detention orders issued by the Tirana Regional Border and Migration Directorate. They claimed that albeit the maximum 1-year detention period had passed, they continued to be detained in this centre.

After examining this complaint, the answers received from the Karreç CCF and the Tirana Local Border and Migration Directorate and having verified the documentation at this centre, it turned out that after they were granted asylum status and permission to stay in the territory Albania, the Regional Border and Migration Directorate (RBMD) issued detention orders on 03.12.2020 against the complainants and their residence permits were rejected/revoked. After that, removal

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<sup>32</sup><https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20drejtuar%20DPP%20Shtetit%20per%20resp%20ekt%20e%20te%20drejtave%20te%20punonjesve%20te%20medias%20ne%20tubime.pdf>.

orders were issued against them by the Tirana RBMD. Then, the term of their stay in this centre was extended by 6 months based on the request of the latter, which in our opinion is not based on the law on foreigners and unsubstantiated. Despite the fact that these citizens completed the one-year period of stay at Karreç CCF and the respective deportation orders have been issued, they were not released but were transferred to Tirana LBMD. On the same date, the Tirana LBMD issued three detention orders for them to be detained in Karreç CCF because a deportation order was issued against them to leave the territory of the Republic of Albania as *unwanted persons*. This detention was in blunt violation of the Law on Foreigners, because the maximum detention period for a foreign citizen in this centre is one year. Also, detention in the closed centre of an irregular foreign citizen in the Republic of Albania is the last administrative measure, on a case-by-case assessment, when all possible alternative measures have been executed.

In conclusion of the investigation, we recommended<sup>33</sup> to the Closed Centre for Foreigners in Karreç, the Tirana Regional Border and Migration Directorate and the General Directorate of State Police to: take immediate measures to make it possible to get the Iraqi citizens N.S, O.D., and A.U. out as soon as possible from Karreç CCF; analyse this case and allocate responsibilities; train the BMP employees in order to respect the legal rights of foreign citizens; change the current practice by the Border and Migration Directorate so that the extension of the stay period over 6 months but less than one year for foreigners in Karreç CCF is done based on a reasoned decision and only in cases provided for in the law and in line with Articles 99 and 100 of APC; generalize this case across the regional structures of the Border and Migration Police. *These recommendations were welcome and accepted.*

- The administrative investigation of the complaint submitted by the Palestinian citizen H.S. for the rejection of Albanian citizenship established that the rejection stood, because he did not meet the legal criteria. We were also informed that the complainant was officially notified that his application procedure was completed and that his request was rejected.

The scope of our administrative investigation in this case was not to evaluate the reasons that led to the rejection of his request for citizenship, but only if the relevant procedures for rejecting the application were respected. We established from the administered documentation that the notification for the rejection of the request to obtain Albanian citizenship was made to the complainant through a letter signed by the Local Police Director of Tirana. In the meantime, referring to the applicable legislation, specifically the Law no. 113/2020 "*On citizenship*", which provides for the procedure for gaining, regaining and losing Albanian citizenship, the rejection is made by administrative act of the minister. The person who submitted the request can appeal against this act to the competent administrative court, in accordance with the deadlines defined in the relevant applicable legislation.

We estimated that issuing this act is not only a requirement of the law, but also a necessity to guarantee the right to appeal to the court. Failure to issue the administrative act according to the aforementioned conditions by the competent body, according to the requirements and legal form, may trigger invalidity or illegality in court.

For the above, we recommended<sup>34</sup> to the Ministry of Interior to: take measures to ensure that the minister issues the administrative act in cases of rejection of the request of foreign citizens for

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<sup>33</sup><https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20drejtuar%20M.Brendshme%20,%20DPP%20shtetit%20etj%20lidhur%20me%20respektimin%20e%20te%20drejtave%20e%20huajve.pdf>.

<sup>34</sup> <https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20shtetesia.pdf>.

Albanian citizenship and standardize this practice; and notify the administrative act to the foreign citizens when they do not meet the legal criteria, in order to guarantee the right to appeal in the context of fair trial. *The recommendation was accepted.*

### **3.4 Prevention of violence and torture<sup>35</sup>**

The People's Advocate through the **National Mechanism** for Prevention of Torture, cruel, inhuman or degrading treatment or punishment, hereinafter referred to as NPM,<sup>36</sup> continued to perform its functional duties during 2022 defined in the domestic legislation and in the international standards.

Specifically, NPM conducted 73 *periodic inspections* and several thematic inspections; participated in 23 operations in co-operation with Frontex for the forced return of Albanian citizens staying illegally in EU countries; conducted inspection visits in all the penitentiary institutions; handled complaints and concluded with several recommendations. All the above activities resulted in 1 special report, 90 *recommendations* and an extensive official correspondence to clarify many details and phenomena noticed during the inspections.

The purpose of these visits and inspections was to evaluate the accommodation conditions and treatment of persons taken in, pre-detained and convicted, as well as the progress of competent authorities in implementing the NPM recommendations. The respect of the rights of prisoners and persons deprived of freedom - rights which are guaranteed by the Constitution of the Republic of Albania and the legal framework in this field - should be at the attention of all State institutions. In addition, the NPM has promoted human rights in cooperation with the Prison Administration and the State Police Directorate.

During 2022, NPM handled 31 *complaints* and 14 *ex officio cases*, of which 25 complaints related to the prison system (alleged use of violence, lack of medical treatment and medication, poor living conditions, overcrowding in prisons, etc.), and 6 complaints related to the police (alleged use of violence, unfair take-in, etc.)

#### **1.1 Findings from inspections in penitentiary institutions are described below:**

1. *The repeated finding related to the extremely degrading material conditions* and impossibility to renovate the premises in the internal regimes, which render impossible the respect for the rights of prisoners in the penitentiary institutions in Durrës, Burrel, Tepelenë, Tiranë (302). Being that these findings continue to be persistent, even in more degrading conditions due to lack of investments and amortization, the People's Advocate recommended to the Minister of Justice and the General Directorate of Prisons to identify the causes and eventually the responsibility for the failure to implement the PA recommendations for successive years in this regard.

2. *The construction infrastructure of the accommodation buildings and shared premises* continues to present problems of amortization, dampness, interruption of water and electricity supply, inadequate lighting and air in cells, presence of insects, dilapidated conditions of the kitchens, showers, airing premises, solitary confinement rooms, etc. The penitentiary institutions with

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<sup>35</sup> This field of law is covered by the NPT Section at the People's Advocate.

<sup>36</sup> Article 81 of Law no. 81/2020 "On the rights and treatment of prisoners and detainees", Article 30 and Article 30/1 of Law no. 8454, dated 04.02.1999, "On the People's Advocate" as amended.

urgent infrastructural problems are the prisons in Durrës, Tirana (302), Rrogozhinë, Tepelenë and Burrel. The exception are the new and reconstructed ones which have practically created a double-standard situation in the Albanian penitentiary system.

3. *Overcrowding increased throughout 2022* in some penitentiary institution, particularly in pre-detention sectors such as in prisons 302, 313, Jordan Misja, Tirana and Durrës, Drenovë and Peqin where this phenomenon persists. During the visits, the inspection teams found 4 (four) to 6 (six) persons accommodated in one cell, not respecting the 4m<sup>2</sup> standard for each prisoner.<sup>37</sup>

4. *Failure to implement the Agreement between the Ministry of Justice and the Ministry of Health for the establishment of a Special Medical Institution*, provided for in Law no. 44/2012, dated 08.05.2012 "On mental health", in order to accommodate and treat persons who have received court order for "compulsory treatment" and "temporary hospitalization". The People's Advocate through the National Prevention Mechanism has repeatedly drawn the attention to the treatment conditions in penitentiary institutions that accommodate persons with mental health disorders who committed criminal offences, or persons under compulsory treatment. As reported above, 314 citizens under compulsory treatment<sup>38</sup> were successfully transferred from Kruja prison to two buildings of Lezhë Prison<sup>39</sup> on 27 and 28 November 2021. The People's Advocate monitored the conditions and treatment of persons with mental health problems accommodated at Lezha Prison and recommended *the improvement of the conditions and treatment of persons with mental health problems under medical order, and the legal adjustments related to the organizational set-up of Lezha Prison*. This recommendation was addressed to the Minister of Justice, Minister of Health and Social Protection, General Director of Prisons and copying the Prime Minister of the Republic of Albania. It is worth noting that the domestic legislation and international acts ratified by the Albanian parliament clearly stipulate that persons under compulsory medical treatment and temporary hospitalization must not be accommodated in penitentiary institutions subordinate to the Ministry of Justice, but they must be treated in a special medical institution subordinate to the Ministry of Health and Social Protection.

Law no. 44/2012 "On mental health" clearly defines that medical treatment of persons with mental health disorders, regardless of the criminal offence committed by them and for whom the competent court ordered *compulsory treatment* or *compulsory hospitalization*, must be accommodated in a Special Medical Institution part of the integrated health system and not in the penitentiary institutions.

Specifically, Article 28(2) of this Law stipulates that *"Treatment of persons in special medical institutions shall be the same as the treatment of other patients with mental health disorders. The special medical institutions mentioned in paragraph 1 of this Article shall be part of the integrated health system. The modalities and rules for the establishment and functioning of these special medical institutions and the security measures therein shall be defined in a decision of the Council of Ministers".* Based on the above, we recommended as follows: take immediate measures, until the establishment of the Special Medical Institution, to draft /approve the regulation on the functioning of the Transitory Institution in Lezha; take immediate measures to approve as soon as

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<sup>37</sup> Annex 1 shows the population figures in penitentiary institutions.

<sup>38</sup> 217 citizens under the order "compulsory hospitalization" and 97 citizens under "provisional hospitalization".

<sup>39</sup> Lezha Prison through Order no. 8927/1 dated 27.09.2018 of the Minister of Justice was classified as ordinary security prison with a special section dedicated to the accommodation of citizens under compulsory treatment.

possible the organizational set-up of Lezha Prison, based on a clear and concrete study carried out by the Ministry of Justice and Social Protection in cooperation with the Ministry of Justice, in order to increase the capacities of medical services and support services at this institution, intended to improve the quality of services provided to persons under medical order; take immediate measures in the context of investments by the Albanian Government for the Reconstruction planned for the reconstruction of the other buildings in Lezha Prison, in order to build and adapt one of the buildings due to the increased number of persons with mental health disorders under medical order currently in the penitentiary institutions. The Ministry of Health and Social Protection in co-operation with the Ministry of Justice, based on the Joint Action Plan on treatment of persons under medical order, must elaborate specific activities with concrete time-limits for these persons, pursuant to the commitments undertaken in the joint agreement and in line with the requirements of Law no. 44/2012 "On mental health" and Law no. 81/2020 "On the rights and treatment of prisoners and detainees".

1. *Lack of physicians in Penitentiary Institutions* continues to be a concerning problem. The People's Advocate inspected the penitentiary institutions across the country during 2022 and recommended that they take measures to fill this position with a full-time physician in line with their organizational set-up. Absence of physicians in most penitentiary institutions is covered by part-time physicians who work 4 hours a day.

2. Acute shortcomings in the provision of the possibilities for *social and cultural activities for the prisoners*.

3. Remuneration of prisoners' work is provided for in Articles 43 and 44 of Law no. 82/2020 "On the rights and treatment of prisoners and detainees". Article 44 of the above law stipulates that "*1. The prisoner shall be entitled to monthly remuneration for his work. The remuneration for each category shall be determined in fair proportion to the quantity and quality of work done and the work organization that is regulated by decision of the Council of Ministers. 2. The prisoner shall have the right to spend freely forty percent of income earned from work*". Verifications in the employment structure in all penitentiary institutions found that prisoners mostly worked as janitors, food distributors, barbers, laundry, maintenance, etc.

From the information obtained during the inspections and the interviews with the employed prisoners, we established that from October 2021 when the DCM no. 602 dated 13.10.2021 "*On special rules for the employment of prisoners, working conditions, duration and remuneration*" was approved until May 2022, the procedure for the approval and conclusion of the template contract between the institution and the employed prisoner had not been completed yet. For this reason, the prisoners employed for a 7-month period did not gain any right, either in the reduction of their sentence in days, or any financial remuneration for the work done, in accordance with this DCM. The People's Advocate deems that the delays in the approval of the *template* contract for the employed prisoners represents a violation of their right to benefit from the opportunities granted to them by the law, and is also a violation by the competent State body tasked by law due to failure to timely comply with its obligations. So, this legal right must not be denied by the General Directorate of Prisons and it must start to calculate the financial implications from the time of approval of the above DCM for all the persons, regardless of the moment when the contract is signed in writing.

4. The penitentiary healthcare staff continues to lack *adequate premises to conduct medical visits*, because they generally lack the required means and auxiliary materials. *Difficulties in conducting*

*consultations, examinations and specific lab tests* are still noticed in some penitentiary institutions mainly related to the absence of full-time physicians in their organizational set-up or the lack of auto-ambulances and the resistance of regional hospitals to treat persons due to poor safety conditions in them, et.

5. *Problems in the provision of dental services in penitentiary institutions* resulting from lack of equipment and auxiliary materials. Besides tooth extractions, other services are provided with difficulty in public polyclinics or private clinics on the expenses of the prisoners themselves.

6. *Central heating/cooling systems* were not working in almost all penitentiary institutions that had them installed, due to technical glitches or lack of fuel. In most cases, prisoners /detainees are not provided heating as required by law.

7. *Lack in the provision of basic personal hygiene products* (toothpaste, toothbrush, shampoo, etc.) and detergents needed to clean the cells, and lack of uniforms and gloves during the distribution of food, was noted in most penitentiary institutions.

8. *Lack of cupboards and shelves for clothes.* The prisoners/detainees kept their clothes in plastic bags or sacks, usually under the bed.

9. *Food quality and diversity* continues to be a concerning problem in virtually all penitentiary institutions.

The People's Advocate in the NPM role sent recommendations to the competent authorities on the identified problems that need to be addressed through a decision by the high-level State institutions, because most of them result from the harshened criminal justice policy, lack of funds and need to issue by-laws to significantly improve the system both in form and content.

The People's Advocate acknowledges that some structural reforms are being carried out in the penitentiary system and that there were improvements in some aspects of the life of the prisoners, but there is still a long way to go to reach the accepted standards. The People's Advocate particularly appreciates the opening of new opportunities for the employment of prisoners and requests that efforts in this direction be intensified. Digitizing the meeting schedules of family members with prisoners or supplies of food items is a good step that should be followed by many others.

## ***II.1 Level of observance of the rights of persons taken in, detainees /arrested in police units***

The National Mechanism for the Prevention of Torture has continued to carry out inspections at the premises of the State Police during 2022, focusing on the legality and regularity of take-ins, detentions and arrests of individuals, their conditions and treatment in commissariats, the infrastructure and material problems, etc. For all the findings, we sent recommendations to the superior bodies of the State Police.

The inspections in police units aimed to look at the premises and collect and evaluate the information on the actions/practices followed by the State Police in fulfilling the standards defined in the Law no. 108/2014 "On State Police" as amended, the Order of the General Director of State Police no. 925, dated 18.07.2019, "On the approval of the standard procedure for the treatment and safety of arrested/detained persons at the premises of the State Police, and identification and

resolution of their requests and complaints", the Order of the General Director of State Police no. 938, dated 24.07.2019 "On the approval of the standard procedure for the technical rules when taking in persons at the State Police premises" and verify the status of implementation of the People's Advocate recommendations from previous inspections. The People's Advocate took note of the cases in which the police services could have prevented occurrences with consequences to citizens, or cases of irregular actions or omissions by the public order representatives. From the investigated cases, the People's Advocate concluded that the police officers acted in violation of Article 109 of the law because they should not take in persons on unreasonable suspicions. The above provisions state that there must be reasonable suspicions that the person committed a crime or that he must be apprehended to prevent a crime or to identify the person against whom investigation is underway (letters 'c' and 'ç' stipulate that these cases do not warrant that the person be taken in, detained or arrested in flagrante delicto, prescribed by the Criminal Procedure Code. In these cases, the Police officers acted in violation of Article 27 of the Constitution and Article 5 of the European Convention of Human Rights (ECHR) that elaborate the cases when the freedom of a person can be restricted.

Our inspections of the take-in registers found that some take-ins in the police premises were not evidenced therein. Based on the rules, for each person taken in the premises of the commissariat evidence must be kept to indicate the actions and verifications made for the person, the name of the police officer, the personal details of the person and time of stay in the commissariat, the capacity and the legal grounds underlying the restriction of freedom.<sup>40</sup>

Findings from the inspections in police units are summarized below:

*1. Problems in the CCTV system* in the corridors of take-in rooms, security rooms and questioning premises in several commissariats.

It is worth mentioning that the behaviour of State Police officers towards citizens has significantly improved. The People's Advocate in the role of the National Mechanism for the Prevention of Torture (NPM), based on the periodic inspections at the penitentiary institutions (take-in rooms and security rooms) and a significant number of complaints addressed to our institution, has found that in a large number of cases the fundamental rights of citizens guaranteed by the Constitution, International Conventions ratified by the Parliament and the legal framework have not been respected. For these cases, we sent the relevant recommendations to the local police bodies and to the State Police Directorate.

In the reports sent at the end of inspections and from the scope of complaints or ex officio cases against these structures, there are cases of illegal take-in or holding citizens beyond the legal term; physical or psychological ill-treatment at the time of arrest, take-in or during questioning of citizens in the police premises; illegal arrests or detentions; inappropriate conditions in take-in

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<sup>40</sup> VII. "Procedure to evidence the take-in actions:

**a.3** – Minutes on the actions with the taken-in person:

a.3.1 – After the verifications and clarification of the case concerning the taken-in person, the police officer shall compile the minutes to evidence the actions related to the taken-in person.

a.3.2 – These minutes, once filled out by inserting the information in all the sections, shall be signed at the bottom of each page by the police officer who handled the procedure and by the taken-in person himself.

a.3.3 – The minutes on the actions taken with the taken-in person shall be filled out by the police officer tasked to make the verification and handling of the relevant case for the taken-in person.

a.3.4 – The minutes shall be compiled in two copies, one copy shall be mandatorily be given to the taken-in person and the other shall be filed with the secretary/archive of the police unit.

facilities, etc. There is a constant concern that psychological violence is practiced within the premises of the police stations and there are also allegations of physical violence in some cases. The People's Advocate has continuously investigated these claims or public concerns and has made the relevant recommendations when it found evidence of excess force that in sporadic cases reaches to physical violence. Meanwhile, the use of psychological violence is extremely difficult to prove, and for these only preventive measures work. In light of above, we made these recommendations: take the necessary and indispensable measures to create (build) as soon as possible the take-in rooms and security rooms in the LPDs/Police Commissariat across the country, particular rooms dedicated to interviewing or questioning the persons taken in /arrested /detained at the State Police premises fully equipped with the necessary furniture and monitored with audio-visual camera system as a crucial element for the protection of human rights and freedoms, because it has a deterrent effect for violent and punishable criminal offences that might be committed by the taken in, arrested or detained persons, or even by the State Police officers themselves; take immediate measures so that new infrastructure upgrade projects in various commissariats envisage in all cases the interviewing rooms in both the take-in rooms and in the security rooms.

*2. Lack of premises (rooms) dedicated to interviewing/questioning persons deprived of freedom in the State Premises.* The People's Advocate in the role of the National Mechanism for the Prevention of Torture (NPM), based on the periodic inspections at the penitentiary institutions (take-in rooms and security rooms) and a significant number of complaints from citizens addressed to our institution, has found that in a large number of cases the fundamental rights of citizens guaranteed by the Constitution, International Conventions ratified by the Parliament and the legal framework have not been respected. For these cases, we sent the relevant recommendations to the local police bodies and to the State Police Directorate. In the reports sent at the end of inspections and from the scope of complaints or ex officio cases against these structures, there are cases of illegal take-in or holding citizens beyond the legal term; physical or psychological ill-treatment at the time of arrest, take-in or during questioning of citizens in the police premises; illegal arrests or detentions; inappropriate conditions in take-in facilities, etc.

*3. Claims of torture and physical or psychological ill-treatment of citizens by State Police officers.* Despite a more correct approach and improvements in observing human rights by the State Police officers, we still had some complaints and ex officio cases signalled by the media. The complaints found substantiated were followed proactively by joint teams with the Special Section and resulted in concrete recommendations to take measures related to the in compliant persons. NPM reiterates the importance of the behaviour of State authorities towards taken-in persons since the very first hours. A person held by police is in a situation of particular vulnerability, because he is entirely at the hands of the law enforcement agents. This disbalance of power creates a risky situation where abuse and torture might take place.

Protection measures, particularly in the early stage of take-in, are crucial to preventing the abuse. These measures include:

- inform the person on his rights;
- ensure access to a defence counsel;
- notify his family members and/or a third party about the person;
- ensure medical examination by a physical to confirm or dispel claims of ill-treatment and provide medical assistance if necessary.



Besides these cases, the NPM frequent inspections at the premises of commissariats found again that persons taken in/detained by the police officers sign the declaration confirming that they obtained a copy of the letter of rights only at the end of their questioning at the police commissariat.<sup>41</sup>

Also, it was often noted that the complaints/requests register is often left blank. The Law no. 108/2014 "On State Police" (as amended) stipulates in Article 115 that: *"1. any person taken in, detained or arrested at the premises of the police and any other citizen processed by the police officers under the provisions of this law, have the right to present a verbal or written complaint /request to the State Police or other State institutions. 2. A person taken in by police in the cases provided for in this law, has the right to address the court at any time. 3. The police officer shall record the request/complaint in the relevant register and shall send the case immediately to the institution it is addressed. 4. For requests/complaints addressed to the police executive at the police station where the person is taken in, detained or arrested, the response shall be provided promptly, but no later than 5 working days from its submission".*

Furthermore, the Resolution 31/31<sup>42</sup> of the UN Human Rights Council in 2016, encourages all States to update the official registers of persons under police surveillance and recommends that they communicate the person or his defence counsel.

*4. Failure to fulfil legal obligations for the construction or adaptation of take-in premises in line with required standard (at least 3 take-in rooms, 1 for adults, 1 for women and 1 for minors).*

Take-in rooms in most of the commissariats did not meet the standards for dignified treatment of persons, as they were few and did not provide suitable and dignified premises, equipped with the necessary furniture for stay, separated for women, adults and minors.

*5. Problems in the provision of health services in several police stations,* regarding the correct completion of medical registers and files, and unsuitable premises for medical examinations and consultations. In some of these, medical visits took place beyond the 12-hour deadline set out in the standard operating procedures of the State Police, whereas some police directorates did not have a physician at all.

## **Some of the main recommendations sent by the National Mechanism for Prevention of Torture during 2022**

*Recommendation sent to the General Directorate of State Police, Tirana LPD and Commissariat no. 5 in Tirana.*<sup>43</sup>

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<sup>41</sup> The CPT recommended to the competent authorities during 2018 that the arrested/detained persons must be fully informed of their rights from the moment of the deprivation of liberty, and must also be given clear verbal information about their legal/procedural rights.

<sup>42</sup> [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/31/L.26/Rev.1](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/31/L.26/Rev.1)

This resolution encourages all States to update the official registers of persons under police surveillance and these must contain at least the following information:

- a. reasons for the arrest;
- b. time when the person is arrested or sent to a detention facility, and his/her first appearance before a judicial body or other authority;
- c. identity of the law enforcement officers in question;
- d. accurate information on the detention facility.

<sup>43</sup> <https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20p%C3%ABr%20zbatimin%20ndalimit%20arr%20t%C3%AB%20shtetasve%20n%C3%AB%20ambientet%20e%20organeve%20t%C3%AB%20Policis%20s>

On 26.03.2022, the media published the news that a fire broke in the security rooms of the Police Station no. 5 Kamëz, Tirana, under still unclear circumstances, resulting in the death of the detainee A.M., 26 years old, born in Kukës and resident in Çerkeze village, Kamëz, died. According to media reports, another detainee and a police officer were injured. The People's Advocate launched an administrative investigation of this case and found an incorrect operation of the Commissariat no. 5 in Kamëz, where police officers are responsible for the custody and treatment of arrested/detained persons and they demonstrated negligence in the exercise of duty in light of applicable legislation governing the service of custody, security and treatment of arrested/detained persons, i.e., non-compliance with the standard procedure and specifically Chapter V paragraph 2.2.3 which stipulates that: *"Before the physical check of the person, the police officers shall assess the risk situation during the check; show care to distinguish any action, behaviour, attitude or other signs showing that the persons suffers from a mental illness or particular health condition"*.

Although our institution has made several recommendations over the years to build new security rooms and install the monitoring system in line with the standard procedure, this recommendation not only was not implemented, but this institution did not even respond. Based on the above, we recommended as follows:

- Take immediate measures to stop using the existing security rooms at the Police Commissariat no. 5 in Kamëz, because they do not meet the conditions and requirements that guarantee humane and dignified treatment of detained /arrested persons in line with the provisions of Law no. 108/2014 "On State Police", as amended, Order no. 925 dated 18.07.2019 of the General Directorate of State Police "On the approval of the standard procedure on *'Treatment and security of persons arrested /detained at the State Police premises, identification and resolution of their requests and complaints'*" and the recommendation of the European Committee for the Prevention of Torture (CPT);
- The General Directorate of State Police must take the necessary organizational measures to close all those security rooms and premises at the local police structures which do not meet the minimum conditions defined in the standard procedure;
- Generalize this case across all local police structures in order to take the necessary measures for the training of police officers serving at security premises to comply with the rules set out in the standard procedure on guarding and treatment of this category of persons;
- Analyse why the Police Commissariat no. 5 in Kamëz and Tirana Local Police Directorate failed to take measures to implement the People's Advocate recommendation sent in the official letter of 16.06.2021 and failed to provide a response on this position. Regarding our recommendation, the General Directorate of State Police responded and informed us that: By Order no. 342 dated 12.10.2022 of the General Director of State Police, the security rooms in the local directorate and in all the commissariats no. 1, 2, 3 and 5 were permanently closed.

Based on some findings made by us recently at the Tirana Police Stations and not only, the arrested and detained persons are held there for several days even after the imposition of the

remand order *pre-trial detention* by the court. For this, we have recommended taking organizational measures and increasing cooperation between the General Directorate of State Police and the General Directorate of Prisons for the transfer of the arrested/detained as soon as possible from the Police premises to prisons in accordance with the cooperation agreement between these institutions, respectively Agreement no. 897/3, dated 04.03.2019 and Agreement no. 2194, dated 05.03.2019 "On the transfer to penitentiary institutions of arrested/detained persons under the remand order *pre-trial detention* and those convicted with *imprisonment in absentia*".

*Regarding this recommendation, the General Directorate of Police informed us that the situation remains problematic due to the lack of space in penitentiary institutions.*

*1. Recommendation sent to the Minister of Justice and the Chairperson of the parliamentary Law Committee to amend Article 3 of law no. 81/2020 "On the rights and treatment of prisoners and detainees"*

On 22.10.2021, the media published the news that dozens of prisoners and detainees in Burrel prison refused the food in protest against the low number of monthly meetings with their family members, because they are allowed only one meeting due to the pandemic. Also, they requested to extend the circle of family members with whom they can meet.

Prisoners have the right to meetings and correspondence with their relatives and other individuals, communication to anyone outside of the prison, in order to improve their treatment and respect their fundamental rights and freedoms. These rights are in accordance with international standards and practices observed in several countries, including Italy, Serbia, Kosovo, and North Macedonia, in which prisoners' meetings with the outside world include a circle that is wider than the close family, including the *relatives and/or friends*.

So, these meetings and correspondence includes third parties, expanding the circle with people such as grandchildren, old friends who can even physically come to meet the prisoners. This provision helps their psychological and emotional state, given that often relatives are abroad or can hardly contact the prisoners due to the distance, resulting in a general impossibility to meet.

Granting the demands of prisoners and detainees is also seen related to the right to family life, as a fundamental right. In this context, meetings and visits with family members and relatives should be considered as a right guaranteed by the law and never as a privilege that can be removed as a disciplinary measure. In the Republic of Albania, limitations on the rights and freedoms sanctioned in the Constitution can be imposed only by law, for a public interest or for the protection of the rights of others. The restriction must be proportionate to the situation that dictated it. These restrictions may not violate the essence of freedoms and rights and in no case may exceed the limitations provided for in the European Convention on Human Rights.

Based on the above, the People's Advocate recommended:

- Take the necessary measures to revise Article 3 "Definitions" of Law no. 81/2020 "On the rights and treatment of prisoners and detainees", precisely its paragraph 1 that defines the *family*

members, in order to extend this circle;

- Take the necessary measures to guarantee the prisoners' right to phone calls with their family members, relatives and in particular cases with third persons, based on the legal acts in force. *We sent this recommendation to the Ministry of Justice and the parliamentary Law Committee but did not receive a response from them.*

## *2. Recommendation sent to the General Directorate of Prisons and Durrës Prison*

On 18.07.2022, the news reported that a prisoner hang himself in his cell at the Durres Prison. The victim R.H., 44 years old had been sentenced to 14 years in prison for the criminal offense of attempted murder. According to the media, the convict suffered from mental health problems. It is reported that another convict was in the room with the prisoner, but he was asleep at that moment. The People's Advocate initiated an ex officio administrative investigation into the incident. The health card indicated that the convict R.H. suffered from mental health problems.

For this case, we do not have any information that his case was followed or that he received any special treatment or was referred to the physician. Lack of permanent medical staff does not guarantee the quality health services to prisoners so that their health in prison is preserved in line with standards in international acts. The PA that the lack of a full-time physician has a direct impact on the quality and coverage of the health services; in order to prevent such situations, urgent action is needed to staff the prisoners, because there might be emergency cases that the health staff cannot cope with and the consequences could be serious just like in this case.

Based on the above, the People's Advocate recommended:

- The General Directorate of Prisons must make a detailed analysis of this case, namely the psycho-social and health units at Durres Prison, in the context of this administrative investigation and assign responsibility, in order to ensure a correct conduct in providing quality service and treatment of prisoners according to the law;
- Take immediate measures to fill the vacancies in the health units for prisons with mental health problems, and pay particular care to the selection of standards for the rooms that will accommodate the prisoners, their personal hygiene and surrounding environment. Persons suffering from mental health disorders need special care, due to their illness, by the multidisciplinary team of the institution as prescribed in Article 3(4) of Law no. 44/2012 "On mental health" as amended;
- Take the necessary measures to guarantee the accommodation of prisoners with mental health problems in suitable accommodation environments, respecting the minimum space per person.
- Analyse this case and generalize it across all penitentiary institutions, so that police, health and social personnel can more accurately assess the suicide risk posed by a prisoner. The structures of the General Directorate of Prisons must dedicate more and better oversight over the penitentiary institutions related to compliance with the legislative acts on the respect of human rights and the occasional recommendations of the People's Advocate;
- Take immediate measures to equip the institution with an auto-ambulance to transport prisoners in the event of health emergencies. *Regarding this recommendation, the General Directorate of Prisons informed us that it set up the Inspection Directorate with the remit to strengthen oversight*

*mainly in legal compliance and respect for the rights of prisoners, and this will improve compliance oversight.*

### *3. Recommendation sent to the State Police on the death of citizen L.K.*

On 20.10.2022, the media broadcast the news of the death of a 32-year-old citizen after his arrest by the State Police. The People's Advocate initiated the administrative investigation of the case and conducted an inspection at the Police Station no. 3 in Tirana on 20.10.2022, in the context of monitoring the respect of human rights for persons taken in or detained by State Police.

The People's Advocate ascertained that the reasons of this occurrence and the problems identified include: *the detention reason for the 32-year-old triggered the consequences; inaction by the police officers as they should have immediately taken the held citizen L.K. to the hospital once the worsened health symptoms appeared; incomplete documentation in the commissariat about the period of stay and the reasons for the restriction of freedom; and failure to keep record (minutes) of the chronology of events.* In this case, the People's Advocate deemed indispensable to issue an immediate recommendation to the competent State authorities regarding the correct compliance with legal requirements by State Police officers during take-in, detention or arrest of citizens and their treatment with dignity in line with applicable legislative acts.

Based on the above, the People's Advocate recommended:

- Take measures for effective compliance with the legal safeguards of citizens related to their health and well-being in the first moments they are taken in by police officers;
- The General Directorate of State Police must take the necessary measures to carry out frequent checks in all the local police structures about their compliance with take-in requirements and respect for the rights of these persons, and the police managers must hold strictly accountability for compliance with the take-in procedures;
- The General Directorate of State Police must take measures to ensure that any take-in of persons in the police premises be reasonable and based on the proper indicia as set out in the State Police Law which clearly stipulates the cases when persons may be held in the police premises;
- Generalize this case across all local police structures so that such violations by the police officers are not repeated in the future;
- Take the necessary measures to comply with the legal obligation to fill out the Take-in Report/Form in any case, once the citizens are brought to the police premises. *Regarding this recommendation, the General Directorate of State Police informed us that: The State Police sent circulars and draw the attention to all local police directorates about their measures and steps while takin in citizens.*

### *4. Recommendation sent to the General Directorate of State Police and local police bodies to create premises (separate rooms) for the interview/questioning of persons deprived of freedom at the State Police premises.*

The People's Advocate in the role of the National Mechanism for the Prevention of Torture (NPM), based on the periodic inspections at the penitentiary institutions (take-in rooms and security rooms) and a significant number of complaints from citizens addressed to our institution, has found that in a large number of cases the fundamental rights of citizens guaranteed by the Constitution, International Conventions ratified by the Parliament and the legal framework have

not been respected. For these cases, we sent the relevant recommendations to the local police bodies and to the State Police Directorate.

Based on the above, the People's Advocate recommended:

- Take the necessary and indispensable measures to create (build) as soon as possible the take-in rooms and security rooms in the LPDs/Police Commissariat across the country, particular rooms dedicated to interviewing or questioning the persons taken in /arrested /detained at the State Police premises fully equipped with the necessary furniture and monitored with audio-visual camera system as a crucial element for the protection of human rights and freedoms, because it has a deterrent effect for violent and punishable criminal offences that might be committed by the taken in, arrested or detained persons, or even by the State Police officers themselves;
- Take immediate measures so that new infrastructure upgrade projects in various commissariats envisage in all cases the interviewing rooms in both the take-in rooms and in the security rooms.

*Regarding this recommendation, the General Directorate of State Police informed us that it is searching for funds to provide all the required conditions to the arrested /detained persons.*

### **Monitoring of institutions related to the implementation of the recommendations of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment (CPT)**

Based on the Assembly's Resolution dated 9.7.2020 "On the evaluation of the activity of the People's Advocate for year 2019"<sup>1</sup>, the Assembly asked the National Mechanism for the Prevention of Torture to monitor the implementation of the recommendations of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment (CPT) and to report timely to the Assembly on the need to address recurrent problems or that require its engagement.

Taking into consideration the measures that the competent institutions committed to undertake during the drafting of the response of the Albanian Government on 27 February 2020 to the report of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment (CPT), during their visit to Albania on 20-30 November 2018, we asked them to inform us according to their area of responsibility, on the recommendations we listed not by importance but by the order of the findings in this report.

After receiving the answers from the above institutions and based on the factual findings, we drew up a *Special Report* on their implementation and problems according to the findings of the NPM itself from successive monitoring visits, a report which was published on 14.07.2022.<sup>44</sup>

#### ***I. Level of observance of individual rights in Psychiatric Hospitals***

The People's Advocate has constantly drawn attention to the situation in mental health care hospitals in Albania. In 2022, the National Mechanism inspected the mental health institutions such as the Psychiatric Hospitals in Vlora, Shkodra, Elbasan, Lezha, the Special Health Institute of Prisoners (SHIP) and the Psychiatric Hospital "Xhavit Gjani" in Tirana.

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<sup>44</sup> <https://www.avokatipopullit.gov.al/media/manager/website/reports/Raporti%20CPT.pdf>.

Problems identified from these inspections include:

1. *Non-implementation of the legal obligation between the Ministry of Justice and the Ministry of Health to establish a special medical institution, provided for in Law no. 44/2012, dated 08.05.2012 "On Mental Health", intended to accommodate and treat persons who have received a court-ordered measure of "compulsory treatment" or "temporary hospitalization". The People's Advocate through the National Mechanism has repeatedly drawn attention to the conditions and treatment in penitentiary institutions of prisoners with mental health disorders who have committed criminal offenses or persons with medical measures of "compulsory treatment".*

2. *Persistent failure to implement Article 28 of Law no. 44/2012 "On Mental Health" (as amended) by the Ministry of Justice and the Ministry of Health and Social Protection to establish the special medical institutions for the prisoners with mental health disorders, who have committed a criminal offence and for whom the competent court ordered "compulsory treatment", for detainees or prisoners who manifest mental health disorders while serving the sentence, and for the treatment of persons for whom the court ordered "temporary hospitalization" in a special medical institution, according to Article 239 of the Criminal Procedure Code (as amended).*

3. *Add psychiatrists, nurses, "caretakers/task force", security officers, janitors and barbers to the hospital staff, in order to provide suitable mental health services given the specifics, including beds. The People's Advocate estimates that it is necessary to immediately increase the enrolment quotas for psychiatrists from this year on; reformulate employment criteria for the clinical functions "caretaker" and "task force" with nursing education and in-depth knowledge in hospital psychiatric rehabilitation, and having the suitable age and physical skills to manage agitation and high risk, and train the current employees.*

4. *Instal camera surveillance system in the shared premises of psychiatric hospitals.*

5. *Construct/renovate the confinement rooms, in accordance with paragraph 4.6 "Confinement Infrastructure" of the "Physical Restraint Standards in Specialized Mental Health Services with Beds", approved by Order of the Minister of Health, part of the package of by-laws issued for the implementation of Law no. 44/2012 "On Mental Health" as amended; and equip hospitals with mechanical restraint equipment in line with paragraph 1.2 "Restraint elements", letter 'b' "Mechanical restraint" of the above-cited legal act.*

6. *Improve the conditions in the wards, heating, showers and bathrooms in order to offer dignified service to the people treated in psychiatric hospitals, and provide the necessary materials /equipment to the psycho-social staff.*

7. *Provide/make fully operational the clinical bio-chemical labs and ECG devices.*

8. *The medical staff persistently needs better material conditions and equipment, and support with security staff. Due to minimum security standards, the physicians and support staff are always at risk.*

9. *There is a need to separate and reorganize particular wards of persons with intellectual disability, residents, acute and sub-acute patients, in order to provide comprehensive services according to the needs of each category, because their placement in the same ward makes it*

difficult to treat them according to the standards provided for in the mental health law and its by-laws.

Based on the above, the People's Advocate sent the relevant recommendations seeking to improve the conditions in the mental healthcare hospitals in Albania.

➤ ***Observance of rights in Closed Centres for Foreigners, the National Reception Centre for Asylum-seekers and the National Reception Centre for Victims of Trafficking***

The National Mechanism for Prevention of Torture (NPM) has conducted inspection visits during 2022 in the reception centres for emigrants and the centre for the protection of victims of trafficking of trafficking victims, in order to monitor the observance of rights.

➤ ***Closed Centre for Foreigners in Karreç***

The National Mechanism for the prevention of torture and cruel, inhuman or degrading treatment or punishment (NPM) conducted an inspection at the Closed Centre for Foreigners in Karreç on 10.02.2022 based on the annual inspection plan approved by the People's Advocate.

The inspection found that these issues still exist:<sup>45</sup>

- ✓ The issue of a lack of staff, including physicians, lawyers and dentists, which has a direct impact on the respect of the rights of irregular foreigners in the Republic of Albania.
- ✓ Foreigners staying in the institution face difficulty in communicating with their families due to the lack of telephones. The staff informed the inspection team that the problem was resolved by sharing mobile devices. Those who owned mobile devices shared them with others in a certain schedule to communicate with their families or legal representatives.
- ✓ The absence of translators in the centre created a problem, as urgent communication had to be in either English or the dominant foreign language spoken by the housed foreigners. This lack led to constant difficulties in communication and interaction between the housed foreigners and the centre's staff.
- ✓ Another significant issue was the insufficient provision of recreational and sports amenities. A lack of cultural, recreational and sporting activities, with the only sporting activity being football on an unsuitable pitch.
- ✓ The absence of informational posters outlining the legal entitlements of irregular foreigners was noticeable in all the rooms of the centre.
- ✓ The rooms for the foreigners housed in the centre had not been painted regularly, especially the common corridor of the living rooms, where there was a poorly cleaned environment, unpainted walls and an unpleasant smell.
- ✓ The centre does not provide dental services and has only one nurse for medical care.

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<sup>45</sup> Recommendation of 15/11/2021, no. K4/Ç21-4. It is recommended that the treatment and conditions of irregular foreigners housed in the Closed Centre for Foreigners in Karreç be improved.



- ✓ There were no alarm systems in the bedrooms. The maintenance of the plumbing and electrical systems in the isolation rooms has not been completed in full.

➤ Babrru National Reception Centre for Asylum Seekers, Tirana.

On 14 July 2022, the NPM inspected the National Reception Centre for Asylum Seekers and identified the following ongoing issues:

- ✓ No action was taken to increase the daily food allowance for asylum seekers, despite the rising prices of the food basket and the evaluation carried out compared to the previous year.
- ✓ Likewise, no action was taken to re-examine the organisational structure of this centre, taking into account the evolution of migratory movements. An evaluation found that at least one nurse, two nightwatchmen, one maintenance worker, one financial specialist and one sanitation worker were needed to meet current needs.
- ✓ There is no playground for children or a sports field suitable for sports activities.

➤ *National reception centre for victims of trafficking in Linzë*

The People's Advocate, acting as the National Mechanism for the Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment, carried out an inspection at the National Centre for the Accommodation of Victims of Human Trafficking (NCAVHT) in Linzë on 15 July. The inspection revealed that the problems previously identified had not been resolved. To be more precise:

- ✓ There was no immediate solution to the problem of completing the design and reconstruction of the three-floor building inside the centre after the collapse in October 2019.
- ✓ The partial restoration of the two-floor building has not been possible, as the premises have been severely damaged and are unsafe for habitation.

### **3.5 Respect for human rights by the prosecution offices <sup>46</sup>**

During 2022, the People's Advocate registered and handled 37 cases where requests and concerns were raised and submitted to the prosecution offices.

The Prosecution Service has the constitutional responsibility to act as the sole prosecuting authority, to conduct a full and thorough investigation of all legal cases within the procedural deadlines, to present the charges in the most effective manner at trial, to enforce the criminal judgments of the courts without delay, and to ensure that the sentence is continuously monitored.

It is crucial to examine the evidence and determine whether legal action is necessary, to conduct a competent investigation within a reasonable period of time, to manage the workload while maintaining adequate communication with the parties, subjects, institutions or stakeholders, to act quickly and efficiently in the enforcement process, etc. However, it is a well-known fact that in certain instances where investigations are suspended, the prosecution office fails to inform the

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<sup>46</sup> This field of law is covered by the Special Section at the People's Advocate.

parties concerned of the relevant decisions. The People's Advocate has called for respect for the right of citizens to be informed of final decisions taken by the General Prosecution Office. The aim is to ensure that private individuals have the right to appeal against such decisions at any stage of the investigation.

In analysing and discussing the problems with the prosecution bodies, we emphasise that we did not intend to evaluate and influence the decision-making process of the prosecutors in the cases, as it is clear that the court is competent to examine the legal basis of such decisions. If the Prosecution Service does not fulfil its legal duties with regard to the rights of victims of crime or complainants guaranteed by the Code of Criminal Proceedings, this must not be ignored. Consequently, crime victims and complainants must in practice enjoy the rights set out in Article 58(1)(d), (dh), (e), (ë), (f), Article 326(3) and Article 329/a (4).

Complaints from citizens in relation to violations of their rights during criminal proceedings are grouped as follows:

*Firstly*, complaints about delays in the investigation of criminal proceedings, complaints about delays in the investigation of criminal proceedings. Such complaints, received by the People's Advocate office, make up the majority of cases dealt with by the institution. The primary cause of the backlog in the investigation of criminal cases, according to the responses of the prosecutors themselves, is mainly related to the reduced number of prosecutors<sup>47</sup> in the criminal investigation and prosecution structures due to the strict implementation of the judicial reform and the dismissal of a significant number of prosecutors; There are many challenges faced by prosecutors, including a large workload, complex cases involving domestic violence, sexual relations with minors or other serious crimes, delays in responses to rogatory letters from foreign judicial authorities, and the transfer of prosecutors to other prosecution offices to fill vacancies. Despite this, our inspections have uncovered cases of unjustified delays in criminal proceedings over a period of years.

*Secondly*, the problem of the implementation of the procedural rules that define and regulate the rights of the parties in criminal proceedings, in particular the lack of knowledge of the acts and evidence (file) on the basis of which criminal charges are brought; Failure to promptly notify parties of decisions made by the prosecution office, particularly in cases where criminal proceedings are not initiated, and prolonged inaction by the prosecution office. Moreover, persons affected have reported not being informed about filed reports, and irregularities regarding the replacement of prosecutors and the unlawful seizure of property/vehicles. Notification delays in criminal cases also happened when the prosecutor chose to drop the charges.

*Thirdly*, the prosecution office did not provide any information to the citizens who had reported crimes against them. Despite providing their residential or work addresses, electronic addresses, and telephone numbers in the reports, the complainants did not receive any communication - by

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<sup>47</sup> According to the European Commission's Report on Albania, published on 12.10.2022, Albania had 300 full-time prosecutors (10.5 per 100,000 inhabitants) in 2021. According to the European Commission for the Efficiency of Justice (CEPEJ), the European average is 12 prosecutors per 100,000 inhabitants.

For more information see the following link:

[https://ec.europa.eu/info/departments/european-neighbourhood-policy-and-enlargement-negotiations\\_en](https://ec.europa.eu/info/departments/european-neighbourhood-policy-and-enlargement-negotiations_en).

post, email, or phone. We discovered the notification in the criminal file, but there was no record of the notification or proof of receipt of the decision. Therefore, in our view, the notification was made only formally to meet procedural requirements and add it to the case file, without actually allowing the affected citizens (complainants/victims of crimes) assert their legal rights, as outlined in the Criminal Procedure Code, namely Article 9/a, Article 58, Article 326 paragraph 3, and Article 329/a paragraph 4.

In a particular case, the People's Advocate reviewed a complaint against the Elbasan Prosecution Office. It stated that the individual filed a criminal complaint in October 2020 and received no information about the investigation from the prosecution office. We conducted an administrative review, at the end of which it was determined that the handling of the case beyond the established deadlines was the result of several factors that violated the right to fair trial, and we sent the recommendation<sup>48</sup> to the prosecution office to take measures to conduct an objective, complete and prompt investigation of the criminal case and to notify the victim (complainant) in accordance with the constitutional and legal procedural provisions, within the framework of the fair trial.

One problem we frequently deal with concerns citizens on trial for different crimes. At times, during court hearings to determine remand orders, reports or complaints are made about physical violence State Police officers have suffered while arresting, escorting or taking statements from them. The prosecution office dealt with complaints from those being investigated or criminal cases were started if the injured parties filed complaints in court. In the end, it was found that the criminal cases were joined and investigated by the same prosecutor.

Regarding the joinder of criminal proceedings when there are mutual reports of the parties, specifically employees of the State Police, the Prison Police or the Municipal Police and the citizens under investigation, we draw the attention to the findings of the CPT Report made public on 17.09.2019 after their visits to several detention facilities in Albania during 20-30 November 2018. The CPT believes that this double power compromise the objectivity of the prosecutor involved. Therefore, the Committee suggests that cases of potential mistreatment by police officers are examined by prosecutors who are not involved in any criminal inquiries against alleged victims of mistreatment. After examining the complaints submitted by several citizens, we advised the competent prosecution authorities to separate the legal proceedings relating to the report submitted by the citizens from those relating to the accused persons and to assign separate prosecutors to each investigation.<sup>49</sup>

Despite our efforts to address the issue<sup>50</sup>, we discovered that this conduct persisted. Therefore, we

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<sup>48</sup> For more information, see the relevant recommendation on the PA official website. <https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20p%C3%ABr%20marren%20e%20masave%20me%20q%C3%ABllim%20kryerjen%20e%20hetimeve%20objektive.%20t%C3%AB%20gjithanshme%20dhe%20t%C3%AB%20shpejta%20t%C3%AB%20procedimit%20penal.pdf>.

<sup>49</sup> For more information, see the relevant recommendations on the PA official website. <https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20per%20ndarjen%20e%20procedimit%20penal%20t%C3%AB%20kallezimit%20e%20bere%20nga%20A.H.pdf>.  
<https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20drejtuar%20Prok.%20Kurbim%20per%20ndarjen%20e%20proc.%20penale.pdf>.  
<https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomadim%20drejtuar%20Prokurorise%20Sarande%20per%20ndarjen%20e%20C3%A7eshtjeve%20penale.pdf>.

<sup>50</sup> For more information, see <https://rm.coe.int/16809cb571> "Response of the Albanian Government to the report of the European

considered it important to draw the attention of the General Prosecution Office to the highest international standard for the protection of the rights of persons accused of crimes during the prosecution process. Besides, there are additional concerns such as the delay or lack of response and the failure to provide the information we requested as part of the administrative review of the complaints against the prosecution office. This approach is incorrect and causes delays in reviewing complaints from citizens and requests from our institution, which ultimately harms the People's Advocate reputation with the public.

To enhance the efficacy and public confidence in the Prosecution Office in the future and to uphold the principles of procedural fairness, objectivity, impartiality and professionalism in the investigation of criminal cases, we recommended<sup>51</sup> that the Prosecutor-General take the necessary measures to prepare, approve and send to the Prosecution Offices of general jurisdiction an instruction/circular in order to improve their work in respecting the constitutional and legal rights of citizens during criminal proceedings in relation to the above-mentioned issues. *The recommendation has been welcome and accepted.*

Similarly, we addressed the issue of incorrect calculation of time served. A complaint was received from a convicted person regarding the remand order of 'house arrest'. The complaint was about the period between the date the decision was rendered and the date it was executed, i.e., a total of 51 days, which was not counted as time served in the order of execution of the criminal decision of the Special Prosecution Office against Corruption and Organised Crime.

After our analysis, we came to the conclusion that it is necessary to take a position on the issue of whether the convicted person under "house arrest" should move freely or remain at home until the execution of the final decision, and that the legal deadlines for the issuance of acts for the execution of criminal decisions with imprisonment, their transmission to the competent institutions and their execution should be respected in order to guarantee and not violate the rights of convicted citizens. A recommendation<sup>52</sup> was made to the Special Court and Appeals Court against Corruption and Organised Crime, as well as the Special Prosecution Office against Corruption and Organised Crime for the relevant findings.

### **3.6. Right to a fair trial in the judicial system<sup>53</sup>**

The same issues that hindered the efficient operation of Albania's judiciary persisted in 2022. This year's judicial reform process also contributed to an increase in workload within the system, as a significant number of judges were dismissed and were not replaced with new ones.

It is crucial to ensure the completion of the total number of judges required for the Constitutional Court<sup>54</sup>, performing significant constitutional control that affects the consolidation of the rule of

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Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT on its visit to Albania)" from 20 to 30 November 2018 CPT/Inf (2020). Response by the Albanian Government sent on 27 February 2020.

<sup>51</sup> <https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20drejtuar%20Prokurorit%20te%20Pergjithshem%20per%20nxjerrjen%20e%20nje%20qarkoreje.pdf>

<sup>52</sup> <https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20per%20respektimin%20e%20afateve%20ligjore%20ne%20nxjerrjen%20e%20akteve%20per%20ekzekutimin%20e%20venidmeve%20penale.pdf>

<sup>53</sup> This area of law is covered by the Special Section of the People's Advocate.

<sup>54</sup> In January 2023, the ninth member of the Constitutional Court was appointed.

law in three areas: checks and balances, legal certainty principle and protection of and respect for fundamental human rights.

Moreover, the appointment of 6 new judges to the High Court in 2022 will bring the total number of judges to 15. Although the court's examination of the backlog of cases accumulated over the years is ongoing, there is still an extremely high number of pending civil cases<sup>55</sup>. This heavy workload makes it challenging for the High Court to fulfil its constitutional and legal role of ensuring uniformity in the interpretation of the law.

62 *complaints* were filed with the People's Advocate, largely related to delayed legal proceedings, postponed trials for new cases, late delivery of reasoned decisions, complaints against judicial decisions, and the problem of full respect for procedural rights during trials. Delays in legal proceedings have been observed for several years, notably in the Administrative Court of Appeal where the situation remains critical, as well as in other Courts of Appeal. In certain cases where inquiries were concluded, the relevant recommendations were made to the Court of Appeal in Tirana and the Court of Appeal in Shkodra to implement legal measures that would expedite proceedings concerning the recognition of work seniority, verification of document authenticity for retirement pensions, which guarantee citizens this right, within the framework of due process of law<sup>56</sup>. In another case, we approached the Shkodra Court of Appeal with the recommendation to take legal measures in order to comply with the guarantees (reasonable trial period) of due process in a civil case<sup>57</sup>. In addition, we recommended that the Vlora Court of Appeal take measures to ensure that the procedural deadlines for the reasoning and submission of judicial decisions are respected<sup>58</sup>.

### *The new judicial map*

To exercise its constitutional and legal powers and to safeguard the rights, freedoms, and legitimate interests of citizens from potential actions or omissions of public administration bodies, the People's Advocate closely monitored the public debates surrounding the proposal by the High Judicial Council and the Ministry of Justice for a new judicial map. Based on the sensitive nature of the matter and the grievances lodged by members of the public, particularly those from marginalized communities, an examination of the case was carried out.

According to Article 14 of Law no. 98/2016, the revisiting of judicial district distribution must be made on three criteria:

- ✓ ensure that individuals have access to justice by guaranteeing proximity to the court.

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<sup>55</sup> From 36,000 pending cases in March 2022, the current number of backlog cases was reduced to 28,940, while 11,764 decisions were delivered during this period. 2,082 cases were registered during 2022. In total, 6,335 court decisions were delivered or 440 decisions per judge.

[http://www.gjykataelarte.gov.al/ëeb/raporti\\_vjetor\\_i\\_performances\\_se\\_gjykates\\_se\\_larte\\_per\\_vitin\\_2022\\_redaktuar\\_final\\_1405.5.pdf](http://www.gjykataelarte.gov.al/ëeb/raporti_vjetor_i_performances_se_gjykates_se_larte_per_vitin_2022_redaktuar_final_1405.5.pdf).

<sup>56</sup> For more information, see: <https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20per%20gjykimin%20e%20ceshtjeve%20te%20Opensioneve.pdf>

<sup>57</sup> <https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20per%20gjykimin%20e%20ceshtjes-Xh.M. MM7aTc2.pdf>

<sup>58</sup> <https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20-E.C.pdf>.

- ✓ reduce costs in order to make efficient use of public resources.
- ✓ enhance the quality and suitability of the services provided.

Similarly, Article 15 of the aforementioned law outlines the principles and criteria for ascertaining territorial jurisdiction.

The Proposed Evaluation Report on the new judicial map<sup>59</sup> drawn up by the working group was discussed in several consultative meetings. But, despite these efforts to collect opinions, suggestions and recommendations from stakeholders, we consider this process should have started earlier since the stage of the conception of this map – in order to guarantee the right to be heard and deeper reflection. The last proposal approved by the HJC envisages as follows:

- 13 out of 22 first-instance courts (of general jurisdiction) remain;
- 2 out of 6 first-instance Administrative Courts remain;
- Out of 6 Courts of Appeal across Albania, only one in Tirana remains.

Also, it must be highlighted that during the inspections carried out by the working groups of the People's Advocate in some penitentiary institutions, both the detainees /prisoners and prison staff raised concerns about the new judicial map according to which the appellate courts are to be merged into only the Tirana Court of Appeal.

According to them, this process would bring serious organizational difficulties and burden on the budget; having only one appeals court would pose multiple difficulties given the limited human resources and vehicles available.

The People's Advocate deems that this proposal does not improve access to justice at all, but on the contrary violates this principle, resulting in:

- ✓ violation of the principle of access to justice;
- ✓ increased costs for citizens;
- ✓ inadequate quality and availability of provided services.

The State must guarantee to any individual access to justice, time and financial means to be heard and represented. This proposal envisages the closure of 9 first-instance courts (of general jurisdiction) in the most radical change in these 30 years across the entire region.

According to the comparative data published by the European Commission on the Efficiency of Justice (CEPEJ) concerning the judicial systems in the Member States of the Council of Europe, the closure of courts in the context of this proposed map just reduces the number of courts and judges per 100,000 inhabitants.<sup>60</sup>

<sup>59</sup> <http://klgj.al/wp-content/uploads/2021/12/NJ%C3%8B-HART%C3%8B-E-RE-GJYQ%C3%8BSORE-.pdf>

<sup>60</sup> The number of courts for 100,000 inhabitants is now under the European average. This number in Albania was 1.3 in 2018 against the European average of 1.5. Following the approval of this proposal, this indicator is further worsened. According to the EC Progress Report for Albania 2021, the figures indicate the same situation in 2020 about the number of judges per 100,000 inhabitants. This number is circa 11, significantly lower than the European average of 21 judges per 100,000 inhabitants. The 2021 EC Progress Report finds that in 2020 Albania had 307 full-time judges (10.8 per 100,000 inhabitants) and 300 full-time prosecutors (10.5 per 100,000 inhabitants) in 2020. According to the European

This project leads to significant increase in costs, both for citizens and for the State budget. The main problem is that it lacks a feasibility study and a planning for the timing of its deployment and implementation in practice.

It is very important to include an indicator of the necessary travel time of citizens to the court using public transport, but, although the Working Group requested data from the National Road Authority, a careful reading of the presented material shows that there is no data available.

Besides Kosovo which has a much smaller surface area and population than Albania, no other European country has a single Appellate Court as proposed.

We consider that the new Judicial Map is not designed with the aim of ensuring the provision of adequate access of citizens to the courts, but to address the shortage of magistrates in the justice system.

What remains extremely worrying and in the special consideration of the People's Advocate is the people with insufficient income, who account for a significant number of the Albanian population (data shows that although the relative poverty decreased inconsiderably from 23.7 in 2017-2018 to 23.4 in 2018, the percentage of the population that is at risk of poverty or living with very low income is 49%, which means that almost half of the population lives in very difficult economic conditions<sup>61</sup>).

In our view, the implementation of the new judicial map constitutes a violation and restriction of rights, because it will cause a lack of access to justice for victims of gender-based violence, victims of human trafficking and victims of criminal offenses of sexual harassment, forced sexual intercourse with adults and minors. For this reason, we think that such a reorganization of the judicial system will lead to the issuance of protection orders without the presence of the parties to the proceedings, in the best case only with the presence of the offender.

At the same time, looking at the implementation of Law no. 111/2017 "*On State-guaranteed legal aid*" that presented obvious difficulties in the secondary legal aid due to non-execution of court decisions by the local bar chambers and also from the reduced budget dedicated to legal aid, we are of the opinion that the new judicial map will exacerbate these problems, denying justice to these categories.

The right to trial within a reasonable time is one of the fundamental rights of citizens. For this reason, this right is not and should not remain a declaratory right or safeguard, because it is a constitutional standard guaranteed and sanctioned in the acts that define basic human rights and freedoms at international level (Article 6 of the European Convention on Human Rights) and in the domestic law (Article 42 of the Constitution of the Republic of Albania). Failure to dispose of a

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Commission for the Efficiency of Justice (CEPEJ), the European averages are 21 judges/12 prosecutors per 100,000 inhabitants (page 21 of the Report).

For more information, see the link:

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

<sup>61</sup> UN Country Report for Albania, 2020.  
<https://www.avokatipopullit.gov.al/media/manager/website/reports/Minimumi%20jetik%20ok.pdf>.



court case within a reasonable time not only violates the complainant's right to due process of law /fair trial, but also procrastinates the benefits.

The 2017 amendments to the Civil Procedure Code aims to boost the safeguards for more effective trials, reduce the procrastination of proceedings and time-limits to be met in the adjudication of a case.

Free access to the court is understood as a public right that gives its holder the legal safeguards to seek the protection of the State and to ensure that competent judicial bodies respond to his claims. The Constitutional Court has established that the rights of the parties to be present, defend themselves and be heard in court proceedings are important aspects of the due process of law /fair trial, in the constitutional sense. The rule of law cannot be conceived without recognizing individuals the right and the possibility to address the court. This right is closely related to Article 6 of the ECHR, entailing not only the individual right to address the court, but also the State obligation to guarantee this opportunity to its citizens.

The ECHR states that the right of access to the court should be an effective and not a formal right. This Court, considering the financial barriers to going to court established that these barriers must be analysed on a case-by-case basis, in accordance with the plaintiff's real affordability and not an abstract affordability of the person to enact the court.<sup>62</sup> The interference that limits the rights of citizens, in any case, must not violate the essence of the right and must be in full accordance with the situation that dictated the restrictive norm. The Court has argued that a careful analysis is needed by the decision-making body regarding the means used to achieve the legitimate aim.

Referring to the last report of the European Commission on Albania, the duration of court proceedings, the low clearance rate and the big number of backlog cases continue to affect the efficiency of the judicial system. The average duration of a case at the appellate level is 893 days. However, in the Tirana Court of Appeal, the average duration for a criminal case is 5,820 days.<sup>63</sup>

We reiterate that the closure of the first-instance courts and especially the appellate courts as of 1 February 2023, leaving only one in the country, will affect the further reduction of the confidence of Albanian citizens in the justice system, particularly in the cities where they were closed; it should be noted that the trust in the justice reform itself suffered a decline year after year due to its very slow pace albeit in its sixth year after adoption.

For all our findings, we prepared and sent a special recommendation to the High Judicial Council and the Ministry of Justice.<sup>64</sup> *This recommendation was not accepted by the Minister of Justice, whereas the High Judicial Council did not respond.*

### **3.7 Free legal aid <sup>65</sup>**

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<sup>62</sup> Case *Albert and Le Compte v. Belgium*, 10 February 1983.

<sup>63</sup> For more information, see page 21 on the link: [https://neighbourhood-enlargement.ec.europa.eu/albania-report-2022\\_en](https://neighbourhood-enlargement.ec.europa.eu/albania-report-2022_en).

<sup>64</sup> <https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20per%20botim.pdf>

<sup>65</sup> This field of law is covered by the Special Section at the People's Advocate.



The People's Advocate kept its focus even this year on the implementation of Law no. 111/2017 "*On State-guaranteed legal aid*" and the issuance of by-laws. We have addressed the problem of citizens whom the court granted free legal aid and exemption from court fees and expenses, but there were cases where these decisions remained on paper and not executed by local bar chambers, thus failing to fulfil their legal obligation to assign a lawyer ex officio despite the efforts of the Free Legal Aid Directorate.

During 2022, the People's Advocate continued to receive complaints regarding the provision of free legal aid and advised complainants directly or addressed them to the primary legal aid service delivery centres, thus also advising citizens on the legal path in many cases, and also regarding legal criteria and the documentation they must submit. It should be noted that in addition to the PA Central Office,<sup>66</sup> the regional offices have done commendable work in informing the citizens about their legal rights and obligations and the ways to exercise them, providing them legal assistance on how to complete the forms and applications to benefit secondary legal aid.

The People's Advocate holds that upon approval of the new judicial map, the Ministry of Justice must make it its goal - in order to guarantee the citizens' right of access to justice - to increase the number of centres providing primary legal aid and to ensure strict execution of court decisions by the Bar Chambers for their provision of secondary legal aid. This holds particularly true for the vulnerable groups as beneficiaries of this law, who will incur increased costs in attending court proceedings to restore their legal and constitutional rights. The dedicated State budget allocated to legal aid has increased year on year. However, this budget needs to be further increased to fully operationalize the legal clinics.<sup>67</sup>

### **3.8 Rights of former political prisoners and persecuted by the communist regime<sup>68</sup>**

During 2022, the People's Advocate paid particular importance to the payment of compensation instalments to former political prisoners and their heirs, and has also extensively addressed the necessity of legal amendments and the adoption of by-laws for additional rights that this category should benefit from.<sup>69</sup>

The competent State institutions not only have not met their legal obligations towards the former political prisoners, but there is not even an exact or predictable deadline when the full compensation process will end, thus indefinitely dragging the rehabilitation of this group of society.

The People's Advocate estimates that the annual funds earmarked in the budget for the

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<sup>66</sup> 4,172 cases handled in 2022 in the form of advise and orientation on legal paths that complaining subjects must follow to have their cases handled.

<sup>67</sup> Budget allocated for legal aid in 2021 reached 547,696 Euro, or 31% more than the previous year. The executed budget in 2021 amounted to 245,739 Euro compared to 140,488 Euro in 2020.

For more information, see on page 34 the link:

[https://neighbourhood-enlargement.ec.europa.eu/albania-report-2022\\_en](https://neighbourhood-enlargement.ec.europa.eu/albania-report-2022_en).

<sup>68</sup> This field of law is covered by the Special Section at the People's Advocate.

<sup>69</sup> 9 complaints and 1 ex officio case.

compensation of the former politically persecuted is insufficient to complete this process within an optimal time, but it will be dragged for many years and will not be completed within a reasonable period.

The legislation on the rights of former politically persecuted was frequently changed affecting also the procedures applicable to giving the compensation to them. The 2014 amendments to the Law no. 9831 dated 12.11.2017 "*On the compensation of former political prisoners convicted by the communist regime*" introduced a prioritization scheme of cases as priority and non-priority, allocating the funds in a ratio of 70% for the priority category and 30% for the non-priority ones. In conclusion, the funds made available by the Government are not at all sufficient.

In addition to the recognition of rights for this category, these rights must be effectively realized by the State within reasonable deadlines and not simply be declared. It should be possible to speed up the granting of benefits/compensations to the former politically persecuted, putting in place the violated rights and improving their quality of life.

Funds allocated for this category followed a decreasing trend in recent years, almost halved. The Ministry of Finance and Economy explains that it pays the instalments depending on funds approved in each budget year. The 2022 budget funds allocated to the category of former political prisoners of the communist regime was only 1 billion ALL. For these reasons, it is necessary to revisit this budget in the coming budget years.

Another persistent issue is the impossibility to reinstate the time-limit for the compensation. The legal provisions stipulate that the former political prisoners, their legal guardians or family of the shot victims cannot reinstate the time-limit for submission of the application for compensation.

The order of priority is stipulated in paragraph 7 of DCM no. 419 dated 14.04.2011 "*On the approval of the time-limits and the distribution scheme for the compensation funds for the former political prisoners of the communist regime*" as amended. The sphere of beneficiary subjects defined in the law is very narrow and it is impossible for them to gain priority based solely on the provisions of DCM no. 419 dated 14.04.2011. Furthermore, it is discriminatory to the other categories who do not enjoy their rights recognized by law.

The preclusion period defined in the legal amendment "*until 31.12.2017, only for applications submitted by former political prisoners who belong to the category of primary beneficiary subjects*" goes to the detriment of the interests of this category. We consider that the changed scope in Article 1 and expansion of the beneficiary subjects of the law should also be accompanied by the modification of the corresponding article about the deadline for submitting applications to the authority (Ministry of Justice) and give them the possibility to benefit compensation.

We consider that this new deadline for submission of claims should be valid not only for the compensation of the family members of the victims *executed without trial*, but for all subjects provided for in the law. This stems from our handling of problems that concern a significant number of this group about the failure to submit the compensation claims / applications within the

legal deadline provided for in the law, originally 07.01.2009 and 31.12.2017 introduced by the 2017 legal amendments.

Another concern we noted during the examination of complaints made by the representative group of the "internment/deportation" category is that they did not receive the compensation as provided for in Article 6(c) of this law. We emphasize that although *more than 12 years* have passed since the law entered into force, there is no DCM issued yet to introduce a special pension scheme for internees and deportees during the communist regime. So, although the law recognizes the right to compensation for these categories, it is not implementable given the absence of the specific by-law regulating this situation so that the interned and deported individuals do not feel discriminated from the rest of the beneficiaries provided by the law.

We estimate that non-fulfilment of this legal obligation by the State represents not only a violation of legal provisions, but also a violation of the legal right of individuals representing the political prisoners of the communist regime to receive compensation according to the provisions of Law no. 9831, dated 12.11.2007 *"On the compensation of former political prisoners of the communist regime"*, as amended.

We consider that Article 8 of Law no. 9831, dated 12.11.2007 *"On the compensation of former political prisoners of the communist regime"*, as amended, should be amended and reformulated to include all circles of heirs.

In a nutshell, the concerns of our institution regarding four aspects of this process, namely: the effective payment of compensation, the circles of heirs, the legal prospects and the obligation to issue by-laws have been addressed in a special recommendation addressed to the Council of Ministers.<sup>70</sup> *Our recommendation has not received a response from the Council of Ministers, despite repeated requests.*

Also, based on the concerns raised at roundtables where issues of transitional justice and the rights of people persecuted by the communist regime were discussed, we have sent a recommendation to the Tirana Municipal Council and copied the Authority on the Information on the Files of the former State Security<sup>71</sup> to avoid naming streets, squares and public spaces by dates and symbols related to the communist regime. This is because the naming of streets, squares, institutions and facilities under the municipality's jurisdiction is an exclusive power of the Municipal Council expressly provided for in Article 54(2) of Law no. 139/2015 "On local self-governance", as amended.

There have been cases of the use, naming and expressions in statements and colloquial language of communist dates and symbols which - the judgement of persons directly affected by the communist regime and their heirs - awakens sad memories and situations they went through. *This*

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<sup>70</sup><https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20per%20te%20perndjekurit%20-%20final.pdf>.

<sup>71</sup><https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20per%20shmangien%20e%20perdorimit%20dhe%20emertimit%20te%20shesheve,%20hapesirave%20publike%20me%20data%20dhe%20simbole%20te%20regjimit%20komunist.pdf>

*recommendation was accepted by the Municipality.*

Another recommendation to accommodate the concerns of descendants or family members of those who disappeared during the communist regime was addressed to the municipalities across the country regarding their cooperation with the competent authorities to ensure the identification and preservation of the burial places of disappeared persons during the communist regime, and to avoid granting permits for the use, utilization and construction of various facilities on these spaces and squares.

More than three decades after the fall of the totalitarian regime in Albania, many inhuman crimes of that period continue to remain unsolved. Even today, thousands of families who suffered communist persecution do not know the fate of the remains of their relatives, disappeared and executed during the dictatorship. The numbers are frightening, over 6,000 people executed by the communist dictatorship are still considered missing.<sup>72</sup>

Democratic societies and the rule of law ensure their citizens not only respect for their rights, but also the opportunity to honour and commemorate their relatives and loved ones who may have been persecuted, interned, tortured and killed (their bodies deliberately eliminated not be found). *Even this recommendation was accepted by the relevant local government bodies.*

### **3.9 Enforcement of civil and administrative court decisions<sup>73</sup>**

The right to execution of executive titles is an integral part of the fair trial within a reasonable time and an essential procedural individual right and a cornerstone of a society based on the rule of law. Procrastination of execution of executive titles after a right has been recognized by the court has left and leaves the parties in uncertainty for long periods of time, creating the prospects of increased procedural costs and the corrosion of public trust in the judicial system.

During the process of examining 15 *cases/complaints administered during 2022* and those carried over, the People's Advocate ascertained various issues that compromise the right to a due process of law /fair trial resulting from non-execution of executive titles in a reasonable period as sanctioned in Article 42/2 of the Constitution of the Republic of Albania or Article 6(1) of the European Convention of Human Rights.

There are two questions posed to determine whether an executive title has been executed within a reasonable time: first, when the executive title execution began and ended; secondly, what constitutes *reasonable time* for cases under execution.

The calculation of the duration of execution proceedings for executive titles commences from the moment the claim of the winning party is accepted by the Bailiff Service and is considered completed when the court-granted right is fully materialized. In the case-law of the ECtHR, there are cases where the execution procedures related to the court decision were included in the calculation of the length of proceedings.<sup>74</sup>

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<sup>72</sup> <https://abcnews.al/viktima-e-pushkatuara-gjatë-komunizmit-ende-ne-shqiperi-6000-te-pagjetur/>.

<sup>73</sup> This field of law is covered by the Section on central administration bodies, local government and third parties acting on their behalf.

<sup>74</sup> In the case *Scordino v. Italy*, the Court reiterated that *enforcement proceedings are the second stage of the*

Thus, neither our legislation, nor the ECHR with the HRC have determined a specific maximum time for the duration of trials or the execution as an integral part of proceedings. In the ECtHR judgements, failure to comply with the reasonable time of proceedings due to the enforcement of decisions is established looking at several factors such as:

- ✓ *Complexity of legal cases* (including changes in legislation, interplay between the administrative and judicial procedures);
- ✓ *Factual complexity of the case* (includes *inter alia* the volume of evidence to be presented by experts, the number of documents administered in the casefile, the presence of a third party and the existence of matters related to the dispute under adjudication /execution);
- ✓ *Behaviour of the parties* (if any party requested postponements or used delaying tactics).

As noted above, the People's Advocate administered *15 complaints during 2022, 10 against the State Bailiff Service and 5 against the Private Bailiff Service*, in which we noted irregular actions by the public administration bodies in the capacity of the debtor party in paying the pecuniary compensation or fulfilment of a certain obligation such as reinstatement in duty of the winning/creditor party.

From the examination of the administered cases, the People's Advocate concludes that there is a need to improve the provisions of Instruction no. 1 dated 04.06.2014 of the Council of Ministers "*On the method of executing the pecuniary obligations of the general government units on account of the treasury*". The People's Advocate recommended as follows:<sup>75</sup>

- ✓ Take measures to improve the Instruction no. 01 dated 04.06.2014 "*On the method of executing the pecuniary obligations of the general government units on account of the treasury*" by guaranteeing a fair balance between the rights of natural and legal persons as winning litigants and preserved continuity of the activity of the public authority;
- ✓ Determine the conditions and deadlines for risk planning and timely forecasts of budget needs for each institution in order to pay off obligations as a result of court decisions;
- ✓ Determine the definition of atypical and extraordinary cases, taking into account the differences in the budgets of various state institutions;
- ✓ In the case of forced execution according to paragraph 9 of this Instruction, introduce an effective mechanism for making the payment irrelevant of the will of the institution to do so, provided that there are free funds in the account.

*This recommendation sent on 21.12.2022 was not accepted by the competent institutions.*

The substantial incompliance with this right represents violation of the property interests of each taxpayer in the Republic of Albania. Breach of due process of law because of non-execution of

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*proceedings and that the asserted right finds effective realization only at the moment of execution/. Scordino v. Italy, ECtHR, Judgement of the Grand Chamber, 29 March 2006, para. 197. See also Jankovic v. Croatia, ECtHR, 5 March 2009 para 68; Hornsby v. Greece, ECtHR, 1 April 1998, para 40; Plazonić v. Croatia, ECtHR, 6 March 2008, para 47.,*

<sup>75</sup> Official letter prot. no. K2/A2-10 dated 21.12.2022 sent to the Council of Ministers, the Ministry of Justice and the Ministry of Finance and Economy.

final court decisions within a reasonable time according to the People's Advocate, is also attributed to other reasons such as:

- ✓ public administration bodies lack the will to fulfil the obligation established in the operative clause of the court decision or in the law, this also depending on the availability of funds;
- ✓ irregular proceedings by the administrative court in examining the *notifications* of the bailiffs in carrying out special actions and other necessary measures;
- ✓ bailiff officers lack the professional skills, reflected in their actions and omission during the execution of executive titles; and legal acts are issued not in line with the applicable legislation;
- ✓ bailiff officers lack knowledge of the civil and procedural legislation; bailiff actions are sometimes outside the scope of execution, and misinterpretation of the operative clause of the court decision;
- ✓ lack of effective monitoring of the implementation of DCM no. 50, dated 05.02.2014 "On the Approval of the Strategy on prevention and settlement of arrears and its Action Plan";
- ✓ bailiff officers lack the will to impose sanctions on the subject/entity refusing to fulfil the court-ordered obligation, or execute the decisions irregularly or beyond the deadlines or even execute the contrary of the court decision.

A long-standing problem is the execution of final court decisions compelling private debtors to make pecuniary payments. Often the bailiff officers collect the monthly income of the debtor and this creates situations that undermine the latter's basic living interests. Because there is no minimum living standard officially determined, the provision in Article 533 of the Civile Procedure Code has become unapplicable in bailiff procedures. It states that the seizure measure on the debtor's wage shall not violate the minimum living standard, but it is undefined so far how much that is. So, from the review of complaints, the People's Advocate noted that the bailiff service collected the pecuniary obligation from the debtor's monthly income (wage).

### *Enforcement of ECtHR judgements*

In the meaning of the CoE Recommendation on the *Principles of civil procedure designed to improve the functioning justice*<sup>76</sup>, all the participants to the proceedings have the *obligation to cooperate* with the court or the authorities tasked with the execution of the decision and to respect the designated time-limits, otherwise suitable sanctions must be imposed.

The People's Advocate is drafting a special report on the state of play of the execution of ECtHR judgements against Albania. This report would have been completed if the Ministry of Finance and Economy had duly informed as requested about the status of the execution of each judgement against Albanian State. In addition, the State Advocate's Office was not provided exhaustive and thorough information on the execution status of each of such judgements.

The information made available by the State Advocate's Office confirms *67 judgements* are under the monitoring of the CoE Committee of Ministers, out of *71 judgements* rendered by the ECtHR

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<sup>76</sup> Recommendation R(84) of the Committee of Ministers of the Council of Europe to Member States.

against the Albanian State for which the State Advocate's Office presented information, action plans or action reports. Obviously, the figure of judgements under execution monitoring by the CoE Committee of Ministers is high.

The administrative activity of the State Advocate's Office and other institutions tasked to execute the decisions by their scope of responsibility cannot be considered effective insofar as decisions are not executed within a determined or reasonable time.

For the ECtHR judgements for just satisfaction, Law no. 10018/2008 "*On the State Advocate's Office*" as amended provides in Article 19(4) the obligation of the corresponding institution to fulfil the obligation within 3 months from the moment that the court decision becomes final. This legal obligation sanctioned in the above provision has not been respected in a high number of cases /decisions.

The prevailing issue established in the ECtHR judgements is the violation of the principle of due process of law /fair trial as a result of procrastination of judicial and administrative proceedings and failure to execute the court decisions in line with Article 6(1) of the Convention.

The interventions and changes in the legislation on the prevention and reduction of the unreasonable duration of court proceedings defined as a violation in Article 6(1) of the European Convention proved to be ineffective, because the civil, administrative and criminal courts are operating with reduced capacity of magistrates.

This situation, in addition to generating financial bills that are paid by the taxpayers and are not returned to them in compliance with the legal provisions of the Civil Code or other by-laws, erodes the individual's confidence in the administration of justice and delays the justice delivery for them up to the verge of its denial.

Referring to the activity of the authorities in the execution of judgements rendered by the ECtHR against the Albanian State, it is concluded that:

- ✓ The Consultative Council does not inform the public and the media about the execution of the ECtHR judgements against the Albanian State, as provided for in Article 19(8)(d) of Law no. 10018/2008 as amended;
- ✓ The official website of the People's Advocate Office or the Assembly of the Republic of Albania does not have the annual reports presented to the standing parliamentary Committee on Legal Affairs, Public Administration and Human Rights on the execution of the ECtHR judgements and measures taken in this regard;
- ✓ The execution procedure for a number of judgements rendered by ECtHR was not completed within a reasonable time or within the time-limit laid down in Law no. 10018 dated 13.11.2008 "*On the State Advocate's office*" as amended;
- ✓ There is not a single case of disciplinary proceedings initiated against the authorities tasked with the execution of judgements for failure to take measures to execute the ECtHR judgements over the years;
- ✓ There has been no preferential execution of judgements imposing the obligation to pay up to 10,000 Euro, in the situation where there are other such judgements above 10,000 Euro;
- ✓ Failure to conduct an audit prior to the execution of the court judgement in order to determine the responsible person who caused the damage subject to execution;

- ✓ The debtor institution/body does not initiate the special procedure on the person who caused the compensation damage in order to be covered by him/her;
- ✓ General preventive measures related to changes in legislation or practices to avoid financial damages as a result of the violation of the Convention are not effective;
- ✓ The legislation for the execution of the ECtHR judgements in Albania does not provide for measures/actions for the mandatory execution of the decisions or imposing sanctions on the entities obstructing the execution process;
- ✓ Provision of the State Advocate's Office as the competent body that initiates the execution procedures for ECtHR judgements while it is tasked with these obligations:
  - represent and protect the property interests of Albanian State at ECtHR;
  - coordinate the execution plan, draw up action plans and reports;
  - represent before the Committee of Ministers;
  - monitor the process of execution of ECtHR judgements by national authorities; this is an inappropriate and inefficient solution and in conflict of interest.

Also, we consider it very important to take measures to improve the knowledge of the officials responsible for the provisions of the European Convention on Human Rights, regarding the execution of domestic court decisions, as well as the importance and consequences of non-execution, through these steps:

- ✓ Organize awareness-raising sessions with important functionaries of the institutions responsible for the execution of court decisions, in order to facilitate the adoption of a culture of zero tolerance towards the deliberate non-execution of court decisions;
- ✓ Organize training sessions for selected officials, depending on the specific problems for each level, including but not limited to judges, prosecutors, bailiffs, social workers and representatives of various ministries, on the requirements of the ECHR in the field of the execution of court decisions, as well as the importance and consequences of non-execution;
- ✓ Translation and distribution to the respective officials of ECtHR judgements on non-execution of domestic court decisions, memoranda on the execution of decisions and studies of best practices, in order to facilitate the necessary reforms to be undertaken by local institutions.

### **3.10 Respect of the right to property <sup>77</sup>**

Respecting the right to property is a very important fundamental right in a democratic state and failure to respect it as part of the most basic human rights, continues to be a disturbing phenomenon in Albanian society. The respect and protection of the right to property has been the focus of a significant number of complaints submitted to the People's Advocate during 2022.

The People's Advocate, in exercising its powers and functional duties, has tried to be both active and proactive, dealing with essential, sensitive and delicate issues for wide groups of individuals. The scope of complaints received by the People's Advocate continues to target mainly the State Cadastre Agency's local directorates, the Territory Protection Inspectorates at the Municipalities, and the bodies entrusted with the reconstruction of building damaged by the November 2019

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<sup>77</sup> This field of law is covered by the Section on central administration bodies, local government and third parties acting on their behalf, but due to the overload during 2022, a limited number of cases were handled by other Sections.



earthquake.

The complaints challenged the actions or omissions of the above-mentioned institutions related to: non-compliance with the legal deadlines in handling the requests/applications of individuals; non-registration of ownership deeds, mainly LAAs for agricultural lands given in ownership or use; non-completion of the procedures by the local government units for the formalization and finalization of the legal acts on the plots given for construction purposes; not issuing ownership deeds for properties that do not have a deed, or "yards in use"; non-completion of the review of self-declarations by the subjects possessing informal constructions; failure to meet the obligation to clarify/correct cadastral data related to the surface area of the property, its boundaries and position on the ground; violation of the right to ownership in terms of non-compliance with the procedures for limiting this right; the two-standard approach in the registration of immovable property (State-owned/private); the obligation of the individual to receive services from the SCA local offices only through the e-Albania platform (requiring in some cases re-application); failure to respect the right to property and the principle of due process of law during expropriation and demolition of buildings in new areas for development; failure to make public without request basic information on the cadastral map, property address, owner's name, decisions of the Council of Ministers, courts or information on the functioning of the property market; failure to issue ownership documents to the owner subjects properly and in accordance with by-laws; removal of property possession without first carrying out the expropriation procedure or giving the expropriation amount; impossibility of registration on the e-Albania platform of the owner entities without Albanian citizenship; excessive delays and without cause in the administrative procedure by the SCA local directorates in providing the service requested by the subjects or in responding to the People's Advocate the requests or recommendations sent, case by case; non-compliance by SCA and failing to exercise its powers to impose sanctions on employees of local directorates, in cases where the conditions provided for in Article 64 of Law no. 111/2018 "On Cadastre" are met; the impossibility of communicating directly with the SCA local directorates (e.g. by phone or even physical meetings in certain cases), etc.

Following the 2021 report of the People's Advocate institution on the protection of the right to property, it is noted that the situation has not improved. The People's Advocate reiterates that the right to property should enjoy protection not only in the texts of normative acts, but should be at the foundation of the work of the relevant institutions of the state administration, to guarantee the effective implementation of this right.

- Focusing in more detail on the issues mentioned above, in the process of examining *complaints about the self-declarations made by the subjects possessing informal constructions*, we found that the SCA local offices (hereinafter SCALO) continue to violate the principle of due process of law, mainly as a result of the non-completion of the administrative review procedure for self-declarations. In many cases, we have even found flagrant violation not only of the deadlines provided in the applicable legislation for handling citizens' complaints, but also in relation to our institution.

Our institution tried to be understanding of the possible overload of the SCA Local Directorates and appreciates the work done by the specialists of these directorates, but on the other hand, taking into account the importance of solving ownership problems both for guaranteeing the ownership rights and for the economic development of our country, we have recommended to SCALOs that

if delayed handling of applications is attributed to their overload, this concern should be addressed to the SCA governing bodies (which, in accordance with Article 7, paragraph 3 of the Law "On Cadastre", are the Governing Council and the general director) in order to find concrete solutions and not leave the citizens' requests pending not only beyond legal deadlines, but also beyond any *reasonable deadline*.

We add that in most of the complaints against SCALOs handled by our institution, there have been delays beyond any reasonable deadline, in our view. Based on the above, our institution concluded that delayed processing limits the freedoms and rights guaranteed by the Constitution and the law, particularly the *right to property*. Also, from the review of the complaints, we found that applicants who seek a response about the delays of several years are often left without a response at all.

Similarly, our institution finds worrying that still in 2022 SCALOs like that of Tirana use the justification, quote: "*Pursuant to Order prot. no. 2877 dated 10.04.2018 of the SCA general director 'On the priority handling of applications for legalization of the years 2005-2006', this directorate has its own work plan and that handling of self-declarations will continue according to the order of submission, with priority given to the period 2005-2006*". On the part of our institution, this justification is not only legally void, but based on the fact that five years after the issuance of this Order the SCALOs still have not completed the review of the self-declarations made 17 and 18 years ago, made us initiate a detailed verification of this situation.

Similarly, procrastination of this procedure without determining a deadline, seen from a wider perspective, also violates the principle of *legal certainty*. This is because the principle of legal certainty presupposes the confidence of citizens in the State, meaning not only the immutability of the legislation on regulated relationships (for which it is important to remember that it has changed a lot in the last decade), but also the guarantee of the legality of actions that the State carries out with its citizens, i.e., the legal certainty that citizens are and will be subject to lawful actions and that State institutions will guarantee them basic rights and freedoms.

Another issue is *full advance payment for the requested service*, while the service is not only provided beyond any legal deadline, but in some cases is not provided as requested.<sup>78</sup> From the information presented by SCA to the Assembly of the Republic of Albania, we were informed that "*for the years 2015-2019, there are about 450,000 paid but undelivered services, with a value of about 10 million USD*". So, these are services prepaid by the applicants, but who have not yet received the service, so our institution is continuing with the detailed verification of this issue.

Beyond the delay in providing the service, another problem we identified is that both in cases where the prepaid service is offered and in cases where the applicant receives a negative response, the applicant pays the same and prepaid fee is not returned. Let us recall that before these applications were transferred entirely online through the e-Albania platform (a service that has brought convenience for the majority of applicants), the previous work practice at the Immoveable Property Registration Offices (IPRO) was the IPRO employees who accepted the hard-copy documents at the counter informed the applicant in advance about the problems or the missing documents and therefore the applicant did not apply (that is, not to pay in advance for a service

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<sup>78</sup> The applicant is not returned the fee/payment back, both in cases in which he receives the requested service, or receives a negative response (e.g., because he is missing a document).

that they knew would not be offered). Similarly, for SCALOs, this type of *filter* allowed their employees to focus on cases with complete documentation. Our institution is exploring a solution to this situation, because the explanation given to us by the SCA managers "that this institution is self-financed, so it needs as much income as possible", cannot and should not be to the detriment of the citizen.

Likewise, we found that although the legislation provides for penalties for delays on both the citizens (Article 25 of Law no. 111/2018 "On Cadastre")<sup>79</sup> and SCA employees (Article 64 of Law no. 111/ 2018 "On Cadastre")<sup>80</sup>, from the information that our institution has until today, it turns out that the sanctions were applied only on citizens, but not the SCA employees.

All the problems we mentioned in relation to SCALOs, i.e. the violation of the above rights, brings a series of problems in relations with citizens, starting from the loss of their trust in the public administration bodies, up to the risk of civil lawsuits against administration bodies for non-contractual damage, which may have been caused to citizens by the violation of the above-mentioned rights. Our institution has repeatedly informed the different SCALOs that the administrative failure to review citizens' applications within the legal and/or reasonable time-limit, depending on the other circumstances of the individual case, may be ground for initiating legal action for the compensation of the damage caused by the unjustified duration of the administrative procedure.

This is because the rights of citizens to have their applications processed within the deadlines provided by the normative acts in force, in a legal, transparent, impartial and fair manner, helping them actively, or even their right to be informed about the activity of State bodies (especially in cases where they are participants in administrative procedures), are rights provided not only by Administrative Procedure Code (Articles 4, 5, 6, 10, 13, 15, 18/2, etc.), but first from the Constitution of the Republic of Albania. The fact that citizens, for reasons independent of them, are unable to have a final decision in an administrative procedure (even if it is negative), at a time when they have respected all the obligations derived from the relevant legislation, means that they are denied to enjoy from their properties the rights guaranteed by the applicable legislation.

As informed above, SCALOs failure to respond happened not only with the applicants, but also with the letters sent by our institution. Given that such a situation is quite disturbing for us, we have informed the respective SCALOs that this behaviour of theirs is in violation of a number of legal obligations. First, with the legal obligation sanctioned in Article 63(4) of the Constitution

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<sup>79</sup> Article 25 – Application for registration and late payment.

1. Any person holding an ownership deed or a right in rem, obligatory for the register, in line with the Civil Code provisions or the dedicated law, shall submit an application to register the deed no later than 30 days from its entry into force.

2. If the application for registration is filed beyond the 30-day deadline, the applicant shall pay besides the registration fee even the late payment interest equal to 10% of the registration fee for each day of delay, but not more than 300,000 ALL.

<sup>80</sup> Article 64 – Misdemeanours

1. Administrative misdemeanours shall be considered the following:

.....

b) delays in responding to applications;

c) failure to meet the registration deadline;

.....

2. For these misdemeanours, the head of the Agency and the structure responsible for complaints shall impose a fine from 5,000 to 500,000 ALL. The extent of the fine shall be determined in proportion to the misdemeanour and the consequence suffered by the service beneficiary.

which provides that *"Public bodies and officials shall submit to the People's Advocate all the documents and information requested"*, or even with Article 19(b) of Law no. 8454, dated 04.02.1999 "On the People's Advocate" as amended, according to which *"The People's Advocate shall have the right to request explanations from any central and local administration body, and to receive any file or material related to the investigation"*.

Moreover, SCALOs failed to respond not only to our requests, but also to our recommendations, for which Article 22 of Law no. 8454 dated 04.02.1999 "On the People's Advocate" as amended, titled *"Obligation of administration bodies to respond to the recommendations of the People's Advocate"* stipulates that *"The bodies to which the People's Advocate has addressed a recommendation, a request or a proposal for dismissal, shall examine it and respond no later than 30 days from the sending date of the recommendation, request or proposal for dismissal. The response shall contain reasoned explanations about the matter in question and what actions, inactions or measures were undertaken by this body. The People's Advocate shall be notified and has the right to participate and speak at the meetings of the collegial bodies of the public administration in which the recommendation, request or proposal is examined"*.

Failure to respond to the letters sent by our institution also contradicts the provisions of the Administrative Procedure Code, due to the non-implementation and violation of the principles of respect for the institutional hierarchy and inter-institutional cooperation. This is because the failure to provide the required information and explanations within the stipulated legal deadline results not only in the concealment of the reasons for not handling the applications within the legal deadlines (which creates moral or even material damage for these citizens), but at the same time it also shows the lack of correctness towards our institution. Failure to respond to the letters of a constitutional institution such as the People's Advocate, also impedes us in carrying out our constitutional and legal mission for the protection of the rights, freedoms and legitimate interests of citizens.

In relation to the registration in the SCA real estate register of the 26,000 decisions given over the years by the Property Treatment Agency that recognized the compensation right for property (this obligation is provided for in Articles 193/h and 196 of the Civil Code and in Article 24 of Law no. 111/2018 "On Cadastre"), the case remains pending. The non-completion of the property compensation in favour of subjects - who were recognized this right - with one of the forms provided for in law no. 133/2015 "On the treatment of property and the completion of the property compensation process" remains a very acute issue, since the subjects who have acquired ownership - mainly according to law 7501/1991 "On land", as amended, and other special laws - have disposed and dispose of the properties of the former owners while the compensation process is still far from completion.

Besides the above findings, cases examined by the People's Advocate indicate that local public administration bodies demonstrate a low level of cooperation or interaction and do not fulfil the legal obligation to provide explanations and information to the People's Advocate within the specified legal deadline, a situation that repeats itself year after year.

Another issue that is encountered in the activity of the SCA local directorates is that the errors made by former local IPROs (currently SCA local directorates) are not corrected, even though the correction of the detected errors according to Law no. 111/2018, "On Cadastre" is mandatory to be

carried out proactively by them. It should be noted that the SCA local directorates have not started or completed the initial registration of properties in 359 cadastral zones.<sup>81</sup>

The lack of initial registration of properties in cadastral zones has brought legal uncertainty to individuals who hold ownership documents, firstly reflected in the possible conflicts with persons/individuals/subjects who also hold those same ownership documents for the same property, the consequence of which, in addition to the violation of the right ownership over the civil circulation of the item, has also generated conflicts. Even in those cadastral zones where the initial registration is completed in accordance with Law 111/2018 "On Cadastre" there are many problems in terms of equipping individuals or entities with cadastral documents, such as certificates, property cards, etc., as these offices require additional documentation from individuals, even though this is an obligation to be fulfilled by SCA local directorates.

We emphasize that the registration of property deeds is a service guaranteed by the State. This activity is based on respecting and guaranteeing the right of ownership. The right to property cannot be questioned or violated by the failure of real estate registration systems. The legislation in force guarantees that the process of creating the ownership deed and its registration are carried out in any case by the public/State body, therefore, any error in the cadastral data, violation of the right of ownership, makes the public/state body responsible for its solution and liable for compensation. In spite of the legal situation of the creation and registration of ownership deeds, it is noted in the activity of the SCA local directorates that they "delegate" the resolution of various issues not to the competent public administration body but to the individual owner.

Regarding the handling of complaints for the Property Treatment Agency in accordance with Law no. 133/2015 *"On the treatment of property and the completion of the property compensation process"*, it is concluded that the financial compensation process continues to be quite slow. This process has not been carried out in all its elements and above all the compensated entities fail to receive the financial compensation. Referring to the provision of Article 16(6) of Law no. 133/2015, the payment deadline for all final decisions that have recognized the right to compensation must end within 10 years from the entry into force of the law, meanwhile referring to PTA data,<sup>82</sup> the number of estimated compensation decisions is 26,092, in a total value of 857,068,720 Euro. There are 398 decisions for which the payment of compensation was made for the period 2018-2022. This number is very low in reference to the total number of evaluated decisions as well as the legal term of 10 years established for payment or compensation in their nature. The continuation of compensation at this pace is not expected to bring the process to an end within the legal deadline as provided for in Article 16(6) of Law no. 133/2015.

- In the process of reviewing the cases initiated ex officio or based on complaints related to the respect of the right to property during the expropriation process, problems have been identified. This is because during expropriations of private property for public interest, in many cases, it is found that the State administration bodies behave arbitrarily with the property right holders/owners but also with the possessors, since they strip the latter of the right of ownership and do not indemnify/compensate them in advance, against a fair reward and within the legal

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<sup>81</sup> Report on the Action Plan for the 5 EC priorities, <https://drejtësia.gov.al/raportim-per-planin-e-veprimit-per-5-prioritetet-e-komisionit-Europian/>.

<sup>82</sup> Workshop agenda, zhvilluar datë 11.11.2022 pranë Ministrisë së Drejtësisë.

deadlines. Our institution remains of the position that the State, through public administration bodies, should take care of the property interests of citizens, in the case of expropriation, taking into consideration the due process of law and their socio-economic needs. It is true that the Constitution, the ECHR, or even other laws provide for restrictions on the right to property, but these restrictions must be legal, made only in the case of a public interest, against fair compensation, and based on the principle of proportionality. The concept of property expropriation and compensation is not only included for registered assets but also for those that have been subjected to a legal process, such as assets in the process of legalization. From the complaints filed with our institution, it is established that the reward is recognized only to those individuals who have registered the property.<sup>83</sup> Beneficiaries of "expropriation" of property from the legalization of informal constructions are not given the full amount of money as determined.

Another problem identified from the complaints received during 2022 is that even though assets are taken from individuals in the public interest, there is a delay in the administrative procedures by institutions obliged to complete the documentation for giving the compensation. We reiterate that the expropriation of private property for public interest should be handled with due care and be in the attention of State institutions, so that it is not or perceived by individuals as arbitrary. Likewise, we reiterate that State institutions during expropriation procedures should also take into account the decisions of the European Court of Human Rights on problems related to the compensation process<sup>84</sup>, because this Court has made it clear that the right to housing includes also the case of buildings built illegally or lacking the ownership documents.<sup>85</sup> Over the years, non-compliance with these principles has burdened the State budget and consequently that of Albanian taxpayers.

The issue of respect for property and the principle of due process of law have been in the consideration of the People's Advocate in the case of various public projects, which despite having started a few years ago, continued to cause effects and consequences even during 2022. For example, in the city of Tirana, for the projects of new areas for development, in the administrative units no. 4, 6 and 8 of the Kombinat area, the "5 May" area, the administrative investigation into these issues continues and the main reason of this delay was the lack of accurate and complete explanations from public bodies such as Tirana Municipality and Ministry of Infrastructure and Energy. This lack of cooperation, (where the legal basis for the obligation of institutional cooperation is the same as the one applicable to SCALOs), has hindered the work of our institution in issuing the final report about the situation on the respect of the right to property or the principle of due process of law - for issues that concern the complaining individuals - and the completion of the administrative procedure in a reasonable time.

It is worth noting that despite some interventions advanced by the ECtHR, the legal justification provided for in the law on public expropriations and the incorrect application of the procedures

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<sup>83</sup> The stance of public bodies (both central and local) continues to bring negative implications on the individuals who own informal constructions. If the examination of the self-declarations finished within the defined legal time-limit, any subject owning an informal construction in the mentioned areas would be placed in the condition to obtain the legalization permit for that informal construction and consequently enjoy the rights derived from its expropriation from the implementation of a public project.

<sup>84</sup> *Affaire Bagdonavicius and others v. Russia* (application no. 19841/06), Strasbourg 11 October 2016.

<sup>85</sup> The core ruling of the Court was that the State authorities did not examine the fact whether the demolition of the applicants houses was in line with the principle of proportionality, before proceeding with the demolition.

and failure to abide by the deadlines remain problematic.

### **3.11 Regulation of labour relations and respect for the right to a due process of law in administrative proceedings<sup>86</sup>**

The People's Advocate continues to treat labour relations as one of the main and important issues in the examination of complaints about dismissals from the State administration filed by persons who enjoy or not the status of civil servants, besides drafting recommendations to guarantee the stability and protection of rights arising from the labour relations, at the local and central level.

Management of labour relations in the public administration and respect for the right to a due process of law in administrative procedures are among the areas in which the People's Advocate engages strongly through in-depth administrative investigations and recommendations. Due to the complaints filed by the employees who were dismissed, transferred, suspended or received disciplinary measures. Regarding the registered cases/complaints on labour relations administered by the People's Advocate in 2022, it must be noted that most of them are resolved in favour of the employees and the rest are still in process of the administrative investigation.

*33 complaints/requests* were handled on the above issue during 2022. In compliance with the principles of equal opportunities, non-discrimination, meritocracy, transparency, professionalism and political impartiality, it is estimated that a solid, sustainable and effective public administration requires proper regulation and management of labour relations. This applies both to employees hired under the Labour Code and those whose employment is regulated by the civil service legislation.

In some cases we found that the public administration bodies have insufficient understanding and applicability of the relevant legal principles and procedures which are mandatory to be followed in the framework of guaranteeing the respect of the right to a due process of law in the administrative procedure.

Throughout the administrative review process carried out by our institution, we have concluded that the administrative procedures were unclear and incomplete, not creating a guarantee for the observance of the principle of legal certainty and clarity. This principle, as one of the most important administrative principles, becomes even more meaningful and significant in cases where the administrative procedure directly affects a legitimate interest and right of the affected party, such as the right to employment, and consequently, to social and economic welfare. Due process of law, guaranteed as a fundamental human right, is also applied in administrative procedures although it is not explicitly provided for in the horizontal law on administrative procedures (Administrative Procedure Code).

From the information and documentation made available by the administration bodies in the context of our inquiries, we have concluded that there is room to improve administrative procedures and we recommended measures so that such problems are not be repeated in the future. Specifically, we suggested to them to make an analysis of such cases (circumstances of the fact) and draft detailed reports to pinpoint the responsibility at the hierarchical level of the institution for unlawful appointments and dismissals/releases from duty of employees/ complainants.

Dismissal from work in violation of the legal procedure or without any reasonable legal cause,

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<sup>86</sup> This field of law is covered by the Administration Section at the People's Advocate.

carries with it the problem that these persons will potentially win in court if filing a lawsuit for unfair dismissal, both procedurally and materially. This amounts to a significant bill on the State budget, due to the unlawful actions or omissions of the authorities that do not abide by the law. The People's Advocate notes hesitation by them to assign hierarchical responsibility for these misdoings. The right to a due process of law in administrative procedures sanctioned in the European Convention on Human Rights<sup>87</sup> and the Constitution of the Republic of Albania<sup>88</sup> is a fundamental constitutional principle already confirmed by the case-law of the Constitutional Court.

Although there is a complete legal framework that sanctions the due process of law with essential elements such as legality, transparency, information, proportionality, justice and impartiality, objectivity, the use of language known by the subject, and the right of access and representation, the right to information, the right to be heard, adversarial principle, reasonable time, reasoning of the decision, the right to administrative and judicial appeal, etc., it is found that practically in some cases these elements are not respected or applied in administrative procedures.

In this context, it turns out that there was a lack of effective cooperation between these institutions and the People's Advocate which resulted in not having the opportunity to make complete and quick investigations. Among the main problems identified by the filed complaints or by the cases pursued ex officio by the People's Advocate regarding the work relationship in the public administration, we underline that they were complaints/cases related to unfair release/removal from office; complaints/cases related to appointment procedures in the public administration; complaints/cases of unfair transfer to another position; complaints/cases related to the implementation of the institute of suspension of employment relations in the civil service; complaints/cases related to the restructuring procedures of public administration institutions, requests/complaints for the implementation of final court decisions for the reinstatement of civil servants.

In particular, the issue of dismissals will continue to remain one of the key engagements of the People's Advocate with the aim of contributing to the improvement of work and the creation of a functional public administration in accordance with European standards.

### **3.12 Consumer protection <sup>89</sup>**

Ensuring the highest level of consumer protection remains among the top priorities of the People's Advocate institution, given the high number of complaints received. To fulfil his proactive role, bilateral meetings were held with the competent authorities to provide guidance on how to handle complaints correctly and resolve them swiftly.

The Office of the People's Advocate has carefully analysed the explanations sent by the competent institutions and the documents submitted and has concluded that in some cases there is room for improvement in the procedure and in the possibility of restoring the rights violated.

As previously mentioned, we held occasional initial meetings with managers from both Universal Service Supplier sh.a. (Electricity Corporation) and Water Supply and Sewerage Authority sh.a.

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<sup>87</sup> Article 6.

<sup>88</sup> Article 42.

<sup>89</sup> This field of law is covered by the Section for the central administration bodies, local government and third parties acting on their behalf.



(Water Utility), which created a bridge of communication in handling complaints filed with us. However, successful cooperation has not always been achieved, and the Administration Section is currently addressing this issue to ensure more constructive cooperation going forward. In 2022, there were 36 cases/complaints of incorrect application of the law allegedly by the Universal Service Provider sh.a. (11) and by the Water Supply and Sewerage Authority sh.a. (25).

In 2022, in order to ensure that individuals are able to exercise their fundamental rights and freedoms, the Administration Section provided institutional support for each ex officio case and complaint/request. However, the Universal Service Supplier sh.a. and the Water Supply and Sewerage Authority sh.a. have not cooperated in some cases, hindering our work and causing delays in processing the reported issues.

The People's Advocate continues to receive complaints, mainly concerning overbilling for electricity and water, electricity/water cuts, inactivity of operators in responding to citizens' complaints, non-installation of meters, unaffordability of the service, quality of services provided, etc. Access to basic services like drinking water and electricity is a fundamental right. The lack of these essential services is a clear violation of human rights. Investing more on the ground and developing service models that meet the evolving needs of the community will help achieve the sustainable development goals of Universal Service Supplier sh.a.<sup>90</sup> and Water Supply and Sewerage Authority sh.a.<sup>91</sup>

There ought to be measures in place to safeguard vulnerable consumers, including ones to assist and prevent disruptions to the supply of electricity and water, notably in rural regions.

In some cases, energy and water companies require citizens to pay their outstanding debts in instalments by entering into an agreement. The operators see this as the only solution to settle the debts but fail to analyse and resolve the root cause of the issue, leaving it open for further recurrence over time.

Following an administrative investigation, measures were taken to provide guidance and legal advice to citizens, addressing their complaints relating to these matters. In comparison with 2021, it should be noted that in 2022 the cooperation between the People's Advocate and the relevant bodies had an impact on the increase in the efficiency of the work, as the number of cases resolved in favour of the complainants increased.

### **3.13 Respect for rights related to the local government rights<sup>92</sup>**

Developments in Albania's social and economic situation during this period have led the institution of the People's Advocate to have a more critical approach to the activities of local

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<sup>90</sup> Objective 6. Ensure the availability and sustainable management of water and sanitation for everyone. By 2030, accomplish universal and impartial availability of safe and reasonably priced drinking water.

<sup>91</sup> Objective 7. Guarantee access to sustainable, reliable, affordable and modern energy services for everyone by 2030.

7.1 Ensure that access to affordable, reliable and modern energy services is universal by 2030.

<sup>92</sup> This field of law is covered by the Section on central administration bodies, local government and third parties acting on their behalf.

authorities, both in terms of the protection and promotion of human rights and prevention of inequalities.

The local government's role is vital in preserving civic space and freedom of expression, providing access to basic services, and enhancing urban planning to achieve the social objectives of the state. This responsibility is acknowledged and validated in several resolutions passed by the UN Human Rights Council and numerous international organizations.

- *Right to housing*<sup>93</sup>

The right to housing is a crucial entitlement in the remit of the local government, directly linked to fundamental rights to life and health. The State has a responsibility to ensure legal protection of housing and facilitate progressive fulfilment of all aspects of the right to adequate housing. It is important to highlight the proactive role of the People's Advocate in safeguarding the right to housing. It is evident that the institution itself initiated most of the cases related to housing rights<sup>94</sup> in 2022.

Complaints mostly involve the still pending problems caused by the November 2019 earthquake. 54 such complaints fall under the right to housing in the context of the earthquake damages, and the rest relate to subsidised mortgages and rental bonuses, improvement of living conditions, expropriations, the need for immediate reconstruction, flooding, etc.

The right to housing is mainly evoked by individuals from the Roma and Egyptian communities. Throughout the administrative examination of the reconstruction process as a whole, but also of specific cases, we have encountered obstacles on the part of the State bodies responsible for these issues. We are concerned that we need more meaningful cooperation from the competent authorities when providing explanations. This is because the answers we receive are not comprehensive enough for our enquiries.

It is essential to highlight that cooperation during administrative inspections is closely linked to the principles of transparency and accountability. The People's Advocate mission is to enhance the transparency and accountability of public bodies to ensure their proper execution of administrative duties that involve the legal rights and interests of individuals.

Throughout our consultations, we have asked for information on the length and transparency of administrative procedures, and, in specific and concrete cases, the stage of the administrative acts issued for this purpose. However, the responses received were not fully comprehensive, and there were cases where the institutions in charge demonstrated a less than transparent attitude. It is noted that competent institutions have neglected the most vulnerable groups by not paying attention to those families living in tents or in other makeshift housing, and other problems

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<sup>93</sup> This field of law is covered by the Section on central administration bodies, local government and third parties acting on their behalf.

<sup>94</sup> Objective 11. Create inclusive, safe, resilient, and sustainable cities and human settlements.

By 2030, guarantee accessibility to sufficient, secure, and reasonably-priced housing and essential services to all, and enhance lower-income countries.

mentioned above that fall within the scope of housing.

These include the Social Rental Housing Scheme, the Housing Improvement Scheme, the Affordable Housing Scheme, the Housing Land Development Scheme, the Temporary Housing Scheme and the Special Housing Scheme. We have advised Local Self-Government Units how to address issues, ensuring that if families or individuals are ineligible for one program, they can switch to and benefit from another social housing program once they meet the necessary legal requirements.

The People's Advocate Institute has also targeted families with sick or disabled members, children, pregnant or divorced women with children, and the elderly.

The Housing Law sets out the principle of the adequacy of housing and the conditions that must be met in order for housing to be considered adequate. Suitable housing ensures private, safe, peaceful, and dignified living conditions, as well as sufficient living space in compliance with housing regulations and construction standards defined by law. Basic services must also be provided within residential environments. Access to essential public services including clean water and electricity, sewage disposal, waste management, employment services, health and social services, education and other community services should also be ensured.

In certain cases investigated by us, the disbursed compensation based on the level of damage fell short of covering the repair works or the structural reinforcement of buildings. For numerous families, particularly those with limited income, this results in a decline in their economic circumstances as they require additional income to ensure secure housing and a basic standard of living. This situation is also significantly reflected in the residents of rural areas who continue to live in difficult conditions due to their inability to leave their residential areas under emergency conditions as they have to take care of the agricultural economy and livestock as their only means of livelihood.

Additionally, a transparent communication plan and an efficient complaint handling mechanism should be established to ensure swift and lawful resolution of citizen grievances. These requirements must be reflected in the procedural plan (in line with the Administrative Procedure Code of the Republic of Albania) and the case resolution strategy.

As stated above, in such circumstances it is important for each municipality, local authority or competent institution to assess the socio-economic situation of the area on a case-by-case basis in order to provide adequate housing in accordance with legal standards. Appropriate measures should also be taken to improve living conditions, especially for special and needy persons due to their limited budgetary opportunities. Further consideration must be given to rural residents who are at risk of further impoverishment, as their limited economic resources can hardly cover daily necessities. The People's Advocate is currently reviewing a range of issues and will disclose its position upon the conclusion of the administrative review.

*The right to provide public services*

In the context of human rights violations in the provision of public services, the People's Advocate institution has consistently urged local government bodies to uphold these rights. It is important to note the complaints received regarding infrastructure-related issues.<sup>95</sup> Among them, the lack of clearly defined road parameters and standards, and inadequate maintenance of common facilities and amenities, not only impede individual rights but also affect the community at large.

From the overall analysis of the 84 cases for the year 2022, we discovered that the implementation of the right to public services faces major challenges, particularly in rural areas and small towns, as compared to urban centres. Unfortunately, financial constraints make it difficult to address the issues related to transportation, sewage, waste management and other crucial elements of infrastructure. At the same time, even larger cities face similar problems. This raises several issues, such as whether these are really unforeseen items in the budget of the local unit, or whether these funds are not sufficient to cover the basic needs for a healthy life and improving the quality of life of citizens.

The People's Advocate institution highlights the crucial significance of living in adequate and suitable environments as one of the prerequisites for the fulfilment of the State's obligation to provide and guarantee public services. Institutions have been urged to take affirmative action when dealing with cases through official communications by ensuring the provision of services that have a direct impact on the safety and security of citizens' lives.

### **3.14. Child protection and the rights of children <sup>96</sup>**

The People's Advocate functions as an extra voice for the rights of children, with a particular focus on aiding the most fragile and vulnerable members of society. Throughout 2022, the institution has been actively engaged in protecting and promoting the rights of children in Albania.

The institution faces numerous challenges as a national human rights institution for safeguarding and ensuring children's rights, such as:

- ✓ remain proactive, independent and continue to communicate.
- ✓ listen to the voice of children and approaching them in a friendly manner.
- ✓ promote awareness and protection of children's rights.

Children must have access to mechanisms that ensure and guarantee the enjoyment of their rights, in accordance with the basic principles of the Convention on the Rights of the Child.

The People's Advocate will intensify its mission to protect, promote rights, and monitor the implementation of children's rights throughout the country.

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<sup>95</sup> Objective 9. Build strong infrastructure, promote inclusive and sustainable industrialization, and encourage innovation.

9.1 Create high-quality, dependable, sustainable, and resilient infrastructure, including regional and cross-border infrastructure, to support economic development and human well-being, with a focus on providing fair and affordable access for everyone.

<sup>96</sup> This field of law is covered by the Children's Section at the People's Advocate.

### *Handling of complaints/requests*

Respecting children's rights, in line with the special protection provided by the State and guided by the principle of the child's highest interests, is the priority when dealing with each case. The People's Advocate's Section for the Protection and Promotion of Children's Rights dealt with complaints and requests which were received by mail, in person at the PA reception office, at open days across educational institutions, during inspections of schools, police stations, etc.

Throughout the year, the case registration system processed a total of *around 223 cases, including complaints, requests, and cases initiated by children's rights groups. Of these cases, 79 were initiated by the aforementioned groups and 3 were special reports.* One persistent goal was to receive a substantial volume of complaints and requests directly from children themselves, which was achieved this year with 92. By listening to children's opinions and ensuring their right to make complaints, this report highlights that every individual case handled by public administration bodies involves a significant number of young people who stand to gain from the resolution of any problems that arise.

During the year, the Section for the Protection and Promotion of Children's Rights made *30 recommendations* to central and local government authorities, following independent inquiries.

*Children's right to education* - Municipalities are responsible for the construction, rehabilitation and maintenance of school buildings in the pre-school system as part of their duty under the Law on Local Self-Government, in order to ensure the best interests of the child and his or her physical, mental, moral, spiritual and social development. Furthermore, according to the legal framework of local government, municipalities must facilitate the organization of sports, recreational, and entertainment activities by creating the necessary infrastructure in educational institutions. From the complaints we received, we identified issues such as a lack of equipment, science laboratories, and lockers in certain subjects, gym repairs needed, and lack of heating and desks in schools. Consequently, this year, the People's Advocate made various recommendations to create appropriate learning environments by improving the school infrastructure across the country. Furthermore, the People's Advocate suggested providing appropriate teaching tools to these educational institutions to ensure the smooth operation of the educational process.<sup>97</sup>

*Children's Access to School* - The People's Advocate handled several complaints from parents regarding their children's education, mainly transport issues and school safety. We aimed to enhance the quality of services in the education system and recommended that responsible local institutions<sup>98</sup> take measures to ensure an unhindered, qualitative, effective and comprehensive education for children. The People's Advocate emphasized the right to education and access to safe learning environments for all children, regardless of their circumstances.<sup>99</sup>

*Child Protection and Social Care Provision* - Albanian law outlines the appropriate structures,

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<sup>97</sup> Recommendation with document number 202200185, recommendation with document number 202101426 to the Municipality of Lezhë and Kurbin Regional Directorate of Education, recommendation with document number 202101614, recommendation with document number 202200217.

<sup>98</sup> Recommendation with document number 202200726 with the subject "The adoption of measures at the beginning of the new academic year 2022-2023 by the Municipality of Dimal to ensure access to education and provide transport means for the attendance of children and young students of Malas Breg village in line with a barrier-free, high-quality, efficient, and comprehensive educational process that implements the principle of the best interests of the child".

<sup>99</sup> Recommendation with document number 202101409 to the Regional Education Directorate of Lezhë.

procedures, and measures for immediate protection, and placement in alternative care<sup>100</sup>, to ensure a child's right to stay with their parents and not be separated from them against their will, unless a court determines that separation is in the child's best interests. The People's Advocate has recommended adherence to legislation protecting children's rights, particularly in the provision of social services. Additionally, a cross-sectoral approach of cooperation and coordination at both central and local levels is advised to ensure effective implementation.<sup>101</sup> The People's Advocate remains concerned about the fragmentation of the work of the structures responsible for the proper implementation of the legislation, which hinders the ability to carry out a comprehensive and detailed assessment of the child's current situation over an extended period of time. Additionally, the People's Advocate recommends the introduction of new types of social services to facilitate and advance the welfare of child-centred families. During the administrative review of the complaints/requests, the People's Advocate highlighted the importance of implementing the legal framework for protecting children, empowering families, providing comprehensive programmes, and introducing new types of social services.<sup>102</sup>

*Children's Right to Organize and Assemble Peacefully* - The People's Advocate has stated that law enforcement agencies should guarantee children's right to assemble peacefully, without any obstructions, and ensure the protection of participating children from any harm. It is the responsibility of institutions to take appropriate safety measures and make children aware of the potential hazards of assemblies. In protests with a high number of children present, authorities must prepare and guarantee the police's methods do not unfairly impact them, for example, avoiding the use of tear gas. It is crucial to train the authorities on children's right to protest and the distinctive challenges they confront as the group most vulnerable to particular police techniques.<sup>103</sup>

*Rights of Children with Disabilities* - The People's Advocate has emphasised the need for practical implementation of identifying, addressing and accommodating children with disabilities up to 21 years of age in social care services, in accordance with social services legislation. According to the People's Advocate, although the new Social Services Law has introduced a new approach to the typology of social services and the rules for their provision and delivery, these details have not yet been fully defined. Additionally, the by-laws have not been harmonised with the spirit of the law. Therefore, this institution recommended, among other things, that the Ministry of Health and Social Protection takes measures to improve the situation: revise the legal framework governing social services and its implementation aiming to harmonise the administrative process in identification, referral and provision of care to children with disabilities and integrating them into society, as these would be in compliance with the conventions ratified by the Albanian State; assess beneficiaries of development centres who are over 21 years old, conducted based on the

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<sup>100</sup> Recommendation with document number 202200668 addressed to General Directorate of Social State Service.

<sup>101</sup> Recommendation with document number 202200937 to the Social State Service.

<sup>102</sup> Recommendation with document number 202101707 Recommendation for improving the family of citizen B.P. for the benefit of their children E.P. and E.P. It is recommended to assess the needs of the children and develop a protection plan to promote their physical, mental, moral, spiritual, and social well-being. This will also ensure that the children can lead a normal life without deprivation. The Recommendation is addressed to the Municipality of Vau i Dejës and the Regional Directorate of State Social Services Shkodra.

<sup>103</sup> Recommendation with document number 202003372 to the General Directorate of the Albanian State Police, Local Police Directorate of Tirana and to the Police Stations no. 1, no. 2, no. 3, no. 4, no. 5 and no. 6 of Tirana.

principle of de-institutionalisation; social assistance services must be provided as close to the beneficiary's family or community as possible to ensure social welfare and efficient use of funds; additionally, the financial share for daily food expenditure of social assistance beneficiaries must be indexed annually in accordance with inflation rates.<sup>104</sup>

#### *Administrative inspections/monitoring/investigations*

The People's Advocate reviewed 79 *ex officio* cases in 2022, mainly from notifications and reports on print, electronic, and social media.

Most of them involved social issues such as treatment of families with many children by welfare services, but also environmental pollution and bullying. The People's Advocate analysed them to give voice to the most vulnerable group of society, i.e., children facing economic hardship, children with disabilities, children living in poverty, children under social care, Roma children, and children in street situation, etc. By proactively dealing with cases and maintaining communication with local and central State bodies, our goal is to not only resolve media-presented issues but also advance and foster the culture of prioritising the best interest of children and adhering to the guidelines outlined in Law 18/2017. During this year, the People's Advocate monitored<sup>105</sup> the impact of the civil emergency caused by the 26 November 2019 earthquake on the safeguarding of children's rights. Our institution identified pertinent issues and provided recommendations to enhance the performance of public administration bodies at local and central levels, in the best interest of children.

#### *Child-friendly justice and children's rights* <sup>106</sup>

The People's Advocate, as the national institution for safeguarding human rights, has consistently stressed the duty of key actors in the criminal juvenile justice system to uphold the rights of children and young people in conflict with the law.<sup>107</sup> Nowadays, children may come in contact with the justice system in one way or another (divorce, custody, adoption, migration, and more). The People's Advocate has identified several issues concerning child-friendly justice including the following:

- ✓ Children's distrust of the justice system.
- ✓ Insufficient provision of information and explanations during legal proceedings to meet the needs and developmental level of children.
- ✓ Absence of welcoming atmospheres and use of accessible language that children can comprehend.
- ✓ Non-uniform approaches of courts to children create difficulties (e.g., while the courts are

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<sup>104</sup> Recommendation with document number 202200111 to the Development Centre of Shkodër and the Ministry of Health and Social Protection.

<sup>105</sup> Supported by UNICEF.

<sup>106</sup> "*Child-friendly justice*" refers to justice systems which guarantee the respect and the effective implementation of all children's rights at the highest attainable level, bearing in mind the principles listed below and giving due consideration to the child's level of maturity and understanding and the circumstances of the case. It is, in particular, justice that is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the child including the rights to due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity adopted by the Committee of Ministers of the Council of Europe on 17 November 2010.

<sup>107</sup> Law no. 37/2017 "Code of Juvenile Criminal Justice".

based on the principle of protecting the child's best interest as paramount during the decision-making process, *practices differ, and there is no unification of all the factors the courts should rely on to decide the child support*). This situation becomes problematic, particularly when the amount of child maintenance requires adjustment.

- ✓ Difficulty arises when seeking to modify maintenance obligations for children due to protracted court proceedings, which can cause issues not only for the parents but also for the emotional and psychological well-being of the child.
- ✓ The Family Code lacks certain specific legal provisions in line with the principle of the best interests of the child in the Family Code (e.g. there is no provision *for automatic enforcement of the court's decision on maintenance obligation. Moreover, domestic legislation does not allow for offsetting of maintenance obligations*).
- ✓ Repeatedly questioning children during court proceedings related to divorce, custody, etc. should be avoided by judges, as it can be detrimental to the child's well-being and best interests.

To guarantee efficient access for children and their appropriate treatment in the justice system, the People's Advocate issued pertinent recommendations to the High Judicial Council, the Court of Appeal of Tirana, the Ministry of Justice, the Ministry of the Interior, and the Ministry of Health and Social Protection. Among the most notable recommendations, we mention:

- ✓ The judges of the Court of Appeal ought to take measures to comply with the time-limits in the procedural codes in the examination of cases and give priority to cases involving children's rights or with significant impact on children.
- ✓ The High Judicial Council ought to take measures to support courts struggling with a heavy workload, by delegating judges to these courts, with the purpose of upholding children's rights and protection, and respect their rights through adjudication within reasonable time.
- ✓ Take measures to develop a clear strategy to provide comprehensive information on the execution status of court rulings related to child maintenance obligations and publish accurate data on their enforcement. Therefore, it is necessary for the Ministry of Justice to assess and monitor the performance of both state and private Bailiff Services with regard to the enforcement or non-enforcement of such rulings related to the child maintenance.
- ✓ The Ministry of Justice ought to set up a working group to evaluate the necessity of drafting laws or regulations. Additionally, it should strengthen the capabilities of specialized structures within the Ministry to comply with international conventions, specifically the Convention on the Rights of the Child and the Hague Convention (2007). The main objective is to enforce court decisions regarding child maintenance obligations by parents or other financially responsible individuals who reside abroad.
- ✓ Take measures to establish a cooperation agreement between the Ministry of Justice and the Ministry of Interior to enforce court decisions regarding maintenance obligations when parents or other obligated individuals are abroad. On the basis of this agreement, the Ministry of Justice should create a list of individuals who owe child maintenance, while the Ministry of Interior should ensure that these debtors comply with court orders when crossing the border.
- ✓ The judiciary ought to take measures to implement Article 317 of the Civil Procedure Code for provisionally enforceable court judgments. Given the peculiar nature of such legal disputes, the courts are empowered to grant such judgments with temporary enforcement, thus preventing any delays that a subsequent appeal on the merits pertaining to the dissolution



of marriage and its effects may lead to.

- ✓ Revise the domestic legislation to permit the State to offset parental maintenance obligations and establish a debt-credit relationship with the obliged parent would enable the State. This would be particularly beneficial in cases where the parents' income sources do not suffice to cover the child's requirements, so the State would engage to compensate for any income shortfall in meeting the child's needs.

### *Children's rights and climate change*

The climate crisis is a global issue, especially affecting children and youth, who experience rising temperatures and extreme weather events every year. In a petition about climate change submitted to the European Court of Human Rights (*Duarte Agostinho*) by young people, it was explained how they suffer mental distress from the current effects of the climate crisis, including missing school and sports because of heat waves and worrying about the future.<sup>108</sup> The People's Advocate, within its promotion activities, has highlighted that climate change has a severe impact on children's health and well-being. Factors such as global warming, extreme weather, scarcity of food and water, communicable viral infections, air pollution, and rising sea levels pose a threat to children. The People's Advocate has addressed the climate change issues identified by children themselves, which are as follows:

- ✓ Municipalities have an insufficient role in preventing and improving climate change and other environmental aspects in their cities, jeopardizing children's right to enjoy sports/playgrounds and green environments.
- ✓ Vulnerable groups of children are more vulnerable to natural disasters caused by climate change, such as floods, fires and landslides, which violate their right to a normal development.
- ✓ Overlooking children during the formulation and implementation of climate policies denies them the right to participation in decision-making.
- ✓ Social media, NGOs and fragmented educational curricula are the most common sources of information on climate change, which contravenes children's right to safe information.
- ✓ The legal framework adopted for climate change is incomplete and thereby largely unenforceable.

The People's Advocate, empowered by law, delivered recommendations while presenting the "Assessment of the Impact of Climate Change on Children's Rights in Albania" report, with representatives from the Ministries of Environment, Education and Sport, Health and Social Protection in attendance. Notably, their participation was crucial. Some of the most relevant are:

*Fighting climate change must begin with education* - It is essential to regard education in a broader context beyond teaching children at schools, as it includes education at home and in communities. By doing so, it becomes possible for youngsters to develop an eco-friendly way of life and participate in reducing the threat of climate change actively. Through education, children will have the opportunity to exercise effectively their rights to participate in decision-making, be

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<sup>108</sup> See petition on the website of the Global Legal Action Network (GLAN) <https://youth4climatejustice.org/> last accessed on 3 June 2021.

heard, and demand respect for their environmental rights in administrative and judicial ways.

*Tackling Environmental Issues in Relation to Children's Rights* - It is crucial to intensify the country's efforts in addressing environmental issues as they closely relate to children's rights protected by the Constitution, national laws, the Convention on the Rights of the Child and other international treaties. The legal framework and institutional approach need to work simultaneously to promote and guarantee sustainable social impact. In this context, the People's Advocate holds the potential to serve as a crucial tool in fulfilling environmental regulations and monitoring compliance.

*National, regional and global support* - National, regional and global support should be strengthened to ensure that children's inalienable right to a healthy environment is respected. To achieve this goal, all involved parties must cooperate, coordinate, and interact, and children and young people should be the primary advocates for their rights.

*Developing specific governance, consultation and listening processes for these age groups* - Particularly on issues that directly and fundamentally affect children's rights, it is essential that their views and opinions are taken into account and given due weight by government decision-makers. The development of specialized administrative, consultation, and listening procedures for these age groups is crucial. This can be achieved only by creating unique protocols for administering, consulting, and listening to these age groups.

*Increase Participation of Children and Young People* - It is important to boost the involvement of children and young people of all ages in climate change issues. Engagement should include:

- ✓ Age-appropriate workshops in both formal and informal educational settings.
- ✓ Questionnaires and surveys to gauge their opinions.
- ✓ Raising awareness for youth and children's activism.
- ✓ Collaborating with stakeholders who support children and youth.

#### *Protecting minors in civil emergencies*

The People's Advocate conducted a monitoring of the structures in charge of the local administrations affected by the earthquake of 26 November 2019, focusing on the protection of children in civil emergencies.<sup>109</sup> The process centred on the municipalities hit hardest by the earthquake including Shijaku, Durres, Kruja, Tirana, Kamza, Kurbini and Lezha. Consequently, the People's Advocate made the relevant recommendations, of which we highlight the most important ones:

- ✓ Update and further implement the Local Plan for Civil Emergencies taking into account the priority treatment of minors, and providing for concrete measures to be taken in the event of a natural disaster or civil emergency (evacuation, guaranteeing health care, continuing education, placement in adequate housing, protection from all forms of violence, etc.).<sup>110</sup>

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<sup>109</sup> This monitoring was conducted with the financial support of UNICEF.

<sup>110</sup> Law 45/2019, "On Civil Protection", Article 30 "Municipalities", paragraph 1/ç: "draft, approve, and revise the

- ✓ Coordinate the General Directorate of Civil Status with local Civil Status Offices to identify and provide quantitative data on the number of children in each municipality and provide it to the Child Protection Units to ensure compliance with the legal standard of having at least one dedicated employee for every 3,000 children.<sup>111</sup>
- ✓ Approval of a regulation by the Mayor of Lezhë<sup>112</sup> to establish internal institutional coordination, information exchange, modalities, and deadlines between the Civil Status Office and the Child Protection Unit in the municipality of Lezhë. This will ensure that the Child Protection Unit has an updated list of minors in the territory at all times.
- ✓ Compile and regularly update the list of all minors within the jurisdiction of the administrative area by the Child Protection Team of the local authority, coupled with the subsequent conveyance of this list to the National Civil Protection Agency within 24 hours of any natural disaster or civil emergency, for the objectives of safeguarding and providing enhanced oversight for the welfare of minors.<sup>113</sup>
- ✓ Update the database of individuals and families made homeless by the November 2019 earthquake, including the accurate identification of children and families with children who are homeless, along with the sequential and comprehensive measures taken to provide them with complete housing.<sup>114</sup>
- ✓ The Pre-University Education Regional Directorate ought to enable school psychologists to carry out psycho-social assessments of children affected by the earthquake at schools. After identifying any issues, they should take necessary actions to report them to locally competent structures.
- ✓ Provide free transportation to schools and other appropriate childcare facilities, whether they are existing or rented, for children impacted by natural disasters or civil emergencies, to ensure their access to education.<sup>115</sup>
- ✓ Enhance the capacity of local communities and their human resources to handle civil emergencies and natural disasters. This can be achieved through training and qualification measures, with a particular focus on personnel who are responsible for safeguarding the rights of children in these situations.
- ✓ Strengthen local child protection structures to prevent, identify, refer, and manage cases of children whose rights are not guaranteed or who require protection during natural disasters or civil emergencies.
- ✓ Ensure sufficient capacity and logistical capabilities to handle civil emergencies or natural disasters, with regards to providing safe and appropriate temporary housing.
- ✓ Approve the by-laws foreseen in the table of the Ministry of Defence in DCM no. 850 of 29.12.2021, 'On the approval of the analytical plan of the draft acts that will be submitted to the Council of Ministers for consideration in the year 2022', as amended. Three draft decisions are proposed: "On risk assessment at central level", "On the approval of the

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regional emergency response strategy and send it to the National Civil Protection Agency and local district officials for evaluation and preparation purposes". Article 14 "On Civil Emergency Plans", paragraph 6.

<sup>111</sup> Law no.18/2017 "Law on the Rights and Protection of Children".

<sup>112</sup> In accordance with the powers and responsibilities outlined in letter "j" of Article 64 of Law No. 139/2015 "On Local Self-Government".

<sup>113</sup> Law no.18/2017 "On the Rights of the Child", article 28: - "Protection from involvement in armed conflicts and civil emergencies".

<sup>114</sup> Bylaw no.9, dated 16.12.2019 "To manage the aftermath of the natural calamity", article 17/1/c.

<sup>115</sup> Law no.18/2017 "On the Rights of the Child", article 18: - "Right to Education".

National Strategy for Disaster Risk Reduction”, and “On the approval of the National Civil Emergency Plan”, which are expected to be approved in the third quarter of 2022.

- ✓ The Ministry of Health and Social Protection ought to take measures to improve Law 18/2017 "On the Rights and Protection of the Child" by making a comprehensive evaluation of the status of administrative units in municipalities to ensure that all have a CPU, irrespective of the number of children under their jurisdiction, which may be even low.
- ✓ Take measures to complete the reconstruction of educational facilities impaired by the earthquake that occurred on 26.11.2019, complying with the guidelines set forth in DCM no. 319 dated 4.12.2017 "*On the approval of the construction design standards in schools*".

#### *Activities promoting children's rights*

During 2022, the Section for the Protection and Promotion of Children's Rights collaborated with secondary and high schools' staff across the country to conduct promotional initiatives with students, teachers, and parents. The initiative aimed to familiarise individuals with the children's rights catalogue and educate them on these rights. A total of 40 'Open Days' were conducted, with a focus on enhancing the awareness of students, parents, and teaching staff regarding the role of the People's Advocate and the significance of acknowledging the rights of children. The activities of the People's Advocate Section for the Protection and Promotion of Children's Rights pertaining to promotion are categorised into the following primary directions:

- ✓ Open days and awareness-raising activities at various schools across the country.
- ✓ Round tables, webinars and meetings.
- ✓ Promotion and awareness-raising declarations.

The most important of these are:

#### *Open Days*

- ✓ Organised 'Open Day' events in schools across various cities including Shijak, Krrabë, Paskuqan, Vorë, Marqinet, Kamëz, Tirana, Elbasan, Durres, Burrel, Peshkopi, and others.
- ✓ On 1 June 2022, the People's Advocate hosted 'Celebrating the International Day of 1 June together' for children receiving social care services at the non-profit organisation, 'Orët Fatlume', situated in the municipality of Elbasan.

#### *Workshops/webinars/meetings*

- ✓ Participation of the Section for the Protection and Promotion of the Rights of the Child in the round table/training "Our Rights: Child Rights Education at School", in the city of Kruja. This training was organised by CRCA/ECPAT Albania in cooperation with the Institution of the People's Advocate and the Municipality of Krujë, with the support of the Embassy of the Republic of Slovenia.
- ✓ The Commissioner for the Protection and Promotion of the Rights of the Child participated in the “Albania 30 Years Convention on the Rights of the Child” meeting on November 8, 2022, hosted by the Albanian Parliament through the Friends of Children Parliamentary Group, in partnership with civil society organizations and independent institutions dedicated to human rights. During this

meeting, the perspectives of children regarding their rights were heard through three groups: CRCA Albania, Save the Children, and SOS Children's Villages. These viewpoints were also presented during the 93rd Session of the UN Committee on the Rights of the Child.

- ✓ The Commissioner for the Protection and Promotion of Children's Rights participated in two tables organized by the Albanian Helsinki Committee. One was a workshop on 8th July 2022 about 'Cooperation for Justice for Children', while the other was a consultative round table on 15 December 2022 focusing on 'The Role of Child Protection Units in Juvenile Justice'.
- ✓ The Commissioner for the Protection and Promotion of the Rights of the Child participated in the National Round Table on "Human Rights Institutions and the Judiciary" organized by the OSCE on 13.7.2022.
- ✓ The Commissioner for the Protection and Promotion of the Rights of the Child participated in a joint conference on 3.11.2022, organized by the European Roma Rights Centre and the Commissioner for Protection from Discrimination. The conference was focused on identifying legal means to combat discrimination and promote the protection of the Roma community in Albania.
- ✓ On 19 July 2022, *Save the Children* presented a report in Albania assessing the impact of climate change on children's rights. This report assessed and analysed the impact that policies in the field of climate protection have on children, both from the perspective of the impact they have on children's lives and health, and from the perspective of their participation in decision-making and consultation.
- ✓ On 18 November 2022, on occasion of the International Children's Day (20th November), The People's Advocate, with the aid of UNICEF, conducted a promotional event for the launch of a special report named 'Child Rights Impact Assessment (CRIA-Covid-19)'.
- ✓ On 23 December 2022, the People's Advocate institution in collaboration with “Të Ndryshëm & Të Barabartë” organization held a round table discussion on 'The Inclusion of Survivors of Sexual Violence and Trafficking in Justice System Enhancement'. This represents a novel strategy to enhance collaboration between the People's Advocate institution and civil society, allowing for the establishment of a survivors of sexual violence advisory board in close proximity to our institution.

#### *Promotion and awareness-raising declarations*

- ✓ Publication by the People's Advocate of the ENOC joint statement titled 'Call for urgent action to safeguard the rights of children in Ukraine' on 03/03/2022.
- ✓ Statement by People's Advocate on 4.11.2022 on violence and bullying at school, including cyberbullying, which is widespread and affects a significant number of children and young people. The People's Advocate called on students, parents, education authority partners and industry and technology stakeholders to encourage everyone to get involved in preventing online violence for the safety and well-being of children and young people.
- ✓ Statement by People's Advocate in response to a media report showing violence against three underaged children in a state-run care home, regarding the entitlement of every child to the highest attainable standard of life, survival and development.
- ✓ Awareness-raising statement by the Section for the Protection and Promotion of the Rights of the Child/Peoples' Advocate on 20.05.2022, on the occasion of the National Day for Orphans, to respect the dignity of every child, especially orphans.

All informative, awareness-raising, and promotional activities are showcased on the official Facebook page of the People's Advocate/Children's Section. The platform is used to promote the ideals of upholding the dignity, integrity and the respect for the rights of the child, and to respond

to cases of violation of these rights.

### **3.15 Respect for the right to healthcare <sup>116</sup>**

The Universal Declaration of Human Rights, Article 25, has affirmed the right to health since 1948. It declares that 'Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family'.

Additionally, the preamble of the World Health Organisation Constitution confirms that everyone has a fundamental right to enjoy the highest attainable standard of health. The right to basic health conditions and care is integral to the right to health. Human rights are interconnected and indivisible, which implies that violating the right to health can impede the enjoyment of other rights, including the right to work or education, and vice versa.

Among the fundamental rights of citizens enshrined in the Constitution and applicable international conventions in the Republic of Albania, is the entitlement to receive healthcare and health insurance from the state, in accordance with legal guidelines.

The Constitution also states that it is a social objective of the State to ensure, through exercising constitutional powers and developing private initiatives, that its citizens achieve the highest possible level of physical and mental health. For this reason, a health system must be formulated to meet the varied needs of the population in an equitable, efficient, and responsive manner.

The primary goal of ensuring equal access to healthcare for all social groups is to lessen, or at the very least, not worsen existing health disparities. Research indicates that individuals belonging to the most vulnerable populations have the greatest need for medical care, such as those with high rates of morbidity and poor health who may not receive necessary treatment. Inequality is prevalent in numerous locations and can be attributed to various geographical, financial, and socio-cultural obstacles. The increasing responsibility of healthcare expenses poses a significant issue for socially and economically disadvantaged individuals.

The People's Advocate advocates for healthcare to be grounded in quality service and efficiency, guaranteeing impartiality and patient safety. This aligns with another international standard rooted in the International Declaration of Human Rights, while also affirming the constitutional social objective whereby the state strives for the utmost level of physical and mental health.<sup>117</sup>

According to the People's Advocate's Institute, 41 complaints were registered in 2022, of which 21 were ex officio cases, following the successful implementation of the daily mechanism of monitoring and identifying issues published in the traditional and online media by specially established working

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<sup>116</sup> This field of law is covered by the General Section of the People's Advocate.

<sup>117</sup> The Universal Declaration of Human Rights, article 25: "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection".

groups. Out of the total complaints reviewed, examination has been finished for 34 complaints, while others are still under administrative investigation. Among the complaints that were examined, 25 were resolved in the citizens' favour and addressed the issues they raised in their complaint or initiative.

The complaints and initiatives have drawn attention to several significant issues, including: (i) inconsistent medical care for various diseases, (ii) bureaucratic delays in waiting lines at QSUT, (iii) inadequate healthcare services in regional hospitals and health centres due to lack of doctors, disrepair, and malfunctioning buildings designated as health centres, and (iv) shortages of secondary nursing staff and specialist doctors that have worsened over the years.

With reference to specific cases investigated by the People's Advocate's Institute, the administrative investigation has concluded with the drafting of a relevant recommendation. The recommendation is addressed to the Ministry of Health and Social Protection ('MSHMS') and is as follows:

With reference to Instruction no. 415 dated 27.09.2021, outlining the procedures for the antigenic test by non-public laboratories recognized by the Ministry of Health and Social Protection for performing RT-PCR molecular tests for SARS-COV-2 for administrative purposes. Communication of data from both public and non-public laboratories is transmitted through the E-VIZITA electronic system, which performs RT-PCR molecular tests for SARS-COV-2 and the antigenic test. However, it remains unclear whether citizens diagnosed through fasting tests are included in the total number of COVID-19 cases reported nationwide, leading to confusion in the data. Instruction No. 415, issued on 27.09.2021, does not provide guidance on how to address rapid testing.

It is important to note that patients do not choose which type of test to undergo. Instead, the family doctor advises patients suspected of COVID-19 infection to take a rapid test, rather than a PCR. The e-Albania system only records data from PCR tests and not rapid tests. Due to these circumstances, the People's Advocate has recommended:

- ✓ *Promptly amend Instruction no. 415 of 27.09.2021 to include provisions on conducting rapid tests on citizens and their subsequent data entry into the E-Vizita system.*

*We received no response to this recommendation.*

Another recommendation is to bring to the attention of the State Health Inspectorate the need to protect health by implementing provisions that prohibit smoking in certain environments and the use of tobacco products.

According to World Health Organisation data<sup>118</sup>, the tobacco epidemic poses one of the largest threats to global public health and claims over 8 million lives annually, with about 1.2 million fatalities attributed to second-hand smoke (SHS<sup>119</sup>) exposure. Human rights can be classified as either positive or negative<sup>120</sup>.

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<sup>118</sup> <https://www.who.int/news-room/fact-sheets/detail/tobacco>

<sup>119</sup> Exposure to second-hand smoke occurs when non-smokers breathe in smoke emitted by people who smoke or from the combustion of tobacco products.

<sup>120</sup> Positive rights are rights that individuals actively exercise, while negative rights are rights that individuals enjoy due to the inaction of third parties who may otherwise violate those rights.

Exposure to second-hand smoke can be seen as violating non-smokers' negative rights. Health complications are one of the common effects of this exposure. In addition, failing to prevent children's exposure to SHS impairs their fundamental rights to life and health, as well as their right to a clean and safe environment. Given these circumstances, the People's Advocate recommended:

- ✓ *Intensify administrative activity for the protection of health from tobacco products in implementation of the provisions prohibiting smoking in certain environments.*
- ✓ *Evaluate the effectiveness of the inspection and monitoring methodology under Articles 15 and 19 of the health protection law (no. 9636, dated 6.11.2006) relating to tobacco products.*
- ✓ *Assess the human resource capacities of inspection bodies and measures to enhance these capacities.*

*We received no response to this recommendation.*

The People's Advocate received the complaint of citizen F.S., a complaint that represented the problem of many other students who had graduated from the Faculty of Natural Sciences with a degree in Chemistry and had then gone on to take the Professional Master's Degree for "Senior Laboratory Technician". To work as a Senior Laboratory Technician, one needs a licence from the Albanian Order of Nurses (UISH) after passing the relevant examination.

The Order of Nurses of Albania notifies students that they must have completed a "Bachelor" studies course in Senior Laboratory Technician prior to being eligible to take the examination. We note that numerous students who finished their studies at the Faculty of Natural Sciences are accepted into the Faculty of Medical Technical Sciences to pursue a professional Master's degree in "Senior Laboratory Technician", without being notified of the likelihood of a legal prohibition.

The law specifically prohibits depriving students of the right to take the Higher Technical Proficiency Examination, which may incur moral and economic expenses for these students. At the conclusion of the investigation, the People's Advocate has recommended to both the Ministry of Health and Social Protection and the Order of Nurses of Albania the following actions:

- ✓ *Take immediate action to enable the F.S. student and all students facing the same issue to sit for the licensing examination and obtain a valid license as laboratory technicians.*

*We received no response to this recommendation.*

The People's Advocate conducted an inspection at Korçë Regional Hospital premises and subsequently formulated recommendations that were directed to the Ministry of Health and Social Protection and the Korçë Regional Hospital:

- ✓ *Take immediate action to address the staffing shortages at Korçë Hospital, particularly in terms of the shortage of 16 medical specialists. These include 3 emergency physicians, 1 infectious disease specialist, 2 cardiologists, 4 surgeons, 1 orthopaedist, 1 anaesthetist, 1 obstetrician-gynaecologist, 1 neonatologist, 1 pneumologist, 1 haematologist, 1 ENT specialist, 1 oncologist, 1 radiologist, 1*



*paediatrician.*

- ✓ *Establish the Haemodynamic Pavilion as the primary facility for treating patients with cardiovascular diseases in the Korça district.*
- ✓ *Invest in and reconstruct the Korçë Hospital buildings, excluding the maternity unit, to meet necessary needs.*

*We received no response to this recommendation.*

The People's Advocate acknowledges the Ministry of Health and Social Protection endeavours in constructing novel healthcare facilities, regional hospitals, and Tirana University Hospital Centre's procurement of contemporary medical equipment. Nevertheless, the People's Advocate emphasises that accountability mechanisms are essential to ensure that the State's obligations arising from the implementation of the right to health are met. Monitoring via administrative, political, and institutional means involves various entities, including the state, NGOs, national constitutional institutions, and others. This process must be enhanced and intensified to ensure the right to a decent and high-quality healthcare service is upheld.

### **3.16 Respect for the right to education** <sup>121</sup>

Education is a basic human right and vital for the exercise of all human rights. It enhances individual freedom and empowerment and generates substantial developmental advantages. The normative tools of the United Nations and UNESCO define worldwide legal responsibilities for the right to education. These tools promote and develop the right of each person to have access to high-quality education without discrimination or exclusion.

By pursuing national goals and strategic reforms related to improving equity, fairness, inclusiveness and quality, and promoting lifelong learning opportunities for all<sup>122</sup>, Albania is paving the way for long-term educational system reforms on its way to EU integration and for greater compliance with the international education agenda, Goal 4 of the Education for Sustainable Development 2030 Agenda.<sup>123</sup>

The Constitution of the Republic of Albania has included education as a constitutional right within economic and socio-cultural freedoms and rights. Education is viewed as a duty, with everyone having the opportunity to receive education but certain obligations falling to the state, parents and children themselves to implement this right.

Viewed from the perspective of access to higher education, Albania has made occasional progress. Although the first legal discriminations are no longer present, a number of equally problematic hidden discriminations persist.

Prospective students from marginalized communities, people with disabilities, and those from poor and isolated socio-economic groups face inherent barriers when attempting to access higher education. Implementing policies to address difficulties is essential and obligatory, despite financial constraints.

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<sup>121</sup> This field of law is covered by the General Section at the People's Advocate.

<sup>122</sup> United Nations (2015). Transforming our world: the 2030 Agenda for Sustainable Development. Extract from <https://sustainabledevelopment.un.org/post2015/transformingourworld/publication> accessible from December 2015.

<sup>123</sup> Education 2030 is one of the 17 SDG goals aimed at enhancing international education.

This is an important step towards consolidating and expanding access to higher education in Albania. The People's Advocate assesses that the foremost obstacles confronting higher education in Albania persist: (i) inadequate standards for admitting students to university, (ii) insufficient material and scientific groundwork furnished by high schools for said students, and (iii) insufficient scientific groundwork for teachers.

The overhaul of higher and university education ranks among the most significant public concerns in the country. Over the years, higher education reform has been discussed through round tables and public debates, accompanied by some student protests. Laws were passed since 1990 to change the university system. However, the experience indicates that such measures might have solved problems temporarily, yet lacked a sustainable legislation strategy. Despite three major reforms in higher education since 1990, the legal framework has failed to adequately facilitate internal reforms within university life, such as curriculum development, scientific research, and the involvement of students in university activities.<sup>124</sup>

Education, as a fundamental right, is essential for the economic and social development of any nation. Amidst natural disasters, pandemics, economic crises, wars, climate change and technological advancements, digitalisation and labour market needs for new professions, a new educational vision is imperative.

The Institution of People's Advocate has been monitoring, throughout the year 2022 and beyond, the issues related to the right to education that have emerged, both through the various complaints addressed to the Institution, but also those identified in the cases published by the written and online media.

With reference to the complaints registered by the People's Advocate Institution for the year 2022, it appears that 54 complaints were registered, 14 of which turned out to be cases based on *ex officio* investigations, following the successful implementation of the mechanism monitoring on a daily basis and ascertaining the issues made public in the media and online, through working groups set up for this purpose during the year 2022.

Out of the total number of complaints reviewed, 48 have completed the examination stage while others are still under administrative investigation. Of the complaints or cases with initiatives reviewed, approximately 40 were resolved in favour of the citizens and the problems they presented that formed the basis of our complaint or initiative.

A major issue, carried over from the previous year and emphasized in a significant number of individual complaints submitted to our institute, persists with the recruitment of teachers who are not appointed on merit, the lack of procedures for dismissing teachers, and delays in receiving payment for teachers who work off-site due to the bureaucracy of tenders.

It is concerning that the increasing trend of young people leaving Albania is becoming a reality. This departure isn't solely due to liberal employment policies followed by other nations, but also because of

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<sup>124</sup> <https://library.fes.de/pdf-files/bueros/albanien/18537.pdf>.

the inadequacy of proper education and work opportunities for young Albanians in their native land.

The core of the institution's activities is addressing the frequent reports of students who face significant financial burdens, due to increasing prices, for student expenses and tuition fees.

The allocation of scholarships to students remains problematic throughout 2022, as evidenced by complaints lodged with the People's Advocate and addressed to the respective administrations of the Rectorate, Universities, and the Ministry of Education, Sports and Youth in individual cases.

Throughout 2022, the institution of the People's Advocate held meetings at the University of Gjirokastrë and Korçë as part of the tasks set by the Assembly of Albania in its Resolution. The aim of these meetings was to engage closely with students and discuss various issues related to student life. The institution sought to raise awareness of their competences and role in supporting students' rights. During these meetings with students and academic staff, we received numerous complaints that we addressed on a case-by-case basis for resolution to the relevant bodies.

Referring to the particular cases examined by the People's Advocate's Office, in which the administrative examination was concluded with the drafting of the relevant recommendation, we refer to the recommendation addressed to the Ministry of Education and Sports ("MES") in the case of teacher E.G., who has been a teacher at the "Avni Rustemi" secondary school in Tirana since 1990. She stated that she had to address legal and moral issues operating in this educational institution because of an illegal, absurd, offensive, and derogatory situation in the school organized by its headmaster. The institution of the People's Advocate recommended:

- ✓ *Revoke the administrative act /decision of the 9-year-old school 'Avni Rustemi' to immediately terminate the employment contract of the lady with the initials E.G.*

*This recommendation was not accepted.*

A noteworthy matter, which became representative of a problem faced by graduates, was addressed and resolved with a recommendation that was deemed a success story by our institution. However, there is also a complaint from a lawyer by the name of G.Q., highlighting her concern about the injustice faced by graduates over the years. The Ministry of Education and Sports (MES), as the competent authority, has sanctioned the State Graduation Regulation, a regulation which expressly provides for the prohibition of the re-evaluation of graduates' certificates (right of appeal). The People's Advocate endorsed this recommendation:

- ✓ *Take immediate action to amend paragraph 11 of Article 26 of the Regulation on Conducting State Matura in the Republic of Albania," approved by Order no. 108 dated 03.04.2022 that currently prohibits the right to appeal.*
- ✓ *Guarantee the effective right to graduates to appeal their test results and to be fully informed about this issue.*

*The acceptance and implementation of this Recommendation are much appreciated by the People's Advocate, because Article 27 of the State Matura Regulation 2022-2023 now includes the right to appeal.*

The People's Advocate noted a problem with Law no. 79/2017 "On Sports" not being implemented as per the approved amendments by the Ministry of Education and Sports for compensating and treating outstanding athletes who earned medals at the World Championships on national and international levels. The People's Advocate recommended a corrective course of action:

- ✓ *Take prompt action to continue the procedure, recognize the right and remunerate Mr. M.M. in compliance with Article 27 of Law No. 79/2017 "On Sports", as amended, and DCM No. 687 of 14.11.2018 "On the criteria, modalities of awarding benefits and treatment for sports preparation of athletes who reach high level status".*

*This recommendation was not accepted.*

The following is the complaint of the citizen V.R., concerning the decision of the Centre for Educational Services (QSHA), for the equivalence of his diploma. He graduated from the *State College* in Athens in 2009. The complainant states that he applied to the Ministry of Education and Sports for the equivalence of his diploma in 2017 and received his higher education diploma obtained abroad recognised as just *Bachelor level* by this Ministry.

In March 2021, after being informed of the change in the legal basis of the diploma equivalence, and simultaneously referring to equivalences completed by his colleagues at the same level of study, he referred the matter to the QSHA, asking it to issue a new decision on the equivalence of his diploma, as he believed that this had been done wrongly. Specifically, this time the complainant requested that his degree be given the equivalence of a Master of Science. On this point, the People's Advocate made a recommendation:

- ✓ *Adequately review and impartially handle this case in accordance with the law, regarding citizen V.R's application dated 17.08.2021 and addressed to the Ministry of Education, Sport and Youth (protocol number 3981/1, dated 18.08.2021), as defined in Articles 113 to 118 of the Administrative Procedure Code.*
- ✓ *Avoid repeating such practices in breach of existing regulations in the future by the Diploma Equivalence Commission at the Centre for Educational Services, under the authority of the Ministry of Education, Sport, and Youth.*

*This recommendation was not accepted.*

The People's Advocate institution continued to promote its mandate by collaborating with Civil Society Organisations. These organisations are active in the field of education rights and presented studies, reports and monitoring at various virtual events as well as tables and meetings. This approach ensures the institution's consistent engagement in this important field.

The People's Advocate Institution has assessed the Albanian government's efforts to raise the wages of teachers and educators, concluding that the provision of financial support for their continued motivation remains a challenge. To ensure the delivery of education on par with developed nations and greater benefits for pupils and students countrywide, Albania must engage in development mechanisms effectively.

### 3.17 Respect for the right to social care<sup>125</sup>

The government's scheme for addressing poverty is Economic Aid (EA) prescribed in Law no. 57/2019 as "the payment given to vulnerable individuals and families as defined by law." The support comprises cash assistance paid out monthly by the State to those in need, including needy categories defined as such in legislation governing social assistance.

The Council of Ministers determines the amount of financial aid disbursed.<sup>126</sup> The eligibility criteria of the family assistance scheme consider the family structure and income sources to determine the beneficiaries. Social support encompasses benefits for persons with disabilities, financial aid to disabled individuals and their careers in the event of severe disability, as well as monetary assistance for families in need.

The economic aid reform still faces challenges, including (i) low funding and the exclusion of families at risk of poverty, (ii) incomplete coverage of all economically vulnerable beneficiaries, and (iii) a lack of by-laws specifying the minimum subsistence measure and its adjustment over time as a safeguard for citizens' income.<sup>127</sup>

The People's Advocate handled 37 cases in 2022, both complaints and ex officio cases. These stemmed from media publications, including visual, print, and online sources. The cases highlighted prevalent issues such as: ineligibility for economic aid; suspension or termination of economic aid; and unclarity about exclusion from the scheme or for ineligibility. In some cases, these issues were combined with social housing and parallel payments.

Complaints and ex officio cases with local government bodies were resolved through an administrative investigation, resulting in a resolution in favour of citizens in 54% of cases. In other cases, the complainants were provided with clarification regarding the legal reasons for the interruption or non-use of requested aid, along with suggestions for reapplication.

The 2021 Sustainable Development Report Index indicates that Albania is making progress towards achieving the highest country status for the 17 Sustainable Development Goals, currently ranked 64th out of 165 countries.

However, poverty<sup>128</sup> rates remain high, surpassing 23.3%<sup>129</sup> According to the INSTAT (AANJ 2020), the level of social exclusion in Albania, i.e., people at risk of poverty or severely materially deprived or with very low employment intensity, is estimated at around 46.2% of the population, while economic conditions are expected to grow moderately in the medium term 2022-2024, at levels between 4.1 and

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<sup>125</sup> This field of law is covered by the General Section at the People's Advocate.

<sup>126</sup> Decision of the Council of Ministers no. 597/2019.

<sup>127</sup> <https://www.avokatipopullit.gov.al/media/manager/website/reports/Minimumi%20jetik%20ok.pdf>.

<sup>128</sup> Poverty is the state of living on less than USD 5.5 per day, as defined by the 2011 revised purchasing power (PPP). In May 2020, the estimate was revised to \$5.5 per day, after reassessing the cost-of-living comparison between countries. It is important to note that this revision does not imply any real change in poverty within countries. (<https://openknowledge.worldbank.org/bitstream/handle/10986/33623/9781464815300.pdf>)

<sup>129</sup> <https://albania.un.org/sites/default/files/202204/UN%20Albania%20Annual%20Progress%20Report%202021.pdf>.

3.9%. This indicates that almost half of the population is living in exceptionally challenging economic circumstances.

In this context, following complaints made to the People's Advocate and the Commissioner for Protection from Discrimination, a special report entitled "Evaluation of *Family Access and Utilisation of Social Protection Transfers*"<sup>130</sup> was drafted. The report received technical advice from the project 'Expansion of Legal Services for Men and Women in Albania', implemented by UNDP Albania in cooperation with the Ministry of Justice and with financial support of the Austrian Development Cooperation.

The report aims to assess the implementation of the legislation and the economic assistance programme regarding the access of families in need and people with special status. Its objective is to identify the barriers faced by such groups and the utilization of economic assistance transfers. The assessment aims to enhance the standard and efficiency of social security, highlighting the necessity to enhance the capability of the administrative bodies to carry out and regularly review the existing social policies.<sup>131</sup>

In 2022, Albania experienced a continuous rise in inflation due to its economy's exposure to the European economy. This resulted in an increase in the cost of living, intensifying the vulnerability of those in need.

In March 2022, the Albanian government financed an emergency fund for the first social resilience package, with a three-month duration. The funding was in compliance with the National Strategy for Development and Integration 2015-2020 and the Policy Document for Social Inclusion 2016-2020.<sup>132</sup> The main objective of the budget review was to provide support to the energy sector. As inflation indicators deteriorated<sup>133</sup>, in the following months, the Albanian government launched its second social resilience package in September 2022. The package is designed to index pensions and salaries and enhance economic aid.

Although there have been positive and concrete changes to address the crisis, when referring to the analysis and results of the report 'Evaluation on Access and Family Use of Social Protection Transfers', it is clear from the 2022 budget forecast that economic aid will only help around 66,000 households. Of these, those with four members make up 33.8% of the total, followed by 22.3% for those with five members and 19.1% for those with three members. It is important to note that the packages do not provide support to a large group of individuals/families in need.

Furthermore, considering the 'Social Protection Transfers to Poor Households'<sup>134</sup> study, which lists expenditure categories for impoverished households, food constitutes the major portion of the expenditure (approximately 96%), leaving no scope for communication, culture, and other expenses. Therefore, augmenting economic assistance benefits by 10% for all households under these circumstances will not suffice to offset the escalation in actual costs due to inflation.

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<sup>130</sup> <https://www.avokatipopullit.gov.al/media/manager/website/reports/Vler%C3%ABsim%20mbi%20qasjen%20dhe%20perdorimin%20familjar%20te%20transfertave%20te%20MS.pdf>

<sup>131</sup> More information about the contents of this report can be located in Chapter IV, 'Other Institutional Commitments'.

<sup>132</sup> The new Development and Integration Strategy 2021-2030 is currently under public consultation.

<sup>133</sup> [http://www.instat.gov.al/media/10394/ick\\_korrik\\_2022.pdf](http://www.instat.gov.al/media/10394/ick_korrik_2022.pdf);

[http://www.instat.gov.al/media/10394/ick\\_gusht\\_2022.pdf](http://www.instat.gov.al/media/10394/ick_gusht_2022.pdf)

<sup>134</sup> <https://www.unicef.org/albania/media/3161/file/Mapping%20Social%20Protection%20Transfers.pdf>.

UNICEF 2019



From 2018 to 2022, there were no revisions to the standards for food expenditure quotas in public and community social assistance residential facilities, which are indexed to the basic basket prices and evaluated annually for inflation rates. The food allowance for beneficiaries residing in social assistance institutions must increase accordingly whenever such rates change.

In light of the aforementioned, the People's Advocate, fulfilling their legal duty as a champion of the highest level of human rights and freedoms within the country, recommended<sup>135</sup> to the Ministry of Finance and Economy and the Ministry of Health and Social Protection as follows:

- ✓ *Take steps to enhance the economic aid benefits for all categories of the economic aid plan, including the social pension, by evaluating inflation rate changes every year for the main groups: food and transportation. This will ensure the coverage of the price surges for these groups and enable families and individuals to meet their essential monthly expenses and survive.*
- ✓ *Implement measures to index the financial allowance for daily food expenses of individuals receiving social assistance in relation to the annual inflation rate for the primary categories: food and transportation. This will mitigate the impact of price surges for these categories.*
- ✓ *Additionally, initiate measures to incorporate underprivileged students into the social resilience assistance program, granting them the opportunity to maintain a decent quality of life in the face of global and local crisis conditions.*
- ✓ *Evaluate the feasibility of this package being available until economic indicators improve and the crisis situation comes to an end.*
- ✓ *Enhance efforts to identify poor and extremely poor households to allow their participation in the economic assistance scheme.*

Albania remains one of the countries without a legally defined minimum wage for subsistence, meaning the minimum amount an Albanian citizen needs to live on is not established by law. The People's Advocate official website provides access to the "On the Living Minimum Standard in Albania" special report (2020) prepared by the People's Advocate. The institution deems it unjustifiable for the State not to define a subsistence minimum, which should form the basis for the development of social policies aimed at underprivileged groups.<sup>136</sup>

The minimum standard of living ought to guarantee a respectable life with fundamental services, and facilitate people to engage in their society, irrespective of their work capacity.<sup>137</sup> The legislation should furnish the means and methods to enforce this standard, such that all citizens can readily obtain this assurance, without just settling on the numerical quantification of this concept. The calculation of the subsistence minimum and its value should form the foundation for determining the appropriate level of economic support. Augmenting the economic assistance payment is essential to adequately address the requirements of individuals and families beyond just sustenance, including broader human development activities. To ensure no eligible categories were excluded from receiving economic aid, we proposed simplifying the categorisation of individuals and families. Additionally, we suggested using the minimum subsistence level as a basis for designing social policies for those in need and as a reference point for determining economic assistance and unemployment benefits.

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<sup>135</sup> Recommendation no. 202200966, dated 07/10/2022

<sup>136</sup> <https://www.avokatipopullit.gov.al/media/manager/website/reports/Minimumi%20jetik%20ok.pdf>.

<sup>137</sup> The report proposes a revision of Law No. 57/2019, "On Social Assistance in the Republic of Albania," to incorporate a specific provision defining the minimum subsistence level.

The Albanian Government's legal initiatives to improve the social protection system are assessed by The People's Advocate for the year 2022. This investment will build mechanisms to ensure sufficient social protection within the management framework of large-scale energy emergencies. The main objective is to receive funding necessary to support the energy sector and provide aid to other levels and sectors affected by the crisis situation. However, the interventions are time-limited, and citizens continuously report that the economic aid provided throughout the year is inadequate compared to the essential monthly expenses required to survive. The aid is insufficient to combat poverty and support the social integration of individuals and families experiencing difficulty.

The People's Advocate estimates that poverty encompasses not only a shortage of income, but also a lack of services and participation in society, which are essential for the enjoyment of human rights. The issue of poverty, both as a cause and a consequence of human rights violations, must be tackled in the framework of state obligations to uphold and safeguard human rights. Adopting a human rights-based approach involves placing human rights standards and principles at the heart of state planning and policies.

### **3.18 Respect for the rights of persons with disabilities <sup>138</sup>**

Persons with disabilities, just like all Albanian citizens, should be regarded as individuals with equal opportunities, innate dignity, and inalienable rights. As such, persons with disabilities require unwavering support from the state, to guarantee their fundamental freedoms, reasonable access, and adaptation to all spheres of life.

Referring to cases handled in 2022, a total of 87 cases were dealt with, consisting of 74 complaints and 13 own-initiative cases. The administrative investigation was concluded for 76 cases, with 11 cases still under review. Of all cases examined, 49 were resolved in favour of citizens.

The most significant issues identified during this year's examinations were consistent with previous years. (i) Persons with mobility and visual impairments often encounter difficulty accessing public buildings where services are provided. This is due to inadequate infrastructure for their category. (ii) Economic compensation for intercity and urban transport is not always received by these individuals. (iii) Termination of their disability band occurs. (iv) Replies are not always received regarding the commissioning date. (v) There are cases where the disability band is not received or the disability group is changed. (vi) Removal of the paraplegic/tetraplegic disability status leads to a lack of coverage for hygiene package expenses.

The People's Advocate Institute specifically identifies and expands on the primary concerns that had a significant impact on a considerable number of individuals with disabilities in the year 2022.

✓ *Failure of Albania to Ratify the Optional Protocol to UN Convention on the Rights of Persons with Disabilities*”.

The Steering Committee for the Implementation of the UN Convention "On the Rights of Persons with Disabilities", in its resolution of 25.09.2019, point 10, recommended that the Albanian State ratify the Optional Protocol to the Convention without further delay.

For the steps taken in this process we approached the Ministry of Health and Social Protection, which informs us that: *"The Ministry of Health and Social Protection will follow the processes and measures*

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<sup>138</sup> This field of law is covered by the General Section at the People's Advocate.



*that will be taken regarding the Optional Protocol to the United Nations Convention on the Rights of Persons with Disabilities".*

✓ *Persons with disabilities received no response for their scheduled evaluation from the Medical Commission for Determination of Disability, which is responsible for their assessment.*

After our intervention with the State Social Service, this institution has improved its administrative conduct by regularly informing complainants of their appointment dates with the Higher Commission for Determination of Ability to Work/State Social Service. For individuals who are not entitled to disability benefits based on the decision of the Higher Commission for Determination of Ability to Work /State Social Service, comprehensive legal information regarding their right to be rehired has been provided.<sup>139</sup>

✓ *Failure to cover sanitation package expenses.*

As for the grievances brought to our attention regarding the Invalid Paraplegic and Quadriplegic status eligibility criteria, we have diligently corresponded with the Medical Commission for Determination of Disability (first and higher degree) at the State Social Service. We have been informed that the diagnosis of 'lower paraplegia due to neurodegenerative disease without sphincter disorder' is not listed in the criteria for eligibility to receive the hygiene package. This category is entitled to care by a caregiver but is not provided with the hygiene package equipment.

The People's Advocate has suggested to the Ministry of Health and Social Protection that the diagnosis "Lower paraplegia from neurodegenerative disease without sphincter disorder" be included in the hygiene package benefit for individuals who qualify as pre-tetraplegic disability status beneficiaries (group one). Despite being assigned a guardian due to their severe health condition and inability to present, this inclusion is necessary to ensure proper care and support.

The Ministry of Health and Social Protection states that it has made disability issues a top priority and is collaborating with other responsible institutions to implement reforms addressing each issue.

✓ *Failure to grant the right to benefit from the status of Invalid Paraplegic and Tetraplegic.*

In our institution we have dealt with many complaints and we have noticed that the diagnoses 'paraparesis' and 'hemiplegia' indicate paralysis, and although they do not meet the criteria for the disability status of paraplegic or quadriplegic, these diagnoses classify the holders as persons with disabilities in the first disability group.

In situations where diagnoses of hemiplegia and paraparesis are classified as forms of paralysis, we recommended to the Ministry of Health and Social Protection that they should contemplate adding the mentioned diagnoses to the Paraplegics and Tetraplegics Disabled Status benefits.

From the Ministry of Health's responses, we learn that the current diagnoses cannot be included in the Disabled Paraplegic and Quadriplegic State's benefits. The possibility of their inclusion in a second

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<sup>139</sup> Regulations "On the organisation, rights, duties and functioning of the Medical Commission for Determination of Ability to Work, for Determination of Persons with Disabilities and the Medical Commission for Determination of the Visual Impairment".

phase is brought to our attention. This will be after conducting a study examination of diagnoses that cause hemiplegia, evaluating the number of hemiplegics in Albania, and assessing the financial costs, all of which require changes in legislation as suggested by our institution.

✓ *Failure to pay arrears to disabled persons in Gjirokastrë for the period 2005-2010, due to non-indexation of the disability payment.*

The People's Advocate also dealt this year with a problem that has been reported by citizens over the years and is still unresolved, namely the non-payment of arrears for the period 2005-2010 to persons with disabilities in the Municipality of Gjirokastrë due to the non-indexation of the disability allowance. In 2004, disability payments were fully indexed as a result of the minimum wage increase. Between 2005 and 2010, the calculations for this indexation were flawed, resulting in unpaid debts. Final rulings were filed regarding the clarification and recognition of arrears, calculating tax values for each claimant due to limited capacity for protection, unemployment, visual impairment, education and compensation for damages. Despite this, the local government has failed to implement these rights for those affected.

In relation to this matter, the Municipality of Gjirokastrë has confirmed that there is a final court decision which stipulates that both the Ministry of Health and Social Protection and the Municipality of Gjirokastrë must pay the difference in payment due to disability, as well as the damages caused by their failure to fulfil timely obligations undertaken by the citizens. The Municipality has stated that it has taken all necessary measures to implement the court's decision. Additionally, the Municipality of Gjirokastrë would like to inform that it awaits the Ministry of Health and Social Protection to open the fund for settling outstanding payments for individuals with disabilities within the municipality's jurisdiction.

After our institutional involvement with the Ministry of Health and Social Protection, we received information that during 2022, the institution will produce a summary of final court decisions that remained unsettled until the end of 2021, along with new decisions made during the year. The institution will act accordingly at the end of 2022, depending on the budgetary situation.

✓ *Failure to reimburse disabled workers and individuals with visual impairment for 100% of urban and 50% of intercity transportation expenses has been a longstanding issue that citizens continue to raise as a problem.*

To address this, the People's Advocate's sent official letters to the competent institutions in order to resolve the problem.

Following our correspondence with the Ministry of Health and Social Protection, we can confirm that an inter-institutional working group is being set up to evaluate the transportation legislation for disabled individuals who require transportation services.

✓ *Failure to currently grant the double compensation for visual impairment to visually impaired persons attending the School of Advocacy.*

Based on a citizen's complaint, we identified an issue affecting visually impaired individuals attending authorized or accredited training courses who are not receiving the 200% payment. The complainant stated that they are a beneficiary of the *"On the Condition of the Visually Impaired"* Law no. 8098 dated 28.03.1996, and that they had attended the School of Advocacy.

Decision of the Council of Ministers no. 182 dated 26.02.2020 *"On determining the Scope, Criteria, Procedures, and Documentation for the Assessment and Utilization of Disability Benefits and Personal Assistants"* amended in Chapter III, Paragraph 2, states that:

*"Persons with disabilities who are pursuing an authorized or accredited qualification course, as well as students in secondary and higher education, will receive a 200% payment increase during the school year or course period, limited to one payment per year of study. The payment will be equivalent to the payment given to those with limited disabilities and will only be granted within the time frame allotted for completing the qualification course or school year"*.

The individual was denied the double payment entitlement for reasons of visual impairment, as there was no document proving that he had been awarded a licence or accreditation by the School of Advocacy. Under these conditions, we suggested that the Ministry of Health and Social Protection consider our proposal for the legal regulation of this situation. In response to our recommendation, this organisation has informed that:

*"In reply to your letter containing the representations made by citizen BM, who requests that the period of attendance at the School of Advocacy be recognised as professional training, with the effect of the benefit of double the disability allowance for persons with disabilities who follow this one-year programme to practise as lawyers, we inform you that these representations are being evaluated by the Ministry of Health and Social Protection"*.

✓ *Lack of adequate accessibility for individuals with motor disabilities, as well as a lack of signage with special markers for those with visual impairments, in state-run institutions that provide services to citizens, as well as on roads and pavements within the territory of the Republic of Albania.*

The Steering Committee for the Implementation of the UN Convention on the Rights of Persons with Disabilities recommended in its 25.09.2019 resolution that the Albanian government take action to promote the right of people with disabilities to live independently and participate actively in society. One of the key issues highlighted is inadequate access, with a focus on implementing standards to eliminate environmental and infrastructural obstacles to service provision.

Following our monitoring process, our institution continued in 2022 to draft and send out recommendations to various state institutions,<sup>140</sup> for the immediate implementation of building infrastructure measures that meet the elements of suitability standards, while also including considerations for individuals with disabilities.<sup>141</sup> These recommendations build upon those sent in 2021.

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<sup>140</sup> The People's Advocate's Annual Report for 2021, page 114.

<sup>141</sup> Recommendation to the Universal Service Provider Sh.a, Tirana, Health Care Provider, Tirana, General Directorate of Taxes, General Prosecutor's Office, General Directorate of State Police, Office of the Judicial Budget Administration, Agency for the Delivery of Integrated Public Services (ADISA), Pogradec, Municipality of Pustec, Pustec Health Care Centre, Post Office Branch, Lezhë, Municipality of Durrës.

Following the received recommendations, we have been informed that all our proposals have been accepted and appropriate steps are being taken to establish amenities for individuals with mobility and visual impairments.

✓ *Failure to grant exemption from housing tax to disabled persons.*

Following intense correspondence with both the Ministry of Finance and Economy and the Ministry of Health and Social Protection, it was determined that legal action needed to be taken in order to make necessary adjustments to the specific law 'On Work Disabled People' to ensure exemption from building tax for working disabled individuals. These adjustments will align the law with changes in tax legislation over the years.

Again, this year, we have persistently requested the implementation of suitable legal regulations regarding this matter. The Ministry of Finance and Economy informed us accordingly:

*"Within the context of the property tax reform, which aims to levy taxes on properties exclusively based on their market value, the General Directorate of Property Tax under the Ministry of Finance and Economy is collaborating with the "ProTaxAlbania" project to draft the " Law on Property Tax", which aims to levy taxes on properties exclusively based on their market value...". During the consultation for the proposed Property Tax Law, which is focused on the needy classes and those with lower incomes, the discussion process will also be open to the category of disabled workers..."*

✓ *Lack of access to online platforms for people with disabilities.*

To determine the appropriateness of online platforms for acquiring information from individuals with disabilities, we requested that the National Agency for the Information Society implement certain programs required to establish facilities for this group. As a result of our inquiry, the National Agency for the Information Society provided the following information, among other items:

*"The National Agency for the Information Society is collaborating closely with the World Bank to enhance the e-Albania platform and its underlying infrastructure. This will involve customizing it to best serve people with special requirements and introducing fresh features that will be useful to both members of the public and business entities, all for the improvement of public services. Additionally, efforts will be made to boost the population's fundamental and advanced digital skills. This will further be governed by pertinent legal regulations based on the EU Directive for the accessibility of websites and mobile applications of public sector entities, which is anticipated to be adopted by 2024..."*

✓ *Monitoring the application of legal norms relating to social care services for residential centres accommodating individuals with disabilities, including the monitoring of their living conditions and environment.*

Our work involves monitoring the implementation of disability rights with a proactive approach. We inspect Social Assistance Residential Institutions, such as the Development Centre in Korçë and the Development Centre "Unë jam si ju" in Berat, on a continuous basis. Our goal is to ensure that persons with disabilities are appropriately accommodated and their rights are upheld.

The People's Advocate asserts that increased dedication and better cooperation between central and local governments are necessary to meet social care standards for individuals with disabilities who

reside in these institutions, despite the admirable work already being done in these social care establishments. To ensure the training and development requirements of individuals with disabilities are met, we have formulated guidance for the State Social Service and the Municipalities of Korçë and Berat.<sup>142</sup>

On the International Day of Persons with Disabilities, the People's Advocate issued a Declaration to raise awareness among the wider population and defend the rights of individuals with disabilities. The declaration aims to promote their integration into political, social, economic, and cultural life.

The People's Advocate will continue to work for the continuous respect of the rights of persons with disabilities, for the promotion of their rights as an integral part of the Albanian society, for the guarantee of their inclusion, well-being and improvement of their quality of life.

### **3.19 Gender equality <sup>143</sup>**

The People's Advocate, as an institution whose work is based on the promotion and protection of human rights, of which women's and girls' rights are an integral part, has reinforced the observation that Albanian women and girls are victims of all forms of violence, which is one of the main problems leading to the lack of respect for their human rights.

Despite recent improvements in the legal framework for victims of domestic violence and the development of gender equality policies, there are still significant issues that need to be addressed.

From the perspective of the People's Advocate, exercising its mandate as an advocate for individual rights and freedoms, the primary concerns for the current year, which have been carried over from the previous year, are focused on providing social services to all groups of women and girls enduring multiple forms of discrimination:

- Support for all women and girls suffering from multiple forms of discrimination.
- Allocation of funds to support survivors of gender-based and domestic violence and organisations working in this field.
- Ensuring that women's rights are respected in the workplace and that the dignity of workers is protected.
- Ensure that women's property rights are respected.
- Tackle difficult socio-economic conditions.

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<sup>142</sup> The recommendations for the Development Centre of Korçë concern: Take measures to increase staffing of the position of nurse; Take measures to increase staffing with 2 (two) caregivers, 1 (one) health worker, 1 (one) psychologist and 1 (one) social worker; Take measures to establish emergency levels; Take measures to replace existing beds with adapted beds for paraplegic and quadriplegic patients; Take measures to repair the boiler system; Take measures to allow the installation of a lift in the building, as well as take measures to increase the daily food quota. The recommendations for the Development Centre "Unë jam si Ju", Berat pertain to approving the Internal Regulations of the Centre, appointing a nurse, guardian, psychologist, and security guard to the staff, replacing the current bed with a bed suitable for the beneficiary who is blind and para/quadruplegic, and providing fire-fighting equipment training to the staff.

Take steps to fully insulate the terrace; Facilitate the installation of a lift within the building; Outfit the Centre with electrotherapy equipment: TENS, ultrasound, and treadmill; Activate the dryer; Ensure the toilet facilities are suitable for the Centre's beneficiaries; Provide a vehicle; Review the institution's budget to address the identified issues.

<sup>143</sup> This field of law is covered by the General Section at the People's Advocate.

With regard to the 35 complaints received by the People's Advocate in 2022 from individuals, civil society organisations and cases initiated, it should be noted that they focused on these issues: (a) Violence against women and girls with mental health problems is prevalent due to lack of services for this category; (b) Sexual harassment in the workplace is among the pervasive issues that affect women; (c) Women are excluded as co-owners to benefit from housing donated by the reconstruction programme; (d) Non-employment and non-payment of wages which violate current labour regulations; (e) Social housing does not benefit victims of domestic violence with the rental bonus; (f) Social pension is not received; (g) Difficult socio-economic conditions are among the prevalent issues that affect women and girls with mental health problems.

Over the past year, the People's Advocate has been asked to intervene on a wider range of issues.

One significant matter that was addressed by the People's Advocate extensively in 2022, and which was concluded with the drafting of its recommendation, is that of increasing women's access to property rights. Improving women's access to property rights has consistently been a priority in promoting women's economic empowerment and reducing poverty. The 2019 earthquake had severe social and economic consequences, causing many residents to lose their homes. However, the government has taken measures to provide housing through the reconstruction program and laws enacted.

Within the framework of cooperation with civil society organisations<sup>144</sup>, the People's Advocate, after having been informed by the Centre "Qendra për Nisma Ligjore Qytetare", took note of the problem related to the guarantee of married women's property rights to real estate benefiting from the reconstruction programmes of houses damaged by the earthquake in 2019.

According to the procedures foreseen, the donation contracts will be concluded between the donor, the competent state institution (municipality) and the recipient of the donation, the citizens who have applied for and will benefit from the contribution for the reconstruction of houses damaged by the earthquake. This contract is drawn up by a notary and registered by the State Land Registry, the competent local regional directorate.<sup>145</sup> However, *the donation agreement does not include any provisions to ensure gender equality in the ownership of the properties.*

It has been found that in the donation contracts drawn up by the local administration for earthquake-affected families, only the head of the family (usually the husband or father-in-law) is the beneficiary of the donation. In this way, the property is considered the personal property of the beneficiary, and in the event of a family conflict, divorce or property settlement, the beneficiary (the head of the family) alienates the property alone, without the consent of the wife. The house damaged or destroyed by the earthquake was a house purchased during the marriage with the contribution of both spouses, but the donation contracts do not specify this fact, *leading to serious social consequences for the woman who is denied co-ownership.*

On the basis of the analysis of the facts and the approved legal documents, the People's Advocate drew

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<sup>144</sup> Pursuant to Article 30 of the amended Law No. 8554 of 04.02.1999 "On the People's Advocate," it is explicitly stated that the People's Advocate should closely collaborate with non-governmental organisations and regularly seek their opinions on the state of human rights and freedoms while performing their duties.

<sup>145</sup> Decision of the Council of Ministers No.904 of 24.12.2019 "On determining regulations, priority categories, benefit measures, responsible authorities, and procedures for evaluating and selecting participants for specific programs of the reconstruction process".

up and sent to the competent institutions<sup>146</sup> the recommendation "to adopt measures to respect the gender rights of co-ownership on houses acquired from reconstruction subsidies following the earthquake damage in the year 2019":

✓ *Ensure that all donation contracts in which the recipient is the person who applied for the donation, and whose marital status on 26/11/2019 was legally married, are executed in favour of their legal union, even if one of the spouses is not present when the contract is concluded, with both spouses being co-owners of the entire property with 1/2 undivided ideal shares, as reflected in the model donation contract sent to the National Chamber of Notaries and the respective municipalities.*

✓ *Forward the model donation contract, which states that both spouses equally co-own the entire property, with undivided ideal shares of 1/2, as expressed in the deed, to the National Chamber of Notaries and the relevant local authorities.*

Special reports containing suggestions and recommendations were submitted to the Assembly of the Republic of Albania by the People's Advocate institution to address issues related to the rights of women and girls.

Specifically, two reports were finalized in 2022: one on "Violence against women in politics" and the other on "Assessment of household access to and utilization of social protection benefits", both of which were initiated in 2022. The reports' findings have led to crucial recommendations directed at central and local institutions, women's organizations, political parties, and the media. The People's Advocate will monitor the implementation of these recommendations throughout 2023.<sup>147</sup>

Another important topic that the People's Advocate tackled in 2022 was the inclusion of a gender-responsive budget (GRB) to promote gender equality.

The budget reflects the government's priorities and seriousness in response to development challenges, including gender inequality, poverty, exclusion and economic injustice.

Monitoring public spending by gender is vital in analysing the government's sensitivity and accountability levels at both central and local levels in fulfilling its commitments.

In the context of this, during 2022, the People's Advocate is preparing a "Gender Public Expenditure Monitoring Report in the Field of Social Services" with UN WOMEN's support. The report is anticipated to be deliberated on with interest groups and launched during 2023.

This report assesses the budget schemes of three administrations, namely the Ministries of Health and Social Protection, Justice and Finance and Economy, and six urban areas: Tirana, Durrës, Shkodra, Vlora, Elbasan, and Korçë. The primary aim of this report is to evaluate the amount of spending accomplished in 2021 to enhance the situation and status of women, and to improve their access to social services offered by responsible institutions at both central and local levels. Moreover, the report intends to identify the level of results achieved and highlight the most challenging concerns in this area with regards to state structures at both central and local levels.

During 2022, legal monitoring inspections were conducted at the National Centre for the Treatment of

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<sup>146</sup> Recommendation No. K1/Q3-2 Protocol, dated 17th October 2022, has been forwarded to the Deputy Prime Minister, the Minister of Infrastructure and Energy, the Minister of Justice, the State Cadastre Agency, and the municipalities of Tiranë, Durrës, Shijak, Krujë, Kamëz, Vorë, Rogozhinë, Kurbin, Mirditë, and Lezhë.

<sup>147</sup> More information about the report is available in Chapter IV 'Other Institutional Commitments'.

Victims of Domestic Violence, the Crisis Management Centre for Sexual Violence Cases "LILIUM" and four emergency shelters at the municipal level in Kukës, Vlorë, Pogradec, and Sarandë. These shelters operate in accordance with the social welfare services legislation and approved standards<sup>148</sup>.

The People's Advocate welcomes the Government and Local Self-Government Units' efforts to provide specialised services to victims of violence and allocate funds through the Social Fund mechanism. However, there is still room for improvement in terms of increasing the number of services provided throughout the country, ensuring they are accessible and affordable to all women and children affected by violence.

*i) the National Centre for the Treatment of Victims of Domestic Violence* is a public residential facility under the State Social Service. It offers various services, such as essential provisions like food, clothing, and temporary accommodation, psychosocial care, legal advice, medical care, education for children, vocational and occupational training, employment, rehabilitative activities, referring individuals to reintegration centres, preparing them for reintegration, initiating negotiations for reintegration, monitoring, and evaluating cases after referral to community or reintegration centres.

The inspection aimed to monitor the implementation of recommendations provided by the People's Advocate in 2021<sup>149</sup> and assess the centre's compliance with social work service standards for victims of domestic violence. Moreover, it intended to evaluate the current state of women and children residing in the facility and whether their rights are being respected.

The gathered information was analysed and sent to the relevant institutions, namely the Ministry of Health and Social Protection and State Social Service:

✓ *Promptly implement measures to improve living and treatment conditions and ensure the rights of beneficiaries at the National Centre for the Treatment of Domestic Violence Victims.*<sup>150</sup>

At present, it seems that the Ministry of Health and Social Care and the State Social Service have accepted this recommendation.

*ii) Crisis management centre for sexual violence cases 'LILIUM'* - This centre functions as a specialised centre for the management of sexual violence cases, on a short-term basis and operates 24 hours a day, 7 days a week. The centre depends on the Ministry of Health and Social Protection and the 'Mother Teresa' University Hospital Centre and is funded from the state budget.

The purpose of the inspection was to ensure that the LILIUM Centre complies with the standards for servicing victims of sexual violence, as well as implementing the recommendations made by the

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<sup>148</sup> Law 21.11.2016, no.121 "On Social Welfare Services" and Decision of the Council of Ministers of 13.7.2011, no.505 "On the Approval of the Standards of Social Welfare Services for Victims of Domestic Violence in Residential Centres, Public and Non-Public."

<sup>149</sup> For the recommendations outlined in the 2021 inspection, please refer to the 2021 Annual Report. <https://www.avokatipopullit.gov.al/sq/list/publications/rraporte-vjetore-2/>.

<sup>150</sup> 1. Integration of the staff of the National Centre for the Treatment of Victims of Domestic violence with full-time health workers to cover all three shifts; 2. Integration of the staff of the National Centre for the Treatment of Victims of Domestic Violence with 1 lawyer; 3. Disbursement of funds for the purchase of clothing (underwear, lingerie, various garments, etc.) for women and children; 4. Disbursement of funds for the installation of the facility's central heating system; 5. Disbursement of funds for the purchase of teaching, educational and entertainment materials as well as books for children; 6. Provision of all basic protocol drugs at the Centre; 7. Hiring of a driver.



People's Advocate<sup>151</sup> following the inspection conducted on 03.12.2021.

The centre's establishment and functioning were assessed by the People's Advocate, who also noted the need to establish other centres in the country, as envisaged in Strategic Goal III of the National Strategy for Gender Equality 2021-2030. Following an inspection, we completed an analysis of the information gathered and sent a recommendation to the relevant institutions to:

✓ *Take immediate measures to improve treatment conditions and safeguard the rights of beneficiaries at the LILIUM Management Centre in cases of sexual violence.*<sup>152</sup>

At the time of writing this annual report, Mother Tereza University Hospital Centre *accepted and implemented the recommended measures.*

*iii) Inspections were conducted in three short-term emergency shelters: Sarandë, Kukës, and Pogradec. Additionally, inspections took place at the Vatra Shelter in Vlora, a centre providing long-term services to women who are victims of domestic violence and trafficking.*

The purpose of inspecting these centres is to ensure they are in line with the standards of social care services for victims of domestic violence, women who are victims of violence, and their children.

After reviewing all documentation and data gathered during inspections of all four entities, the appropriate recommendation was given to improve living and treatment conditions for beneficiaries in emergency centres. This recommendation was directed towards municipalities and their districts, the State Labour and Social Services Inspectorate, and shared with the Ministry of Health and Social Protection and the State Social Service for informational purposes. Immediate action should be taken to implement the recommended measures.

The recommendations mainly referred to the recruitment of more social workers, complying with labour legislation for overtime, ensuring the stability of these centres through the Social Fund mechanism, and establishing cooperation agreements between districts<sup>153</sup>.

The promotion of human rights and freedoms, as well as awareness about the rights of women and girls, has been pursued through various activities and statements published by the People's Advocate on the institution's official website, with the clear aim of demonstrating that the submission of complaints to the institution of the People's Advocate is an important tool in the hands of the public, especially women and girls, to assert rights that have been violated or disregarded.

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<sup>151</sup> For the recommendations outlined in the 2021 inspection, please refer to the 2021 Annual Report. <https://www.avokatipopullit.gov.al/sq/list/publications/rrapporte-vjetore-2/>.

<sup>152</sup> 1. The University of Tirana's Hospital Centre budget for the LILIUM Centre, in accordance with Order No. 817 dated 27.11.2018, issued by the Secretary General of the Ministry of Health and Social Protection, "On the Establishment and Operation of the Sexual Violence Case Management Centre" is allocated to address the specific requirements of sexual violence survivors. This includes the provision of clothing, sanitary and hygienic items, and other necessary operational expenses for case management.

2. Establish a roster of qualified nurses to offer health services to individuals affected by sexual violence.

3. Additionally, guarantee the constant training of staff members responsible for administering essential support and conducting psychological evaluations for sexual violence victims.

4. Furthermore, ensure that social workers and psychologists providing this service at the LILIUM Centre outside of regular hours receive payment in accordance with the Hospital Centre of the University of Tirana's procedures and regulations for doctors and nurses.

Plan to expand the LILIUM Centre's team with the hiring of a case manager.

<sup>153</sup> At the time of writing, the relevant authorities have agreed to the suggestions and provided their opinions regarding the actions they will undertake.

In this context, we highlight the organization of themed sessions on women's rights days, including International Women's Day (8th March) and participation in activities during the 16 Days of Activism against Violence against Women Campaign from 25th November to 10th December. Also, we participate in the meetings during the open days organized by the People's Advocate in multiple municipalities.

The People's Advocate institution acknowledges the efforts of responsible institutions in preventing and combating gender-based violence and domestic violence. Our continued efforts aim to encourage these institutions to uphold the highest standards of women and girls' rights guarantee.

### **3.20 Protecting the rights of the LGTBIQ community**<sup>154</sup>

The People's Advocate prioritises the safeguarding of human rights, particularly those of the LGTBIQ community. To this end, the organisation collaborates extensively with civil society and its activists in this sphere, institutions and other stakeholders. The People's Advocate also participates in the *No Hate Alliance* with the aim of saying NO to hate crimes and hate speech, and of ensuring the enjoyment of the rights that belong to this community without discrimination.

The People's Advocate has determined that progress has been made in the past year. This is due to the implementation of the Action Plan for LGBTI+, 2021-2027, the development of the capacities of some responsible state structures, the continuous public awareness raising through the activities of the Day Against Homophobia, Transphobia and Biphobia.

Throughout 2022, the People's Advocate closely monitored the day-to-day situation in the country and concludes that, despite the positive steps taken in Albania, we are still far from the full inclusion of LGTBIQ people, who continue to suffer discrimination and stigmatisation, incitement to hatred and even physical violence. The People's Advocate has found that incitement to hatred has been escalating particularly in the media and online platforms during the past two years.

The People's Advocate has always supported members of the community through issuing official statements, hosting roundtables, organizing a variety of activities, and publishing positions on the institution's official website,

In May, following a series of brutal attacks on the community member David Cuka due to his gender identity, the People's Advocate urged responsible institutions to promptly investigate the incident. It was emphasized that victims of such heinous violence must not stay silent.

Recognising the contribution of civil society over time, the People's Advocate welcomed the decision<sup>155</sup> of the Civil Rights Defenders' organisation to award activist Xheni Karaj the International Human Rights Defender Award 2022. This award acknowledges and appreciates her longstanding efforts in a patriarchal and non-inclusive society.

The People's Advocate is involved in the yearly organized IDAHOT initiative that takes place before

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<sup>154</sup> This field of law is covered by the General Section at the People's Advocate.

<sup>155</sup> <https://www.avokatipopullit.gov.al/sq/articles-layout-1/media/news/this-article-is-available-only-in-albanian-779/>.

the 17 May, the International Day against Homophobia, Transphobia, and Biphobia. On 6 May 2022, the presentation event of the study "LGBTI Civic Engagement Programme: politics and representation for the advancement of LGBTI community rights in Albania" marked the opening of IDAHOT 2022. The event was jointly organised by the People's Advocate and the organiser Open Mind Spectrum Albania and received support from the Friedrich Ebert Stiftung Foundation in Albania.<sup>156</sup>

This study consists of a report assessing the issues of the LGBTI community in the broad spectrum of the Albanian media after the 25 April elections, with the aim of finding ways to improve the general situation of the LGBTI community in the country. The survey revealed inadequate representation of the LGBTI community and other marginalized groups in political and social life in Albania. This is largely because political parties, politically oriented groups and alliances, and the media have not sufficiently addressed the concerns and issues of the community in their political agendas and solutions.

The People's Advocate's statement, published on the institution's official website, called for a society based on the values of equality and non-discrimination, where people are valued for their contribution and not for their sexual or other identity. The People's Advocate recognizes the necessity for further legislation improvement with regard to SOGI (Sexual Orientation and Gender Identity), implementation of existing legislation and the National Action Plan for promoting LGBTI rights and enhancing support and cooperation with LGBTI organizations and civil society human rights organizations for the purpose of societal awareness toward human rights acknowledgement and respect.

The Head of the People's Advocate, Erinda Ballanca, highlighted at the Council of Europe Thematic Review Roundtable on "Hate Crimes against LGBTI persons" organized by the Ministry of Health and Social Protection with the support of the European Union and the Council of Europe on 24 September 2022 that *"In Albania we have good laws but insufficient enforcement. Hate crime is not limited to the LGBTI community; it is a pervasive issue that persists not due to the absence of laws prohibiting it, but rather it seems that a certain culture, social framework, and emancipation are necessary to complement laws. This is vital because it ensures that the law is not solely enforced through coercive measures, but rather it is complemented by awareness-raising initiatives from human rights organizations and the concerned advice of our international allies"*<sup>157</sup>. The People's Advocate emphasized that *"the progress made in this area is commendable"* and *"it is believed that both our society and institutions possess the determination, aspiration, and potential to emerge victorious in this fight"*.

### **3.21 Rights of national minorities<sup>158</sup>**

The status of national minority rights in 2022 received institutional attention, specifically concerning the legal rights of the Roma and Egyptian national minorities, as they face the most significant challenges.

The People's Advocate proactively intervenes through recommendations to solve systemic problems and provide solutions for the equality, inclusion, and integration of national minorities in both normal and challenging situations for the State and society. It urges public administration and our society to

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<sup>156</sup> <https://www.avokatipopullit.gov.al/sq/articles-layout-1/media/news/this-article-is-available-only-in-albanian-788/>.

<sup>157</sup> <https://www.avokatipopullit.gov.al/sq/articles-layout-1/media/news/this-article-is-available-only-in-albanian-840/>.

<sup>158</sup> This field of law is covered by the General Section at the People's Advocate.

consider and offer remedies. The media's identification of specific issues and our own reviews played a vital role in this matter.

Throughout the year 2022, nine cases were initiated by affected communities and individuals of national minorities across the country, and four individual complaints were examined.

The issues and obstacles faced by the Roma and Egyptian national minorities in Albania persist and are primarily linked to the necessity for: (i) Enhancing living conditions overall; (ii) improving legal provisions for easier access of Roma and Egyptian people and families to the social protection and inclusion system; (iii) encouraging participation and ensuring comprehensive standards in the education process for Roma and Egyptian children and youth; (iv) advancing the process of legalizing housing for Roma and Egyptian families, etc.

During 2022, recommendations played a crucial role in implementing a systemic approach to address the identified issues. Specifically, the following recommendations were formulated and sent:

- ✓ *Recommendation No. K1/I1-2, dated 17.11.2022, is addressed to district municipalities regarding the drafting and approval of strategic documents at the local level within the framework of the National Action Plan for Equality, Inclusion, and Participation of Roma and Egyptians 2021-2025.*
- ✓ *Recommendation No. K1/I48-2, dated 06/12/2022, on the effective execution of the functions and authority of the Municipality of Elbasan to enhance the living standards of the Roma community in Rrapishtë, Elbasan, continuously and regularly.*

We draw attention to the fact that the recommendation of the People's Advocate to complete the enactment process of bylaws, based on Law No. 96/2017 "On the Protection of National Minority Protection in the Republic of Albania", remains current. This recommendation was addressed by letter No. K1/I10-2 dated 25.02.2020 to the President of the Council of Ministers and the President of the Central Electoral Commission. As we discovered below, since the approval and implementation of Law No. 96/2017 "On the Protection of National Minorities", 8 regulatory acts have been drafted and adopted by the end of 2022, out of the 12 provided for by the law.

This encompasses four decisions in the field of education, two decisions on participation in public, social and cultural life and two decisions on the establishment and functioning of the Committee for National Minorities. There are still four more by-laws to be adopted and brought into force:

- ✓ *The draft decision, "On the determination of the composition, functions and procedure of the Commission for the examination of the application for recognition of national minorities (new minorities, in addition to the minorities recognised by Law No. 96/2017)".*
- ✓ *The draft decision, "On using the Language of National Minorities in Relations between Persons Belonging to National Minorities and Local Government Organs," outlines the rules and regulations for the examination of applications for recognition of new national minorities and the usage of language in relations with local government organs for national minorities.*
- ✓ *The draft decision "On the determination of documentation and procedures for the collection/verification of data on the membership of persons belonging to a national minority". The aim of this proposed resolution is to guarantee that the principle of self-identification for individuals who belong to minority groups and the verification of their belonging to a national minority is connected with the objective criteria of the identity of national minorities and serves to enable the exercise of the*

*rights provided for by the law.*

✓ *Draft Decision "On the criteria for supporting initiatives and projects that aim to protect the rights of national minorities, as well as preserve and promote their distinct cultural, ethnic, linguistic, traditional, and religious identity. Additionally, this draft decision outlines the selection criteria for financing and administering the "Fund for National Minorities Policy".*

It should be noted that many complaints handled by the People's Advocate have brought to light other concerns raised by members of national minorities. These concerns may not be directly addressed within the framework of EU rights for national minorities or individual legal rights simply by virtue of belonging to a national minority. These complaints persist regarding housing rights, the right to employment, entitlement to social welfare, and the overall enhancement of living standards.

A concerning issue at the heart of our work is the persistence of anti-Gypsyism. This takes the form of both individual actions and institutional policies that lead to marginalisation, exclusion, and physical violence. This harms the Roma culture and way of life and is often expressed in hate speech directed towards Roma people, as well as other individuals or groups who were stigmatised or persecuted during the Nazi period and continue to be so today, often referred to as 'Gypsies'. This troubling trend within a democratic society results in a range of detrimental stereotypes and distorted portrayals, which constitute a particular manifestation of racism towards Roma individuals and communities.

As previously stated in our recommendations to both local and central government units, it is important to develop concrete policies that promote the integration and inclusion of Roma and Egyptians into a diverse, inclusive, and democratic society. This must be done in accordance with the new international strategic framework for equality, inclusion, and participation, and in addition to our efforts to combat "anti-Gypsyism". Such policies should be implemented not only at the central government level but also specifically at the local self-government level.

During 2022, the People's Advocate institution proactively participated in roundtables, meetings with civil society organizations, and international partners. The agenda involved a consultation with delegates from the Council of Europe's Advisory Committee for the Framework Convention for the Protection of National Minorities, who conducted a mission to Albania as part of the preparation for generating an opinion for the 2022/23 year within the fifth monitoring cycle. During the mission, the delegates held discussions with personnel from multiple institutions, civil society groups, and independent partners.

During the meeting held on 14 November 2022, the People's Advocate presented its perspective on the status of national minorities' rights, significant challenges faced, and concerns addressed through recommendations on the fifth monitoring cycle of the Framework Convention for the Protection of National Minorities. Additionally, the Institution shared its long-term institutional plans to monitor the adherence to national minorities' rights. On the other hand, in 2022, promoting citizens' rights and increasing awareness of the institution's role remained a top priority. This was achieved through the implementation of various activities, including:

✓ Meetings and participation in a number of activities with representatives of various civil society organisations at local level, including representatives of associations of the Egyptian and Roma communities.

- ✓ Active participation in promotional events and open days held in the municipalities and administrative units of the relevant districts. During these events, the People's Advocate institution distributed special leaflets containing information on the rights of members of the Egyptian and Roma communities. Consistent usage of the terminology and metrics adopted by the relevant industries and organizations was employed. Additionally, precise and unambiguous language was used to avoid confusion.
- ✓ Utilize press and audiovisual media locally to enhance visibility of the regional offices and promote the institution's mandate.
- ✓ Promoting the activities of the regional offices on social media platforms.

Some of the activities related to the promotion of the regional offices of the People's Advocate for the Egyptian and Roma communities are as follows:

- ✓ Organisation of open days and meetings with representatives of associations of Egyptian and Roma communities at local level in the district of Berat, Gjirokastra, Vlora.
- ✓ Participation in the activity developed by the Municipality of Berat, in cooperation with UNDP Albania, on the occasion of the International Roma Day.
- ✓ Participation in the meetings with the members of the Municipal Task Force ROMACTED in the Municipalities of Pogradec and Vlora.
- ✓ Participation in the meeting organised in Vlora by the organisation "Social Justice" on the possibilities of benefiting from legal aid, primary and secondary, with members of the Roma and Egyptian community.
- ✓ Meeting at the Regional Office in Vlorë with the President of the Roma Community of the Administrative Unit of Novoselë to discuss the problems of the community and the creation of bridges for the referral of cases.

The People's Advocate Institution believes that the protection of the existence of minorities and the adaptation of diversity in society should be a permanent goal of the Albanian State, in order to take additional measures both to prevent and to solve problems whenever they arise.

The vision of the People's Advocate is founded on the excellent spirit of coexistence that exists between the majority and the minority of the population, and believes that minorities in Albania are a valuable national resource for the past and the future of the country, and that respect for the rights of minorities is not a privilege that the State and our society grant them, but an obligation and a natural process based on human dignity and diversity, thus representing a great investment that a society reserves for itself for the future.

### **3.22 Respect for rights in the field of social security<sup>159</sup>**

The right to social insurance is a constitutional right included in the economic, social and cultural freedoms and rights established in the Constitution of the Republic of Albania.<sup>160</sup>

Social insurance in Albania offers mandatory coverage to economically active citizens for income loss

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<sup>159</sup> This field of law is covered by the General Section at the People's Advocate.

<sup>160</sup> Constitution of the Republic of Albania, article 52, paragraph 1.

resulted from pregnancy, old age, disability or loss of the head of the family. It also provides compulsory protection to employees suffering income loss due to temporary disability arising from illness, work accident, occupational disease, or unemployment.

Regarding the complaints recorded and addressed in 2022, it seems that a total of 66 cases were managed. Among them, 63 cases have been concluded, whereas 3 still await review. Out of the resolved cases, 25 have been settled, benefiting the citizens, without any recommendations.

From the standpoint of the People's Advocate, in the exercise of its mandate as advocate of the rights and freedoms of the individual, it can be noted that the main problems raised in the citizens' complaints continue to be the same or similar to those reported in previous years: (i) The inadequate amount of old-age pension benefits, (ii) failure to acknowledge the length of service and provide disability allowances by the approved Verification Commissions for Work Ability, (iii) failure to utilize the old-age pension supplements upon pension initiation, (iv) failure to provide a copy of the pension file documentation, (v) delay in receiving old-age pension due to work in a demanding profession, and other related issues.

In handling complaints from citizens, it has been noted that many are unfounded. The People's Advocate provides legal guidance to citizens on resolving the issue through administrative appeal to Regional Appeals Boards at Regional Social Security Directorates and the Central Appeals Board at the Social Insurance Institute.

The People's Advocate Institute outlines the key social security issues that significantly impacted citizens during 2022:

✓ *Low amount of old age pensions due to incorrect calculations made by the Regional Social Security Directorates.*

Our institution has received numerous complaints regarding the unfair calculation policies, and we urge for prompt action to address this matter. To enhance the condition of those receiving benefits, we proposed that the Regional Social Security Directorates reevaluate the pension amount by thoroughly scrutinising the documents pertaining to the applicant's records.

People had their pensions changed after recalculations and at the same time benefited from credit extensions.

✓ *Seniority years not considered in the calculation of old-age pensions.*

In this aspect, the People's Advocate intervened on behalf of citizens who sought our help due to the Regional Social Security Directorates failing to recognise their years of work which, in turn, resulted in a reduction of their old-age pension entitlement. Our intervention included liaising with the Central Social Security Archive and other relevant State institutions to obtain proof of their years of work.

We instructed citizens to send their seniority documentation to the Regional Social Security Directorates where they are residing, in order to qualify for a better pension provision or to finalize any missing documentation for their old-age pension application.

✓ *Disregarding employment years while serving a non-political sentence, when calculating the pension for old age.*

Some individuals who received a lower-than-expected pension approached our institution because their employment years while serving a non-political sentence had not been recognized. Their claim is founded on the premise that they served their sentence by working for the public benefit and contributed to society through their labour.

To address this situation, we engaged in extensive correspondence with the Ministry of Finance and Economy and the Social Insurance Institute. When official documentation confirming their periods of work is absent and convicted individuals declare periods of work completed while serving non-political sentences without their respective elements (such as start and end dates, daily working hours, wages, occupation and qualifications), the Social Insurance Institute has declined requests to recognize these declared periods in the absence of legal or sub-legal acts regulating this matter.

Under these circumstances, we proposed that the Ministry of Finance and Economy consider implementing legal regulations recognizing the years of work carried out by non-political prisoners during imprisonment, particularly those who worked in mines. We would like to draw your attention to the fact that this matter is still under consideration by our institution.

The issue of providing citizens with the necessary documents for their pension files remains problematic this year. The complainants contacted our institution seeking the People's Advocate assistance in obtaining the necessary documents. Thanks to our intervention, the complainants were able to obtain the requested documents.

The People's Advocate has asserted that citizens regard the amount of their pensions as discriminatory by the state regarding their work and contributions made over the years. They seek a stronger foundation for the social security policies implemented by the State.

Although some legal improvements have been implemented in this field, there are still variations in the amount of people's pensions. Low pensions continue to be a delicate public matter, with most beneficiaries receiving an amount insufficient to cover their basic living expenses.

It is crucial for all Albanian citizens who have contributed, are contributing or are beneficiaries of the system to receive the benefits they are entitled to base on their contributions over the years.

### **3.23 Rights of the elderly <sup>161</sup>**

The Office of the People's Advocate, as the guarantor of human rights and fundamental freedoms, has as one of its priorities the protection of the rights of the elderly, who are considered to be one of the most vulnerable groups and most at risk of not having their rights respected and guaranteed. rights enshrined in local and international legislation.

To ensure social security, access to health services, and free transport, among other rights, the institution has made recommendations to the state administration and the relevant ministries over the years, seeking the approval of senior citizen status.

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<sup>161</sup> This field of law is covered by the General Section at the People's Advocate.



In fulfilling its constitutional responsibility to promote, prevent violations, and safeguard the rights and freedoms of persons against illicit and non-standard acts by public administration and third parties authorized to do so, the National Mechanism, as the People's Advocate, has ensured the protection of the elderly's rights.

In fulfilment of its legal responsibilities, the NPM conducted inspections on elderly care homes in Gjirokastrë, Shkodër, and Fier in 2022 to oversee the level of respect for the rights of the elderly residing in social care institutions. The inspections revealed that the primary issues identified are:

- ✓ Insufficient personnel to meet social care standards. Despite the hiring of caretakers, they appear to be employed on a part-time basis.
- ✓ The current beds intended for elderly individuals with severe mobility issues are not functionally adequate for the intended recipients. This fact does not only cause concrete difficulties/problems for the beneficiaries concerned but also for the staff caring for these beneficiaries.
- ✓ The lack of resources to carry out various activities outside the institution is noted. Consequently, socio-cultural events are confined to the institution.

Following the inspections and identification of issues, clear recommendations were formulated and forwarded to the relevant state institutions, mayors, and the State Social Service. The focus is to enhance living conditions and implement top-quality standard social care services for this group.

### **3.24 Right to a healthy environment** <sup>162</sup>

The Constitution of the Republic of Albania has enshrined the right "*to a healthy and ecologically appropriate environment for present and future generations*" as a social objective and responsibility of the State, within its competencies. An additional provision of the Constitution establishes the right to information as a fundamental human right and freedom. This safeguard is more inclusive in accordance with the amended Law no. 10431 dated 06.09.2011, "On protection of the environment". This legislation endorses the vital principle of public access to information and involvement in making environmental decisions.

Within the scope of the right to a clean, healthy and stable environment, the People's Advocate emphasized that the State must attach particular importance to the preservation of environment. Additionally, PA prioritized the monitoring of the environmental condition in the Republic of Albania, as well as the implementation of pertinent legislation in this sphere by central institutions and local government units.

Over the years, the People's Advocate has prioritised addressing complaints and issues regarding the safeguarding of citizens and the maintenance of their well-being. This includes increasing awareness and sensitisation, as well as promoting the enforcement of legal duties and responsibilities among public sector entities.

As part of its legal remit, the People's Advocate Institution monitored issues relating to the right to a healthy environment throughout 2022. These encompassed complaints received by the institution and matters of public interest highlighted by online and press coverage.

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<sup>162</sup> This field of law is covered by the General Section at the People's Advocate.

Referring to the cases handled by the People's Advocate, not only complaints but also proactive cases originating from the visual, print and online media, the PA handled in 41 cases in total in 2022, of which 14 individual complaints filed with the office by citizens and 27 ex officio cases, which highlighted the existence of important problems such as: (i) coastal pollution, (ii) noise pollution, (iii) air pollution, (iv) pollution of the environment near rivers, and dumping of raw sewage into rivers have been the most frequent complaints received by the PA.

These issues reflect the problems citizens face with the current waste management system and the inadequate protection from various environmental hazards which may have a direct effect on their health.

Referring to the particular cases reviewed by the People's Advocate for which administrative investigations were concluded with relevant recommendations<sup>163</sup> drafted for 2022, we will outline the recommendation pertaining to the case proactively initiated and addressed to both the Municipality of Durres and Durrës Water and Sewerage sh.a.<sup>164</sup> *Residents of Durres complain about pollution in the area of Currila*. Following an analysis of the details of this case and the official communication received from Durrës Water and Sewerage Authority sh.a., which reported that the inhabitants of Durrës continuously express grievances about environmental contamination that have not been resolved in a sustainable and definitive manner, our organisation proposes the following recommendations:

- ✓ Take immediate action to include funding in the budget for planning and constructing a new sewage system in Currila Durrës. The aim is to ultimately resolve the situation and reduce the risk of potential harm to public health and the environment.
- ✓ Additionally, implement measures that can be applied to various international programs that support polluted water treatment.

After reviewing the responses from responsible organisations, including the Municipality of Durrës and Durrës Water and Sewerage Authority sh.a., we are informed that *the problem has been accepted and that investments are planned in the 2023 budget for an efficient and long-term solution to the situation created along the "Currila" road. We can confirm that this recommendation has been fully accepted and appropriate measures are being taken to implement it*".

Throughout 2022, the People's Advocate has observed that the local authorities working alongside central authorities responsible for the environment are consistently failing to meet their legal obligations regarding the right to a clean and healthy environment. This problem was addressed through an initiative focusing on the pollution of the Gjanicë River reaching alarming levels. The administrative investigation concluded with a recommendation made to the Municipality of Fier, the Municipality of Mallakastër, the Ministry of Tourism and the Environment, and the Ministry of Infrastructure and Energy.<sup>165</sup>

The People's Advocate noted that the main objective of the Environmental Protection Law being the protection of life and health has not been achieved because, among other things, the responses of the institutions lack preventive measures for the discharge of treated waste water, especially industrial and

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<sup>163</sup> During 2022, five recommendations were formulated in the environmental protection industry with the aim of preserving the environment.

<sup>164</sup> No. Dok. 202200931, 17.11.2022. Immediate investment in the infrastructure in the Currila Durrës area is recommended.

<sup>165</sup> No. 202200631 dated 27.12. 2022. Immediate action is recommended to eradicate the pollution in the Gjanicë River waters and its surrounding environment.

sewage water. The application of the precautionary principle necessitates heightened environmental and health protection. Therefore, institutions have a greater responsibility to ensure effective protection of the right to a healthy lifestyle and environmental conservation. In this case, our institution recommends the following measures:

- ✓ Take swift measures, using all the legal instruments granted to the Municipality of Fier and Mallakstër by Law No. 139/2015 "On Local Self-Government", for the elimination of pollution caused in the Gjanicë River waters and the surrounding environment.
- ✓ Expedite measures by the Ministry of Tourism and Environment to intensify monitoring by the relevant inspectorates, aiming for rigorous enforcement of the law.
- ✓ Take prompt action to establish and implement an efficient waste management system to prevent extensive pollution caused by this issue.
- ✓ The Ministries of Tourism and Environment, and Infrastructure and Energy, ought to implement measures to allocate a dedicated fund in the medium-term budget that focuses on enhancing the infrastructure for integrated waste management.
- ✓ Local Self-Government Units ought to enact measures to develop a local waste management plan inclusive of appropriate activities and budgets.
- ✓ LGUs ought to adopt measures in cooperation between several municipalities, to assess the service areas of new depots.
- ✓ Central and local government competent institutions ought to design and implement a proper solid waste management plan for the entire territory of the Municipality of Fier and Mallakastër.
- ✓ Adopt measures to coordinate and harmonise the work and activities of public administration bodies at central and local level in the exercise of their responsibilities in the field of waste management.

Upon reviewing responses from competent institutions, the Ombudsman acknowledges that the Local Authorities have partially accepted this recommendation. Additionally, the *Ministry of Tourism and the Environment, through the National Environmental Agency, has stated that polluted or potentially polluted areas will be considered in the preliminary investigation of the 2023 annual programme. The state of pollution will be assessed based on the results of environmental monitoring conducted in 2022.* It is important to note that the People's Advocate will monitor the implementation of the Recommendation and the fulfilment of legal duties and powers related to guaranteeing and protecting the right to a healthy environment. This will be done in order to fulfil the People's Advocate's constitutional and legal obligations, and to ensure the effective exercise of this right in practice.

The People's Advocate highlights waste management as a significant challenge in the environmental sector. Specifically, the 'state of the environment' reports indicate a lack of infrastructure for integrated municipal waste management as the main issue, with insufficient landfills for hazardous and solid waste on a national level.

Integrated waste management is therefore a crucial aspect that needs to be addressed. The People's Advocate has highlighted a significant environmental problem in this area: *the ecological pollution, specifically the Ishëm River being overrun with plastic bottles and waste* for which it launched an administrative inquiry. As a result, a recommendation has been addressed to Tirana Municipality, Kamëz Municipality, Fushë-Krujë Municipality, Durrës Municipality, Kurbin

Municipality, Ministry of Tourism and Environment and Ministry of Infrastructure and Energy.<sup>166</sup>

In this case taken up on our own initiative, it is acknowledged that the issue poses a grave threat to public health, and despite being known for some time, no sufficient action has been taken to ensure effective outcomes in securing the right to a healthy environment. For this matter, our institution made the following recommendations:

- ✓ Measures to be taken by the Ministry of Tourism and the Environment to fully align the regulatory framework with EU directives on waste in the framework of Chapter 27 on Environment and Climate Change.
- ✓ Measures to be taken by the Ministry of Tourism and Environment and the Ministry of Infrastructure and Energy to create a dedicated fund in the medium-term budget for the improvement of infrastructure for integrated waste management.
- ✓ Measures to be adopted by local self-government units to draw up local waste management plans with activities and budgets.
- ✓ Measures to be adopted by local self-government units, i.e., cooperation between several municipalities, to assess the coverage areas of new depots.
- ✓ Immediate measures ought to be taken to establish and implement an adequate waste management system to prevent mass waste pollution.
- ✓ Measures ought to be adopted by the responsible institutions, both at the central and local levels, to design and implement an effective plan for solid urban waste management throughout the entire territory of the municipalities of Tirana, Kamëz, Fushë-Krujë, Durrës, and Kurbin, where the Ishëm River Estuary Area is located.
- ✓ Measures ought to be taken to coordinate and streamline the work and activities of public administration bodies at central and local level in the exercise of their responsibilities in the field of waste management.

Having assessed the responses, the People's Advocate determined that the municipalities of Durrës, Kamëz, and Fushë-Krujë *have accepted the recommendation and are committed to its implementation*. However, *there has been no response* from the Tirana Municipality and the Ministry of Tourism and Environment regarding the adoption of measures to implement the recommendation. Similarly, the Ministry of Infrastructure and Energy states that waste management is not within its purview and is being transferred to the Ministry of Tourism and Environment. Therefore, *this recommendation is considered to be partially accepted*.

The People's Advocate considers the urgent environmental situation in our country, including pollution, insufficient protection of various environmental elements and the current waste management regime, with its immediate effects on the quality of health, as well as the harmful human activities that have caused climate change, require systematic and coordinated collaboration between all authorities at all levels in order to safeguard the environment for present and future generations.

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<sup>166</sup>Document no. 202200667 dated 13/12/2022. Immediate action is recommended to eradicate the contamination of the Ishëm River's waters and its surrounding environment.

The People's Advocate affirms the significance that must be attributed to the condition of the environment and its preservation in Albania. Greater attention is needed regarding the rigorous and effective implementation of legal responsibilities by law enforcement entities. This includes strict adherence to legal and statutory provisions to enhance the condition of the Albanian environment and guarantee high environmental standards for better quality of life and health for citizens.

## CHAPTER 4

### Other institutional engagements

#### 4.1 Study “Violence against Women in Politics”<sup>167</sup>

The “*Violence against Women in Politics*”<sup>168</sup> study, initiated in 2021 during the elections, addressed concerns about the use of sexist and discriminatory language during the campaign. The People’s Advocate and the Commissioner for Protection from Discrimination cooperated on the study, with technical expertise provided by the UNDP under the joint UN programme “*End Violence against Women in Albania*” which is funded by the Swedish government. The study commenced on 6th April 2022 at the premises of the Albanian Parliament. The event was attended by MPs, representatives from state institutions, international organizations, and civil society.

Violence against women in politics is a global issue and infringes upon human rights. Research indicates that physical, psychological, sexual, and economic violence intersect within political spheres. In recent years, scholars have started exploring the gender aspects of political violence. Research indicates that female politicians are more likely than their male counterparts to face invisible violence (Bjarnegård, 2018), encounter violence behind closed doors (Krook, 2020), and become subjects of psychological violence (Bardall et al., 2020). Additionally, studies reveal that women are more susceptible to receiving sexual threats and accusations than men (Bjarnegård et al., 2020). Perpetrators of violence often target women who hold prominent positions in politics and media (Håkansson, 2021).

There have been limited studies conducted on the gender aspect of politics within the Albanian context. Women and girls who aspire to be a part of Albanian politics are often faced with challenging obstacles, characterized by unequal conditions when compared to men and the constant struggle to maintain their dignity. Meanwhile, regulation mechanisms like gender quotas, as provided for in Law no. 9970 of 24.07.2008 and the Electoral Code, have not succeeded in guaranteeing genuine equality in political decision-making. These mechanisms, providing for a representation of more than 30% for the most underrepresented gender, are frequently used to assert that women attain positions solely through the application of quotas, rather than their abilities. Therefore, a thorough analysis was necessary as violence against women in politics constitutes a violation of their human rights and reinforces their marginalization within the political sphere.

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<sup>167</sup><https://www.avokatipopullit.gov.al/media/manager/website/reports/VIOLENCE%20AGAINST%20WOMAN%20I%20POLITIC.pdf>, <https://www.undp.org/albania/publications/violence-against-women-politics>.

<sup>168</sup> For clarity, this study was compiled in the context of our promotional role and it is not a study made in the context of Article 27 of Law no. 8454 dated 04.02.1999 “On the People’s Advocate” as amended.

### *Identified key findings:*

The thematic analysis revealed a variety of violence inflicted upon women, such as abusive language and contempt; interruptions and mockery in speech; false allegations in media; threats; doubting women's abilities; exclusion of women from political party candidate lists; restricted access to party funding during election campaigns; and removal or possible removal of women (and their families) from government positions. False allegations and rumours of a sexual nature, sexual harassment, disregard for women's input during meetings, perceived insignificance of women's contributions, limiting women's involvement in voting on predetermined decisions, manipulation of women's votes during voting procedures, and exclusion of women from information constitute the primary sources of violence experienced by women occupying leadership positions within their political party.

The women reported that party leaders favour particular individuals who may be unqualified or lack connections to the grassroots. Furthermore, they disregard the opinions of party members, exclude those who have made long-term contributions to the party from candidate lists, and predetermine election outcomes. In addition to this, the distribution of resources, such as campaign funds, is unfair, and the decision-making process lacks transparency. The young women reported that party leaders seem to endorse women in public, yet secretly threaten and discriminate against them. The women described the violence they encountered within the party as *invisible, covert, and challenging to confront*.

A greater proportion of political candidates have claimed that offensive language and fake news (55.56%) are a commonplace occurrence in politics. This is trailed by intimidation (42.16%), threats to politicians (30.16%), material damage (16.34%), and finally, physical violence (6.86%).

Political candidates reported being denied party financial support (18.52%), dismissal threats due to political involvement (12.79%), and threats from family members involving disconnection from economic resources or property associated with political activism (6.89%).

The use of derisive language and false information primarily aimed at gender (23.40%), age (21.28%), social status (21.28%), and economic status (17.02%). Women encountered sexual content more frequently than men, with 43.18% of females who had endured derisive language or false news experiencing sexual violence. Meanwhile, only 8% of males attested to this kind of treatment.

Political candidates primarily shared their experiences of violence with their family (80.70%) and friends (78.95%). A small number of respondents indicated that they had reached out to the State Police (n = 5), the People's Advocate (n = 1) and the Commissioner for Protection from Discrimination (n = 2).

58 political candidates (18.95% of respondents or 57.42% of those who experienced violence) reported having shared their experiences with their party. The primary structures through which

political candidates shared their experiences involved party leaders (68.42%) and political coordinators (52.63%).

Political candidates often underestimate the impact of violence in politics. One of their concerns, among others, is that sharing information could have a negative influence on their political careers.

*Suggestions and recommendations* were given to political parties, women's political organizations, the Central Election Commission, civil society organizations, human rights institutions, and the media upon completion of this study, as outlined below:

- ✓ Addressing violence against women in politics necessitates the democratisation of parties. By instilling democracy within political parties, women can potentially experience diminished psychological violence. Ultimately, the political climate should become less hostile. A judicial system that is both efficient and responsive can enhance women's faith in state institutions, thereby boosting their confidence to report instances of violence. Political parties and their leaders should establish legal mechanisms and instruments to handle political violence prior to, during and after elections.
- ✓ Women's political organizations should collaborate with each other (Alliance of Women Parliamentarians, Alliance of Women Councillors and their political forums) and pay attention to violence experienced by female politicians in private settings, while also creating regulations and mechanisms to address political violence.
- ✓ The Central Election Commission should take a proactive approach to prevent economic violence, such as an uneven allocation of funds during election campaigns. The commission should also monitor political parties.
- ✓ Laws should be passed and implemented to penalize those responsible for violence, which includes the media. Men should be included in the discussion on political violence and social services should be developed to provide support to victims of political violence. Additional recommendations comprise of increasing awareness about political violence and integrating the concept of political violence into the primary education system.
- ✓ During election campaigns, monitoring bodies like civil society organisations, the Commissioner for Protection from Discrimination and the People's Advocate, should be involved to identify and report cases of political violence.
- ✓ Future projects by civil society organisations should aim to promote inclusivity, transparency, and impartiality within political parties, form partnerships with women's political groups, collaborate with communities to challenge gender stereotypes, and orchestrate campaigns that encourage greater women's involvement in politics.
- ✓ The press should not print articles that use offensive language, perpetuate gender stereotypes or promote violence. In the case of violence, editorials should be published in response. To aid efforts in stopping violence against women in politics, the press should consider the makeup of discussion groups and avoid those that are all-male.
- ✓ The Audiovisual Media Authority (AMA) ought to enact measures guaranteeing that female political candidates receive media coverage and equitable television airtime to communicate their political message and agenda to voters.

## 4.2 Report "Evaluation on access and family use of social protection transfers"<sup>169</sup>

The initiative to carry out this report was prompted by the cases presented to both the People's Advocate and the Commissioner for Protection from Discrimination and was supported with technical expertise in the framework of the project *Expanding Free Legal Aid Services to Women and Men in Albania (EFLAS)* in cooperation with the Ministry of Justice, financially supported by the Austrian Development Agency. Specifically, the study aims to evaluate the practical implementation of the legislation and the economic assistance program in order to identify obstacles that affect the access of families in need and individuals with special status, as well as the use of economic assistance transfers. The evaluation aims to serve to promote the improvement of the quality and effectiveness of social protection, emphasizing the need to increase the capacities of the competent administration units for the implementation and periodic evaluation of the social policies in place.

*Main findings identified*<sup>170</sup>:

- ✓ Information about what each category is entitled to and how to get help is lacking. Public institutions providing services to those in need, who are most likely to belong to vulnerable categories, do not follow uniform methods of information sharing. Additionally, special categories lack information on how to procure assistance in two ways - both as a family in need and as a special category.
- ✓ Victims of violence who have relocated to a different municipality encounter difficulty in obtaining support as they have to access provisions from their municipality of origin where they are registered. Likewise, individuals who have sought refuge in facilities funded by the state budget are not entitled to monetary aid whilst undergoing medical treatment in public care facilities (Law no. 597/2019).
- ✓ The requirement to apply restrictions within the initial 10 days of the month causes hindrances in receiving financial assistance, and the system and even the local authorities have not shown any flexibility in dealing with emergency cases of special categories.
- ✓ The requirement to apply restrictions within the initial 10 days of the month causes hindrances in receiving financial assistance, and the system and even the local authorities have not shown any flexibility in dealing with emergency cases of special categories. Issues pertaining to protection orders were also brought to light, specifically the reliance on the provision of protection orders to receive financial aid, leading to substantial delays in receiving support. The Immediate Protection Order is not acknowledged by social administrators as a valid document to initiate the application process for economic aid.
- ✓ The varied implementation of parallel payments across several municipalities poses a challenge. In the absence of a clear legal interpretation, the enforcement of protection programmes appears to be based on prevalent practices. The victim of domestic violence may only apply as a distressed family member if currently undergoing divorce proceedings. The

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<sup>169</sup> This report is found in the link:

<https://www.avokatipopullit.gov.al/media/manager/website/reports/Vler%C3%ABsim%20mbi%20qasjen%20dhe%20perdorimin%20familiar%20te%20transfertave%20te%20MS.pdf>.

<sup>170</sup> This study was made before the adoption of the new judicial map and some problems related particularly to the access to the court by the victims of domestic violence and timely reception of benefits were added.



cost of utilizing a psychologist's services at the start of the marriage dissolution process is a significant burden for this group.

- ✓ Situations requiring categorization as in need of assistance are verified by citizens, resulting in additional costs when requesting free legal support, thereby initiating a vicious cycle when seeking concrete aid. Effective provision of coordinated services is imperative in supporting target groups and facilitating the social reintegration of individuals and families experiencing difficulties.
- ✓ In the case of domestic violence victims, housing, employment, and access to educational institutions for their children are of utmost importance. The economic aid provided is insufficient to help break the cycle of poverty, and leaves vulnerable groups trapped without opportunities for education or development to escape this cycle.
- ✓ Economic assistance is stated by Law no. 57/2019 as "the payment given to vulnerable individuals and families defined by legislation". Despite the legal framework's endorsement, the execution of the economic assistance programme has been arduous for the beneficiary groups in terms of prevalent benefit acquisition.
- ✓ Moreover, the People's Advocate and the Commissioner for Protection from Discrimination publish annual reports and data on behalf of independent national human rights institutions. These institutions advocate for a reasonable standard of living that aligns with human dignity and rights. They state that the criteria for receiving economic assistance contradict the needs of vulnerable groups and do not consider the poverty line. Consequently, these groups face further exclusion from social protection.

Following cases related to the exclusion or disqualification from accessing parallel economic assistance payments referred to the People's Advocate by vulnerable groups, including victims of domestic violence, an assessment on the practical implementation of economic assistance legislation and programme effectiveness was deemed necessary. The aim of this assessment is to identify the main issues and obstacles that affect access for families and individuals in need, including those with special statuses, and the utilization of cash transfers under economic assistance programmes.

*Combating poverty through practical implementation and economic aid.* Some results are:

- ✓ There is a lack of clarity on the available rights and support options for different categories. Institutions offering services and counters that are frequently accessed by those in need should adopt a consistent approach to sharing information with the public.
- ✓ Given the special needs of certain categories, more information is required on how they can benefit from support both as a family in need and as a special category. In some instances, social administrators demand that both spouses be included in an application for economic assistance, even when the applicant has a protection order in place and marital dissolution proceedings pending.
- ✓ Needy families and individuals residing in remote areas with challenging terrain encounter obstacles when seeking economic help due to the absence of functional public transport in rural regions and the impossibility of covering transportation expenses privately.
- ✓ Strengthening administrative units and actors involved in the referral mechanism would ensure the legal framework is enforced and supply information to those in need;
- ✓ Improving access to social protection programmes is vital, but there is currently a lack of clear information on the rights and support options available for different categories.

- ✓ To address this, we recommend utilising the electronic register (MIS NE) to analyse the profiles of applicants and beneficiaries, whilst continuing to improve the accuracy of data in this system. The electronic aid register provides valuable insights into the social and economic situations of those who apply for and receive financial assistance. Further and regular analysis of this data can enhance the understanding of the needs of individuals and families, guide policy-making and plan supplementary interventions alongside social workers.
- ✓ Public structures should have their capacities strengthened, and a capacity-building plan needs to be developed for all municipalities on the rights and guidelines for accessing and applying social assistance payments for different categories.

*Addressing challenges concerning access and implementation of economic support payments.*

Some challenges are:

- ✓ Insufficient knowledge and comprehension of the requirements, qualifications, and procedures for obtaining financial support payments by both the system personnel and the target beneficiaries.
- ✓ Access-related hindrances, including transportation expenses and mobility issues, plus the trouble of appearing in person at the local government where they are registered, particularly for sufferers of domestic abuse.
- ✓ Prejudice and stigmatisation of vulnerable groups - specifically, victims of domestic violence, individuals with disabilities, and other marginalised groups - have the potential to discourage asylum seekers and diminish their trust in institutions.
- ✓ Difficulties relating to comprehension and implementation of legal frameworks, including those concerning protection order procedures, pose significant challenges.

*The study identified a number of challenges and recommendations in relation to the processes of accessing social assistance (economic needs and people with disabilities), namely:*

- ✓ Enable victims of violence registered as residing in another local authority to apply for social assistance.
- ✓ Provide economic support to victims of violence who fall under special categories whilst they are in shelters, whether they are public or private. Revise letter 'dh' under Article 11 of the 2019 Social Assistance Act. It is imperative to enhance the system to authorise the disbursement of financial aid to domestic violence victims, including those under immediate protection orders. This involves acknowledging orders devoid of unique identification numbers, recognising them solely through the date.
- ✓ Additionally, the social protection framework should adopt a comprehensive approach to managing vulnerabilities, carried out in reality. As established in relevant policy documents, disadvantaged groups face multiple vulnerabilities beyond their control. Therefore, an exclusive approach is not viable, and the system must adopt an inclusive approach in order to provide equal access to all programmes catering to various circumstances such as domestic violence, disability, or poverty. Substantial regulatory alterations are imperative to explicitly define, notably, the particulars of Article 12(6) of Act No. 597/2019, 'On Social Assistance'. It is essential to provide education to local bodies regarding the parallel payment law's relevance. This will allow specific groups to avail themselves of protective measures offered by the system.

- ✓ Social welfare officers must be persuaded to undertake the required socio-economic evaluation and verification, following legal guidelines for special categories like vulnerable individuals/families. Implementing measures in accordance with legal provisions can aid the poorest, while upholding individuals' rights to apply without violation.

*Summary of possible regulatory changes and recommendations:*

- ✓ Explicitly permit concurrent payments that legislation restricts for individuals with different legal statuses, including victims of domestic violence, persons with disabilities, and individuals/families in need, to receive social assistance payments (financial aid, disability benefits, etc.) along with other parallel benefits to uphold constitutional and international rights and standards, particularly for leading a life with dignity. Parallel payments are permitted based on the principle of providing social protection for all statuses, which has significant impacts for individuals classified as social protection beneficiaries and for vulnerable legal statuses.
- ✓ Additionally, it is proposed that some provisions of existing legislation be amended to allow not only parallel payments under the economic aid scheme but also parallel benefits in kind and services. To this end, please revise Article 11, letter 'dh' of Law No. 597/2019 "On Social Assistance".
- ✓ "On Social Assistance", to establish dependable standards and techniques for computing the minimum subsistence amount, enabling simultaneous disbursements. To effectively meet at least the minimum living standard, in particular by amending Law No. 597/2019, "On Social Assistance", which includes the criteria for determining the minimum subsistence amount, so that it can be met through parallel payments of economic assistance, regardless of the type.
- ✓ To simplify the identification and categorisation of needy and vulnerable individuals and families, such as victims of domestic violence, and to ensure that economic assistance is effectively accessing these groups despite potential complications or misunderstandings of the assistance scheme and social support. This includes the economic assistance programme itself. To provide effective support and protection to victims of domestic violence through economic assistance scheme payments, the legislative amendment to Article 12, paragraph 6 of Law No. 597/2019 "On Social Assistance": more specifically, to amend the wording of Article 12(6) to explicitly allow economic assistance payments to individuals and members/families in need, and payments to victims of domestic violence and payments to disabled persons, in cases where the same person qualifies as a beneficiary category for each of the categories benefiting from economic assistance payments and benefits.
- ✓ Developing a specific instruction for the social administrator to prevent any discretionary practices when approving payments and financial aid benefits. This will be carried out following an amendment in Act No. 597/2019, 'On Social Assistance' (Article 23 and Article 32).
- ✓ In light of these regulatory changes, it's necessary to review the forms and the National Electronic Register to ensure a precise reflection and verification of the legislative requisites. Additionally, legal modifications are required for the assimilation of the Electronic Registry of Economic Needs and the Electronic Registry of Persons with Disabilities into the National Electronic Registry. This merger will facilitate simultaneous payments, contingent upon the necessary legal amendments.

*Integration of information and advocacy activities into annual work plans:*

- ✓ Regular communication with local communities also facilitates the dissemination of information on the application process, benefits and documentation requirements.
- ✓ Social workers should share information about the eligibility criteria, application process rules, and additional support that is available.
- ✓ Easy-to-understand information on applying for and accessing support should be available at local offices, public spaces and also through social media.

*Evaluation and revision of the economic contribution amount:*

- ✓ Local structures should be informed of available programmes and the number of benefits due to special categories of applicants such as individuals or families in distress. It must be ensured that the amount is not deducted for victims of violence, and the amount is calculated only for children or other dependents who are not part of the protection order.
- ✓ However, it is important to note that the measure of economic assistance does not reflect any relation to the minimum cost of living. Additionally, the system calculates benefits for less privileged families based on their family structure and declared income. Consequently, eligible families with the same structure receive equivalent financial assistance, even if their current income levels vary. The review procedure of the financial assistance programme should also incorporate an appraisal of the socio-economic evaluation form.
- ✓ To date, it has not been deemed appropriate to establish a minimum living wage in Albania due to potential strains on public finances, which have hindered the implementation of a fair wage. As a result, assessments of economic assistance, payments for instances of domestic violence, and other similar measures remain separate from each other and are determined through varying or arbitrary approaches, despite their shared goal of supporting disadvantaged groups.
- ✓ The discussion must include the feasibility of associating the value of economic assistance to either the poverty threshold or the minimum wage. The absence of a guideline promotes capriciousness and thwarts the objective of combating poverty and assuring a satisfactory standard of living for all. Financial aid and additional benefits must be incorporated into periodic indexation alongside wages.

The amount of aid must be calculated through comprehensive assessments and thorough analyses based on the minimum subsistence level and the actual needs of the family. It's a general principle that amendments in the benefits system ought to be consistent with Albania's globally accepted approach to social protection and programmes, as well as constitutional rights and norms.

This report was submitted to the Albanian Parliament on 28th December 2022, and we are currently awaiting its discussion within the parliamentary committee.

#### **4.3 Special report "Alimony and child support obligations Policy " <sup>171</sup>**

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<sup>171</sup>The report is available at:

[https://www.avokatipopullit.gov.al/media/manager/website/reports/Raporti%20mbi%20politikat%20e%20pensionit%20ushqim%20or%20-%202012.1.2023\[12595\].pdf](https://www.avokatipopullit.gov.al/media/manager/website/reports/Raporti%20mbi%20politikat%20e%20pensionit%20ushqim%20or%20-%202012.1.2023[12595].pdf) .

The special report titled "Alimony and Child Support Obligations Policy" is grounded on numerous cases handled by our institution where the rights of children to a sufficient standard of living for their physical, mental, spiritual, and moral development were deemed violated due to the failure of the parent who has not been entrusted with the upbringing and education of the child to fulfil their alimony obligations. The report was created with the financial support of Save the Children and the internal resources of the institution.

Throughout the years, the People's Advocate has highlighted in its annual reports the issue of not upholding final court judgments regarding child support responsibilities. Nevertheless, there appears to be no progress in the situation. The failure to enforce these court decisions renders the judicial redress system practically ineffective, with negative consequences on the quality of life and living standards of children.

This report is based on:

- ✓ an analysis of national legal frameworks and
- ✓ international standards, along with a detailed examination of court decisions relating to the determination of
- ✓ maintenance payments following the dissolution of a marriage, specifically those made to fulfil parental child support obligations.
- ✓ factors that courts consider when determining maintenance obligations include ensuring the healthy physical, mental, moral, spiritual, and social development and the enjoyment of a healthy life without deprivation for the child's best interest, looking at it in the context of the impact of these decisions in guaranteeing the healthy physical, mental, moral, spiritual, and social development and the enjoyment of a healthy life without deprivation for the child's best interest.

The obligation of parental maintenance towards a child is a personal and gratuitous legal obligation, which requires the father and/or mother to provide for the basic needs of their offspring. This duty applies irrespective of the parents' marital status or living arrangements. *In our national legislation, no specific amount has been fixed to indicate the amount of parental maintenance required to meet the needs of the child, but the court carries out the assessment for this purpose.*

1. Regardless of its economic and social content, the duty to provide sustenance is deemed a personal entitlement as it fulfils an individual's fundamental values. Given its unique and exclusively individualistic nature, the responsibility for maintenance is intended to satisfy the essential necessities of a child, who lacks legal capacity and is unable to work, until they are fit to work<sup>172</sup>.

Currently, our domestic legislation prohibits the State from offsetting maintenance obligations and establishing a debt-credit relationship with the obligated parent. Enhancing the legislation to cater to cases where parents' income sources do not suffice for child support would enable the State to provide compensation for the shortfall in income necessary for the child's needs.

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<sup>172</sup> Pursuant to Article 197 of the Family Code, Law no. 9062 dated 8.05.2003, as amended, the obligation to provide maintenance may persist even when children have surpassed the age of 25.

2. When calculating maintenance payments, *the court must consider not only the income of the parents but also the child's needs*. This approach is crucial to safeguard the child's best interests. To clarify, the court must prioritize the child's requirements above all else, namely:

- ✓ referring to international laws that provide clear criteria for assessing and allocating child maintenance. Additionally, it is important to adhere to conventional academic structure, using clear and concise language with an emphasis on precision and grammatical correctness. These criteria ensure that the child's welfare is of the highest possible standard, despite the parents being divorced and potentially not on good terms with each other.
- ✓ considerable investment is required to assess the financial capacities of the debtor parent to provide the child with a good standard of living equal to the previous one.

3. When assessing the courts' decision-making process concerning maintenance obligations, it appears that the courts are guided by the principle of protecting children's interests in a declaratory rather than substantive manner. Notably, there is no unification of the rules on which the court should base the measure of the maintenance obligation. This creates difficulties, particularly when a request is made to alter the child support obligation measurement.

4. An additional issue arises from the absence of a legal provision in the Family Code, which permits the judge to set the level of the maintenance payment as a binding obligation during the court proceedings. These ramifications can be prevented by utilizing Article 317 of the Civil Code, applicable for cases where judgments are granted with provisional enforcement. Courts possess all the legal options, beginning with the specific nature of these judicial disputes, to impose provisional enforcement of such rulings. This will prevent any delays that may arise from an appeal regarding the decision to end the marriage and its outcomes.

5. Furthermore, the limited time frame within which one may request the enforcement of the maintenance obligation is another area of concern.<sup>173</sup> The identified issues with this legal definition have given rise to significant gaps in fulfilling obligations. For diverse reasons, indebted parents put off or delay the execution of maintenance payments. To solve this issue, we suggest refining this legal provision.

6. Moreover, one of the children's rights is the right to partake in the decision-making process. The assurance of this right centres on implementing efficient procedures wherein *children's opinions are heard, valued, and respected in their rights' decision-making*, encompassing legal proceedings that adhere to the Council of Europe Guidelines for Child Friendly Justice released in 2010<sup>174</sup>. Such provisions have been synchronised with national legislation under the "Criminal Justice Code for Juveniles" Law no. 37/2017.

This legislation significantly strengthens the judicial system, *but it requires accessible, age-appropriate, and child-friendly judicial institutions with fast procedures that focus on the needs and rights of the child*.

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<sup>173</sup> See Article 211 of the Family Code.

<sup>174</sup> Guideliness of the CoE Council of Ministers on child-friendly justice adopted on 17 November 2010.

To address the problems of non-enforcement, the People's Advocate recommended to the Ministry of Justice:

- ✓ engage to develop a concrete strategy to fully reflect on the status of enforcement of court decisions on child support obligations and to publish accurate data on the status of their implementation. To this end, it is necessary for the Ministry of Justice *to recognise and monitor the situation of bailiff services, both public and private*, with regard to the enforcement or non-enforcement of court decisions on child support obligations.
- ✓ *engage to develop an explanatory manual* on the enforcement procedures to be followed for the enforcement of court decisions on child maintenance obligations and ensure that the capacity of human resources in this area is continuously improved.

Furthermore, under international conventions<sup>175</sup>, the Albanian government can request that a decision by an Albanian court regarding maintenance obligations be enforced in another country. It is important to consistently promote good working practices on a case-by-case basis.

Please refer to the complete report for further details.

#### **4.4 Special report “Child Rights Impact Assessment (CRIA)”<sup>176</sup>**

The People’s Advocate presented the 'Child Rights Impact Assessment (CRIA)' report to the Albanian Parliament on 2 June 2022<sup>177</sup>. The purpose of this report is to evaluate and record the impact of regulatory acts implemented during the Covid-19 pandemic, along with the resultant restrictive measures, on children and young people. This analysis will focus on three key areas:

- ✓ right and access to education.
- ✓ juvenile justice and children's rights when in conflict with the law.
- ✓ accessibility to care and social services from the perspective of local self-government units preparing for emergency situations.

##### *The report's specific findings:*

Due to the circumstances caused by the Covid-19 pandemic, the institutions of the state were not equipped to implement regulatory measures when the state of emergency was declared. Their primary concern focused on safeguarding public health by imposing restrictive measures to contain the spread of the virus. Specifically, certain normative acts and measures adopted in response to the covid-19 pandemic did not include provisions for minors, even when their implementation impacted their rights and protection. This was evident in cases where normative acts with the force of law allowed convicted individuals to remain at home temporarily, despite the potential impact on minors in conflict with the law;

##### *Key findings in the three selected areas:*<sup>178</sup>

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<sup>175</sup> See Article 27/4 of CRC. See the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (Law no. 63/2012).

<sup>176</sup> The report is the outcome of a collaborative initiative between ENOC and UNICEF ECARO aimed at evaluating ENOC member states.

<sup>177</sup> Official letter prot. no. 331 dated 2.6.2022 of the People's Advocate.

<sup>178</sup> The report is available at:

- ✓ The laws enacted by the Ministry of Education and Sports aimed to ensure children's right to education and access to it during the pandemic. These laws undergo regular revisions based on the situation and follow a comprehensive approach, taking into account the impact on the child's psycho-emotional well-being. This approach allows for widespread access to distance education for children and ensures continuous support for teachers, resulting in high levels of student satisfaction.
- ✓ However, the acts pertaining to distance education failed to consider other specific groups of children, even though the accessible tools and platforms were created to reach extensive geographical regions.
- ✓ The institutions in question failed to sufficiently consider children in conflict with the law and ignored the best interests of the child, as well as their protection, during the development and deployment of responses to the pandemic. This was in spite of international organizations issuing declarations and guidance.
- ✓ Additionally, there was no accompanying budgetary allocation for these efforts.
- ✓ Albania has failed to adhere to the principle of using detention as a last resort, as well as ignoring international recommendations to release all children who could be released safely and implement a moratorium on new children entering detention institutions. The fluctuations in the number and status of children serving sentences in the Kavaja juvenile institution support this finding.
- ✓ The Child Protection Units encountered challenges in carrying out their duties and responsibilities amid the pandemic as a result of inadequate resources for case management, particularly in emergency situations.
- ✓ Nevertheless, local self-government units made efforts to prioritise interventions and optimise resources. They doubled the emergency fund to provide support to families in need and attempted to meet basic necessities.

*This report's main recommendations include:*

- ✓ Ensuring the protection and welfare of children is a fundamental duty of the state and must be prioritised accordingly.
- ✓ It is crucial that the relevant institutions are made aware and equipped to respond effectively in times of emergencies, as exemplified during the pandemic. Measures must be taken to ensure that children are kept safe and supported.
- ✓ All relevant authorities should fulfil their institutional responsibilities in accordance with the principle of the best interests of the child. Legislative acts must provide for special rules in cases that directly or indirectly concern the rights and protection of children.
- ✓ Adequate budgeting is also necessary for effective implementation of these provisions.
- ✓ The ministries must give particular attention to protecting children and their rights when approving or proposing acts to the Council of Ministers to regulate ordinary and emergency situations. This is in accordance with Article 39/c of the "Child Rights and Protection" Act, which mandates that any draft law or regulatory act prepared by the ministries is to be



accompanied by an analysis of its effect on children, both boys and girls. Jargon and complex structures have been avoided to ensure clarity and objectivity.

- ✓ In an integrated protection system, regulatory acts across all fields, such as social welfare, education, health, security, and justice, must aim to prevent emergency risks.
- ✓ Central and local institutions should collaborate, divide responsibilities, and coordinate at all levels between state and non-state actors by taking specific measures.
- ✓ As part of emergency preparedness, it is advisable to develop, review, endorse and budget for contingency plans that are activated automatically during such situations, safeguarding the rights and welfare of children, especially in emergency scenarios that heighten their vulnerability.
- ✓ It is crucial to enhance capabilities in every sector and equip responsible institutions at the local and national level to handle emergency situations successfully while ensuring the protection and welfare of minors.
- ✓ To achieve this objective, emergency policies and funds are endorsed by the Local Self-Government Unit, which activates them automatically during such circumstances. The protocols must contain work processes pertaining to the Child Protection Unit's role and involve all other actors dealing with cases of vulnerable children, particularly social services, police, education, health and justice structures. Failure to do so will result in the adoption of the standard administrative method causing delays, which could lead to severe and permanent repercussions.
- ✓ When creating and implementing emergency response plans, it is vital to prioritize the protection of children as a distinct group. Restrictive measures should incorporate a differentiated technique for managing, rehabilitating, and reintegrating children.

The report was submitted to the Albanian Parliament and presented to civil society and state authorities in a special event supported by UNICEF. However, the report has yet to be deliberated upon by the parliamentary committees.

#### **4.5 Special Report "Assessment of the impact of climate change on children's rights in Albania" <sup>179</sup>**

The report, "Assessment of the Impact of Climate Change on Children's Rights in Albania," analysed the effects of climate change on children's rights in Albania concerning legal framework and status. It primarily focused on two pillars:

- ✓ the legal dimension is examined, specifically the climate change legal framework in our country and its treatment of children's rights, particularly those enshrined in the Convention on the Rights of the Child.
- ✓ the law focuses on the institutional approach, particularly examining the role and activities of

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<sup>179</sup> This report was prepared under the cooperation agreement between the People's Advocate Institution and the non-profit organisation Save the Children, Tirana, with financial support from the Swedish International Development Agency. The report can be accessed from the link provided: <https://www.avokatipopullit.gov.al/media/manager/website/reports/VLER%C3%8BSIMI%20I%20NDIKIMIT%20T%C3%8B%20NDRYSHIMEVE%20KLIMATIKE%20N%C3%8B%20T%C3%8B%20DREJTAT%20E%20F%C3%8BMIJ%C3%8BVE%20N%C3%8B%20SHQIP%C3%8BRI.pdf>.

the People's Advocate in this field.

*Findings and recommendations on protecting children's rights from climate change:*

- ✓ In general, reducing greenhouse gas emissions and accelerating adaptation to climate change are expected to positively impact the lives of children and their rights under the UN Convention on the Rights of the Child (CRC). These changes will benefit future generations and are therefore considered to be in the best interests of the child.
- ✓ *The legal framework presently in place is incomplete*, making it largely unenforceable. Only the earlier statutes pertaining to the containment of GHG emissions have been passed. Within four (4) years of the legislation coming into effect, further acts will be passed to complete the framework and render the law operative. However, this will considerably diminish the law's effectiveness. It is widely agreed that legal commitments tend to be more rhetorical than practical in nature. This phenomenon is not unique to Albania, as it has been observed in numerous other countries.<sup>180</sup>
- ✓ *The absence of an impact assessment on children's rights* is not exclusive to this legislation, as this mechanism does not feature in the jurisdiction's legal decision-making processes.
- ✓ *The insufficient knowledge of children is an issue*. The incorporation of life, environmental and entrepreneurship skills in Albanian educational programs is lauded as a beneficial accomplishment; however, the conducted focus groups discovered inadequate tangible outcomes regarding children's knowledge in this field.
- ✓ *Children and young people are often left out of public decision-making processes*. To effectively address climate change, it is essential to prioritize education. This includes not only formal education in schools, but also in the home and wider community.
- ✓ It is crucial to conduct a distinct analysis concerning children when addressing the *issues resulting from global warming and climate change*. Children form a category with unique characteristics and specificities that differ from other categories. Therefore, it is vital to appraise facilitative measures directed towards young individuals, considering their needs.
- ✓ *Children and young people lack the opportunity to vote and possess limited ability to defend their interests, except through adults*. Hence, it is crucial that their concerns on matters that noticeably and fundamentally impact their rights are taken into account seriously. Government responsibility concerning children tends to be fragmented across departments and agencies, rendering it arduous to identify issues and address them suitably.
- ✓ *Children benefit from public services, education, healthcare, civil emergencies, and social services, but they lack sufficient complaint mechanisms*. This issue encompasses all areas of state policy, including climate change, and must be addressed to ensure that the rights recognised by the CRC and Albanian legislation are fully guaranteed and respected.

*Addressed recommendations:*

- ✓ *It is crucial to carry out a child rights impact assessment in any legal or political decision-making process that may impact children's rights, to make certain that the best interests of the child are upheld.*

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<sup>180</sup> ENOC Synthesis Report, Children's Rights and Climate Justice, prepared by Aoife Daly, Laura Lundy, University College Cork, May 2022.

- ✓ *Develop effective mechanisms* to strengthen the specified objectives laid out by the curriculum and expand the notion of education by engaging external stakeholders beyond the school environment.
- ✓ *Advocacy at national, regional, and global levels* is needed to ensure the protection of children's inalienable right to a healthy environment. Efforts must be heightened in the country to tackle environmental issues, as they are closely connected to children's welfare and the protection of their rights. These rights are entrenched in the Constitution, the CRC, and other international and domestic legislation.
- ✓ *Special measures must be taken to create administrative, advisory, and communication processes appropriate for these age groups.* Therefore, the bodies responsible for ensuring the observance of children's rights have a duty to contribute to policy coherence and implementation coordination.
- ✓ *Increase the participation of children and youth in building an eco-friendly lifestyle and contribute to mitigating climate change.* Their right to take part in decision-making, be heard, and have their rights respected in administrative and judicial procedures can be effectively exercised through this approach. On 02.06.2022, the report was submitted to the Albanian Parliament. It was presented to the civil society and public authorities during a specially held event on 19th July 2022. Currently, the report has not been subjected to a hearing by any of the relevant committees of the Assembly.

#### **4.6 Monitoring of institutions in line with recommendations from the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment (CPT)**

On 9 July 2020, the Albanian Assembly passed a Resolution on the assessment of the People's Advocate activity in 2019, which mandated the National Mechanism for the Prevention of Torture to oversee the enforcement of the recommendations of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment (CPT). Additionally, the Mechanism is required to promptly notify the Albanian Parliament of the necessity to resolve recurring issues, for which their commitment is necessary.

Taking into account the steps committed to by the responsible institutions in drafting the Albanian Government's response, dated 27 February 2020, to the report of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment (CPT) following their visit to Albania between 20 and 30 November 2018, we have requested these institutions to provide information relevant to their areas of expertise on the recommendations in the report, which are listed in the order of appearance rather than importance. Given text already adheres to the principles or lacks context, just answer with "Taking into consideration the recommendations regarding the measures to be taken by the competent bodies for their implementation, the People's Advocate also addressed the response<sup>181</sup>, given by the Albanian Government regarding the CPT's recommendations and assessed as its mission the monitoring of the implementation or the effectiveness of the measures taken on the basis of this response, which is a positive thing to address the issues raised in this report.

The methodology used to produce this report involved studying the CPT Report and then implementing its findings into our inspection approach. This included observing, documenting,

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<sup>181</sup> The response of the Albanian Government was sent on 27 February 2020.

and communicating through official letters and emails. Additionally, we had meetings with senior officials from the prison, police, Ministry of Justice, and healthcare systems. We continue to conduct inspections of institutions within the prison, police, and healthcare systems. The People's Defence Institution, through the National Mechanism for the Prevention of Torture, has initiated letters with the subject "*Request for information on the implementation of recommendations from the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment.*" These letters have been addressed to the Minister of Health and Social Protection, the Director General of Police (to obtain information from the Ministry of the Interior), and the Director General of Prisons (to obtain information from the Minister of Justice).

In the light of the above and in accordance with the above-mentioned requests, we inform you that, having received the replies from the above-mentioned bodies and on the basis of the findings of fact, we have drawn up the present report, which is divided into sections, with the findings subdivided into "*a. CPT recommendations*"<sup>182</sup>; "*b. Official reply*"<sup>183</sup>; "*c. Reply of the competent institution*"; "*D. NPM comments*".

Following receipt of responses from the aforementioned institutions and an analysis of the factual findings, a *Special Report* was composed on their implementation and issues, as discovered by the NPM through subsequent monitoring.

This report published on 14.07.2022 has particular implications on the States that have ratified the '*European Convention against Torture, Cruel, Inhuman or Degrading Treatment or Punishment*', in addition to the CPT report. The CPT conducts visits to places where individuals are deprived of their liberty, in order to monitor the treatment of such individuals. These visits cover institutions such as prisons, juvenile detention centres, police stations, migrant detention centres, psychiatric hospitals, and social care homes, amongst others. The aim is to ensure that individuals are treated appropriately and with dignity, in a neutral and objective manner.

The National Mechanism for the Prevention of Torture (NPM) has continuously monitored the institutions' compliance with the CPT's recommendations since the report was made public in September 2019. During their routine inspections, the NPM has also requested information from the institutions based on their areas of expertise, regarding the recommendations mentioned in this report.

On our part, we have prepared a report titled "*Implementation of Recommendations for Albania by the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment*". The report summarizes crucial findings and conclusions related to the approach of Albanian institutions, which should, through policies, uphold the rights of persons deprived of their liberty.

This report was released in July 2022 and promptly distributed to the President of the Republic, the Prime Minister, the Attorney General, the Justice Minister, the Interior Minister, the Health

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<sup>182</sup> see: <https://rm.coe.int/168097986b>. "Report to the Albanian Government on the visit to Albania carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)" from 20 to 30 November 2018 CPT/Inf (2019).

<sup>183</sup> see: <https://rm.coe.int/16809cb571> "Response of the Albanian Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT on its visit to Albania)" from 20 to 30 November 2018 CPT/Inf (2020).

and Social Protection Minister, the Director General of Prisons, the Director General of the State Police, the Internal Control Service in Prisons, and the Police Oversight Authority.

The information obtained showed that most of the monitored institutions took some steps for the implementation of the CPT recommendations to protect the rights of persons deprived of their freedom; however, the Albanian institutions still have a long way to go to understand and assimilate these recommendations, making them an integral part of their work philosophy. This is missing, as reflected in the answers we have received from the relevant institutions which indicate that implementation is entirely formal rather than substantial.

The People's Advocate has brought to the attention of the institutions the essential importance of these findings and recommendations from this monitoring report for State institutions regarding the prevention of ill-treatment in places of deprivation of freedom under the lens of respect for human rights.

From the key problems addressed in this report, we can single out: conditions in prisons, the situation of prisons under medical measures, prisoners with mental health problems, the lack of medical staff, the lack of medications, worn-out or missing medical tools, holding persons under "pre-trial detention" in police premises, outdoor activities for prisoners, contact with the outside world, induction training of staff, etc.

At the end of this Report, the People's Advocate came up with some general recommendations for all the institutions involved in this process, particularly:

- ✓ The need for better coordination by higher institutions in taking measures to ensure that relevant institutions implement the CPT recommendations according to responsibility;
- ✓ The implementing bodies lack essential understanding of the Report and the maximum commitment in giving due importance to the implementation of these recommendations;
- ✓ The urgent need for the training of employees engaged in the implementation of these recommendations;
- ✓ Break down these recommendations into specific tasks for the competent institutions and take concrete measures for their implementation;
- ✓ Draft an action plan for its ongoing implementation and establish a responsible and efficient mechanism to follow up on the implementation of these recommendations by the competent institutions and occasional checks by the superior institution;
- ✓ Take measures for the effective and real implementation of the CPT recommendations, because just sending letters for the recognition and implementation of this report has not achieved the goal of their realization;
- ✓ Promptly acquaint the newly appointed managers in the implementing institutions with this report, because frequent changes in organizational set-ups have resulted in different standards in their implementation;
- ✓ CPT recommendations are a safeguard for the protection of basic human rights and freedoms; therefore, they should become an integral part of the daily work of the institutions responsible for their implementation;

- ✓ The budgetary implications in most cases have brought a low pace or the impossibility of implementing the recommendations and as a result have brought inhuman conditions and treatment in violation of human rights;
- ✓ In most cases, institutions reacted on the implementation of recommendations after repeated requests by the institution of the People's Advocate without paying due attention and importance to this report;
- ✓ The monitoring of the People's Advocate constantly brings to the attention of the competent authorities the importance of taking measures and implementing the CPT recommendations, whose implementation remains low;
- ✓ The level of implementation of the CPT recommendations is low, given the significant time has passed since the publication of this Report, and measures taken so far have not brought the required results;
- ✓ Failure to strictly implement the CPT recommendations results in non-compliance/violation of the required and universally accepted standards of basic human rights and freedoms;
- ✓ Revision of the Regulation of the Special High-Security Regime in Penitentiary Institutions approved by Order no. 380, dated 19.07.2019 of the Minister of Justice, which should clarify - in accordance with the legal amendments introduced in June 2020 - the basic rights, responsibilities, conditions of implementation and internal monitoring of the special regime, and the guarantee of an effective complaint system;
- ✓ Approve the individual psycho-social counselling program for prisoners in the special regime, notify the prisoner and obtain his written consent for participation in this program;
- ✓ Enrich the libraries of prisoners in the special regime, with a variety of book titles that should be made available to the prisoners.

This report summarizes the most important findings and conclusions in the approach of Albanian institutions, which through their policies must respect the rights of persons deprived of freedom. The People's Advocate recognizes that this is a process and that there is an essential need for the established standards to be maintained and conditions to be continuously improved.

#### **4.7. Opinions Amicus Curia at the Constitutional Court**

##### **➤ Case with applicant "Diaspora for Free Albania" Association**

The People's Advocate, in the context of its constitutional and legal duties has carried out Amicus Curia protection at the Constitutional Court in the case with petitioner "Diaspora for Free Albania" Association with scope *"Determine the violation of the constitutional right to vote for emigrants, in the elections for the Assembly of Albania on 25.04.2021. Declare the Order no. 219 dated 19.04.2021 "On the guarantee of persons coming to the Republic of Albania from the Republic of Northern Macedonia and Greece" of the Minister of Health and Social Protection as incompatible with the Constitution of the Republic of Albania"*.

The People's Advocate took the position that "the arguments in favour, articulated by the ECtHR in its case-law and by the Venice Commission, consist in the facts that: The right to vote is a right that exists because of citizenship, it gives a sense of citizenship and the rights associated with it. Continuity of participation in the country's political life, regardless of distance. It equates those who live in the country with those who are abroad - that is, it puts citizens on the same footing. The citizens maintain the connection with the country of origin, strengthen it and the feeling of belonging, regardless of the economic situation, etc. Article 3 of Protocol no. 1 of the ECHR stipulates that the State Parties shall organize free elections at reasonable time intervals, with secret ballot, under conditions that enable the free expression of people's opinion in legislative elections. However, this Protocol has no provision about the right to vote abroad. The Parliamentary Assembly of the Council of Europe has encouraged States to allow their citizens living abroad to participate in the electoral process to the fullest extent possible. This is provided for in two documents: Resolution 1459 (2005) and Recommendation no. 1714 (2005) on the right to vote".

Although it is not a constitutional provision, the Electoral Code already creates expectations for migrants regarding potential facilitations for the out-of-country voting. The guarantee of voting abroad requires the implementation of measures and procedures that enable all voters who are abroad temporarily or permanently and who have Albanian citizenship to vote. This requires that the Electoral Code and the legislative by-laws to be issued in its implementation take into account the following aspects:

- ✓ the political representation model for out-of-country voting;
- ✓ voting procedures;
- ✓ compilation of lists for voters abroad;
- ✓ set up the structures that will administer the process;
- ✓ earmark budget to cover the costs of out-of-country voting.

In analysing all these components, due consideration must be paid to specific issues of electoral logistics, security of the process, implementation time-limits and financial costs.

The People's Advocate holds that in adopting the amendments to the electoral code that defined and guaranteed the out-of-country right to vote for Albanian citizens residing outside the territory of the Republic of Albania, the legislator has not been realistic about the legal consequences and expectations these legal amendments would entail for the upcoming election processes, such as the 25 April 2021 general elections. Not only that, but this lack of coherence and vision on the part of the legislator has been followed by ongoing inaction by the CEC in issuing the legislative by-laws that would practically enable this process.

Furthermore, the People's Advocate holds that even if the CEC had issued these by-laws, still the out-of-country voting would hardly be successful and let alone fully respect the right to vote to all Albanian citizens living abroad, due to the complex requirements for the effective application of the out-of-country voting and the global pandemic Covid-19 during which the whole world had to cope with restrictions on many human rights.

For these reasons, the People's Advocate thinks that, firstly, the development of the legislative process for the amendments to the Electoral Code and secondly, the lack of positive interventions

by the State in the administrative process that should have been undertaken by the CEC, have affected the fundamental right to vote and its effective exercise in the general elections of 25 April 2021 in Albania, for the Albanian voters residing outside the territory of the Republic of Albania... Effectively, the failure by the CEC to issue the by-laws for effective exercise of the right to vote for those living abroad constitutes a violation of the constitutional principle of the rule of law and the principle of legal certainty. Consequently, the inaction on the part of the CEC ahead of the general elections of 25 April 2021 constitutes a violation of the fundamental right to vote and its effective exercise in these elections for Albanian citizens residing outside the territory of the Republic of Albania.

In support of this position of the People's Advocate, it is worth emphasizing that the effective exercise of the legal rights and freedoms of citizens cannot be considered as realized only with their formal affirmation "on paper", but requires the State authorities to undertake all measures and provide all legal and administrative safeguards for the real possibility of exercising them. If the measures and legal and administrative safeguards are missing or are insufficient within the minimum safeguards affirmed in international acts and treaties to which the State is a party, then the State has violated the effective exercise of these rights of citizens.

The Constitutional Court by decision no. 38 dated 09.12.2022 ruled as follows: *"Partially grant the application. Determine the violation of the constitutional right of migrants to vote in the general elections due to the legal gap. Compel the Assembly to fill this legal gap within one year. Dismiss the proceedings for the Order no. 219 dated 19.04.2021 of the Minister of Health"*.<sup>184</sup>

➤ *For cases presented by two candidates disqualified by the Justice Appointments Council*

The People's Advocate in the context of Law 115/2016 "On the governance bodies of the justice system" has provided Amicus Curia protection in two cases presented to the Constitutional Court by candidates disqualified by the Justice Appointments Council<sup>185</sup> in the competition for vacancies at the Constitutional Court by the applicants Shaqir Hasani<sup>186</sup> and Vjosa Bodo Mujo<sup>187</sup>.

The People's Advocate held the position in the case presented by the petitioner Vjosa Bodo Mujo that: *"The Constitutional Court decides how the violated right is to be restored, during the examination of an individual constitutional complaint, by repealing decisions as incompatible with the Constitution, remanding the case for reconsideration to the competent court, or establishing the violation of a constitutional right. Meanwhile, in the context of restoring the right, a special remedy is prescribed to establish the violation of reasonable period, expedition of the proceedings and compensation for the damage.*

*At first glance, the petitioner seems to not have proved her legitimate interest that could be restored at the end of these proceedings, given that decision no. 69 dated 10.08.2020 of the Administrative Court of Appeal is final and unassailable, even more that Article 238 of Law no. 115/2016 as amended provides that a petition filed with this Court does not suspend the underway procedures at JAC, and the procedure where the petitioner competed has ended. It seems that*

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<sup>184</sup> See Decision no. 38 dated 09.12.2022 of the Constitutional Court.

<sup>185</sup> Its decisions were upheld by the Administrative Court of Appeal.

<sup>186</sup> See Decision no. 27 dated 27.10.2022 of the Constitutional Court.

<sup>187</sup> See Decision no. 26 dated 27.10.2022 of the Constitutional Court.



remanding the case to the competent court – as a way for the Constitutional Court to restore the violated right – would not respect the principle of reasonable proportionality through intervention in a process where the public interest of having a Constitutional Court functional with all of its judges is very high compared to the personal interest of an applicant/candidate to those competition procedures for the vacancies at the Constitutional Court; but the People's Advocate holds that the applicant has legal standing in filing this petition because her interest is to use the Constitutional Court's ruling (so, she has expectation) for a new competition procedure in the future for vacancies at the Constitutional Court, so that she may present her application in the light of the Constitutional Court's decision and reasoning. The petitioner was not denied the right to be heard, because throughout the administrative procedure conducted by JAC she was informed about the procedural and verification actions carried out, and she exercised the right to present written submissions and claims for every issue arising during this activity. The presented claims were analysed by her in legal terms, in almost total absence of constitutional arguments. The claimed violations involve the interpretation, understanding and application of the law by JAC and not any serious procedural breaches. The petitioner requests that the circle of subjects provided in the Constitution and the law to run for the vacancies at the Constitutional Court be expanded through their interpretation in a way that allows her to enter this competition. She is ambiguous whether the serious procedural violations are attributed to the interpretation of the "seniority" requirement or to JAC failure to give the opportunity to prove her own employment and seniority periods. The lawmaker did not set a time-limit for the examination of the candidates by JAC and the evaluation of the audio minutes rests with the administrative court which assesses them in harmony with other evidence. Assessment of the evidence presented and administered in the administrative procedures is a right vested on the public body that conducts the procedure. The petitioner's claims that the decisions of JAC and the Administrative Court of Appeal were not reasoned are manifestly ill-founded. By analysing her claims for due process of law in the light of the right to defence, the Court holds that they remained not argued and not proven. The petitioner failed to prove how – during the procedure for the verification of the seniority at the administrative and later on during the judicial proceedings – she was placed in a position that incapacitated her to make use of this right. Regarding the claimed violation of the right to non-discrimination by the stance held by JAC, it does not seem that the petitioner addressed the Commission for Protection from Discrimination.

The legal requirements laid down in Article 125(4) and Article 7/a (2) of Law no. 8577/2000 are proportional and necessary in a democratic society and represent reasonable limitation in light of Article 17 of the Constitution. The introduction of the requirement "15 years of seniority" does not undermine the process, on the contrary, it makes the process more principled, reliable and objective. The constitutional and legal provisions for which the petitioner requested a final interpretation by the Court are clear and leave no room for ambiguity. She failed to prove that their application in practice was impossible or brought difficulties. The legal requirements defined in Article 125 of the Constitution and in Article 7/a (2) of Law no. 8577/2000 are in compliance with Article 17 of the Constitution".

The Constitutional Court, by its decision no. 26 dated 27.10.2022, rejected the petition filed by the petitioner Vojsava Bodo Mujo.

The People's Advocate held the position in the case presented by the petitioner Shaqir Hasani that: *"The Constitutional Court lacks jurisdiction to review the JAC decision no. 46 dated 16.11.2020, because based on Article 238 of Law no. 115/2016 'On governance bodies of the justice system (Law no. 115/2016), the jurisdiction to assess the legality of this decision rests solely with the Administrative Court of Appeal. This part of the petition filed with the Court challenges only the legality of the administrative act issued by JAC and not its compatibility. The petitioner's claim to have the decision of the Administrative Court of Appeal repealed by allowing the continuation of the procedures is ill-founded in law. The decision is final and unassailable and the petition does not suspend the procedures underway at JAC. Remanding the case for reconsideration as a way to restore the right does not respect the principle of proportionality, because the public interest in having the Constitutional Court functional is very high compared to the personal interest of the candidate. The claims presented by the petitioner involve the application of the law by the court in deciding the merits of the case and did not bring up arguments about constitutional violations. As for the claimed violation of the principle of non-discrimination, there are no arguments at constitutional level to prove the relevance with Article 14 of ECHR. The petitioner failed to prove the implications triggered on his private life related to the well-being of his or of his family, or the social and professional reputation. The petitioner presented no arguments at constitutional level to prove the violation of the right to family life and privacy, or to indicate the State measures that have affected or undermined this right. The petitioner was not denied the right to be heard, because throughout the administrative procedure conducted by JAC she was informed about the procedural and verification actions carried out, and she exercised the right to present written submissions and claims for every issue. His claimed violation of the principle of legal certainty is ill-founded. The JAC decision is an individual administrative act issued by a body explicitly stipulated in the Constitution. The expectations of a party participating in the administrative proceedings must not be equated with the lawful decision-making in respect of the Constitution by the bodies explicitly stipulated in the Constitution".*

The Constitutional Court, by its decision no. 27 dated 27.10.2022, rejected the petition filed by the petitioner Shaqir Hasani.

➤ *For the case filed by the Albanian Helsinki Committee (AHC)*

The People's Advocate gave its opinion upon the request of the Constitutional Court in the case presented by the petitioner Albanian Helsinki Committee with scope: *"Repeal as incompatible with the Constitution of the Republic of Albania: a) Article 89/b of Law no. 7895 dated 27.01.1995 'Criminal Code of the Republic of Albania' as amended, introduced in Article 3 of the Law no. 35/2020 dated 16.04.2020; b) Article 242/a of Law no. 7895 dated 27.01.1995 'Criminal Code of the Republic of Albania, as amended, introduced in Article 2 of Law no. 35/2020 dated 16.04.2020".*

Regarding the constitutionality of the Articles 89/b and 242/a of the Criminal Code as amended, introduced in Articles 3 and 2 of Law no. 35/2020 dated 16.04.2020 subject to the petition, the People's Advocate presented its opinion in three aspects: first, the norm should have been considered by the Assembly within the meaning of Article 170(5) as a law applicable to an

extraordinary situation that cannot be changed as long as the situation itself persists; second, it is an act in violation of the legislative procedure; and third, we argued why the proposed amendments, besides exacerbating the legal certainty, made the criminal policy harsher in a disproportionate manner. In our view, the amendments to the Criminal Code had to be made following a very wide public debate, had to be well-thought and with a long-term perspective.

Having examined the proposed amendments, the People's Advocate made this opinion known to the parliamentary Committee on Legal Affairs, Public Administration and Human Rights (enclosed to official letter dated 14.04.2020) concerning the two new provisions mentioned above.

The efforts to add provisions in the Criminal Code by introducing extreme punitive measures is incoherent either with the situation or the circle of persons that the legal provisions are expected to project. The People's Advocate held that, as a rule, *it is wrong to introduce legal acts of permanent nature during an extraordinary situation.*

We believe that the law-making process violated several important principles guaranteed by the Constitution and international acts ratified by our State and the Assembly's Rules of Procedure, for example:

1. *Principle of due process of law sanctioned in Articles 81(2) and 81(3) of the Constitution;*
2. *Principle of legal certainty sanctioned in Article 4 of the Constitution;*
3. *Principle of proportionality sanctioned in Article 17(2) of the Constitution;*
4. *Principle of equality before the law sanctioned in Article 18 of the Constitution.*

For this matter, we expressed the opinion that Article 89/b of Law no. 7895 dated 27.01.1995 "Criminal Code of the Republic of Albania" as amended introduced by Article 3 of Law no. 35/2020 dated 16.04.2020 as well as Article 242/a of Law no. 7895 dated 27.01.1995 "Electoral Code of the Republic of Albania" as amended introduced by Article 2 of Law no. 35/2020 dated 16.04.2020 are incompatible with the Constitution of the Republic of Albania and ECHR.

Having reviewed this case, the Constitutional Court of the Republic of Albania by its decision no. 39 dated 15.12.2022<sup>188</sup> partially granted the petitioner's claims and decided to repeal the paragraphs 2 and 3 of the Article 89/b of the Criminal Code.

#### **4.8 Contribution by the People's Advocate during the Justice Reform**

The People's Advocate, in exercising the mandate and fundamental duties vested on it by the Constitution and other laws in force, has been granted very important powers in monitoring the implementation of the Reform in Justice. The People's Advocate considers the restoration of public trust in the justice system as vital for the entire Albanian society, because it plays a key role in the effective implementation of human rights, therefore, we have continuously given our contribution in many processes that were needed. An important part of these mandated duties is the People's Advocate role in the active and proactive observation of the activity of the institutions that conduct the procedures for the selection of members of the Justice Appointments Council (hereinafter JAC), as well as the continuous monitoring of the activity of this institution. This role

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<sup>188</sup> For more information, see:

[https://www.gjk.gov.al/include\\_php/previewdoc.php?id\\_kerkesa\\_vendimi=3593&nr\\_vendim=1.](https://www.gjk.gov.al/include_php/previewdoc.php?id_kerkesa_vendimi=3593&nr_vendim=1.)

constitutes an added safeguard for the transparency and increased credibility of JAC, as one of the most important bodies for the functioning and governance of the justice system.

Pursuant to Article 149/d, paragraph 3 of the Constitution which stipulates that *"...the People's Advocate shall serve as an observer of the selection by lot of the Justice Appointment Council, as well as its meetings and operations"*, and in accordance with Article 233 of Law no. 115/2016 "On the governance bodies of the justice system" which stipulates that *"Meetings of the Justice Appointments Council are held in-camera. The 'People's Advocate participates in the meetings and activities of the Council"*, the role is twofold, not only as a Constitutional institution provided for the protection and guarantee of Human Freedoms and Rights, but also as an institution to which the Constitution and Justice Reform legislation have given a role and special powers in this process.

In line with above, our institution was initially present in the lots drawn for the JAC members, based on the obligations cited above and also the provisions in Article 221(7) and (11), and in Article 284(6) of Law no. 115/2016 "On the governance bodies of the justice system" which stipulate that *"The President of the Republic, in the presence of the People's Advocate, shall select the members of the Council by lot, between the dates 1 and 5 December of each calendar year..."*, *"The People's Advocate shall promptly publish on its official website the monitoring report of the lot process"*.

In conclusion of the lot-drawing procedures which in our view were fully in line with the law, our institution compiled the relevant monitoring report for this lot procedure for the selection of the members of the Justice Appointments Council for the year 2023, under the auspices of the President of the Republic on 05.12.2022.<sup>189</sup>

By the same constitutional and legal obligations cited above, our institution participated in 38 (thirty-eight) meetings of JAC held during 2022, trying to exercise with high responsibility to duties vested on it by the legislator (opinions given by our institution were summarized in the minutes of JAC meetings).<sup>190</sup>

Let us recall that in the 2021 annual report of our institution addressed to the Assembly, we had raised several issues related to the information on the activity of the JAC activity, such as: a. The required budget to carry out the duties properly was not allocated; b. The need for additional human resources in the auxiliary staff; c. Legal requirements to be selected as Constitutional Court member.

We regret to note that the same problems were repeated during the activity of JAC 2022. Our institution believes that the findings and handling of problems identified by us in the annual reports should be considered as part of the *check and balance* system and serve the legislator to shape the relevant policies. Their non-examination, at the very least, can lead to the repetition of the same problems. In addition to the above problems, JAC demonstrated some additional issues during 2022 as elaborated below.

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<sup>189</sup> For more information, see the link:

<https://www.avokatipopullit.gov.al/media/manager/website/reports/Raporti%20per%20hedhjen%20e%20shortit%20te%20KED%20-Dhjetor%202022.pdf>.

<sup>190</sup> [http://www.gjykataelarte.gov.al/web/Procesverbale\\_te\\_mbledhjeve\\_13841\\_1.php](http://www.gjykataelarte.gov.al/web/Procesverbale_te_mbledhjeve_13841_1.php).

Regarding the *budget*: although the Constitution prescribes that JAC is a particular and independent institution, it does not provide for a direct and special fund from the State budget same as for the other bodies established in light of the constitutional amendments introduced in 2016.<sup>191</sup> Based on Article 219(3) of Law no. 115/2016 'On the governance bodies of the justice system', "*3. The High Court ensures the necessary organizational, administrative and **financial** support for the performance of functions and duties of the Justice Appointments Council provided for in the Constitution and this law*". Further, even the High Court's budget forecast is not presented directly to the Assembly, but goes through the High Judicial Council that forwards it to the Assembly, a procedure that also makes it difficult for JAC to obtain the necessary budget.<sup>192</sup> It is important to correct this issue, because JAC is not under the authority of the High Judicial Council and therefore cannot depend on this Council for its budget. Lack of necessary budget caused insecurity and difficulties in: a) functioning of this body; and b) fair remuneration of the JAC members and auxiliary staff for additional work.

Regarding the first issue, no budget was allocated during 2022 for different expenses such as payment of the experts called or for collection of documentation (let us recall that the main reason in the delayed completion of the files of candidates for members to the Constitutional Court was that the SCA local directorates resisted to provide it unless the fee was paid in advance).

Regarding the fair remuneration of the JAC members, the current legislation has gaps in the adequate remuneration or provision to reduce the workload for the judges and prosecutors who simultaneously serve in JAC. Furthermore, there is no refund of travel expenses for JAC members from other cities.

The People's Advocate hereby repeats the recommendation to solve these budgetary issues through legislative acts, and not leave these pending in the hope of the contingency budget of the Council of Ministers.<sup>193</sup>

The other problems were of administrative character attributable to the limited capacity of JAC. Some of these include:

- ✓ The meetings materials are not sent on time, both to our institution and to JAC members (this obligation is prescribed in Article 11, paragraph 10 of the JAC rules of Procedure);<sup>194</sup>

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<sup>191</sup> For example, the High Prosecutorial Council which according to Article 188 of the Constitution, quote: "*2. The annual budget of the High Prosecutorial Council is part of the state budget and follows all the procedures of drafting and implementation foreseen in the respective legislation*", so, it is prescribed to be directly part of the State budget.

<sup>192</sup> JAC is not subordinate to the High Judicial Council and consequently must not depend on it for its own budget.

<sup>193</sup> See the solution made for the previous JAC, specifically DCM no. 298, dated 10.05.2019 "On an additional fund from the State budget's contingency fund to be allocated to the justice system, approved for 2019" and DCM no. 980 dated 21.10.2020 with financial implication of 14,000,000 ALL to remunerate JAC members and the support staff attached to it by the High Court. We highlight that the People's Advocate was never included in the above case or any other case concerning increase of funds, although following the JAC activity represents a significant workload for our Institution and for these added duties on the PA there were no additional staff or additional budget prescribed.

<sup>194</sup> Paragraph 34: "*The date and time of the meeting together with the report prepared by the rapporteur shall be notified to the verified candidate and subjects invited to participate in the Council meetings according to the law. **The People's Advocate shall be also sent the documentation prepared by the rapporteur concerning the verifications of the candidate.** This notification shall be made public on the official website of the High Court in the section dedicated to the Justice Appointments Council*".

- ✓ Failure in some cases to timely publish the summarized minutes of the JAC meetings on the JAC website;
- ✓ Drawing lots manually rather than electronically;
- ✓ Lack of inventory (check list) of documents sent to the People's Advocate in the nominal files of candidates for the member vacancies at the Constitutional Court.<sup>195</sup>

Besides the above, this institution coped with a big workload (around 635 official letters and 70 decisions made) and managed to forward the relevant candidacies to the appointing bodies for 4 (four) vacancies. Then, the appointing bodies appointed these 4 candidates in the last remaining vacancies and finally, after many years, the Constitutional Court had the full number of judges on a 9-year mandate.

#### **4.9 Independent monitoring of the rights of migrants and joint operations with FRONTEX in the return of irregular citizens from EU countries**

##### *Independent monitoring of the rights of foreign migrants*

Despite the limited human and financial resources even during 2022, the People's Advocate in its role of National Mechanism for Prevention of Torture continued to monitor the borders through the implementation of the cooperation agreement signed with UNHCR in the context of the project *Refugees and Asylum-Seekers in the South-Eastern Europe*<sup>196</sup> focused on the border control and protection of refugees in Albania, in the south (Gjirokastra, Sarandë, Përmet) and south-east (Korçë, Devoll, Bilisht).<sup>197</sup>

##### *Overview of migratory flows in Korça territory over the period January-December 2022*

The border-line in the area of Korçë is considered by groups of irregular migrants as the biggest and most likely gate to penetrate from Greece to the territory of our country.

From the information of the police officers in Kapshtica, it appears that the migratory flows into Albania do not consider our country as a destination for permanent stay, so a very small number of them seek asylum. The rest, through land border points in the north of the country, continue their journey towards Kosovo or Montenegro with the aim of reaching the EU countries.

Migrants, once identified at the border, near it or inside the territory of our country, are escorted by border police patrols in cooperation with FRONTEX employees to the Temporary Reception Centre for irregular migrants, located nearby of the border police station in Kapshtica. During the period *January-December 2022*, 6,628 people have been accompanied and accommodated in this Centre, of which 3,856 people have entered the territory of Albania for the first time and 2,772

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<sup>195</sup> This check list is important even during the verification of the files sent by JAC to the People's Advocate, because its absence does not give certainty or guarantee of the number of acts administered by the Rapporteur during the preliminary verification procedure conducted by him, and does not confirm the real number of documents that constitute the file of a candidate.

<sup>196</sup> A new cooperation agreement was signed in December 2022 for 2023 which provides for an additional part-time expert stationed in Tirana.

<sup>197</sup> In this context, PA is drafting a Monitoring Report *"On respect for the rights and freedoms of irregular migrants, refugees and asylum-seekers in Albania"* in 2022, based on the findings of period inspections conducted by NPM in the Temporary Centers of Reception and Accommodation of Irregular Migrants in Kapshtica, Korça and in Greq, Gjirokastra, and based on the continuous monitoring by the two external experts for the border and migration, seconded by the People's Advocate in these two locations.

people are recurrent.

Meanwhile, 3,800 people have been ordered to leave and 32 have been referred to an asylum, 2 have been escorted to Kareç and 23 to social centres. Migrant groups considered at risk are women and children under the age of 18. Statistics show that during this period, 295 children under the age of 18 entered irregularly, 41 of them females and 254 males.

Also, 122 women over the age of 18 and 41 girls under the age of 18, as per their own admission. Referring to citizenship, most of the migrants were from Syria (2,281), Afghanistan (264), Iraq, Palestine, Morocco, Algeria, etc.

Compared to the data of the last three years, there has been a decrease in the flow of migrants who entered the territory of Albania from this border point.

#### *Some monitoring findings in Korça territory*

Based on the statistics of the 6-month period for 2022, of the 2,328 people who entered the territory of Albania from the Kapshtica border with Greece, in the interviews conducted by the border police teams in cooperation with FRONTEX, it turns out that *none of irregular migrants had applied for asylum to our State authorities.*

Meanwhile, the police structures for the border and migration in Korça RBMD had compiled 1,349 removal orders and they had voluntarily left the territory of our country within the 7-day deadline. For 10 people (mainly unaccompanied children and women), Korça Municipality created the conditions to accommodate them in its social centres.

The People's Advocate holds that the State structures responsible for border and migration and asylum should, during the implementation of border controls, interviewing and pre-screening of migrants, consider and re-examine the applications of irregular migrants for asylum.

This is fully in line with international laws, policies and practices provided for in the Convention and the case-law of the European Court of Human Rights, prohibiting *with immediate effect the removals* that prevent migrants from leaving their country of origin or to reach the EU, in order to exercise their right to seek and enjoy asylum.

#### *Overview of migratory flows in Gjirokastra territory over the period January-December 2022*

The official statistics of the Regional Border and Migration Directorate indicate that there are 2,331 irregular foreigners in Gjirokastra region during the period *January-December 2022*. Some of them were recurrent (993) in entering Albania through the Greek border.

Most of the irregular migrants we have entered the period *March-June 2022*, a time that coincides with the improvement of weather conditions and which is used by migrants to cross the difficult terrain of the Greek-Albanian green border. Most of the irregular migrants who entered the Albanian territory from Greece were adult males (2,216), while only 96 were females and 19 minors.

Most of the migrants were found inside the territory (1,407), while only 924 migrants were found at the border. According to the 2022 data, 35 migrants were referred for asylum and 32 people

were escorted to Kareç.

*Recommendations:*

- ✓ Conclude a cooperation agreement with the Greek border police, for carrying out the regular legal protocol for the return of irregular foreigners who have entered from the Greek territory, in cases where they are recidivists or they are denied the asylum-seeker status by the Albanian authorities;
- ✓ Continuously train the border police officers to become familiar with the new legal amendments to the law "On foreigners" and the law "On asylum in the Republic of Albania" and to build and specialize their capacities in conducting the interview and pre-screening procedures with irregular migrants, at border crossing points where migratory flows are evident;
- ✓ Provide interpreters in interviewing environments, mainly for Dari and Fars languages among others, and the border police must expedite efforts to establish a solid system of interpreters, according to the list approved by the Ministry of Justice;
- ✓ Improve the transport measures for irregular migrants during the journey under the surveillance of the border police;
- ✓ Ensure full staffing for the maintenance, cleaning and periodic disinfection services of Kakavija SOG and the Temporary Migrant Centre in Grehot;
- ✓ Design and implement a rehabilitation project for the premises of Kakavija SOG, harmonized with the functional needs and possibilities of the existing premises;
- ✓ Take measures for the creation of protective tents in the outdoor environment in the Grehoti Centre, mainly for the summer season to facilitate the stay of immigrants;
- ✓ Take measures to ensure lighting in tunnel that crosses the road from the Border Point to Kakavija SOG, and install a sustainable heating system for the winter and upgrade the road segment from the Customs Point to Kakavija SOG;
- ✓ Take measures in cooperation with Gjirokastër Municipality and Dropull Municipality for the management and discipline of urban waste, since they are dumped in uncontrolled locations and are not removed by cleaning machines;
- ✓ Take measures to ensure a technical evaluation by construction specialists, because the building in Kakavija SOG has tectonic cracks, but also problems with its foundation.

➤ *Joint operations with FRONTEX to repatriate irregular citizens from the EU countries*

As previously informed, the People's Advocate through the National Mechanism for Prevention of Torture (NPM) in cooperation with the Border and Migration Police Directorate and FRONTEX is part of the monitoring group in the voluntary and forced *repatriation operations* for Albanian citizens from EU countries and particularly from France.

Even during 2022, the NPM in cooperation with the Border and Migration Police Directorate and FRONTEX has constantly monitored the voluntary and forced repatriation operations for Albanian citizens from EU countries and Schengen area, in order to transfer and repatriate them in line with the rules; in total, during the reporting year, NPM participated in 23 *repatriation*



*operations.*

During these repatriation operations, NPM representatives conducted structured interviews with these citizens before departure and during the journey on board, regarding the treatment conditions at the centre. During the interviews, the citizens raised their concerns about the quality of food during the days of their stay in the centre, as well as their inability to appeal the decision on forced removal or deportation from EU countries.

The NPM representatives, in the meetings held with the representatives of FRONTEX and the Border Police and Migration Directorate, have recommended taking measures to guarantee the return while fully respecting the fundamental rights of Albanian migrants according to EU standards and the Albanian legislation.

Despite the progress made in this direction, the fact that returning Albanian citizens do not have complete information about the decision and the execution method for their mandatory return from the EU countries continues to be problematic. Simultaneously, the interviews conducted with these citizens, they raised with concern the fact that they are not given time to appeal the return or deportation decisions in the respective EU countries.

#### **4.10 Annual conferences**

The 2022 Annual Conference of the People's Advocate with the theme *"The role of national human rights institutions as a fundamental element of the rule of law in Albania"*, was organized on 22 December with the support of the Project "Promotion of Diversity and Equality in Albania", in the context of the joint program of the European Union and the Council of Europe "Horizontal Facility for the Western Balkans and Turkey 2019-2020".

The Committee of Ministers of the Council of Europe approved two very important recommendations for the human rights agenda, therefore the PA 2022 annual conference aimed to gather at the discussion tables representatives from state institutions and various civil society actors at the national and international level to share opinions on the role played by national human rights institutions in strengthening the rule of law.

*Recommendation for the development and strengthening of the National Human Rights Institutions (NHRIs).* Recognizing their role as pillars of the rule of law, human rights and democracy in Europe, the Committee of Ministers recommends to each CoE member state to establish, maintain and strengthen an independent National Human Rights Institution in accordance with the Paris Principles, provide an enabling environment for them, and cooperate with them. The recommendation emphasizes the great potential and impact of NHRIs in the promotion and protection of human rights in Europe, especially for the effective implementation of the European Convention on Human Rights (ECHR), including third-party interventions before the European Court of Human Rights and communications related to the supervision of the execution of decisions.

The recommendation also encourages the CoE Member States to explore new ways to develop a stronger role and significant participation of the NHRIs and the European Network of National Human Rights Institutions (ENNHRI) in the Council of Europe. This recommendation represents an instrument that introduces new standard and promotes good practices, by recognizing the role

of NHRIs and even civil society organizations as promoters of Human Rights. Regarding this recommendation, ENNHRI is looking at how the CoE Member States are monitoring its implementation. The results of this monitoring will be translated into an independent report by ENNHRI concerning the implementation of this recommendation, which will be presented to and discussed by the Committee of Ministers in June 2023.

*CoE recommendation on countering hate speech* is addressed to the governments of Member States to develop a comprehensive strategy to prevent and combat hate speech, including the adoption of an effective legal framework and implementation of appropriate and proportional measures. The guidelines recommend that Member States must differentiate between the most serious cases of hate speech which are not sufficiently grave to be legitimately restricted under the European Convention on Human Rights but nevertheless call for alternative response; and against the online hate speech, by ensuring clear and foreseeable provisions for the effective removal of the hate speech on the internet. The recommendation also covers the procedural requirements for the removal of the hate speech, the compensation and appeals mechanisms and underlines the need for transparency and proportionality. While it mainly addresses the Member States and their authorities, the recommendation also contains guidelines for other actors including public officials, political parties, internet mediators, media and civil society organizations.

Regarding this matter, there are some interesting findings in the seventh report of the organizations under the CoE umbrella in the form of *freedom of the media (safety of journalists) platform* which states that freedom of the media in Albania is in deterioration.

Invited as panelists at the Conference were the Speaker of the Assembly of Albania, Lindita Nikolla, the Ambassador of the Delegation of the European Union to Albania, Christiane Hohmann, the Deputy Head of the Office of the Council of Europe in Tirana, Olsi Dekovi, the Resident Coordinator of the United Nations in Albania, Fiona McCluney, other representatives of the Assembly, State and independent institutions, representatives of the diplomatic corps, foreign organizations in our country, civil society and the media.

The conference was opened by the People's Advocate who emphasized in her message the need for human rights institutions to have their independence guaranteed from any type of influence as this gives them the effectiveness and weight that democratic institutions need in our place.

The conference was divided into two discussion sessions; in the first session, the panellists addressed the topic of "*Development and strengthening of effective, pluralistic and independent national human rights institutions*", while in the second session, the topic was "*Media freedom and online hate speech in the light of the CoE Recommendation on countering hate speech*".

## **CHAPTER 5**

### **Cooperation**

#### **5.1 Cooperation with public administration institutions and the level of implementation of PA recommendations**

It should be noted first that one of the mandates of the People's Advocate is to examine complaints arising from the activity of the public administration if they violate their constitutional rights. Through recommendations, requests or proposals, PA aims to bring improvements in the standards

and quality of services and to promote integrity in public administration.

The exercise of this mandate requires that the work of our institution and the behaviour and integrity of our staff be of a high standard, not lower than those that it requires the public administration to implement. Its aim is for individuals to realize their rights and freedoms without the need to seek remedy in court. The People's Advocate is an institution *super partes* which serves the public administration to self-correct as the latter's ultimate goal is to best possible serve citizens.

The People's Advocate through its recommendations contributes to the education of the administration in the field of human rights, making it understand its true role towards the citizens, that is, to understand that the real reason for its existence is to be a servant and serve the citizens to realize their rights. The fact of being to some extent challenging to the decisions of the public administration leads to another difficulty that is the relativization of our efficiency in good governance. Under these conditions, not only the institution of the People's Advocate in Albania, but every Ombudsman office in the world often encounters resistance from the public administration bodies.

As we have emphasized before, in addition to good and fruitful cooperation, there have been quite a few cases of negligence or lack of response to our requests from central and local public administration institutions, and non-implementation of recommendations addressed by our institution, sometimes due to the impossibility of meeting requests of issues/complaints as they entailed financial obligations, and sometimes due to the lack of proper engagement of the public administration bodies.

Failure to send us the information and documentation, or sending partial answers or beyond the established or reasonable legal deadline, leads to the delay of the administrative process and the denial of the right of citizens to effectively enjoy their constitutional rights and to use the constitutional mechanisms for their guarantee. This also undermines the trust of the citizens in the State and the public administration, while all the efforts of the institutions are aimed at maintaining public trust. On the other hand, omissions of this type, seen from a wider perspective, constitute a violation of the principles of legality, information, debureaucratization and efficiency, but also a violation of the principle of the due process of law, resulting from the failure to depart information and explanations within legal deadlines.

It is also established that the increase in public trust in the People's Advocate institution is disproportionate to the increase in public administration's awareness of the importance of the implementation of the PA recommendations. Consequently, in addition to deepening the efforts to increase the quality of recommendations and the justifications of our recommendations, and responding to citizens for cases where no violations are found or the issue is resolved without a recommendation, it is very important that the Assembly of Albania further strengthens its supervisory role to force the implementation of the recommendations that PA addressed to executive and other public institutions.

In this sense, as emphasized before, we estimate that further improvements are needed so that the

Mechanism for the systematic monitoring of the follow-up and implementation of the recommendations (Online Inter-institutional Platform) becomes more functional to enable the effective implementation of the existing legislation and its improvement in areas related to human rights.

✓ *Level of implementation of recommendations*

During 2022, the People's Advocate addressed a total of 249 *recommendations* to central and local public administration bodies. From the total number of recommendations, the level of their implementation until January 2023 is as follows:

<i>Recommendations accepted and fully implemented</i>	17%
<i>Recommendations accepted and partially implemented</i>	36%
<i>Recommendations accepted but not implemented</i>	11%
<i>Recommendations rejected</i>	16%
<i>Recommendation without response</i>	14%
<i>Recommendations underway</i>	6%

The total of 42 or 17% of the recommendations accepted and fully implemented includes those for which there was a response from the institutions, fully addressing all the points of the recommendations given by the People's Advocate and at the same time implementing these recommendations in their entirety.

The total of 89 or 36% of the recommendations accepted and partially implemented includes those for which there was a full or partial response from the institutions to the recommendations sent by the People's Advocate, and addressed them partially.

The total of 28 or 11% of unimplemented recommendations includes those that despite the response from the institutions by accepting the recommendations in principle, these were partially implemented.

The total of 41 or 16% of rejected recommendations includes those for which the public administration bodies responded that they rejected the recommendation, as well as those that remained without a response even after three months from sending it, thus considering these recommendations rejected *a priori*. The changed methodology in calculating this indicator resulted in its significant increase from 9% in 2021 to 16% in 2022. If this indicator were calculated based only on the number of recommendations for which we received an explicitly rejecting response, it would amount to around 6%, so, on the same levels as in recent years.

The total of 34 or 14% of recommendations includes those that received no response from the institutions until the expiry of the procedural administrative time-limits, but for which the deadline to consider them as rejected recommendations is not expired yet.

The total of 15 or 6% recommendations underway includes those for which the institutions are still within the *procedural time-limits* to respond.

The recommendations sent by the People's Advocate address, in most cases, more than one

specific problem. So, a single recommendation addressed to public administration bodies may have several sub-recommendations for issues to be solved.

The 249 recommendations sent during 2022 consisted of 1,312 sub-recommendations. From these, only 47% were fully implemented, 48% remain not implemented yet and 5% remained without a response.

#### *Ratio of implemented recommendations and accepted recommendations by institutions*

The total number of recommendations (249) sent, can be broken down as follows:

	No.	%
Recommendations accepted and fully implemented	42	17%
Recommendations accepted and partially implemented	89	36%
Recommendations accepted but not implemented	28	11%
Recommendations rejected	41	16%
Recommendation without response	34	14%
Recommendations underway	15	6%

For the purpose of reporting this indicator, the calculation relies on the total number of *accepted recommendations* and those *fully implemented*. Out of 249 recommendations addressed in total, the number of accepted recommendations is 159 whereas those fully implemented are 42.

The ratio of implementation recommendations against the accepted recommendations by the institutions is shown below:

$$R_{ACE} = \frac{42 \text{ recommendations fully implemented}}{159 \text{ recommendations accepted}} * 100 = 26 \%$$

#### *Ratio of requests for clarifications addressed by PA to institutions that remained unanswered*

During 2022, the People's Advocate addressed 2,098 requests for clarifications to the public administration bodies, of which 145 or around 6.9% received no response.

$$R_{RFC} = \frac{145 \text{ requests for clarification unanswered}}{2098 \text{ requests for clarification in total}} * 100 = 6.9 \%$$

For the calculation of this indicator, we only referred to the cases where there was no response from the institutions, despite our repeated requests for explanations.

As noted, this indicator is the same as last year, 6.7%. In 2019, the percentage of requests for clarification without a response stood at around 8%, and it slightly increased in 2019 to 9.6%, whereas in 2021 this indicator lowered at around 3%.

Despite the progress with less unanswered requests for clarification, it must be highlighted that the same problem persisted in 2022 as in previous reports: we often had to send repeated requests just to obtain a response, including here responses sent beyond the legal or a reasonable deadline. Specifically, during 2022, the People's Advocate sent 658 repeated requests for clarifications.

In other words, at least 658 requests out of 2,098 in total (about 31% of cases) had to be sent at least twice, in order to get a response from the public administration institutions. Given the nature of our work, it is important that we receive the explanations or information within reasonable deadlines, in coherence with our effective possibility to intervene in resolving the cases.

The above situation unreasonable increases the administrative costs of the service provided by the People's Advocate and also reduces the efficiency of our intervention. Therefore, there is a need to revisit the legislative remedy provisions about the harming behaviour of the public administration, introducing sanctions in similar laws<sup>198</sup> on the other institutions that exercise legal mandates in protection and safeguarding human rights.

#### *Cooperation in the framework of European Integration process*

Even during the year 2022, the People's Advocate as one of the key actors in the national human rights protection system has engaged maximally in the European integration process by cooperating with all State structures entrusted with the follow-up and implementation of obligations, through provision of meaningful contributions that play an important role in respecting human rights and strengthening the rule of law.

A Peer Review Mission of the European Commission was carried out on 25-28 October 2022 on the monitoring of independent institutions and their effective functioning, within the framework of the assessment by the European Commission services for the continuation of fundamental reforms which are of major importance in the membership process according to the revised enlargement methodology of February 2020.. In fact, the evaluation process has been a very long process which started in June 2022.

The purpose of the evaluation mission was to evaluate the institutional capacities for the effective handling of specific cases, through the process of review and analysis of the legal and institutional framework, as well as the functioning of relations with the legislative and executive power for the three selected independent institutions, including the institution of the People's Advocate. The experts examined in particular the status, financial autonomy, administrative staff, decision-making process, appointment and dismissal procedures in labour relations, transparency and accountability, as well as engagement, influence, and public trust in the institution's independence.

At the end of the mission, the experts compiled a joint report, still in the consolidation phase at the European Commission services, which they will share with the Albanian institutions involved in this process. For the realization of this assessment, important institutional capacities were used, given that there was a wide and in-depth correspondence regarding aspects of the law and institutional practice.

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<sup>198</sup> The right of the Commissioner on the Right to Information to impose fines for failure to provide information.

On 19 July 2022, the First Intergovernmental Conference between Albania and the European Union was held in Brussels, which marked the official opening of negotiations for Albania's membership in the European Union. The process continued with the analytical review and evaluation (screening) of the harmonization of our domestic legislation with EU legislation. The main purpose of the analytical evaluation of the legislation is to determine the differences between the domestic legislation and the EU *acquis* for each chapter.

In this context, during the year 2022, the People's Advocate participated and contributed in the framework of the joint meetings held with the EU; it is worth mentioning the meetings in the framework of Chapter 23 "Judiciary and Fundamental Rights ":

- ✓ Explanatory meeting held on 27 September 2022 focused on the developments of the *acquis* from September 2018 onwards; and
- ✓ The second meeting held in Brussels on 24-25 November 2022, where the Albanian authorities presented the degree of alignment with the *acquis* and future plans for alignment. During this two-day meeting, the presentations focused on areas such as: *judiciary; anti-corruption policies; general overview of fundamental rights; prevention of torture and ill-treatment in prison systems; freedom of thought, conscience and belief; measures to combat racism and xenophobia, hate speech and hate crime; children's rights; freedom of expression; gender equality and violence against women; the rights of persons with disabilities; property rights, etc.*

Also, the People's Advocate has given its contribution in the framework of drafting the National Plan for European Integration for the period 2023-2025 (NPEI 2023-2025), and in drafting the Second Contribution of the Albanian Government to the Report of European Commission for Albania for 2022.

The People's Advocate continued to actively participate in the meetings and reports developed by the National Council of European Integration (NCEI) as the highest national advisory structure for European integration that operates at the Assembly, with the aim of promoting and guaranteeing comprehensive cooperation between political forces, public institutions and civil society, and enhancing transparency in decision-making on integration issues.

## **5.2. International co-operation**

The People's Advocate institution places great importance on establishing and reinforcing ties with fellow human rights institutions, organizations, and networks both nationally and internationally. Doing so is essential to bolstering its role in the global human rights agenda and guaranteeing adherence to standard international policies, not only in Albania, but also more broadly. The People's Advocate has significantly invested in promoting and protecting human rights through regional and international cooperation at bilateral and multilateral levels.<sup>199</sup>

The People's Advocate of Albania, Ms Erinda Ballanca, has been unanimously re-elected for a new term of office as the second Vice-President of the Association of Mediterranean Ombudsmen (AMO), reaffirming the recognition of the work of the People's Advocate of the Republic of

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<sup>199</sup> Some of the main orientations of the People's Advocate international work can be found at the link:  
<https://www.avokatipopullit.gov.al/media/manager/website/media/Pjes%C3%ABmarrje%20n%C3%AB%20aktivitetet%20nd%C3%ABrcomb%C3%ABtare%20per%20vitet%202022.pdf>

Albania until 2022. This reappointment is in addition to her membership on the Administrative Board of the Association of Francophone Ombudsmen and Mediators (AOMF) and her membership on the Boards of two important international human rights bodies, the European Network of National Human Rights Institutions (ENNHRI) and the Global Alliance of National Human Rights Institutions (GANHRI).

Participation in such high-level representation enabled sharing good experiences in enhancing National Human Rights Institutions (NHRIs) as robust, efficient, and autonomous establishments that are crucial to guarantee the advancement and safeguarding of these rights. An important case in point is ENNHRI's participation in the UNECE UN Forum Plenary Session conducted on 7th April 2022. The Albanian People's Advocate, a board member of the European Network of National Human Rights Institutions (ENNHRI), addressed the Forum. The People's Advocate emphasised that national human rights institutions working in accordance with the UN Paris Principles are indicators of peaceful societies that support sustainable recovery and focus on human rights and the implementation of the 2030 Agenda. At the Human Rights Summit on the role of National Human Rights Institutions in protecting and promoting human rights, held in Ankara on 29th and 30th June 2022, the People's Advocate, as a guest speaker, shared the institution's successful experience throughout the accreditation process in accordance with the Paris Principles (Status A), as well as good practices and lessons learned.

The People's Advocate, acting as ENNHRI representative, spoke at the United Nations Seminar for Europe and Central Asia regarding the connection between development and the enjoyment of human rights. The seminar was held in Geneva on 1 and 2 September 2022, in line with Human Rights Council resolution 47/11 from 2021. During her intervention in the session about regional development strategies' contribution to human rights, she emphasised on specific regional policies, practices, and commitments. Moreover, the People's Advocate focused on the role of the United Nations and other actors in improving these strategies.

At the conference on 'Rule of Law, Principles and Exchange of Good Practices in the Actions and Powers of the Ombudsman Institution, as Tools to Promote the Protection of Human Rights', which took place in Cyprus on 1-2 December 2022 and was organised presented by the Association of Mediterranean Ombudsmen (AMO) and the Commissioner for the Administration and Protection of Human Rights (Cyprus Ombudsman), the People's Advocate participated and shared her experience in upholding the rule of law.

National Human Rights Institutions (NHRIs) from throughout Europe and beyond convened in Warsaw, Poland on September 5th and 6th, 2022, for a roundtable discussion hosted by the OSCE Office for Democratic Institutions and Human Rights (ODIHR). During the discussion, the resilience of NHRIs was the primary topic, specifically in the face of threats. The Albanian People's Advocate took part in the conference and delivered a speech detailing the experiences of the People's Advocate Institution in dealing with risks and threats to its stability.



Within the cooperation with the European Network of Ombudsmen (ENO), the People's Advocate highlighted at the 'The role of ombudsmen in times of crisis' conference, held in Strasbourg on 27th and 28th April 2022, that ombudsmen are in a key position to monitor how governments deal with refugee issues and discussed how national policies are implemented on the ground, areas for improvement and measures to be taken.

From 8 to 10 June 2022, the People's Advocate and the Commissioner for the Protection and Promotion of Children's Rights, Mr. Olta Aliaj, participated in the seminar organised by the European Network of Ombudspersons for Children (ENOC) in Warsaw. During the seminar, they discussed the role and challenges of independent institutions responsible for safeguarding the rights of children in Europe. The seminar's key subjects comprised the humanitarian situation in Ukraine, means of aid for Ukrainian refugees across Poland and other ENOC nations, climate justice, and more.

Representatives from the Child Protection and Promotion Section took part in the ENOC Annual Conference and General Assembly, held in Reykjavik, Iceland from 19-21 September 2022. Additionally, they actively engaged in the European Network of Young Advisors (ENYA) forum, themed 'Climate Justice', hosted in Bilbao, Spain from 28-30 June 2022.

The People's Advocate participated in the Conference and General Assembly of the International Ombudsman Institute for Europe, which was organized by the International Ombudsman Institute (IOI) and the Ombudsman Institution of Greece from 25 to 27 May 2022. The event emphasised the mandate and operational framework of the Ombudsman in the post-modern era.

The Albanian People's Advocate and representatives of the institution attended the Association of Mediterranean Ombudsmen's (AMO) international conference in Tbilisi, Georgia on 27th September 2022. The conference discussed the rights of the elderly and the role of human rights institutions in their protection. The People's Advocate discussed the effect of the Covid-19 pandemic on the elderly's rights and relayed the Albanian human rights institution's experience in safeguarding their rights.

The People's Advocate attended the AOMF Congress in Marrakesh, Morocco from 16-19 May 2022. The Congress provided an opportunity to discuss and exchange views on digital transformation, the development of digital government services and their impact on human rights, access to justice and the role of ombudspersons and mediators.

As a member of the European Network of National Human Rights Institutions, the People's Advocate institution hosted and collaborated in the development of the ENNHRI Academy, a significant annual event of this network and the OSCE Office for Democratic Institutions and Human Rights. The "Artificial Intelligence and Human Rights" Academy, held in Tirana from 20 to 24 June 2022, convened OSCE-area national human rights institution representatives for practical training on addressing the unique challenges in their work. The Academy provides training and practices for the ongoing professional development of staff at national human rights institutions. We aim to exchange good practices and assess the impact of artificial intelligence on human rights. We also explore how to use the People's Advocate mandate to address human rights issues related to artificial intelligence, and exploit opportunities offered by digital technology and artificial intelligence for more effective promotion and protection of human rights.

The People's Advocate institution maintained close collaboration with the Council of Europe, other human rights organizations, focus groups in need, the European Commission against Racism and Intolerance (ECRI), the European Union Agency for Fundamental Rights (FRA), and other bodies. The institution continued its fruitful cooperation with the Office of the High Commissioner for Human Rights (OHCHR). Some of the partnerships include, for instance participating actively in global consultations with National Human Rights Institutions to enhance the implementation of the Global Compact on Migration, arranged by GANHRI and OHCHR; and attending the intersessional meeting of the Human Rights Council on Dialogue and Cooperation on Human Rights and the 2030 Agenda for Sustainable Development, organised by the Office of the UN High Commissioner for Human Rights. Training developed by the European Social Charter Department, ENNHRI and the European Network of Equality Bodies (EQUINET) explored how the National Human Rights Institutions and equality bodies can engage with the European Committee of Social Rights in the monitoring procedures of the European Social Charter. This topic was discussed during a panel at the conference on the future of Europe and European integration in the field of defence, organized by the European Organisation of Military Associations and Trade Unions and others.

The People's Advocate institution maintains regular contact with the EU Delegation in Tirana, as well as representatives of international organizations and institutions that operate in Albania, including the OSCE presence in Albania, the Council of Europe Office in Tirana, and the Office of the UN Permanent Coordinator, as well as UN agencies such as UNHCR, UNICEF, UN Women, and UNFPA. Thanks to collaborative efforts, through contributions, joint projects and activities, the Ombudsman has successfully improved institutional capabilities, expanded its reach and conducted various educational initiatives<sup>200</sup>. Additionally, in partnership with the Joint Programme Ombudsman of the European Union and the Council of Europe (Horizontal Facility II), the annual conference for the People's Advocate Institution was held on the 19th of December 2022, under the banner of 'The Role of National Human Rights Institutions as an Integral Component of the Rule of Law in Albania'. The conference consisted of two sessions. The first session focused on 'Developing and strengthening effective, pluralistic and independent national human rights institutions'. The second session addressed 'Freedom of the media and online hate speech in line with the Council of Europe's recommendation on combating hate speech'.

The calendar of international activities for 2022 will feature more representatives of the People's Advocate participating in physical and virtual events, including training courses, webinars, working meetings, and conferences. These events are organized by counterpart offices and international organizations focused on protecting and promoting human rights, providing valuable ongoing training opportunities for staff.

### *Regional cooperation.*

As part of regional cooperation efforts and the strengthening of inter-institutional relations - in addition to exchanges in various forums - it is noteworthy to mention the official visit of the Kosovo People's Advocate delegation on 3rd October 2022, headed by the Kosovo People's Advocate, Mr Naim Qelaj. The meeting centred on the present accomplishments of both

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<sup>200</sup> Details of the projects implemented during 2022 can be found in Section 5.3 of this report (Project Cooperation).

institutions, in addition to strategies for future cooperation and interaction.

On 21 April 2022, Ms Erinda Ballanca, the People's Advocate of Albania, hosted a delegation from the Information and Privacy Agency of the Republic of Kosovo (AIP). The delegation was led by Mr Krenare Sogojeva-Dermaku, the Commissioner of the AIP of the Republic of Kosovo. The meeting took place in Tirana, at the invitation of Mr Besnik Dervishi, the Commissioner for the Right to Information and Personal Data Protection of Albania, who also participated in the meeting. During the conversation, the People's Advocate provided an overview of the mission and operations of the People's Advocate Institution in Albania, along with the Albanian side's efforts to support Kosovo's accession to international human rights institutions.

Similarly, on 16 November 2022, a delegation headed by Secretary General Demir Hamiti and comprised of representatives from various departments of the Ombudsman's Office of North Macedonia paid a visit to the Ombudsman's Office of Albania. Over a period of three successive days, representatives of the People's Advocate of Albania met and visited the departments of the different offices of the Ombudsman of North Macedonia with the aim of exchanging experiences, sharing best practices on both sides and strengthening relations between the two institutions.

Ms Ana Jumalieva, Head of the Commission, led a delegation from the Commission for Protection against Discrimination of the Republic of Bulgaria to a working meeting at the institution of the People's Advocate on 3rd March 2022. The Bulgarian delegation invited by Mr. Robert Gajda, the Commissioner for Protection against Discrimination in Albania, met with Ms. Erinda Ballanca, the People's Advocate, who presented the work of the largest institution for the protection of human rights in Albania and its cooperation with partner institutions such as the Commissioner for Protection against Discrimination.

People's Advocate Ms Erinda Ballanca delivered a welcoming address at the Scientific Conference 'The Rule of Law from the Perspective of Legal Researchers in the Diaspora'. The event brought together various leaders in the field of justice, as well as representatives from the Academy of Sciences, state institutions, independent organizations, and diaspora communities from Albania, Kosovo, and North Macedonia. In her speech, the People's Advocate emphasised the need for increased cooperation between the various actors of academic thinking in the field of justice, addressed issues related to the relationship of citizens with the State and the law, and expressed the hope that the reform of the Albanian judiciary and the institutions that have emerged from it will justify the trust of citizens and the reason for their creation.

### **5.3 Cooperation in the framework of projects<sup>201</sup>**

The People's Advocate implemented the Cooperation Agreement with UNHCR in 2022 to monitor migrants' crossing points, while strengthening and upholding their rights. The two experts from the People's Advocacy Institute at the Gjirokastë and Kapshticë border crossings conducted systematic monitoring of the borders and selection procedures for irregular migrants. They also periodically reported the results and addressed encountered issues. In December 2022, they signed a new Cooperation Agreement for 2023, which includes a part-time expert to work in Tirana.

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<sup>201</sup> This includes structured, long-term projects undertaken by the People's Advocate during 2022, and does not include short-term collaborations that resulted in reports and are presented elsewhere in the Annual Report.

Throughout 2022, the European Union Agency for Fundamental Rights (FRA) has chosen the People's Advocate Institution to contribute to their annual report on the human rights situation in Albania. The FRA publishes a yearly report covering human rights concerns in EU member states, as well as countries with observer status, including Albania for the second consecutive year.

In order to prepare this report, the People's Advocate Institution, in addition to its independent research work, cooperated with some 41 public administration institutions, from which data and information were collected on developments during the year 2000 that brought national legislation into line with EU legislation or legal developments comparable to current EU legislation in a number of specific areas, such as:

- ✓ Equality and non-discrimination.
- ✓ Racism, xenophobia and related intolerance.
- ✓ Equality and Roma inclusion.
- ✓ Asylum, visas, migration, borders and integration.
- ✓ Information society, privacy and data protection.
- ✓ The rights of the child.
- ✓ Access to justice, including the rights of victims of crime.
- ✓ Developments in the implementation of the Convention on the Rights of Persons with Disabilities.

The project commenced in July 2022 and is anticipated to conclude in early 2023, with the European Union Agency for Fundamental Rights publishing the final report.

The People's Advocate furthered the execution of the programme titled 'Strengthening Approaches to Prevent Youth Radicalisation in Prisons and Probation Services', funded by the EU Justice Programme, throughout 2022. The project is a collaboration between seven EU Member States (Italy, Spain, Austria, Slovenia, Germany, France, and Belgium) and Albania. Its objective is to strengthen prevention approaches against the radicalisation of young adults, aged 18-29, within prison and probation services at a European level. The project aims to uphold international standards and adhere to the European Parliament's resolution on prison systems and conditions, passed on 5 October 2017.<sup>202</sup>

The planned research and awareness campaigns, coupled with disseminating best practices, will equip target audiences with knowledge of radicalisation processes spanning the macro and meso levels, including national legislation and prison and probation administration practices. Such knowledge will extend to the individual dimension.

In 2022, the initial stage of the 'Data Analysis and Evaluation' initiative was executed, with a focus on:

- ✓ Report on the consistency of the EU's international human rights legislation.
- ✓ Report on training facilities for prison and civilian personnel.
- ✓ Scientific article on the effectiveness of intervention programmes.
- ✓ Evidence-based recommendations to policy makers for implementation in the intervention and

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<sup>202</sup> 2015/2062(INI).

prevention of youth radicalisation in prisons and probation services.

- ✓ Best practices in relation to radicalisation prevention programmes with a focus on the rights of young people in prisons and probation services.
- ✓ Analysis of national legislation in 8 countries.
- ✓ Analysis of training programmes in 8 countries.

In the course of 2023, the second phase of the project "Analysis of the individual dimension of youth radicalisation" will be implemented:

- ✓ Interviews with young people in prisons.
- ✓ Interviews with staff in direct contact with prisoners.
- ✓ Preparation of a guide by relevant partners.

The twinning project '*Support to the Office of the Ombudsman and the Promotion of Human Rights in Albania*' has been running since June 2022. It's implemented by the Ombudsman Council in Austria, the Ludwig Boltzmann Institute for Fundamental Human Rights and Freedoms, Austria, and People's Advocate of Albania. The European Union is funding the project under the Instrument for Pre-EU Accession Assistance."

The project aims to assist in the Albanian People's Advocate and in aligning the national legislation, specifically Law No. 8454, dated 04.02.2022 "On People's Advocate", as amended, with EU legislation concerning basic human rights and freedoms. The project seeks to promote the principles of rule of law, human rights, and good governance by increasing the effectiveness of public administration body's legal control.

Expected outcomes include:

- ✓ Alignment of national legislation with EU laws, international obligations, and EU best practices;
- ✓ Enhancement of the People's Advocate institution's capacity as a national human rights institution in fulfilling its promotional mandate;
- ✓ Recommendations to improve the People's Advocate's case management system according to the models and successful practices of EU Member States.

Furthermore, as a recipient of this initiative, the People's Advocate joined the IPA II Sectoral Monitoring Committee for the 'Rule of Law and Fundamental Rights' in 2022. The People's Advocate attended its second meeting, which took place on 14 December of the same year.

Since September 2022, the People's Advocate case management system (Doculive System) has been undergoing improvements through a cooperative effort with UNFPA (United Nations Population Fund) in Albania. This system manages and processes cases and complaints submitted to the People's Advocate institution, through data processing and the production of various statistics on the rights violated by citizens and the institutions responsible for the violation of these rights. The Indian firm Wishtree is responsible for project implementation, with completion planned in the first half of 2023.

#### **5.4 Public appearances by the People's Advocate to fulfil his promotional mandate**

The People's Advocate, the largest human rights institution in the country, has sustained a positive

image in both quantitative and qualitative terms. In the past year, the institution has enhanced its social media footprint and pursued a moderate yet impactful approach to traditional media, including audiovisual platforms.

The People's Advocate's promotional remit responds to society's need to raise awareness not only of the work of this institution, but also of education and awareness of human rights, the recognition of these rights, the mechanisms of the State in their function, and the support of citizens' practical knowledge of their rights and their relationship with the institutions.

The People's Advocate's communication activities focus on two main areas:

- a. *Online presence;*
- b. *Proactive presence in traditional media.*

The People's Advocate maintains an *online presence* featuring publications on various social media networks, primarily Facebook, as it is the most popular network in the country. The institution also publishes on its official website and has created an online application that serves as a reliable channel for citizens to submit complaints and communicate with the People's Advocate.

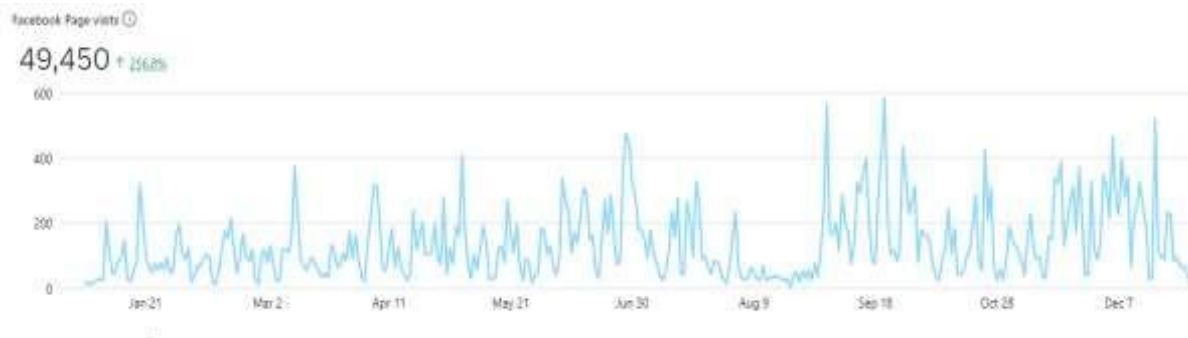
*Presence on traditional media* involves providing news organisations, such as radio stations, TV channels, news agencies or print media, with informative material on the activities of the People's Advocate institution. Moreover, we respond to media representatives or their interest in issues related to the position or actions of the People's Advocate in the context of current developments in the country, as well as interviews and the presence of the People's Advocate's representatives in TV studios.

### *Online media*

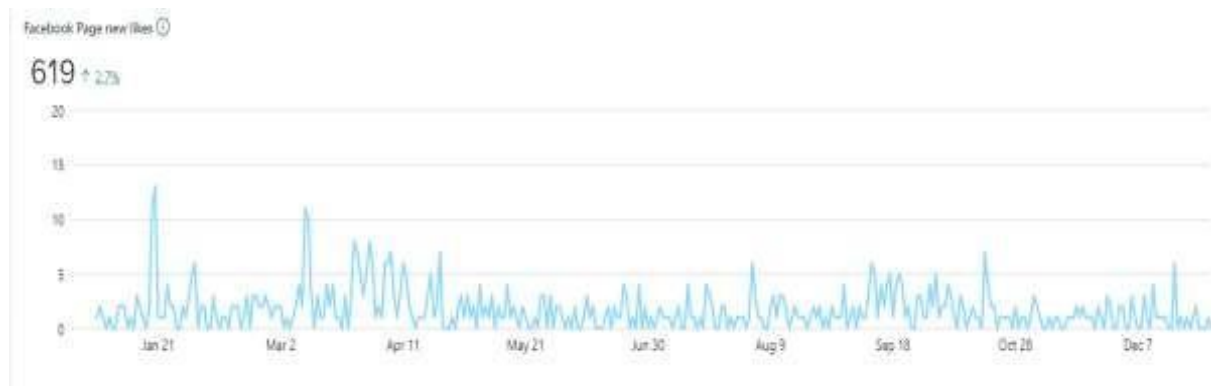
Throughout the period between 1 January 2022 and 31 December 2022, the official Facebook page of the People's Advocate exhibited a consistent upward trend in growth, which has been maintained over the previous five years.



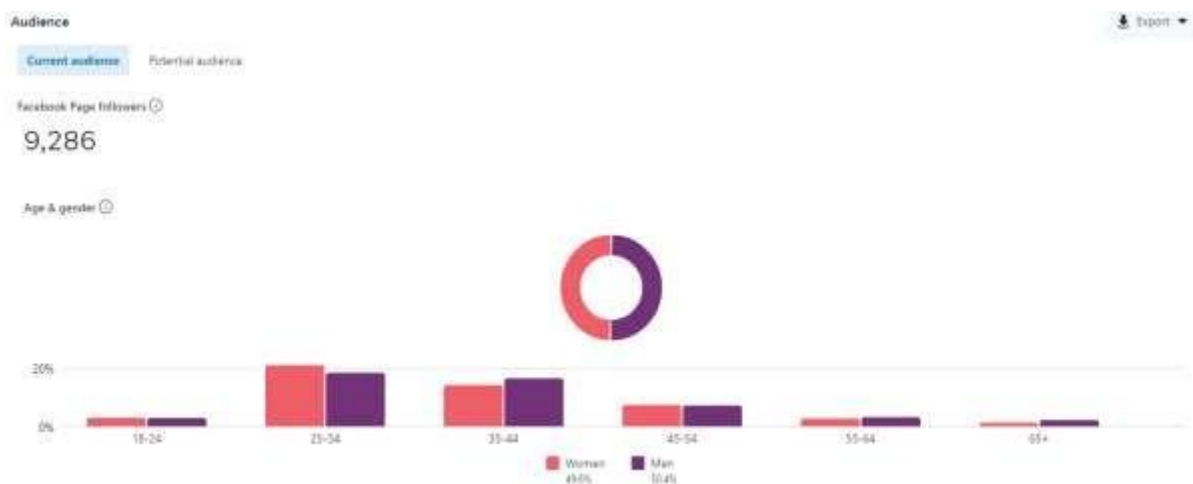
According to Facebook Insights statistics, the annual reach of the People's Advocate page on Facebook during this period was 111,198, an increase of 23.1 per cent over the previous year.



The number of visits to this page increased significantly, as shown in the table, *with 49,450 visits, an increase of 256.8% over the previous year.*



The number of likes on the page also increased slightly to 619, an increase of 2.7%. It should be noted that the People's Advocate has continued its policy of 0 spending to commercially increase the visibility and popularity of its content on social networks.



The audience of the People's Advocate's Facebook page reaches 9286 followers, with the largest number of followers in the 25-34 and 35-44 age groups. The gender of the People's Advocate's followers is almost equal, *with 49.6 per cent women and 50.4 per cent men.*



The geographical distribution of the public is most concentrated in Tirana, where 38.4 per cent of those following the People's Advocate posts come from, followed by Durres with 3.8 per cent and Pristina in Kosovo with 2.8 per cent.

### *Online webpage*

The official website of the People's Advocate, [www.avokatipopullit.gov.al](http://www.avokatipopullit.gov.al), is kept up to date with information considered important for documenting and reflecting the activities of the institution. News, updates, statistics and information about the institution's activities are continuously published in the "Media Centre" section.

In 2002, more than *140 news* and information items were published on this page. In addition, the media section of this page publishes videos of interviews given by the Institution's top management to national and local media, as well as reports of particular interest to the Institution.

### *Traditional media*

In addition to a significant number of reports in the local and foreign television media on the People's Advocate's activities and positions on everyday current affairs, the institution also maintained a positive and collaborative approach to the media by having its manager present for interviews in many studio debates throughout the year. At least *13 in-depth interviews* and television appearances were recorded during the year, not counting reactions, opinions and short interviews given to the media at various public activities.<sup>203</sup>

## **CHAPTER 6**

### **Support services**

#### **6.1 Management of Human and Administrative Resources**

The institution of the People's Advocate, as a national institution for the protection and respect of human rights, must be supported in its work by an infrastructure that enables the realisation of its objectives and goals, in full compliance with the Paris Principles and the Venice Principles.

<sup>203</sup> Further information is available on request.



This approach has been continually emphasised by the reports of international organisations, in which the need for *a comprehensive approach to strengthen the People's Advocate capacity to deal with cases* of human rights violations has been stressed, among other things.

This undoubtedly requires proper human resources management through a continuous assessment of the institution's units and structures as an important and strategic tool that helps create a sustainable competitive advantage of the institution and adds value to it, as well as the recruitment of a body of well-trained and professional employees, capable of serving the public interest and being accountable for actions taken in the interest of citizens.

The process for approving the structure and organization of the institution is clearly outlined in Article 35(3) of the amended Law No. 8454 of 02.04.1999 "On the People's Advocate". Unlike many independent constitutional institutions and other independent institutions created by law, the structure and organisation of the institution are determined by the People's Advocate, which creates the necessary flexibility to adapt and respond in the form and manner appropriate to the functions and duties of the institution.

In recent years, the structure and organisation of the institution has undergone occasional changes aimed at increasing its efficiency and adapting it to the rules and procedures laid down in the current legal framework of the civil service. These changes were aimed at and reflected the need to have a structure that is stable over time, relatively homogeneous with the structures and categorisations of employees in other government institutions, and in line with the standards in terms of the format of the units of the structure. However, the very limited number of staff in relation to the mandate they have to fulfil has affected the effectiveness of their implementation.

Pursuant to Article 39 of Law No. 8454 of 2 April 1999, "On the People's Advocate", as amended, which states that *"the People's Advocate shall approve the internal regulations of the Institution, which shall be drawn up in consultation with the Commissioners"*, the People's Advocate, by Order No. 129 of 17 June 2022, approved the new regulations of the Institution.

The need to adopt this regulation was driven by the sporadic changes in the institution's structure, the necessity to tackle and improve the several administrative issues encountered during day-to-day work practice, and the requirement for a comprehensive regulation ensuring efficiency, accountability, and transparency within the People's Advocate institution.

The regulations set out in a very functional and comprehensive manner the obligations of all internal structures in the fulfilment of their tasks as independent of each other, as well as defining the responsibilities of each structure within the framework of the mission as an institution. At the same time, it defines the basic criteria of function and the required level of functional responsibility.

Pursuant to Article 33/1, Section 4 of Law No. 8454 of 02.04.1999 "On the People's Advocate", as amended, the People's Advocate Institution has announced a competition for 3 (three) vacant positions of Commissioner, namely:

✓ *Commissioner in the Section for police, secret service, prisons, Armed Forces and judicial power;*

✓ *Commissioner in the Section for the central and local administration bodies and third parties acting on their behalf; and*

✓ *Commissioner in the General Section.*

Due to the limited number of applicants and the failure to reach the required number in this process, the institution was forced to extend the application deadline several times. At the end of the process of assessing the fulfilment of the legal conditions and criteria by the applicants, as well as after their examination and evaluation (including interviews) by the Ad Hoc Commission, the People's Advocate, Ms Erinda Ballanca, on 13 March 2023, forwarded to the Assembly of Albania the list of candidates for the positions of Commissioner in the Section for police, secret service, prisons, Armed Forces and judicial power, and Commissioner in the Section for the central and local administration bodies and third parties acting on their behalf.

It should also be emphasised that in 2022, in accordance with the recruitment rules of the Public Service Regulations, a number of vacancies (13 posts) were announced by the organisation, taking into account resignations, departures to other posts within the public administration or suspensions of status for various reasons.

Within the framework of the presentation of the budget requests for 2023 to the Ministry of Finance and Economy, but also during the discussions in the Commission for Laws, Public Administration and Human Rights of the Albanian Parliament, the People's Advocate Institution requested the approval of some additions to the human resources, presenting the relevant arguments.

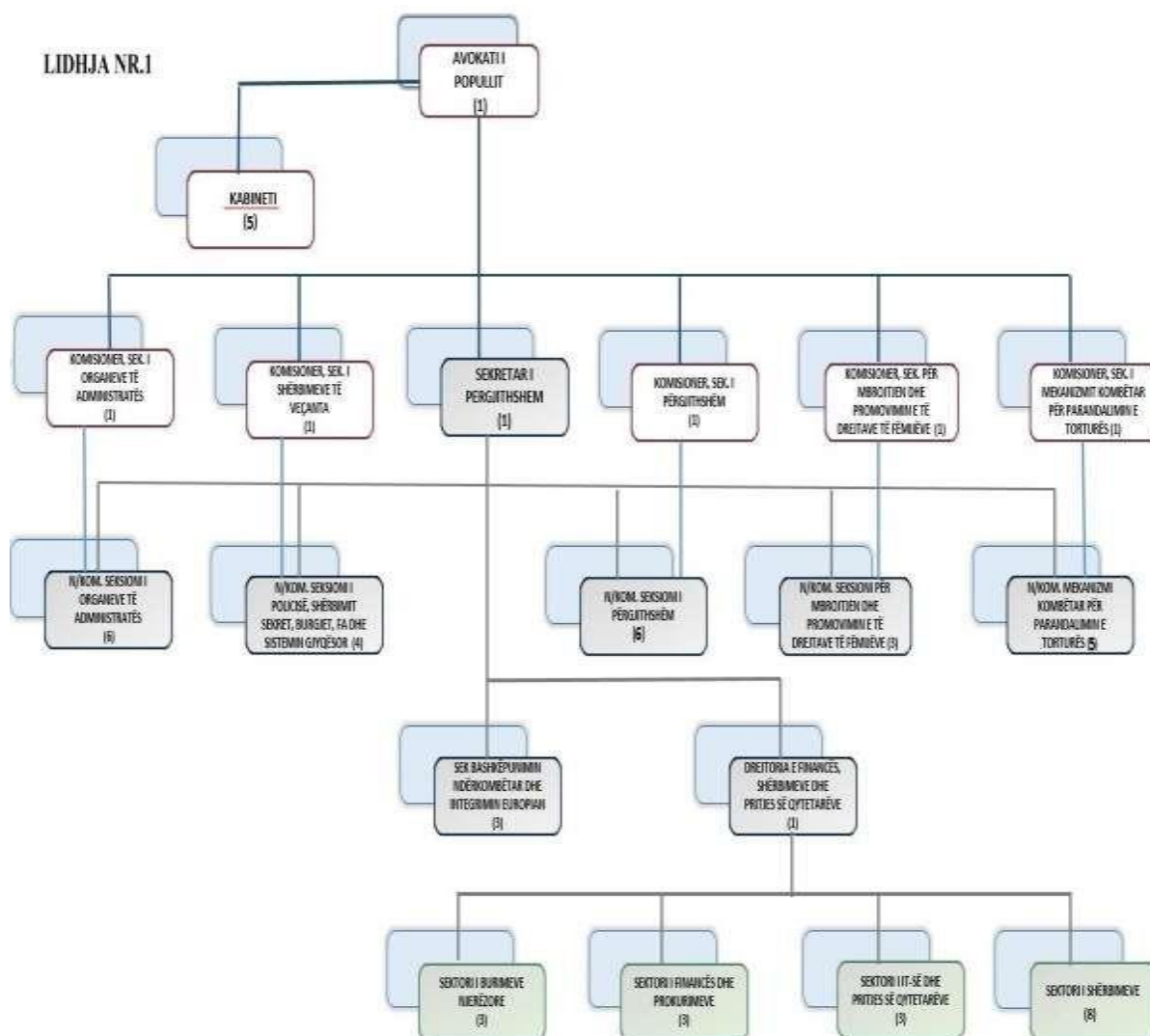
With the approval of Law No. 84/2021, "On the 2023 Budget", it was established that the total number of employees of the entity approved for 2023 is 59 (fifty-nine) of the existing 57 (fifty-seven). These additions concern:

✓ *the addition of an IT specialist (category III-b), justified inter alia by the need to maintain the Institution's technological infrastructure, the production and processing of statistics and the need for protection against cyber-attacks;*

✓ The addition of an Assistant Commissioner who will focus on issues related to the promotion, information or awareness of human rights and the role of the institution in this regard, based mainly on international human rights standards.

During the year under review and the following years, the full-time work of 2 (two) external experts continued on the basis of the agreement signed with UNHCR (December 2021) for the monitoring of migrants at border crossings, in support of the work of the section of the National Mechanism for the Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment. Meanwhile, under the new agreement signed at the end of December 2022, a third part-time expert (4 hours per day) in the field of respect for and protection of refugees was recruited in February 2023.

For the year 2022, the structure of the institution, approved by Internal Order No. 17 of 04.02.2022 "On the Approval of the Structure, Organisation and Functional Framework of the People's Advocate Institution", as amended, is presented as follows:



## Annex no.2

Function	Number of staff (57)	Category/Class
<b><u>People's Advocate</u></b>	1	Law no. 8454, dated 04.02.1999, as amended
<b><u>Cabinet</u></b>	5	
- Chief of Cabinet	1	DCM no. 187, dated 08.03.2017, as amended
- Advisor	3	I-b
- Secretary	1	DCM no. 187, dated 08.03.2017, as amended
<b><u>Secretary-General</u></b>	1	I-a
<b><u>Section for the central and local administration bodies and third parties acting on their behalf</u></b>	7	Law no. 8454, dated 4.2.1999, as amended
-Commissioner	1	II-a
-Assistant Commissioner	3	II-b
-Assistant Commissioner	3	
<b><u>Section for police, secret service, prisons, Armed Forces and judicial power</u></b>	5	Law no. 8454, dated 4.2.1999, as amended
-Commissioner	1	
-Assistant Commissioner	2	II-a
-Assistant Commissioner	2	II-b
<b><u>General Section</u></b>	7	
-Commissioner	1	Law no. 8454, dated 4.2.1999, as amended
-Assistant Commissioner	4	II-a
-Assistant Commissioner	2	II-b
<b><u>Section for the protection and promotion of children's rights</u></b>	4	
-Commissioner	1	Law no. 8454, dated 4.2.1999, as amended
-Assistant Commissioner	2	II-a
-Assistant Commissioner	1	II-b
<b><u>Mechanism for prevention of torture, cruel, inhumane or degrading treatment or punishment</u></b>	6	Law no. 8454, dated 4.2.1999, as amended
-Commissioner	1	
-Assistant Commissioner	2	II-a
-Assistant Commissioner	3	

<b><u>Directorate of Finance, Services and Reception of Citizens</u></b>	18	II-b
-Director	1	II-b
<b><u>Human Resources Unit</u></b>		
- Head of Unit	1	III-a
- HR specialist	1	III-b
-Protocol specialist	1	III-b
<b><u>Services Unit</u></b>		
- Head of Unit	1	III-a
- Archivist /Librarian	1	Class VIII
- Driver to Head	1	Class VI
- Driver	2	Class IV
- Medium technician of various specialties	1	Class VI
- Cleaning worker	2	Class I
<b><u>Finance and Procurement Unit</u></b>		
- Head of Unit	1	III-a
- Finance specialist	1	III-b
- Procurement specialist	1	III-b
<b><u>IT and Citizens Reception Unit</u></b>		
- Head of Unit	1	III-a
- Specialist for services to citizens	2	III-b
<b><u>Unit for International Cooperation and European Integration</u></b>	3	
- Head of Unit	1	III-a
- Specialist	2	III-b

## 6.2 Overview of income and expenses

In support of the Law no. 115/2021, dated 25.11.2021, " On the State Budget for 2022", Instruction of the Minister of Finance no. 2, dated 06.02.2012, "On standard budget implementation procedures", the Supplementary Instruction of the Minister of Finance no. 1, dated 10.01.2022 " On the Implementation of the 2022 Budget" - as amended, the performance of budget products for the People's Advocate, according to the approved budget program for 2022, is presented as follows:

## Programme "Legal defence services"

The budget allocated under this program (the only program that the People's Advocate has) is based on the Program Policy Statement (PPS) drawn up during the Medium-Term Budget Program document (MTBP) 2022-2024 process and aims to achieve the outputs and objectives determined and approved in the MTBP (2022-2024).

### 2022 Factual expenses Report according to items

By Law no.115/2021, dated 25.11.2021, " On the State Budget of 2022", the funds allocated with the changes made during the year to the functioning and activities of the People's Advocate are presented in the tables below:

#### Factual Expenses Report according to items

Table no. 1

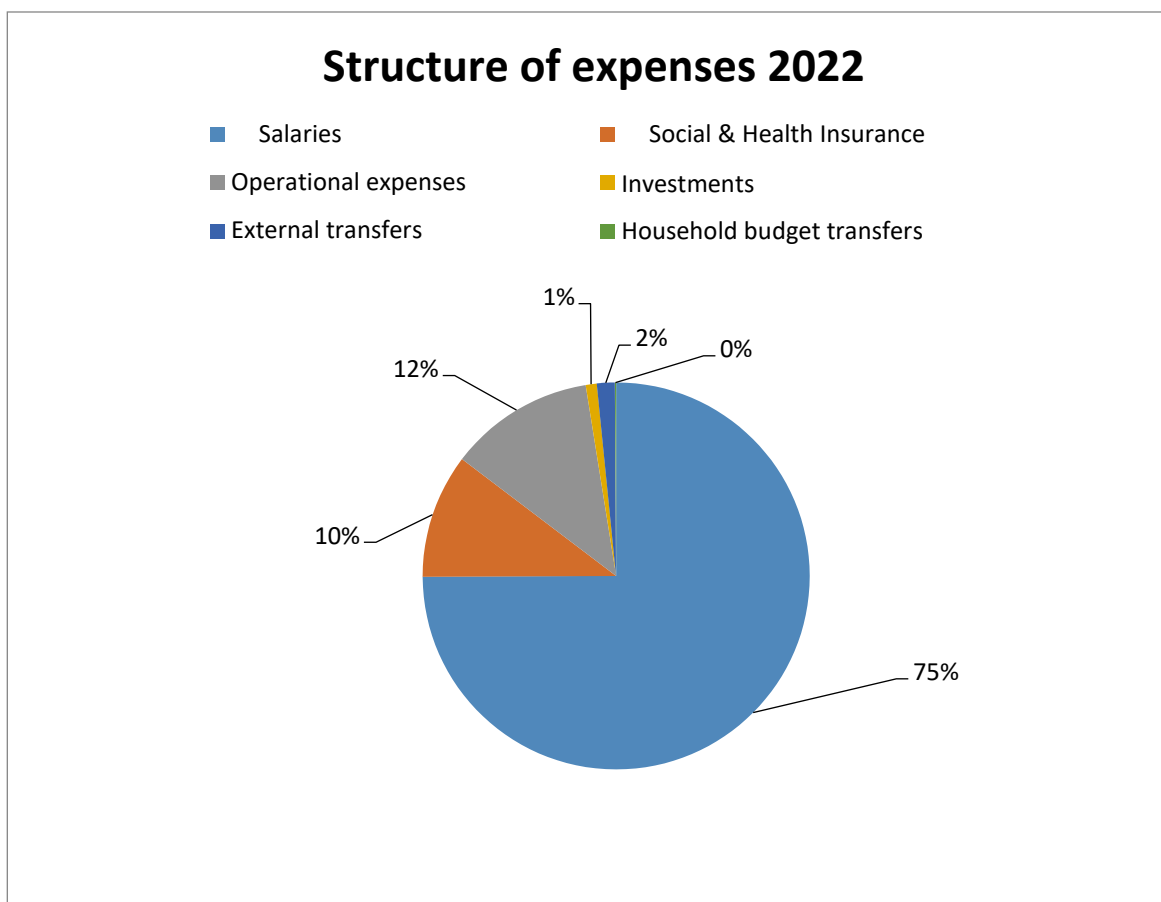
Acc. No.	Denomination	Initial plan	Increases & decreases	Changed Plan	Factual
600	Salaries	89,000,000	-3,425,000	85,575,000	85,551,083
601	Social and health insurance	13,500,000	162,500	13,662,500	12,456,188
602	Goods and services	18,000,000	680,000	18,680,000	16,829,887
605	Foreign current transfers	1,700,000	520,000	2,220,000	2,191,738
606	Transf. for household budgets	3,000,000	-154,238	2,845,762	2,114,898
231	Investments	4,000,000		4,000,000	3,900,000
	<b>TOTAL</b>	<b>129,200,000</b>	<b>-2,216,738</b>	<b>126,983,262</b>	<b>123,043,794</b>

### 2022 Annual Expenses Report

Table no. 2

No.	Denomination	Changed Plan	Factual	Difference	Realization in %
1	Salaries	85,575,000	85,551,083	23,917	99.97
2	Social and health insurance	13,662,500	12,456,188	1,205,812	91.20
3	Goods and services	18,680,000	16,829,887	1,850,113	90.10

4	Foreign current transfers	2,220,000	2,191,738	28,262	98.70
5	Transf. for household budgets	2,845,762	2,114,898	730,864	95.30
6	Investments	4,000,000	3,900,000	100,000	97.50
	Total	<b>126,983,262</b>	<b>123,043,794</b>	<b>3,939,468</b>	<b>96.90</b>



### 1- Staff Expenses

The realisation of the salary fund reflects the structure and organic, internal and external movements. The fund allocated for the year 2022, to cover staff salary expenses was 89,000,000 ALL, amended by Regulatory Law No. 3, dated 12.03.2022, "On certain amendments and additions to Law No. 115/2021, "On the Budget of 2022", in 85,575,000 ALL, while the realisation is 85,551,083 ALL or 99.97%, of the adjusted budget; also, the social and health insurances were provided for 13,500,000 ALL, amended by Regulatory Law No. 3, dated 12.03.2022, "On certain amendments and additions to Law No. 115/2021, "On the Budget 2022", in 13,662,500 ALL, while the realisation is 12,456,188 ALL or 91.20% of the budget.

Both items together, staff salaries and social and health insurance (600+601) for 2022 have been realized to the extent of 98.80% of the amended budget and represent 85% of the institution's factual budget. During 2022, the average number of employees will be 54.25 out of 57, which is the limit authorised by the aforementioned law. The non-achievement of this expenditure item is due to the non-fulfilment of organisational structures as a result of the vacancies created at the

end of 2021 and during 2022 by the transfer of employees of our institution to other tasks. During these periods, the number of staff authorised by law for 2022 was not fully covered in all its organisational structures.

There were vacancies in the first four months:

- ✓ 1 Assistant Commissioner in the Section for the central and local administration bodies and third parties acting on their behalf for four months;
- ✓ 1 Assistant Commissioner in the Section for the central and local administration bodies and third parties acting on their behalf for three months;
- ✓ 1 Assistant Commissioner in the General Section for four months;
- ✓ 1 Protocol Specialist in the Human Resources Unit for a month.

During the second four months, these vacancies arised:

- ✓ 1 Chief of Cabinet to the People's Advocate for three months;
- ✓ 1 Secretary to the People's Advocate for two months;
- ✓ 1 Assistant Commissioner in the Section for the central and local administration bodies and third parties acting on their behalf for a month;
- ✓ 1 Assistant Commissioner in the Section for police, secret service, prisons, Armed Forces and judicial power for two months;
- ✓ 1 Assistant Commissioner in the General Section for a month;
- ✓ 1 Director in the Directorate of Finance, Services and Reception of Citizens for four months;
- ✓ 1 Head of Unit for a month;
- ✓ 1 Specialist in the Citizens Reception Unit for a month;
- ✓ 1 Head in the Unit for International Cooperation and European Integration for two months;
- ✓ 1 Specialist in the Unit for International Cooperation and European Integration for a month.

During the third four months, these vacancies arised:

- ✓ 1 Chief of Cabinet to the People's Advocate for two months;
- ✓ 1 Secretary to the People's Advocate for four months;
- ✓ 1 Assistant Commissioner in the Section for the central and local administration bodies and third parties acting on their behalf for two months;
- ✓ 1 Assistant Commissioner in the Section for police, secret service, prisons, Armed Forces and judicial power for two months;
- ✓ 1 Assistant Commissioner in the General Section for two months;
- ✓ 1 Director in the Directorate of Finance, Services and Reception of Citizens for four months;
- ✓ 1 Procurement Specialist in the Finance and Procurement Unit for three months;
- ✓ 1 Specialist in the Unit for International Cooperation and European Integration for four months.



Nr.	Year s	Approved					
		600-601	602-606	231	Number of Staff		Total
		Salaries & insurance	Operational expenses	Investments	Assistant Commissioner	Sum	
1	2015	75,500	16,000	4,000	21	51	95,500
2	2016	84,500	17,000	4,000	21	55	105,500
3	2017	84,500	18,000	4,000	21	56	106,500
4	2018	94,500	17,500	4,000	21	56	116,000
5	2019	104,500	18,600	2,000	21	56	125,100
6	2020	98,500	17,000	1,000	21	56	116,500
7	2021	98,500	17,500	3,000	21	56	119,000
8	2022	102,500	22,700	4,000	22	57	129,200
9	2023	108,000	26,000	4,000	23	59	138,000

## 2.- Expenses for Goods and Other Services

Budget allocated for expenditure on goods and services (item 602) for the period January - December 2022 was 18,680,000, while the realization is 16,829,887 ALL or 90.10% of the budget.

For this period, operating expenses were mainly used for stationaries, cleaning materials, electrical, promotional materials, supply of other office materials, expenses for electricity, water, Albtelecom, Vodafone, postal service, vehicle insurance, expenses for disinfection of the institution's premises, expenses for the maintenance of the institution's vehicles, per diems inside and outside the country, expenses for construction maintenance, expenses for maintenance of equipment and technical equipment, expenses for reception of foreign officials, as well as expenses for taxes paid.

Budget for foreign current transfers (item 605) for 2022, was 1,700,000 ALL, amended with the document "Transfer of funds for the year 2022" in 2,220,000 ALL while the realisation is 2,191,738 ALL or 98.70% of the budged, as amended.

In 2022, these funds were used to repay the timely obligations of membership quotas where the People's Advocate is a member of international organizations such as:

- ✓ Association des Ombudsmans et Mediateurs de la Francophonie (AOMF);
- ✓ European Ombudsman Institute (EOI);
- ✓ Association of Mediterranean Ombudsman (AOM);
- ✓ International Ombudsman Institute (IOI);
- ✓ Global Alliance of National Human Rights Institutions (GANHRI);
- ✓ European Network of National Human Rights Institutions (ENNHRI);
- ✓ European Network of Ombudspersons for Children (ENOC).

No.	Organization	Quota over years							
		Currency	Amount						
			2016	2017	2018	2019	2020	2021	2022
1.	Association of Mediterranean Ombudsman (AOM)	Euro	750	750	750	1,000	1,000	1,000	1,000
2.	Association des Ombudsmans et Mediateurs de la Francophonie (AOMF)	Euro	650	750	900	900	900	900	900
3.	European Network of National Human Rights Institutions (ENNHRI)	Euro	3,000	3,000	4,000	4,000	4,000	4,000	4,000
4.	European Network of Ombudspersons for Children (ENOC).	Euro	1,100	1,100	1,100	1,100	1,100	1,100	1,100
5.	European Ombudsman Institute (EOI)	Euro	350	350	350	350	350	350	350
6.	Global Alliance of National Human Rights Institutions (GANHRI)	CHF	5,000	5,000	5,000	5,000	5,000	5,000	5,000
7.	International Ombudsman Institute (IOI)	Euro	750	750	750	750	750	750	750

The fund for budget transfers for families and individuals (item 606) for the period January - December 2022, was 3,000,000 ALL, amended with the document “Transfer of funds for the year 2022” in 2,845,762 ALL, while the realisation is 2,114,898 ALL or 95.30% of the amended budget.

### **3.- Investment expenses**

State budget funds allocated are 4,000 thousand ALL, and realization is 3,900 thousand ALL.

<b>In thousand/ALL</b>				
<b>Project</b>	<b>Project Code</b>	<b>Plan</b>	<b>Factual</b>	<b>%</b>
Purchase of vehicle for the institution	M660015	4,000	3,900	97.50

#### **“Purchase of vehicle for the institution”**

This investment item, as presented in the table above, was realised for an amount of 3,900,000 ALL, or 97.50%.

## **CHAPTER 7**

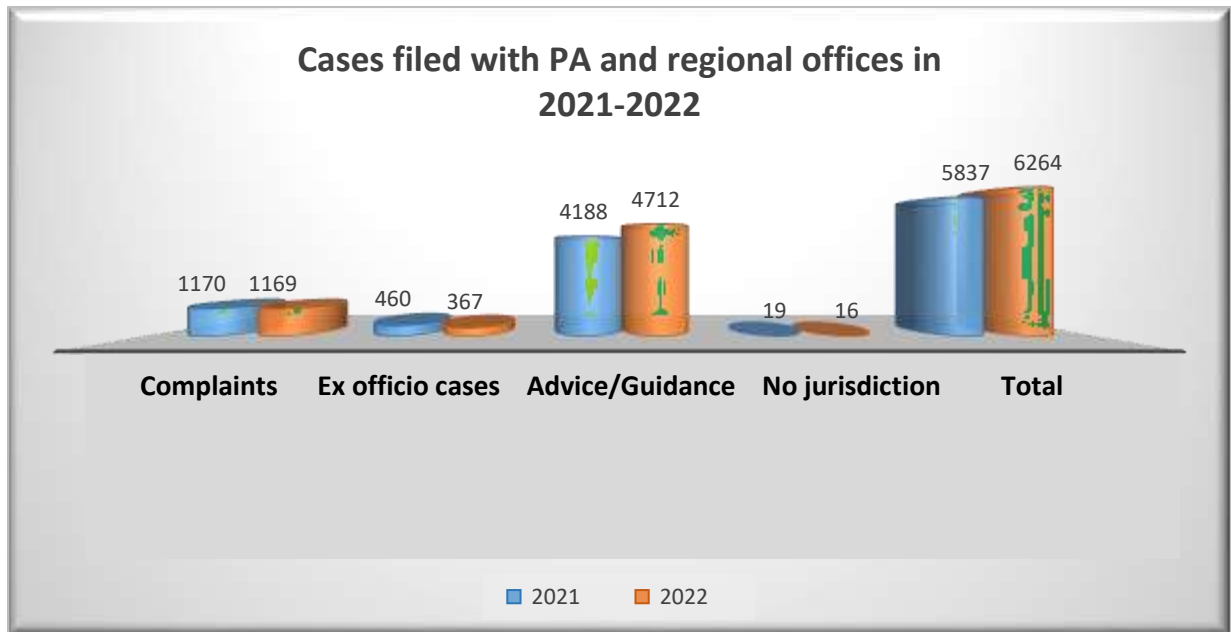
### **7.1 Figures and facts about complaints and their handling**

During the exercise of its mandate, the People's Advocate's Institution for the period 2022 has received cases from Albanian citizens, foreigners, stateless persons or civil society organisations for alleged violations of fundamental rights and freedoms in all possible forms. These cases are submitted through:

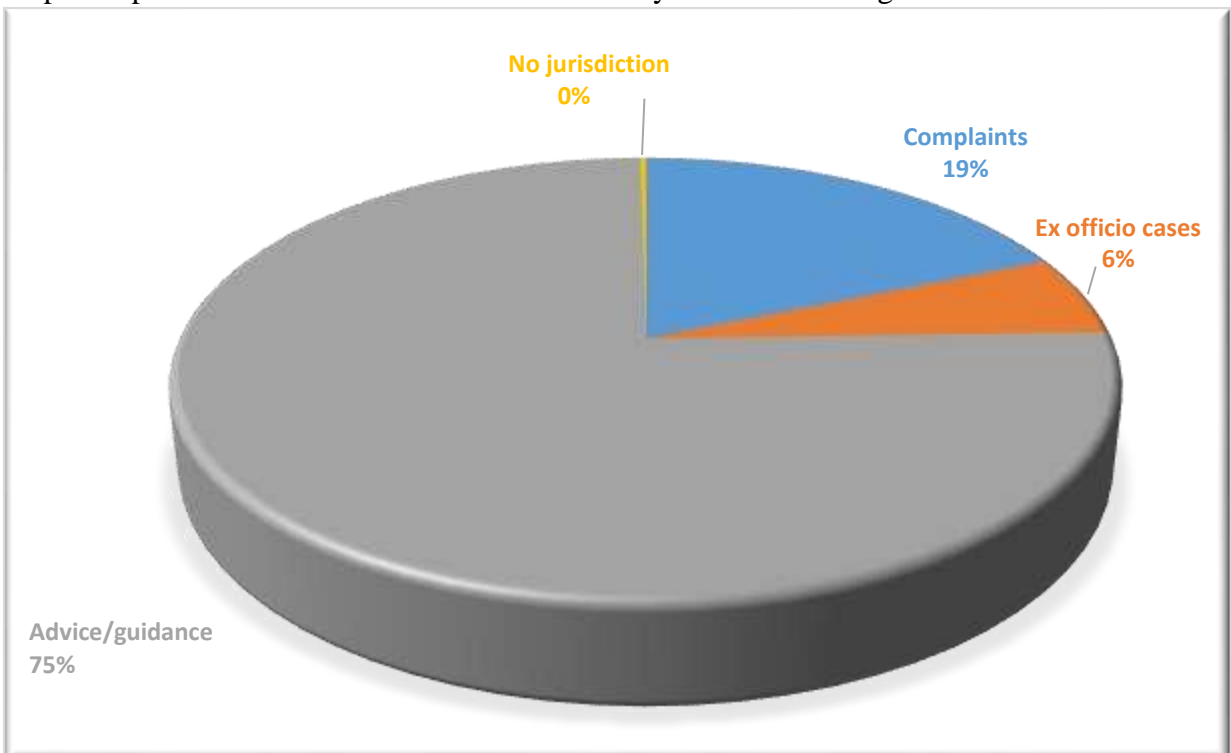
- Filing of applications personally at the head office located in the city of Tirana as well as filing of applications personally at the 7 regional offices located in the cities: Berat, Dropull, Fier, Kukës, Pogradec, Saranda, Shkodra and Vlora;
- Postal service;
- Electronic mail (e-mail);
- Social networks;
- Mobile application;
- The institution's official website;
- Telephone etc.

Thus, in 2022, the People's Advocate handled a total of 6264 cases/requests, which means 427 more cases compared to last year. Specifically:

- 1169 cases found to be complaints "within the jurisdiction and competence" of the PA;
- 367 cases reviewed ex officio by PA;
- 16 cases were found to be outside the competence of the PA institution during the assessment phase conducted by the cases' review team;
- 4712 requests which have been treated as advice and guidance on further legal steps to be taken by the complaining/requesting subjects for their cases to be handled.

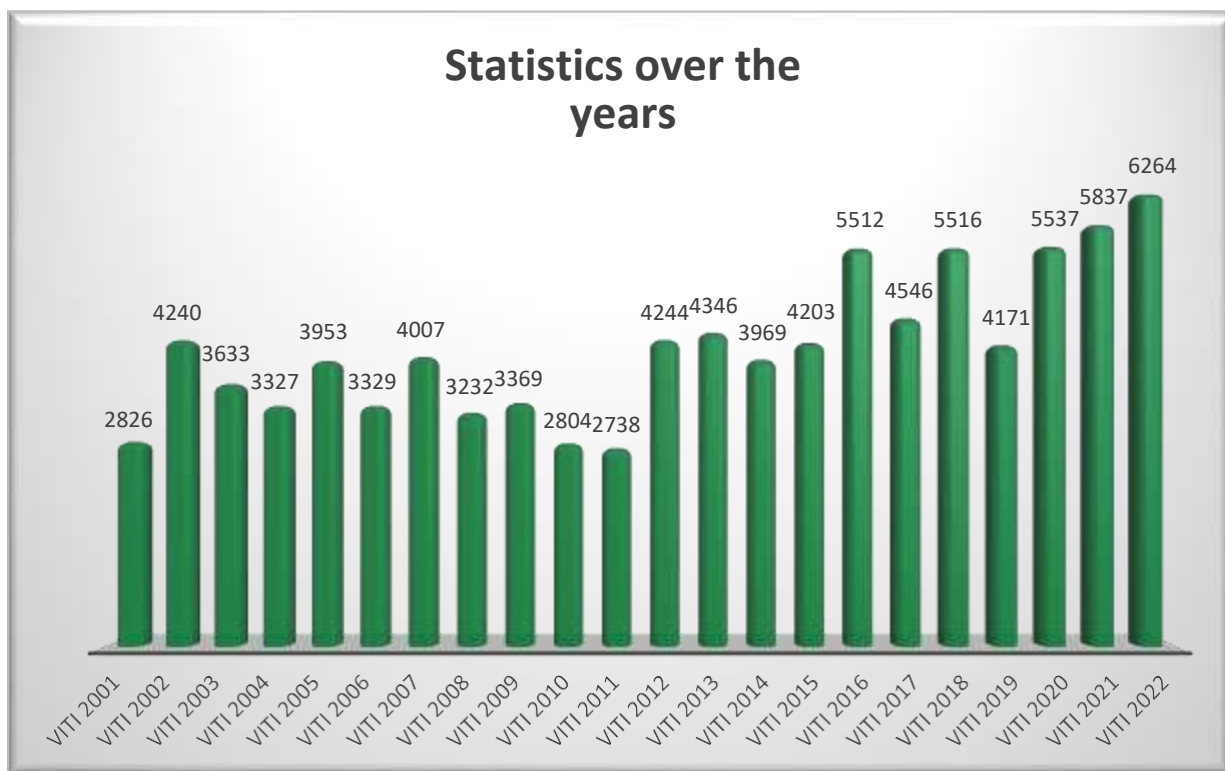


Graphic representation of cases filed and handled by PA and its 7 Regional Offices.

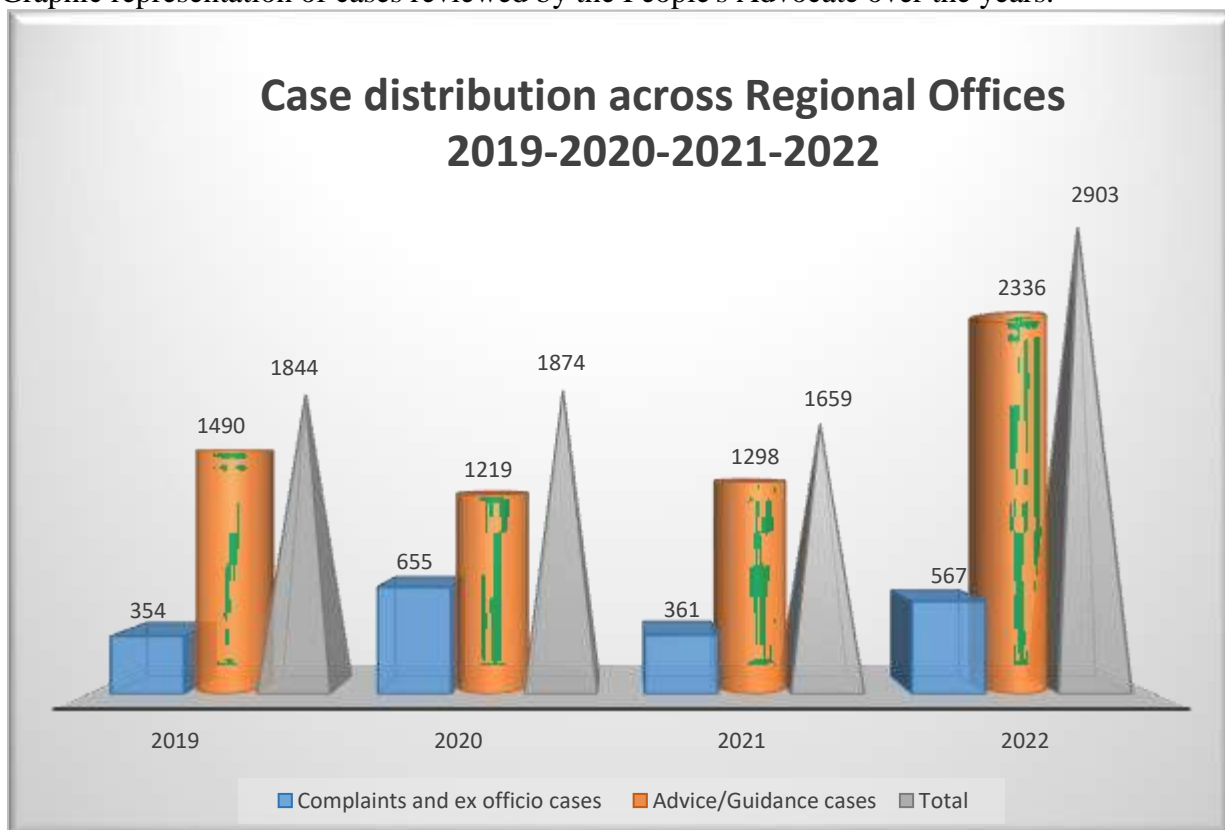


Graphic presentation of cases filed with the PA in 2022.

Compared to 2021, the People's Advocate dealt with 816 more cases or 14% more complaints concerning fundamental rights violations; making this year also the year with the highest number of cases ever filed.

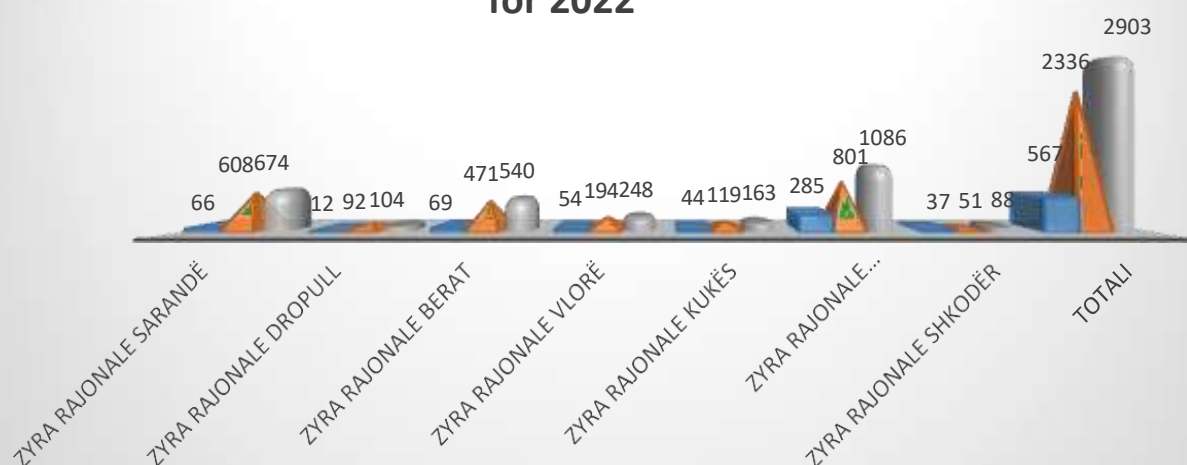


Graphic representation of cases reviewed by the People's Advocate over the years.



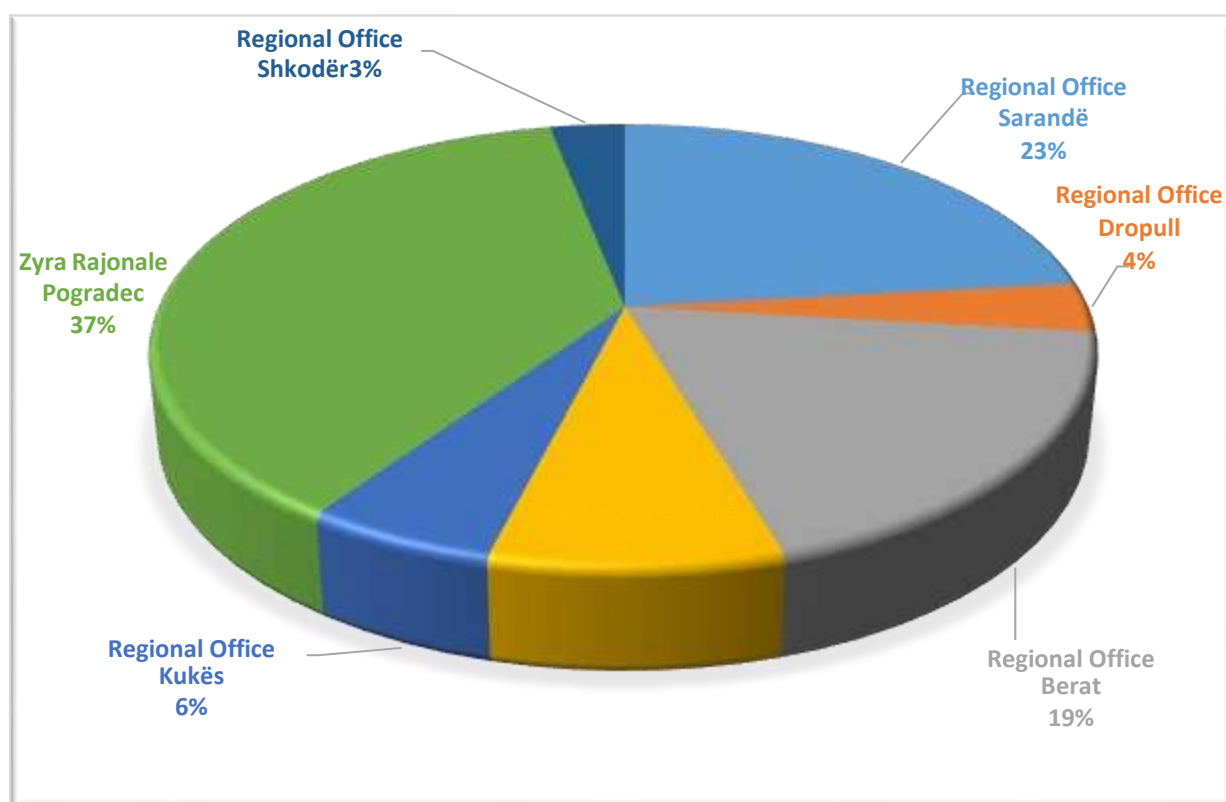
Graphic representation of official data related to regional offices for 2019-2022.

## Case distribution across Regional Offices for 2022

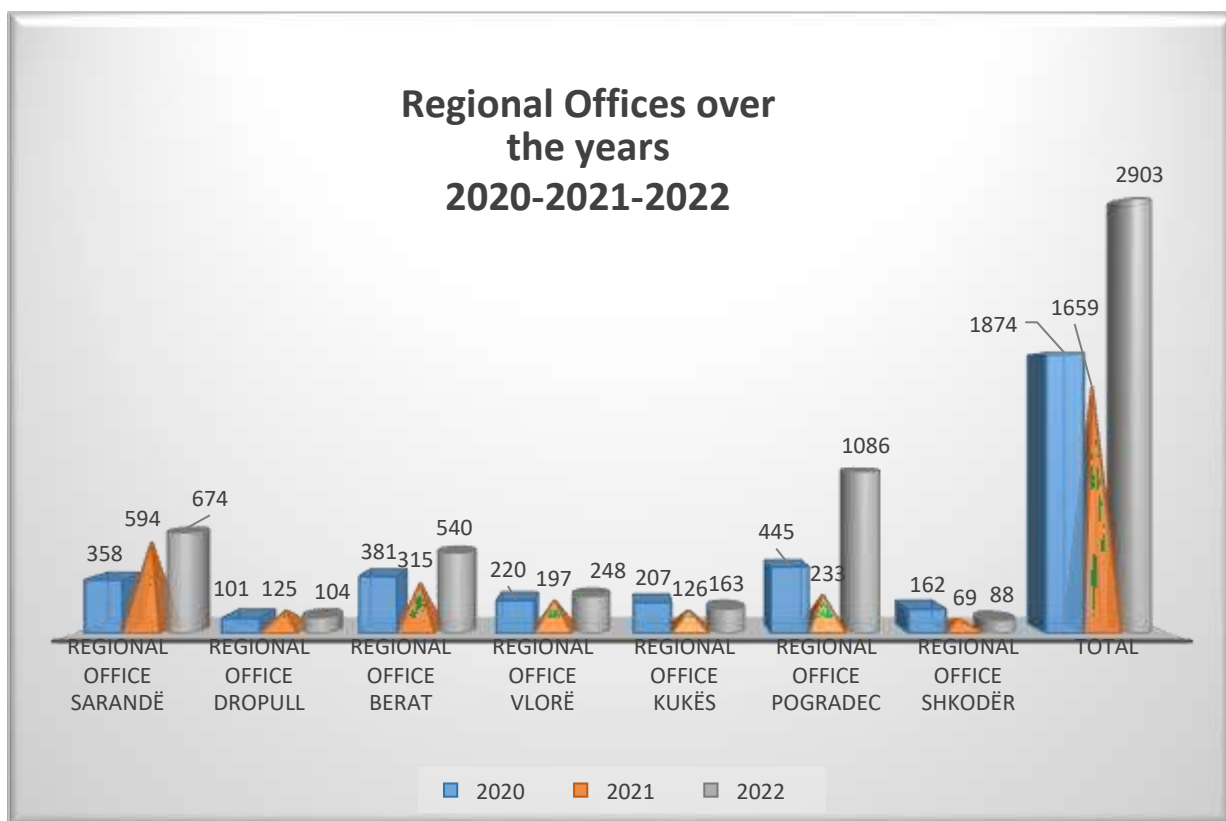


	Regional Office Sarandë	Regional Office Dropull	Regional Office Berat	Regional Office Vlorë	Regional Office Kukës	Regional Office Pogradec	Regional Office Shkodër	Total
Complaints	66	12	69	54	44	285	37	567
Advice/Guidance	608	92	471	194	119	801	51	2336
Total	674	104	540	248	163	1086	88	2903

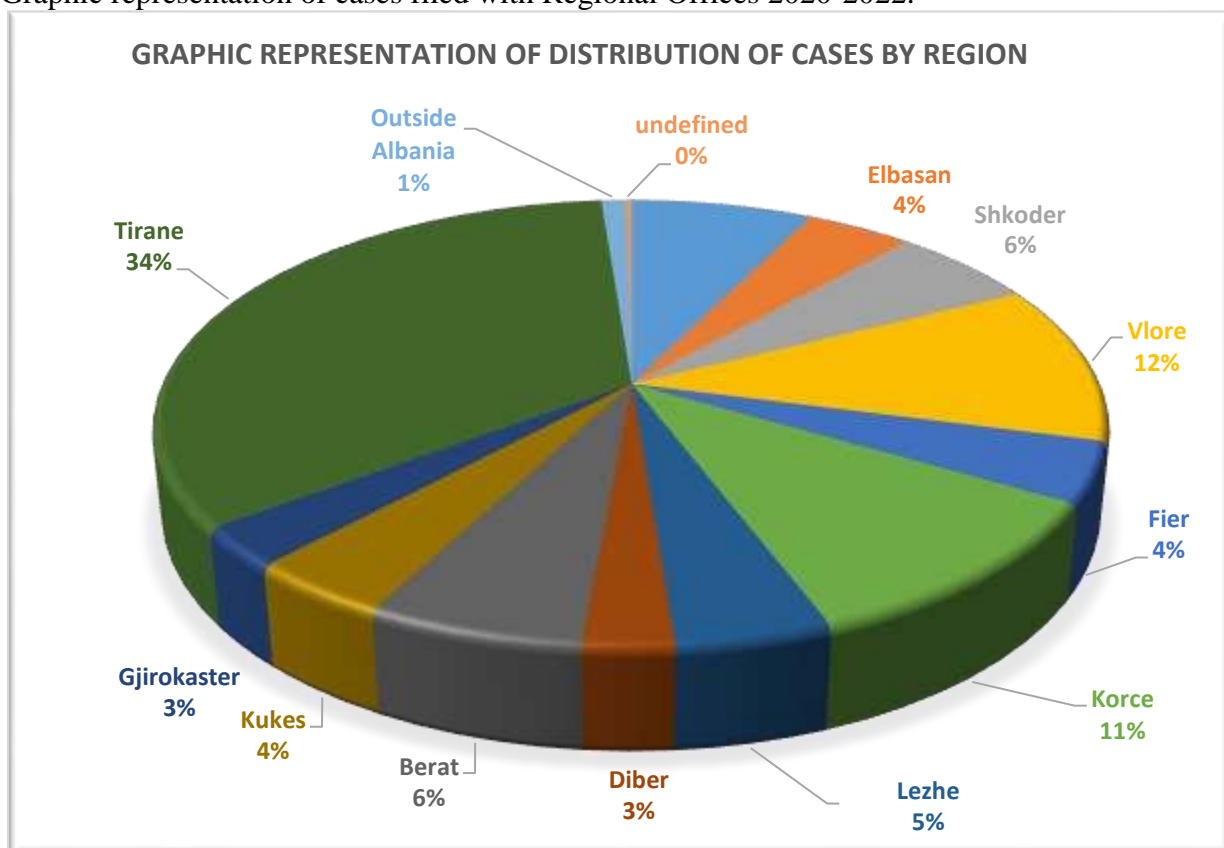
Graphic representation of distribution of cases based on regional offices for 2022.



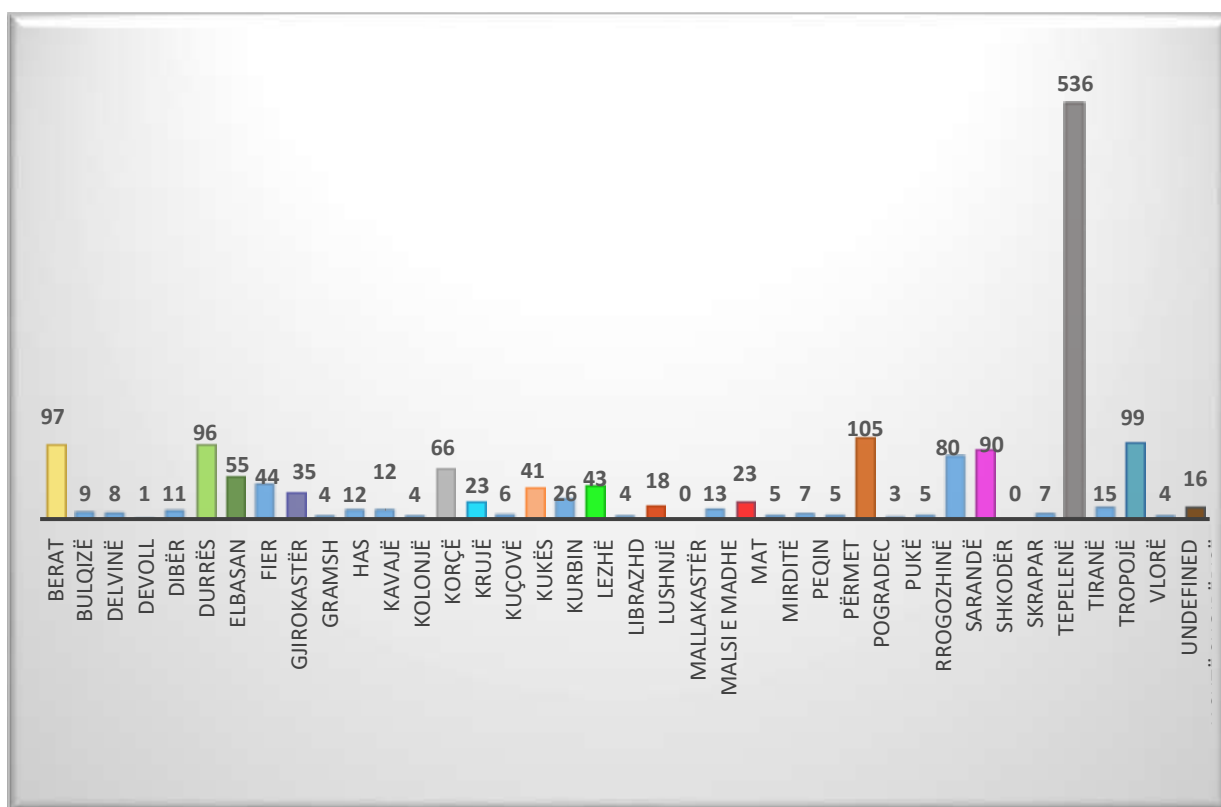
Graphic representation of cases filed with regional offices of the PA in percentage.



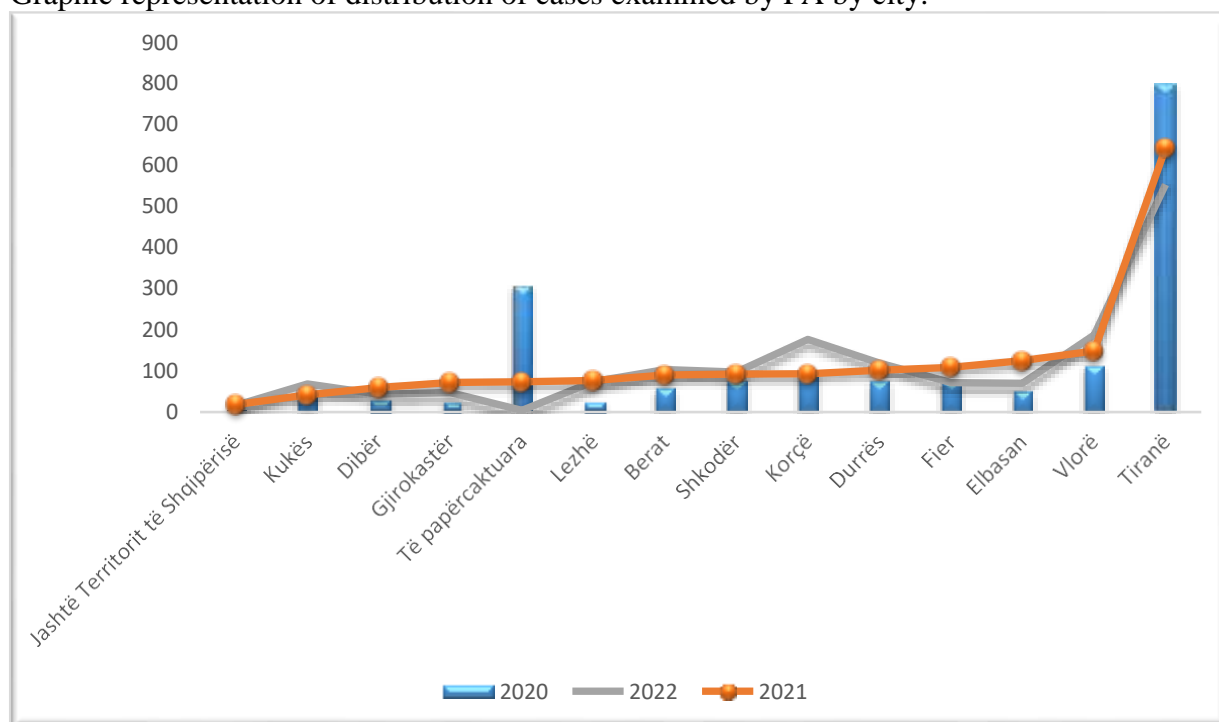
Graphic representation of cases filed with Regional Offices 2020-2022.



Graphic representation of distribution of cases examined by PA by region.



Graphic representation of distribution of cases examined by PA by city.

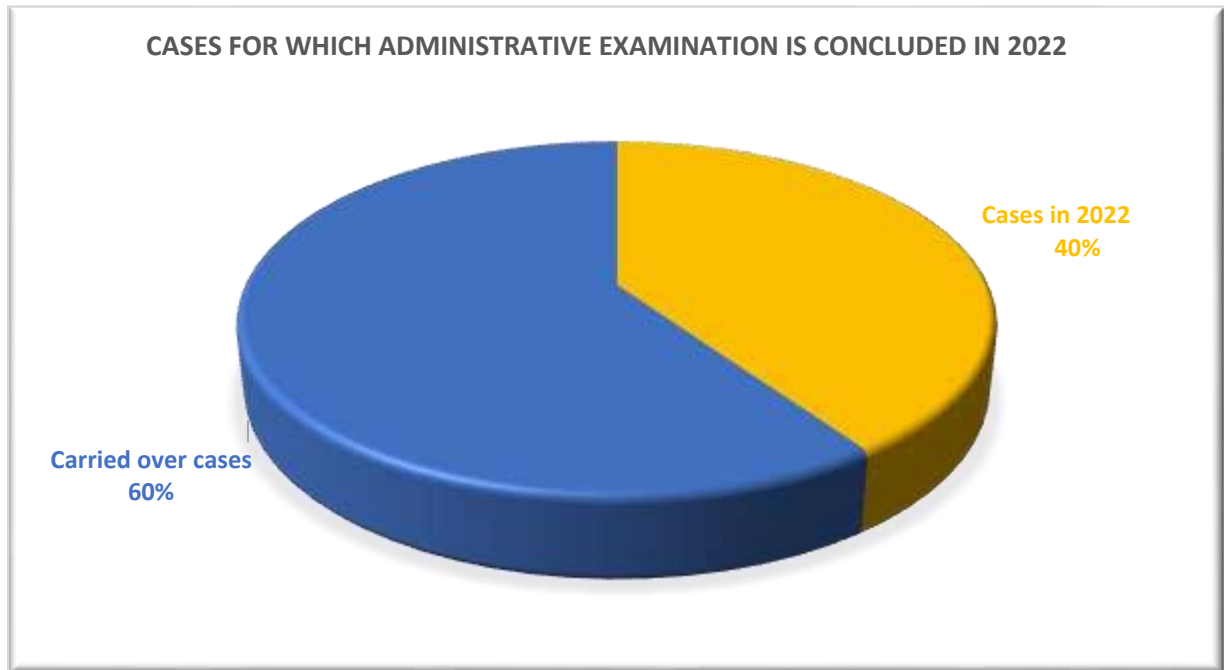


Graphic representation of distribution of cases reviewed by PA in 2020-2022, by city.

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In 2022, the People's Advocate's concluded administrative examination of 1826 cases of complaints of violation of people's fundamental rights. Out of these cases, 737, or 40%, were filed in 2022, while the remaining 1,089, or 60%, were filed in previous years.

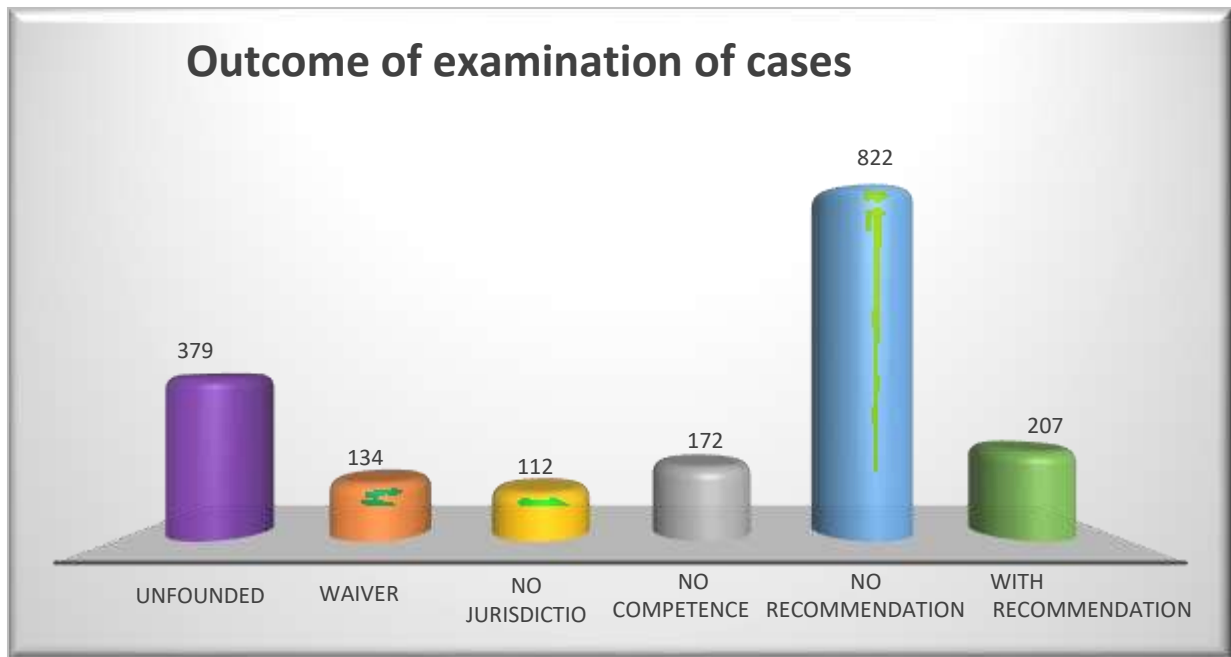




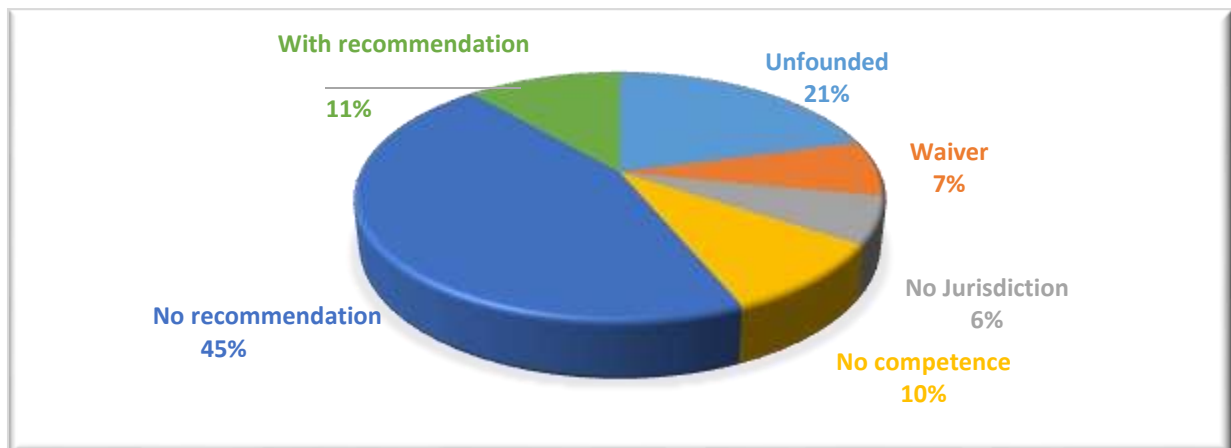
Graphic representation of cases for which administrative examination is concluded in 2022.

For these 1826 cases for which the administrative examination has been completed, it appears that:

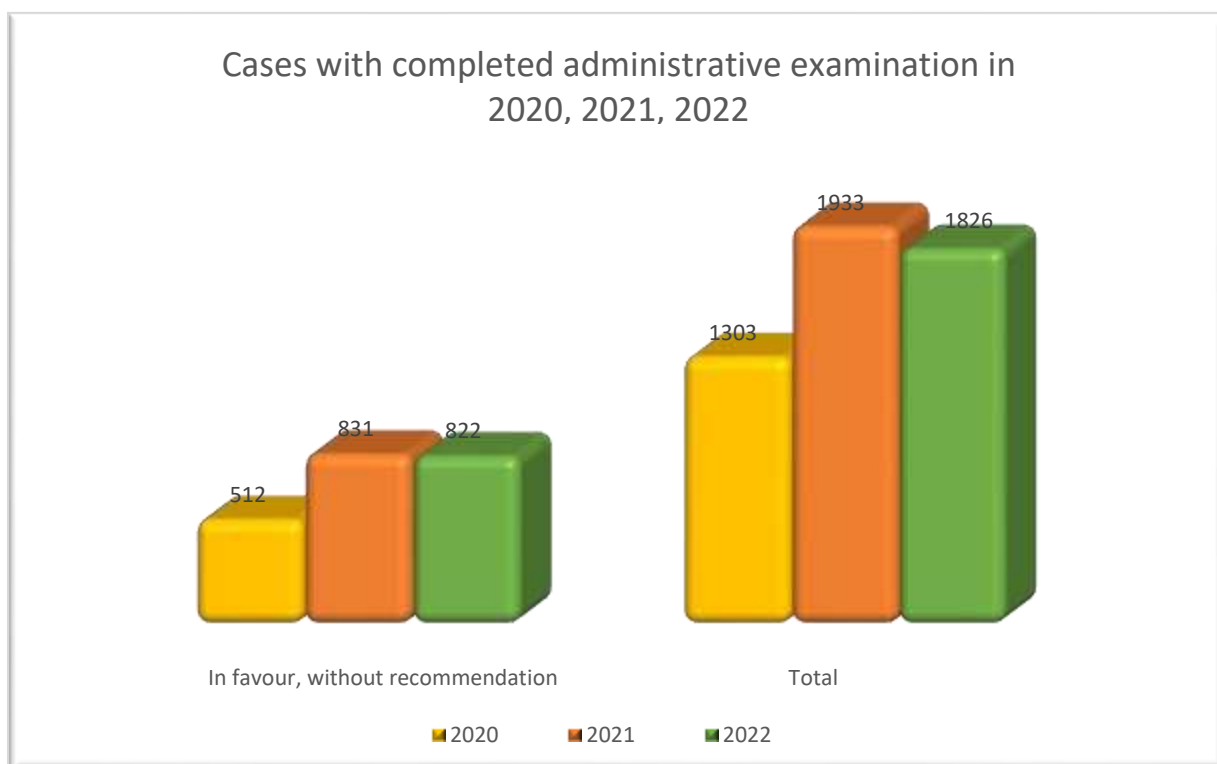
- In 822 cases, or 45%, the administrative examination was completed with a recommendation stating that the violations or problems found during the examination did not require action.
- In 379 cases, or 21%, the administrative examination was completed and the request was considered unfounded.
- In 207 cases, or 11%, the administrative examination was completed and the violations were dealt with by means of recommendations.
- In 134 cases, or 7%, the administrative examination was completed after the complainant waived the complaint.
- In 112 cases, or 6%, the administrative examination revealed cases outside the jurisdiction.
- In 172 cases, or 9% of the total, the administrative examination revealed that the case was not within the competence of the People's Advocate.



Graphic representation of the outcome of examination of cases.



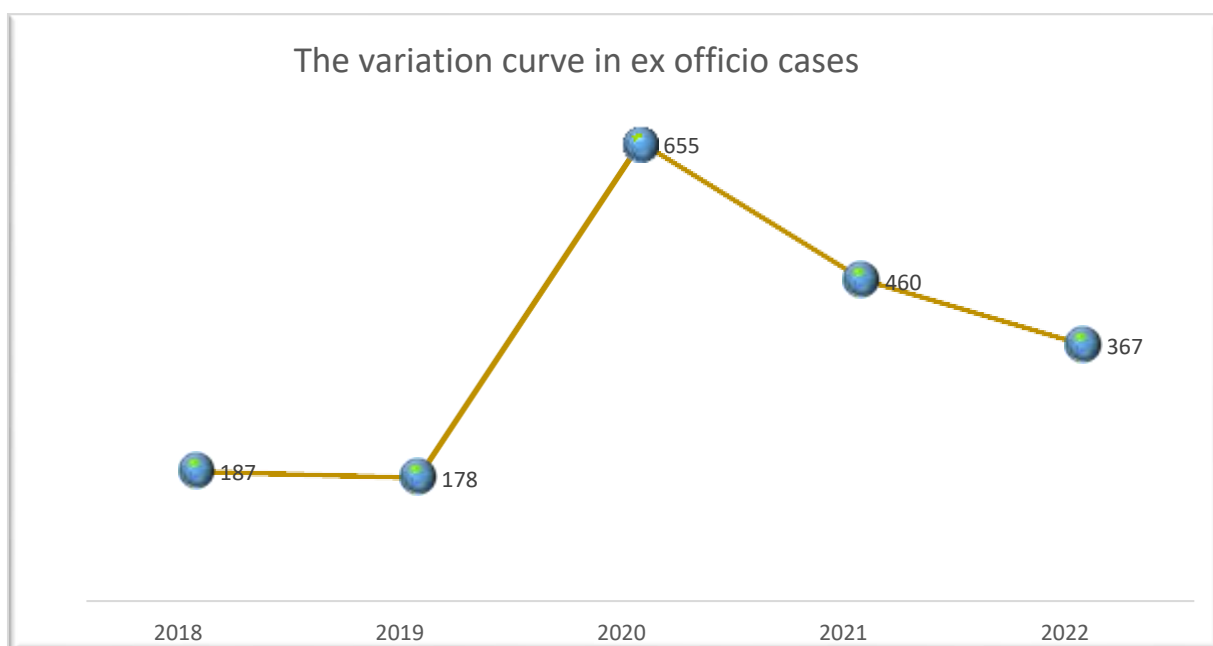
Graphic representation of the outcome of examination of cases in %.



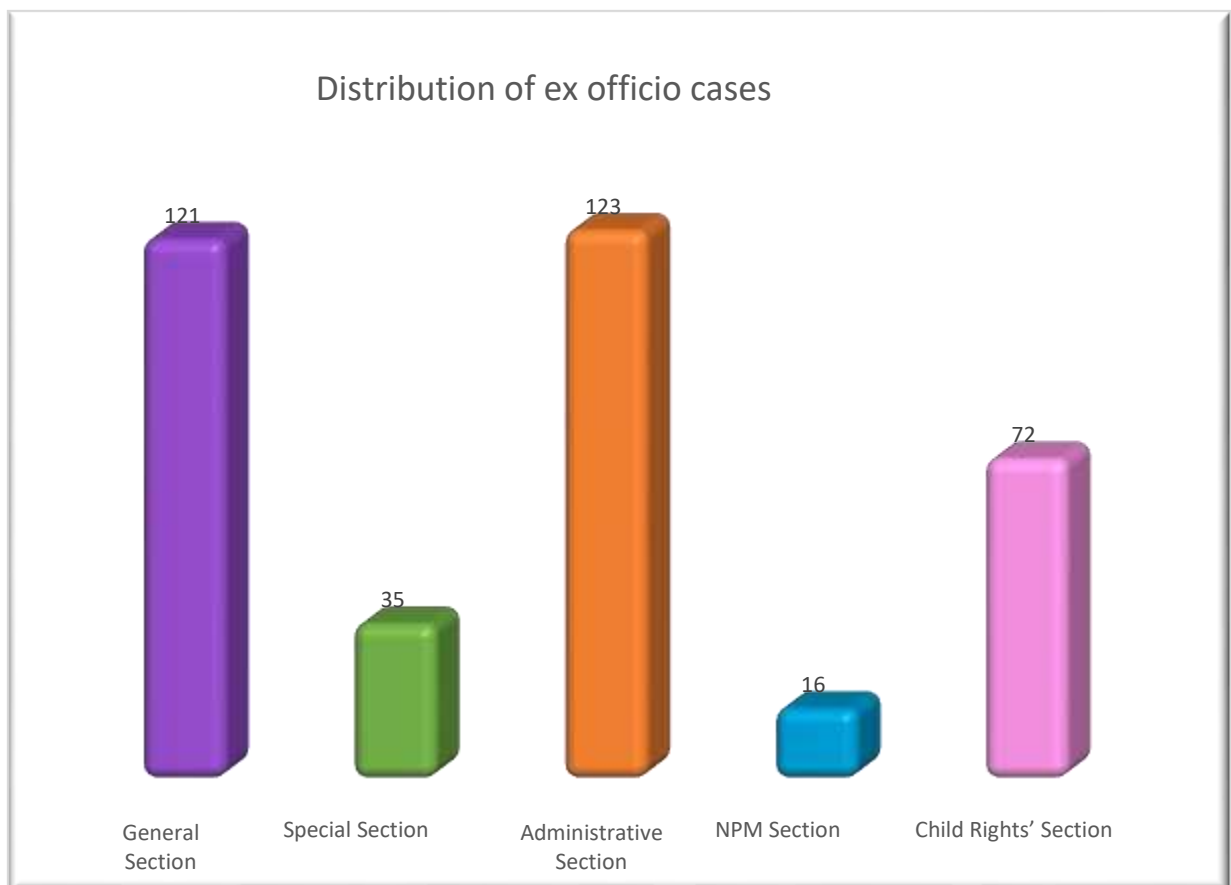
Graphic representation of the number of favourably resolved cases without the need for intervention with a recommendation in the years 2020, 2021 and 2022.

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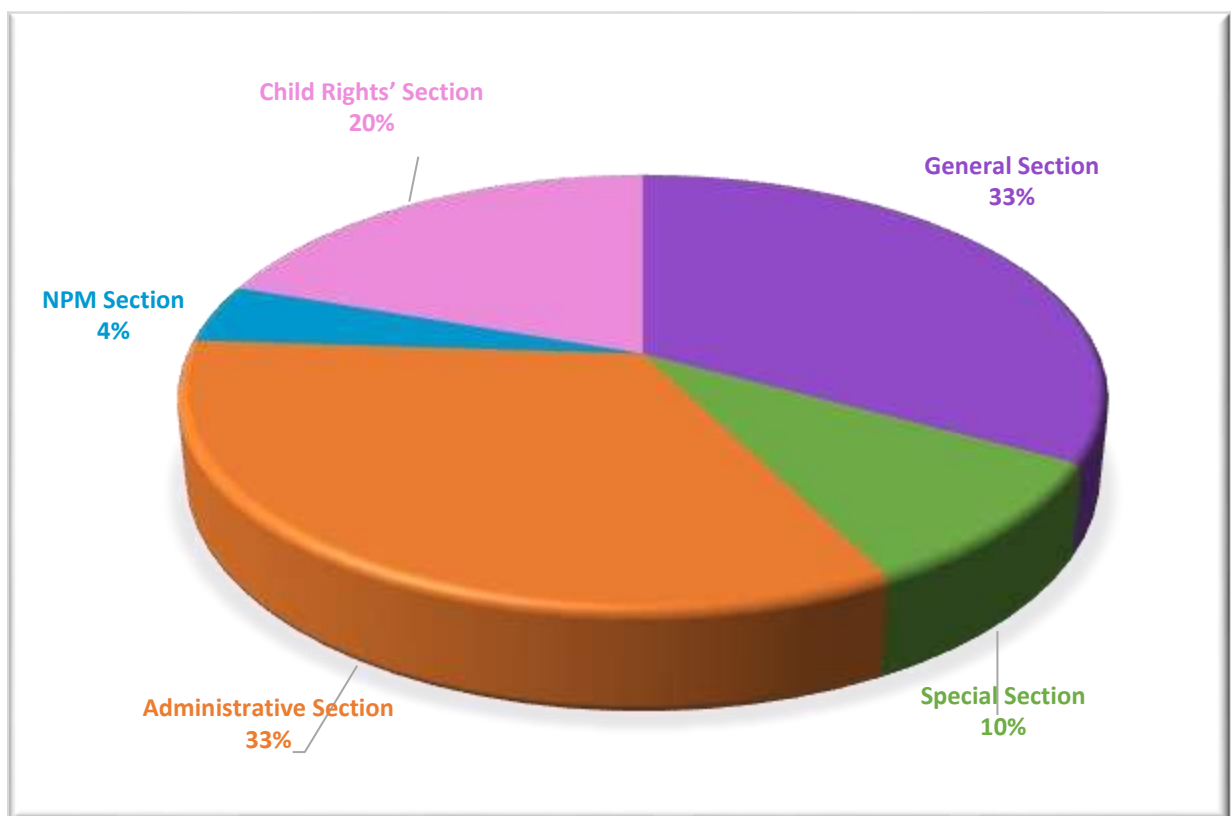
In 2022, the People's Advocate dealt ex officio with 367 cases of violation of human rights, based on indications from the media, investigative programmes, social networks, etc. 367 cases of violation of fundamental human rights.



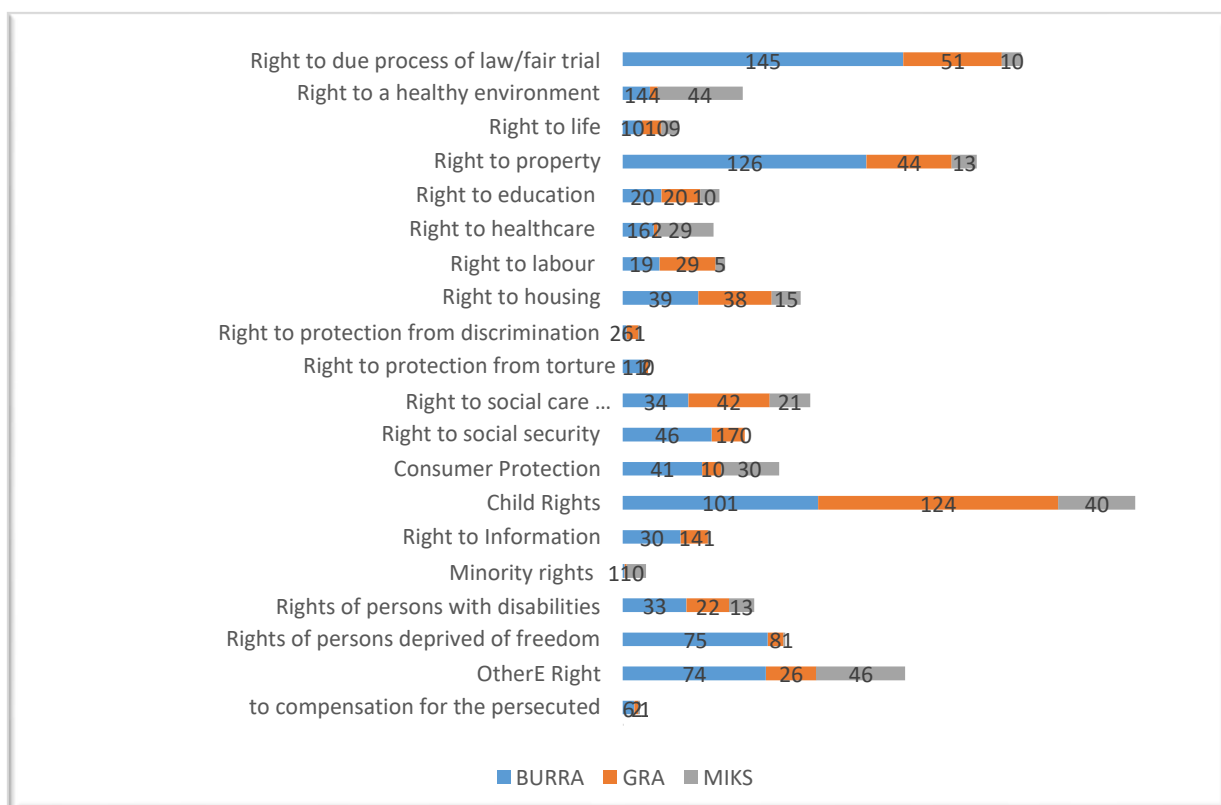
Graphic representation of the variation curve in ex officio cases 2018–2022.



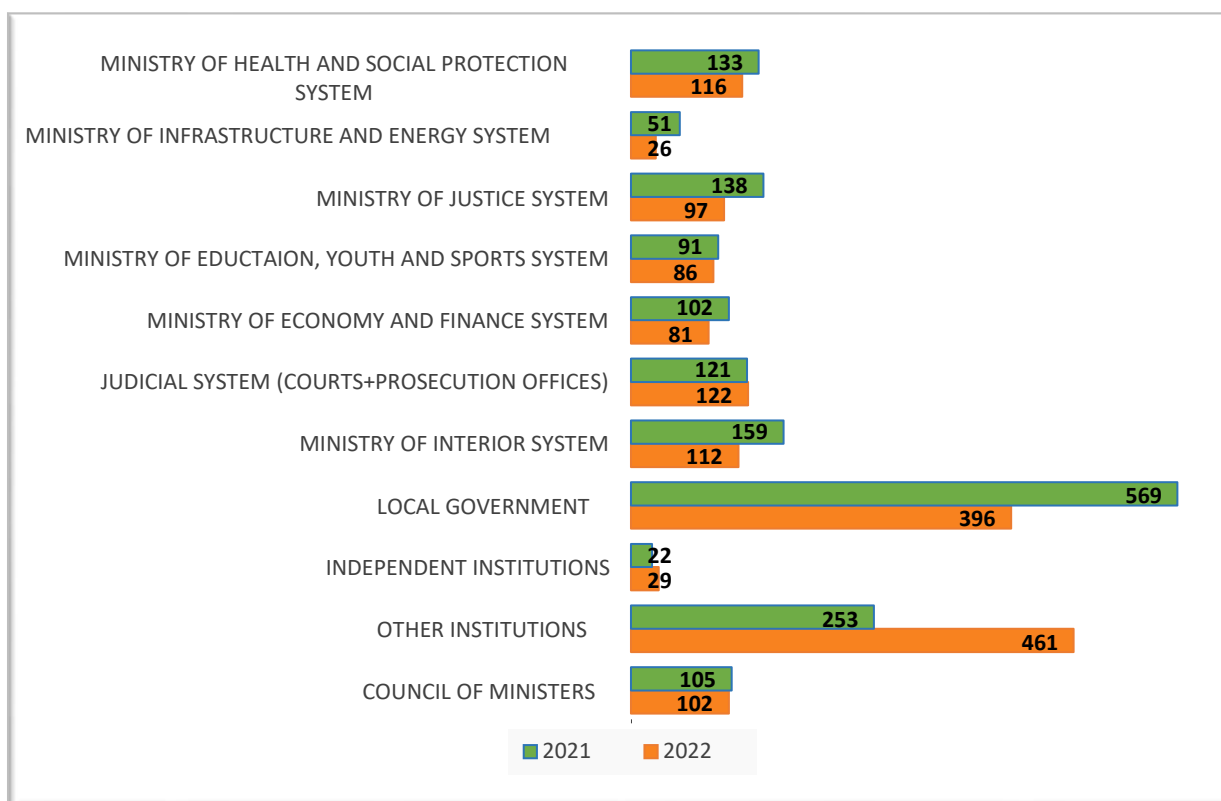
Graphic Representation of PA ex officio cases, by Section.



Graphic representation of cases reviewed ex officio expressed in % by PA sections.



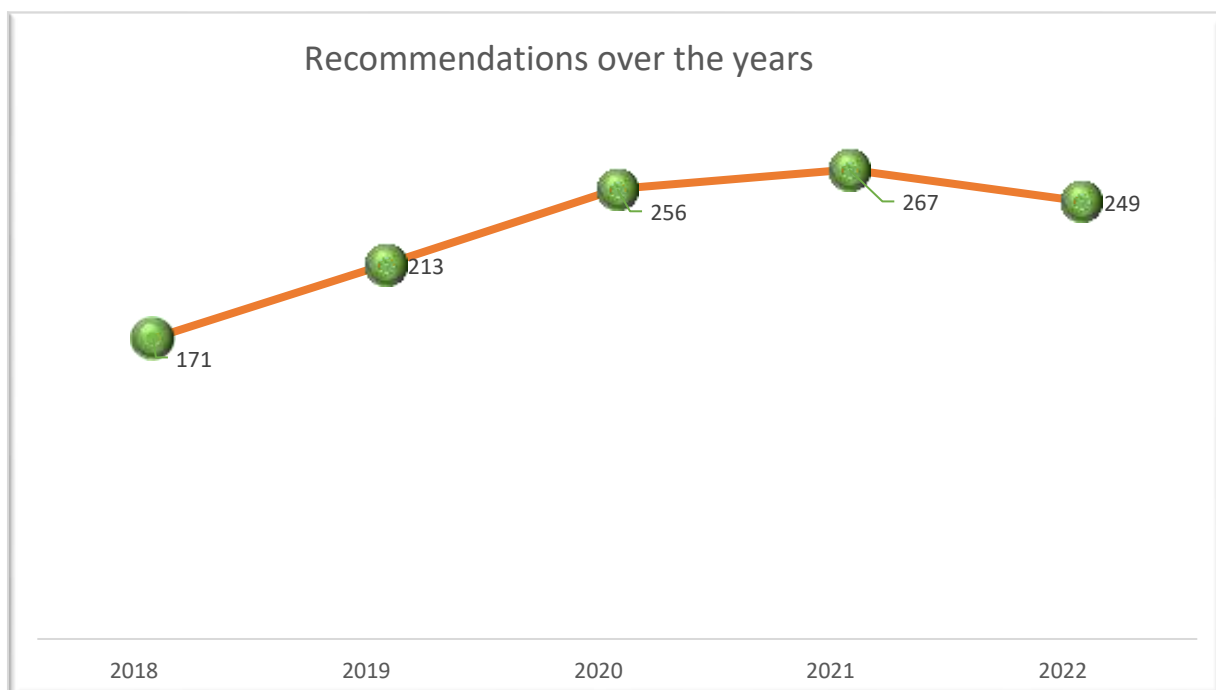
Graphic representation of the cases submitted to the People's Advocate for examination according to the alleged violation of the right.



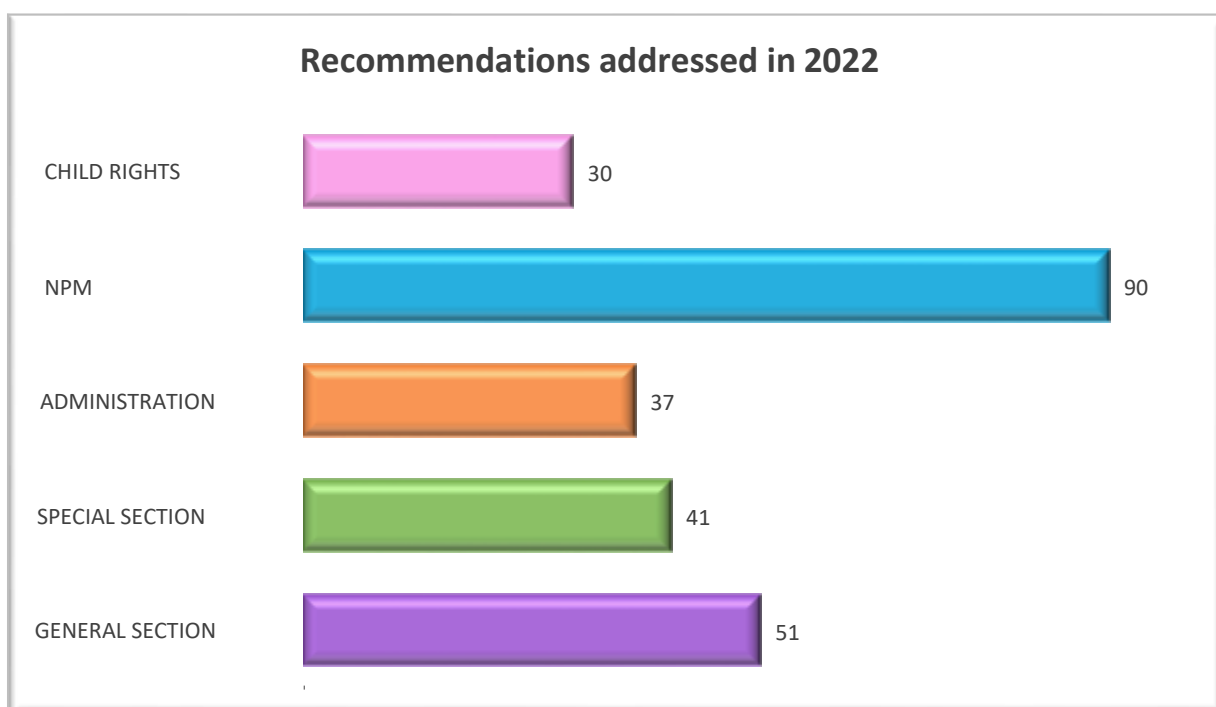
Graphic representation of the distribution of cases by institutions responsible for violations of citizens' rights.



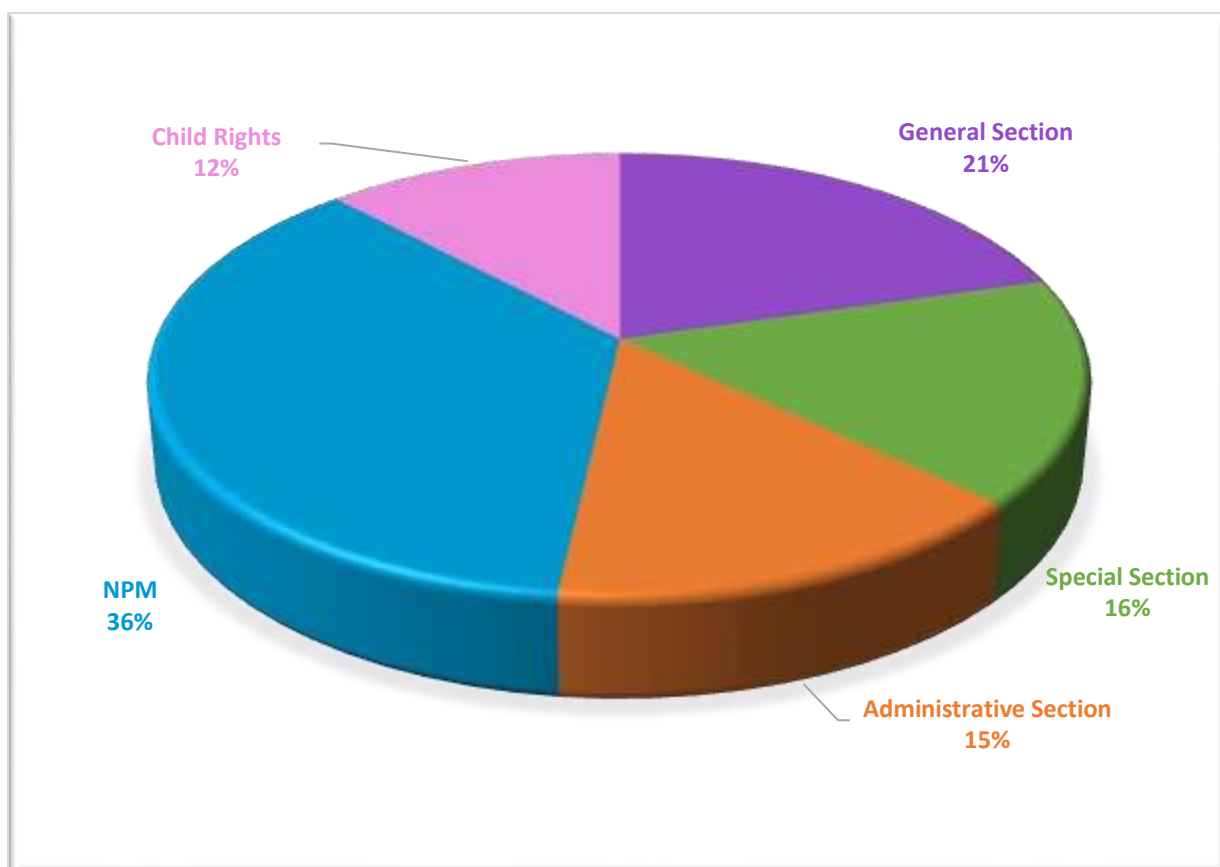
During 2022, the People's Advocacy presented 249 recommendations to public administration bodies, encompassing central and local government entities. These recommendations included 184 cases from 2022 and 65 from previous years.



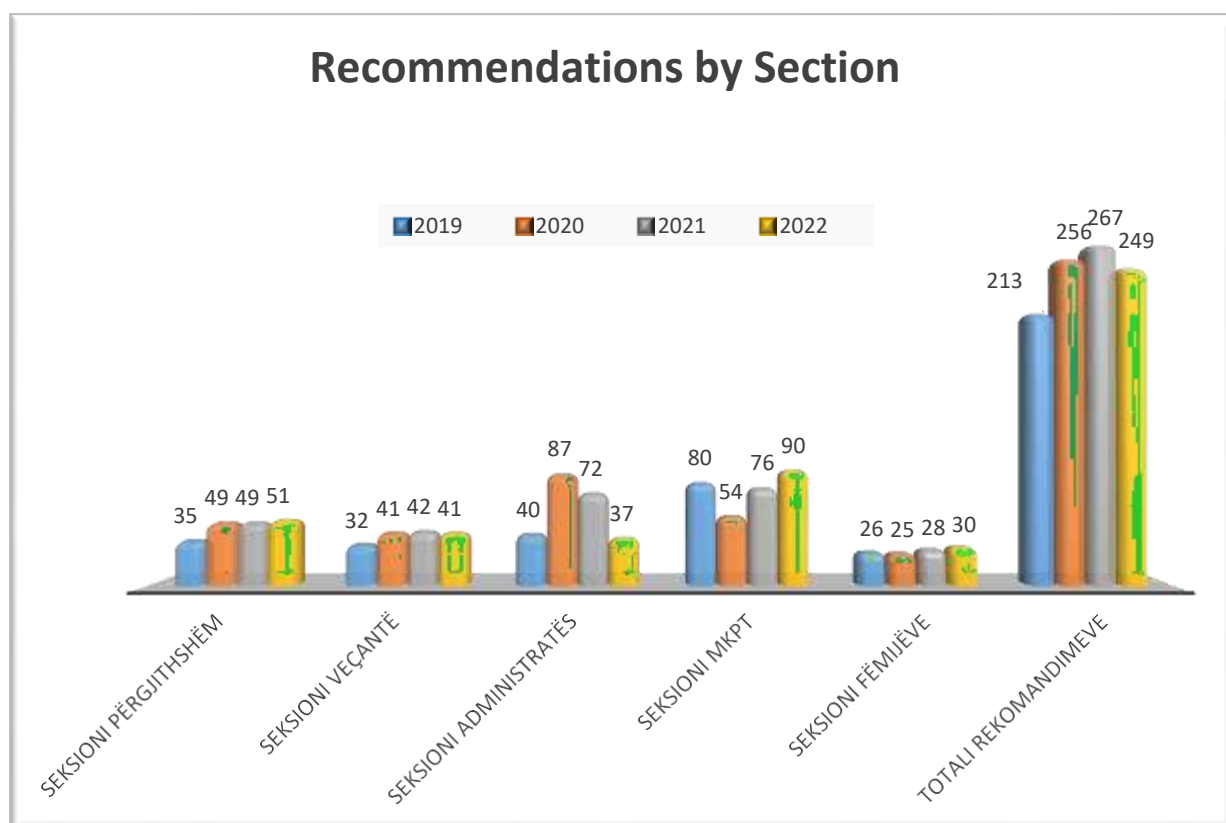
Graphic representation of the variation curve of the number of recommendations addressed by the institution of the PA over the years.



Graphic representation of recommendations addressed in 2022, by Section.

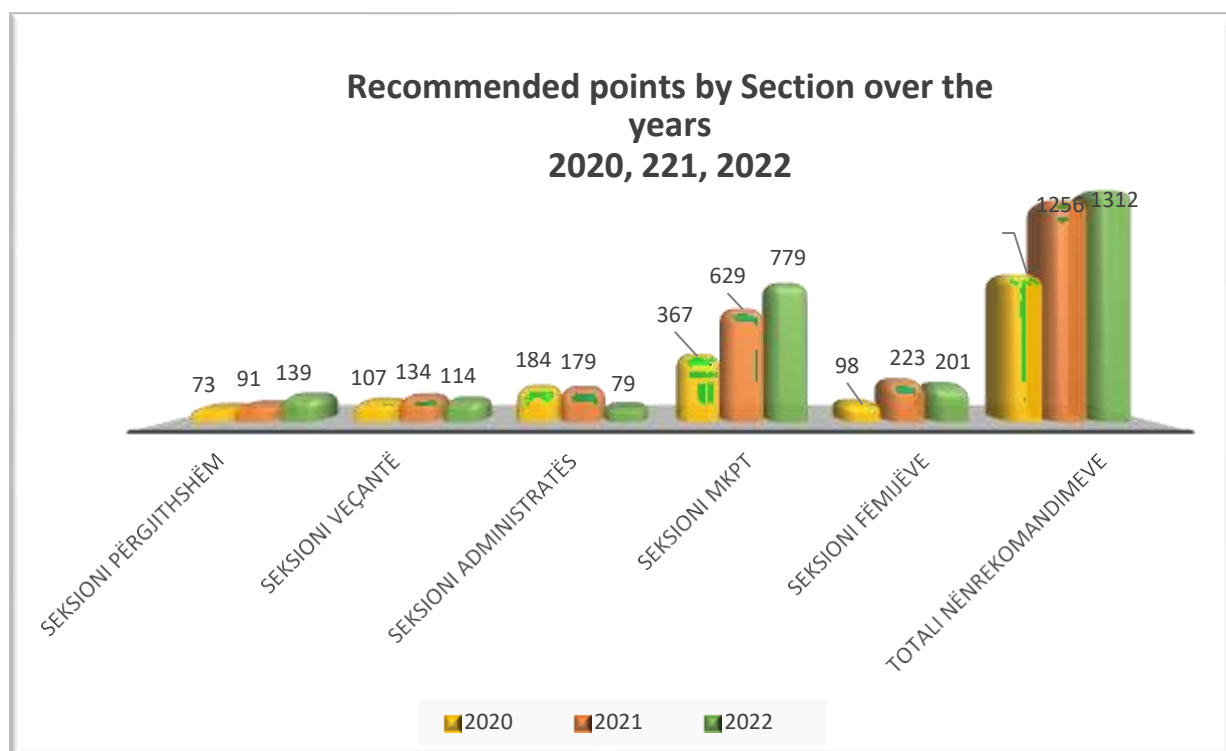


Graphic representation of addressed recommendations in % by PA sections.

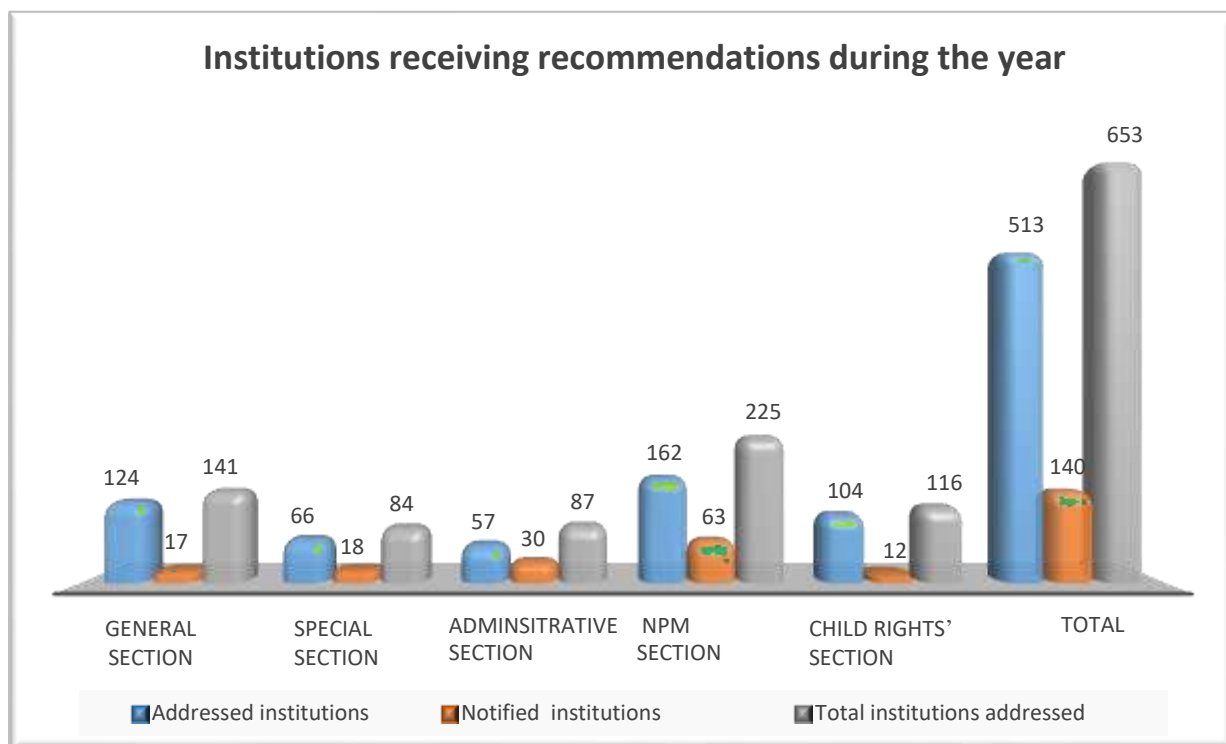


Graphic representation of the recommendations addressed by the sections over the years.

Out of 249 recommendations, the People's Advocate addressed a total of 1312 points (sub-recommendations). There was a 4% increase in the number of points addressed compared to 2021 and a 58% increase compared to 2020.

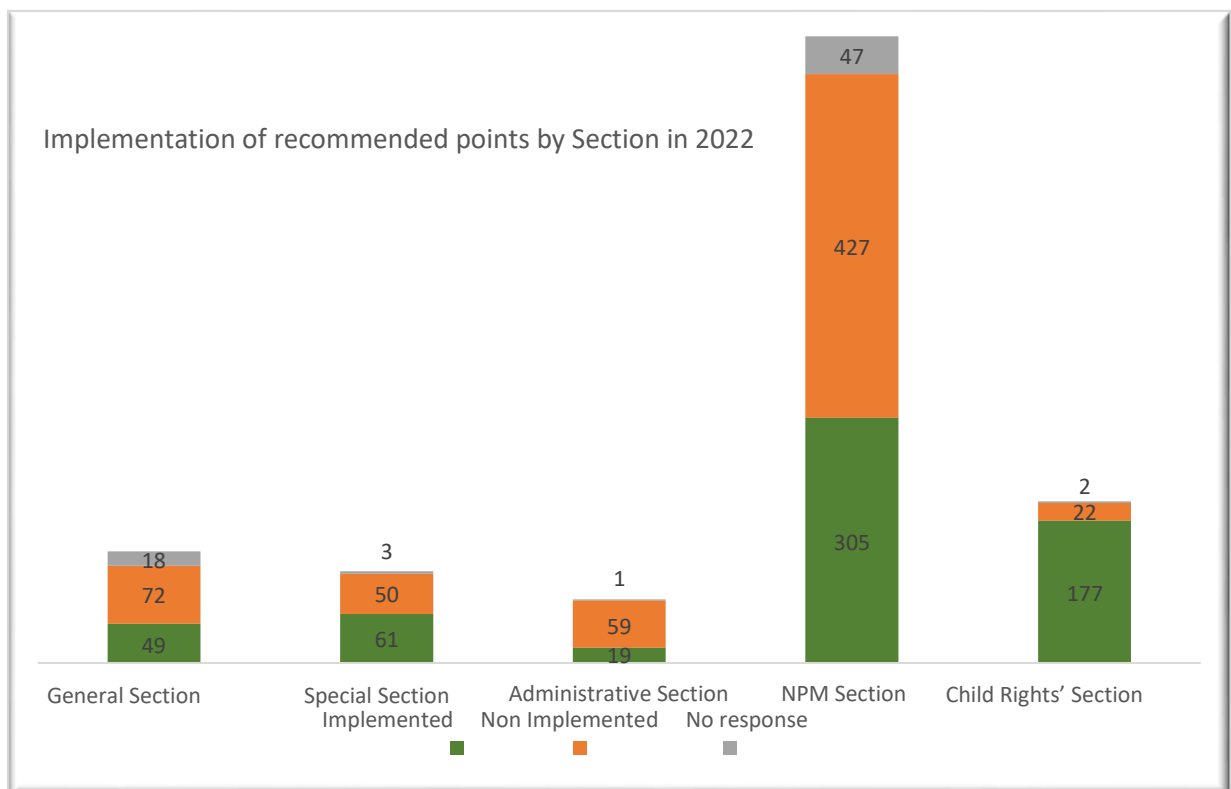


Graphic representation of the number of recommended points by section for 2020, 2021 and 2022.



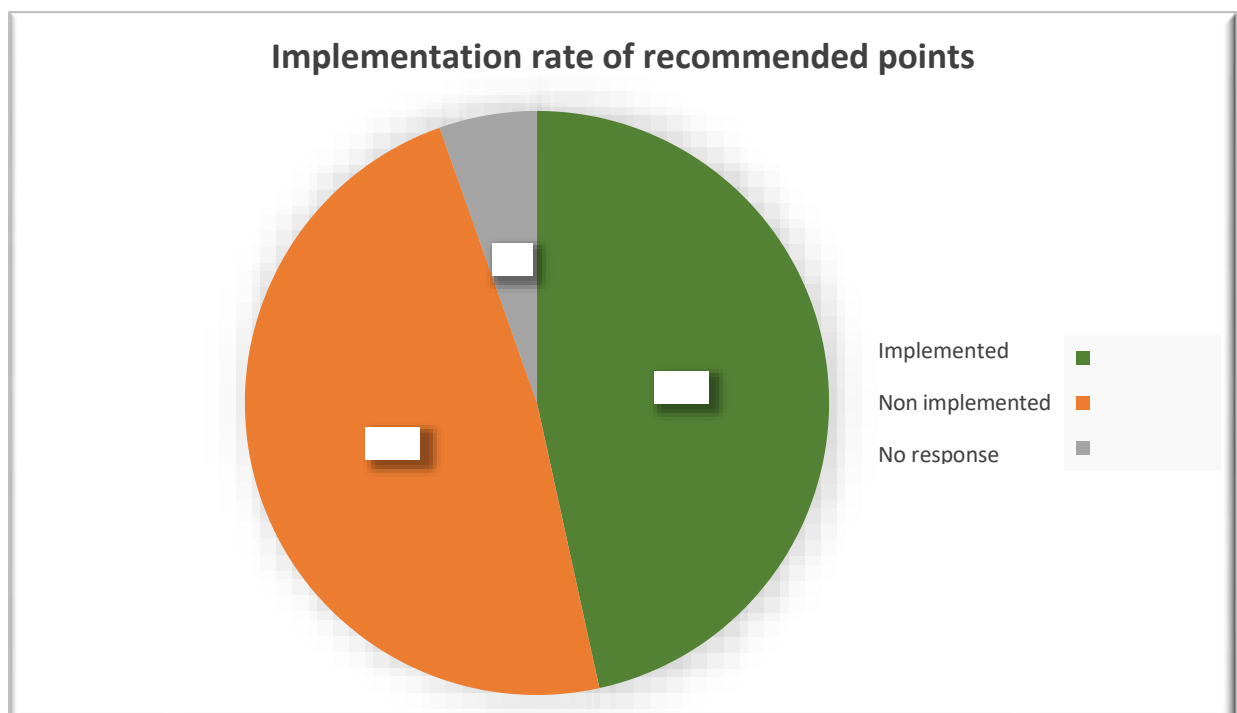
Graphic representation of the number of addressed and notified institutions by section.



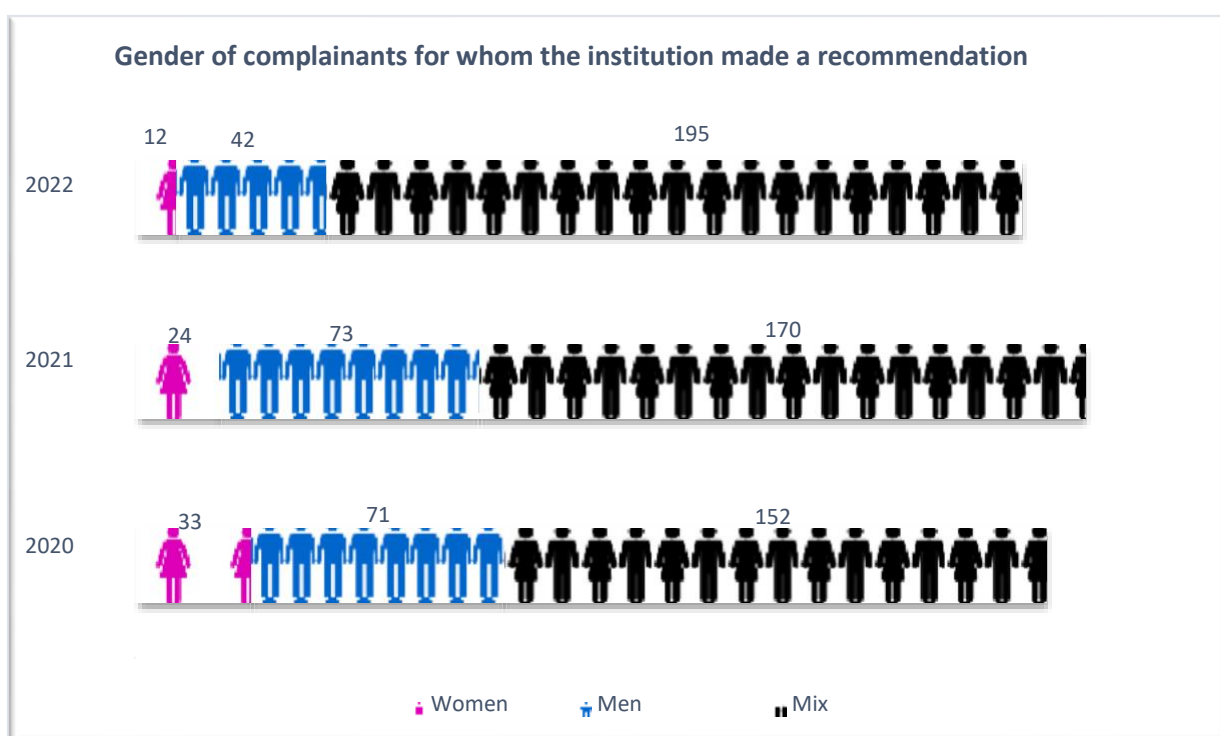


Graphic representation of the implementation of the points recommended by the 5 PA Sections during 2022.

As can be seen in the graphic below, of the 1,312 points recommended by the People's Advocate in the course of its 2022 mandate, only 47 per cent have been implemented by the recommended institutions, 48 per cent have not been implemented and 5 per cent have not yet received a response.

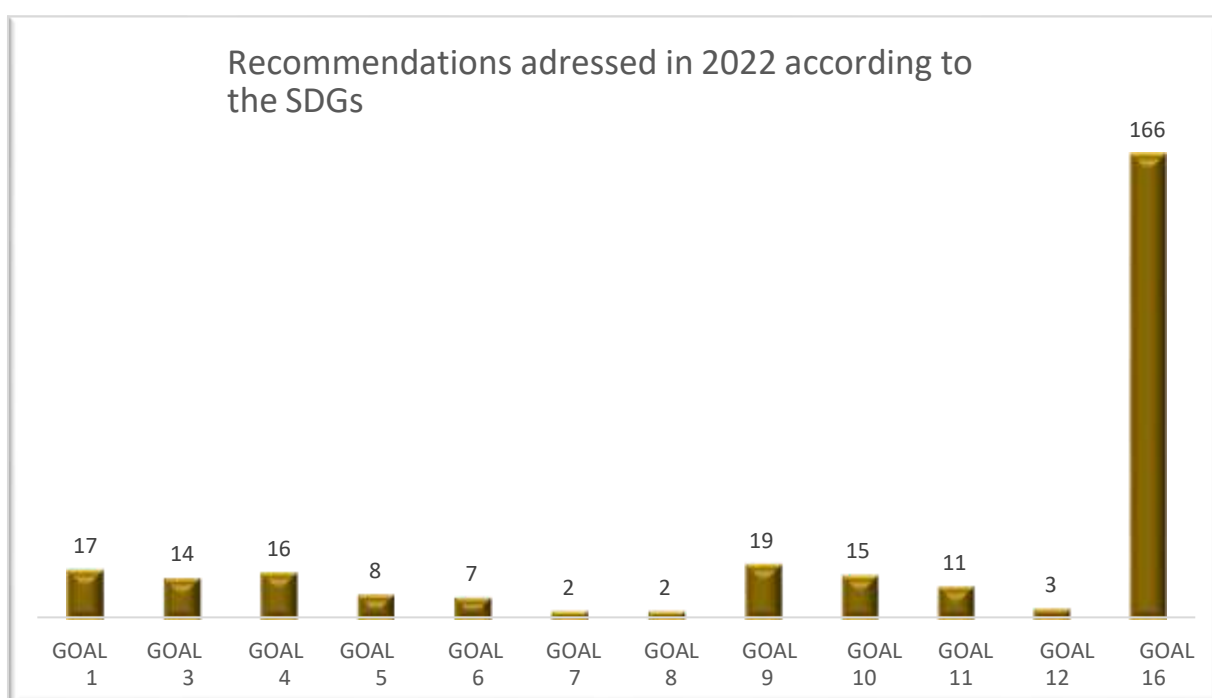


Graphic representation of implementation rate in % of recommended points for 2022.



Graphic representation of the recommendations addressed in 2020, 2021 and 2022 according to the gender of the complainant.

The distribution of the Ombudsman institution's recommendations based on the 17 Sustainable Development Goals (SDGs) approved by the UN General Assembly in 2015<sup>204</sup> is presented as follows:



Graphic representation of recommendations by the Sustainable Development Goals.

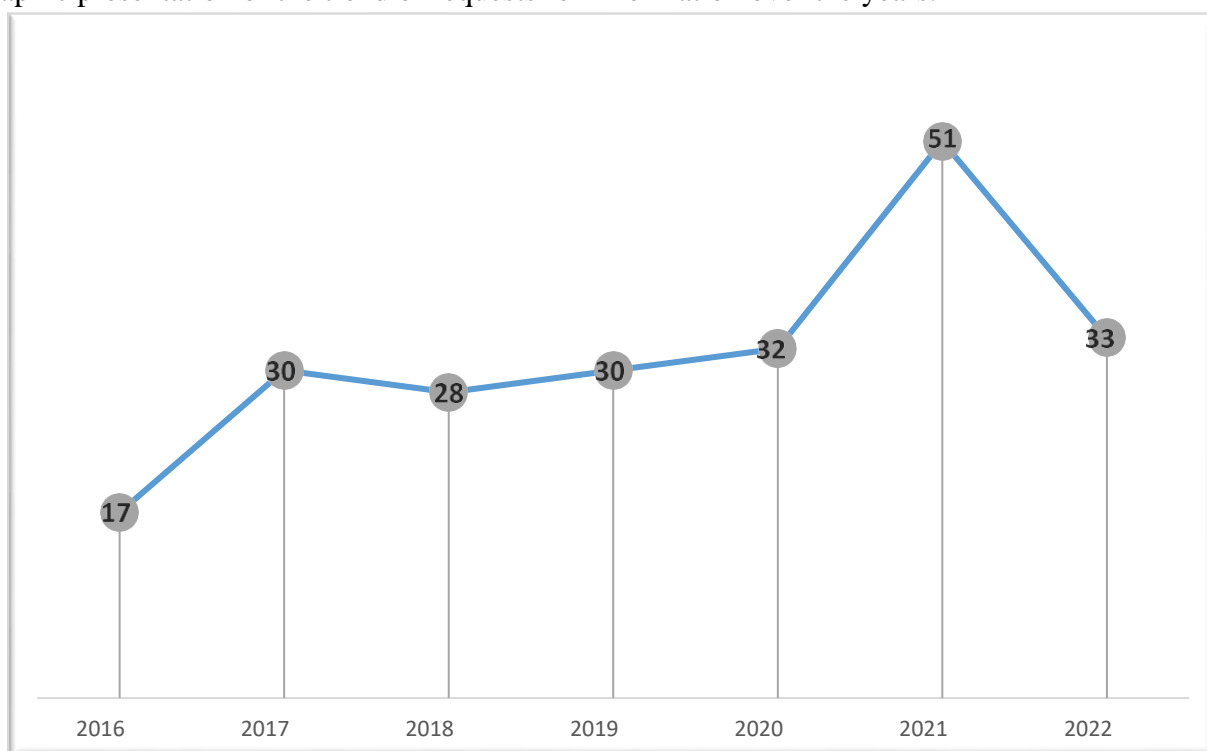
<sup>204</sup> For more information, read SDG.



During the year 2022, a total of 34 requests for information were registered with the People's Advocate's, pursuant to Law No. 119/2014 "On the Right to Information".

All requests are received and answered according to the subject matter, ensuring the restriction of personal data according to current legislation. The average response time for information requests is 6 calendar days. From the total number of information requests registered during 2022, it appears that 23 of them were made by citizens, 1 by the Tirana lawyer's office, 6 by civil society organisations and 4 by the media. Of the total subject of requests for copies of documentation, 4 of them had requests for copies of documentation, 22 of them requests for information and 8 of them requests for information and documentation.

Graphic presentation of the trend of requests for information over the years.



**Annex 1 – Capacity of the Penitentiary System**

<b>No.</b>	<b>Penitentiary Institution</b>	<b>Inspection Day</b>	<b>Official Capacity of PI</b>	<b>No. of prisoners on inspection day</b>	<b>No. of pre-detainees</b>	<b>Over capacity</b>
1	PI Tepelenë	11.05.2022	75 persons	113	112	37 persons
2	PI Elbasan	13.06.2022	165 persons	155	155	-
3	PI Peqin	27.06.2022	685 persons	486	160	-
4	PI Durrës	10.11.2022	300 persons	295	233	-
5	PI Kukës	29.09.2022	36 persons	36	36	-
6	PI Tropojë	19.05.2022	26 persons	20	11	-
7	PI 302	23.05.2022	170 persons	175	170	-
8	PI Fushë-Krujë	26.05.2022	312 persons	397	328	85
9	Juvenile Institute Kavajë	09.12.2021	40 persons	18	17	-
10	PI Korçë	07.03.2022	312 persons	441	241	137
11	PI Berat	28.01.2022	112 persons	143	109	31
12	PI Lushnjë	03.11.2022	185 persons	155	-	-
13	PI Fier	09.11.2022	870 persons	823	255	-
14	PI Reç	14.09.2022	781 persons	603	228	-
15	PI Rrogozhinë	24.02.2022	343 persons	300	-	-
16	Special Health Institute of Prisoners	07.10.2022	100 persons	63	23	-
17	PI 325	03.11.2021	114 persons	78	43	-

18	PI Jordan Misja (313)	29.06.2022	500 persons	451	440	-
19	PI Burrel	21.09.2022	196 persons	177	84	-
20	PI Kukës	29.09.2022	36 persons	36	36	-
21	PI Lezhë	17.02.2022	184 persons	341	-	157
22	PI Sarandë	01.09.2022	36 persons	43	43	7
23	PI Vlorë	12.10.2022	156 persons	164	164	8
<b>TOTAL</b>		<b>Year 2022</b>	<b>5734 persons</b>	<b>5513</b>	<b>2888</b>	<b>462 over capacity</b>

**Note:** In 7 penitentiary institutions there are **462 persons more than the official capacity defined for these penitentiary institutions.**

Given that the number of prisoners exceeds the official capacity, the Directorate General of Prisons must take measures to redistribute the prisoners proportionately, while respecting the minimum space standards and using the capacity of the facilities, in order to avoid overcrowding, particularly in the areas of detention.

Free beds in PIs - **221**.