



***ANNUAL REPORT
ON THE ACTIVITY OF PEOPLE'S
ADVOCATE
2021***



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Foreword by the People's Advocate

Here we come again at the time of publication of this Annual Report of the People's Advocate after another tough year that put many to the test. Saying that the global Covid-19 pandemic has simply transformed the way we live, work and interact would be an understatement.

Among the many things that the pandemic has imposed on us in these difficult times is our focus. The immediate and permanent crisis seems to dictate to us, among other things, the social ability to identify major issues of tomorrow and, in the midst of today's emergency, paralyze our planning activity for the future.

The issue I would like to draw your attention to for this report is climate change. Yes. It is true: we are in a time of wars, such as the war in Ukraine, or the one with the global pandemic that threatens the lives of many. These, however, are nothing compared to the real danger that comes from climate change. They are a direct consequence of our inability to stop the aggressiveness of industrialization for the sake of consumerism, massive deforestation, unstoppable pollution, barbaric exploitation of water and land reserves, entire concrete cities, and a thousand more other destructive things that we, the people of today's world, are doing to our common home, the only one we have for today and forever: the Earth.

To many people here in our Albania of major and daily concerns, the environmental issue can sound like snobbism at best, and ridiculous at worst.

Albania, however, is not a planet or satellite separate from Earth. We do not have the luxury of leaving any issues in the shadows as we need a frontal walk forward to achieve the objective of making Albania a place where future generations can see the environment where they want to live not only from the point of view of political freedoms, the state of law, or economic and social freedoms, but also from the environmental perspective.

There was certainly a reason for children and their rights, including those for a better future, being recently integrated into the new 5-year Strategy of the Council of Europe for the Rights of the Child.

Albania, which we will leave behind for those we claim to sacrifice everything, is today a country where we would not want to send even our fiercest enemy on exile. Unless we all stop doing everything we are doing right now, and start a radical change in our way of thinking and acting with the environment in our focus, what we will leave behind is going to be only an unliveable desert.

The global crisis related to climate change, environmental degradation, biodiversity loss and pollution, violates countless human rights daily and threatens the effective enjoyment of human rights for future generations. As recognized by the United Nations Human Rights Council in October of this year, "everyone, in every country, has the right to live in a safe, clean, healthy and sustainable environment" .

The recognition of this human right is a historical progress and gives hope for the future of the planet. The right to a healthy environment, including a safe and sustainable climate, is itself a human right and the basis for a wide range of other human rights, such as the right to life, health, food, shelter, water and the principle of self-determination. Without them, our survival is at risk.

We, as human rights institutions, must play our part in this fight. Of course, our perspective is carried out through the lens of human rights and the creation of a necessary synergy with civil society organizations to advance environmental rights issues. We must understand this role. We need to study every element of our joint revitalizing action, propose the necessary constitutional or legal changes, or interpret our constitution as a living mechanism which encapsulates the essence of the meaning of human dignity which can never be a rigid concept without radiation.

RESPONSIBILITY FOR THE FUTURE is actually the first declarative sentence we have in the preamble of our constitution. Giving life to this statement needs to become, today more than ever, the way of being for every policy maker and opinion maker!

Albania, our country, has its share in this global effort. Environmental issues are still a periphery of our political and decision-making attention. I believe that it is now time to say that given the very importance and emergency of the situation, it is unacceptable that environmental problems are considered simply as "the work of the Ministry of the Environment", and that this work is limited to a pale political hat that has almost no real impact on how this country develops, how the economy grows, how education is shaped, how industry or services perform, and so on.

The healthy and ecologically appropriate environment for present and future generations can no longer be a social objective, but a fundamental right of the individual. Guarantees regarding the environment cannot remain at the level of a right to more information given the level of progress and consciousness we have. Article 56 of the Constitution of the Republic of Albania clearly provides: everyone has the right to be informed about the state of the environment and its protection.

Throughout these five years of intense work surrounded or rather, immersed in human rights issues, however, I increasingly felt the insufficiency of the rights provided in our constitution to respond to the emerging needs and phenomena that are continuously being outlined in this area.

We need to address new rights, and give them the power and values they deserve, such as environmental rights, but also cultural heritage rights or even the recognition of the obligation of every administration to administer the country well as a human right too. The European Charter of Human Rights represents a document with more complete rights. This is why the People's Advocate thinks that time has come for this issue to be part of the discussions of civil society and further, of constitutional experts, so that we can prepare our entry into Europe by demonstrating the standards and values we adhere to, as well as the catalogue of rights that we recognize and guarantee to our citizens.

CHAPTER 1

Legal and institutional framework

National human rights institutions in the Western Balkans, including Albania, were established in the context of the transition to pluralistic democracy. Human rights were the flagship of transition to democracy and have been at the core of this process. The onset of democratization coincided with the international community's efforts to strengthen the protection of human rights at the global level. In the early 1990s, the United Nations started promoting the National Human Rights Institutions (NHRIs) as independent national agencies specifically designed to protect and promote human rights, in order to *bridge the gap between international laws... and domestic practices*.

The definition of NHRI is based on global standards and developed within the UN system where an NHRI is defined as "*a State-mandated body established under the constitution, law or decree, whose functions are specifically defined in terms of protection and promotion of human rights*" or as "*State body with a constitutional and/or legislative mandate to protect and promote human rights, which are part of the state apparatus and are funded by the State*". National Human Rights Institutions Human (NHRI) are neither judicial nor law-making structures, and have an administrative rather than decision-making nature.

Nowadays, the consideration of the protection and promotion of human rights is visible and sensitive in every government activity and in many other realms of public and private life. The term *Human Rights approach* is turning into a current philosophy of governance and behaviour. The number and span of institutions dealing with human rights reflects this reality. It is understandable that only a legally and effectively independent institution, separated from the responsibilities of the executive branch and the judicial administration, can play a unique role and maintain a leading position in the field of human rights. Such an institution makes an irreplaceable contribution to a country's efforts to protect its citizens and to develop a culture that respects and promotes human rights.

Apart from the protection of human rights, one of the aims of NHRIs is to develop the so-called culture of good governance. This notion has several main traits related to participation, consensus-driven orientation, accountability, transparency, accountability, effectiveness and efficiency, equality, inclusiveness and respect for the rule of law. It ensures that corruption is minimized, minority views are taken into account and that the voices of the most vulnerable groups are heard in the decision-making. It also responds to the present and future needs of society.

In this sense, even the Venice Commission adopted the *Principles on the protection and promotion of national human rights institutions*, recognizing and accepting the basic principles guiding NHRIs such as independence, objectivity, transparency, justice, impartiality, and acknowledging that

these institutions are crucial for a functional democracy, rule of law, respect for human rights and fundamental freedoms¹.

However, since the national institutions for the protection and promotion of human rights focus on building a society where State institutions are accountable to citizens and operate in a transparent, effective and efficient manner, provision of human and financial resources to guarantee that public authorities act in accordance with national and international standards/acts in the field of human rights is indispensable.

The People's Advocate has a broad mandate based on international standards as the highest national institution for the promotion and protection of human rights and prevention of violation of these rights, in line with the national and particularly the international law (especially the Paris Principles²). Overall, the mandate of the People's Advocate covers functions as the *classic* Ombudsman, the National Human Rights Institution (NHRI); National Mechanism for the Prevention of Torture, and the Ombudsman for Children.

This mandate is reflected in the jurisdiction and powers vested on it by the Constitution, the Law on the People's Advocate (as amended) and other duties specified in special laws. With an experience of over 20 years, the People's Advocate operates in synergy with other independent or equality institutions, thus contributing to the improvement of good governance practices and the safeguards of citizens' rights.

The People's Advocate is also certified by competent international institutions for the high standards it meets (received A-Status re-accreditation in December 2020). These standards involve to the right to submit - to the Government, the Assembly and any other competent body at the request of the relevant authorities or *ex officio* - opinions, recommendations, proposals on any matter related to the promotion and protection of human rights.

The re-accreditation decision came with a set of recommendations which will be one of the most important challenges in the future for the People's Advocate. These recommendations focus on: *the need to undertake legal initiatives for a broader mandate that entails the ability to address all human rights violations from actions and omissions of private entities; the possibility for the People's Advocate to have a clearer mandate in encouraging the ratification or adherence to regional and international human rights instruments; the need for sufficient financial resources to fully exercise the mandate, including full-time employment of the representatives at the PA regional offices.*

The tasks or recommendations successive to the (re)accreditation process are addressed first to the respective States and their representative institutions (government, parliament), as well as to the national human rights institutions (Ombudsman). This is because the status given to a

¹ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(2011\)079-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2011)079-e).

² <https://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>.

national institution reflects and is the clearest indicator of the role and importance that the respective State gives to such an institution.

In light of such institutional standing, the legitimate expectations of the public and all actors and factors of our fragile democratic society have been and are still high compared to the activity of our institution. The strategic ambition of the People's Advocate is to become the main actor in the national human rights system, considering the political, legal, social, economic, developmental and cultural realities in Albania.

By this strategic ambition and approach, the People's Advocate focuses on important matters to ensure capacity building of institutions and establish dialogue with stakeholders. The People's Advocate is aware that it alone cannot advance the human rights agenda in Albania. The commitment to have and exercise a fundamental role in this context to achieve measurable results needs to be matched by other stakeholders by the same commitment in observing human rights.

CHAPTER II

Implementation by the People's Advocate of the Assembly's 2020 Resolution

The Assembly of Albania adopted on 7.7.2020 the Resolution on the evaluation of the People's Advocate activity for 2020. It recommended that the People's Advocate take several measures related to its constitutional and legal duties. The People's Advocate, as an independent constitutional body, found these recommendations in line with its mandate and vision. During these six months, the People's Advocate took the following actions:

1. Taking proactive measures by the People's Advocate in relation to informing citizens in more comprehensive or accessible forms about the knowledge of their fundamental rights and freedoms and protective mechanisms, specifically engaging in the implementation of the activities provided for in The 2018-2022 Action Plan, such as the creation of the human rights blog - Success stories, in defence of human rights within the official website of the PA.

1. Take proactive measures to inform citizens in more comprehensive and accessible forms on their fundamental rights and freedoms and protection mechanisms, by concretely engaging to the implementation of activities envisaged in the Action Plan 2018-2022, such as the creation of the blog on human rights – Success stories in the defence of human rights – on the official website of the People's Advocate.

Promotion, information and awareness-raising on human rights are in the remit of the People's Advocate, because the NHRIs are conceived and operate as lead institutions in the promotion and protection of human rights.

For the purpose of establishing a culture of good governance, the People's Advocate elaborated its own Strategic Plan into an Action Plan 2019-2020 that envisages many promotional activities to achieve the ultimate goal for citizens in Albania *to become increasingly aware of their rights, how and where to claim them when breached*. In order to reach this goal, our institution planned several activities related to *the promotion of child's rights and education on human rights, including integration of human rights education in the education curricula in Albania* and strengthening awareness and observance of human rights principles by the business community.

One of the activities included in this Action Plan, already implemented, is the human rights blog - *Success story, in defence of human rights*, on the PA official website of the PA. This blog features successful cases thanks to the PA intervention through its recommendations that addressed (even systematic) problems in certain areas of law. For more information, see the link <https://www.avokatipopullit.gov.al/sq/list/publications/histori-suksesi-7/>

In the context of promotion, it is worth highlighting the work done in the design, publication and distribution of various promotional materials (on protection of the rights of children, prisoners,

etc.) and participation in various television programmes, in order to foster information and awareness on human rights and the PA role as a National Human Rights Institution. It should be noted that these activities were supported by donor funds, because the PA budget does not cover promotion of these aspect.

The People's Advocate has continued to maintain a proactive approach to the media by opening a two-way communication; the media covers the PA activities and the PA responds promptly to the media questions and interests. Additionally, the official reactions of the People's Advocate on cases sensitive to public opinion are consistently picked up by the media after publication in press releases, PA official website or social networks.

The official website www.avokatipopullit.gov.al now is extensive and interactive for all 5 sections of our institution. It provides better coverage of activities, space for media and journalists, access for citizens to file complaints online and examples of handled cases. On this page, there is an informative video about the *mandate and role of the People's Advocate, the cases and ways in which citizens can address our institution for violation of their rights by public administration bodies, amongst others*. For more information, see the link <https://www.avokatipopullit.gov.al/sq/articles-layout-1/media/multimedia/shpjegues-i-thjesht-far-sht-avokati-i-popullit-482/>

As already reported, our institution launched a mobile app *People's Advocate* since 2018 where citizens can complain directly from their mobile phone and send real-time photos, videos or audio to support their complaint. The app is also an interactive bridge between the user and the institution as timely notices are sent to the citizens about the status of their complaint in our institution. It also gives *information on PA functions, the protected civil rights* and examples of positive changes based on the PA recommendations. In the period January-December 2021, *the PA received 9.6% of all complaints through this app*.

On social media (Facebook), the People's Advocate account continues to grow and currently we have over 8,850 loyal followers³, with a sustained increase year on year.

The promotion campaigns and the daily groundwork by our PA regional representatives have been important in boosting the trust citizens place on the People's Advocate.

In this view, the *Balkan Barometer* 2021 report – supported by the Regional Cooperation Council, an EU institution focusing on the integration of Western Balkan countries – *ranked the People's Advocate in Albania among the most trusted institutions by the public*.⁴

2. Continue the info sessions in 9-year and high schools across the country, in order to improve the knowledge of students and teaching staff on their fundamental rights and on the PA's work in defending their rights.

³ 8,150 followers in 2020.

⁴https://www.rcc.int/docs_archive/Downloads/Balkan_Barometer_Public_opinion_2021v4_compressed.pdf.

Implementation in practice of this point of the resolution adopted by the Assembly is broken down in concrete actions and activities to be carried out by the People's Advocate and the Section on Protection and Promotion of Child's Rights, specifically:

First, regarding measures to be taken by the People's Advocate to **inform citizens in more comprehensive and accessible forms** on their fundamental rights and protection mechanisms, the PA activity focused on the publication of a ***user-friendly publication sharing the best practices*** on solved cases in the best interest of the child. A novelty in drafting and launching the friendly publication "Children and their rights" is the public consultation with the extensive participation of children and young teenagers, State administration institutions part of the integrated child protection system and civil society. This publication can be easily accessed online on the official website of the People's Advocate.⁵ Besides, the People's Advocate published the leaflet "SPPCR at the PA – *Serving the best interest of the child, we serve the best interests of the entire society*", seeking to promote and ensure that the public has more knowledge of the People's Advocate.

Second, implementation of the recommendation to continue with the **info sessions in 9-year and high schools across the country** aimed at improving the knowledge of children and teaching staff on their fundamental rights and the PA work in defending these rights rolled out in several activities. In 2021, the Section on the Protection and Promotion of Child's Rights conducted **21 inspections** and **37 open days** and **promotional activities** in a hybrid format on the rights of children, mainly in education institutions, 9-year and high schools across the country, as well as in penitentiary institutions, in order to improve and consolidate the knowledge of pupils/students and the teaching staff about the legal education on the fundamental human rights, particularly the child's rights, as well as the work of the People's Advocate in upholding and defending these rights. Specifically, during 2021, the PA conducted **19 promotional activities** "**Open days**" with the participation of students, teachers and parents across the country (focusing on the second-level municipalities) in the cities of Prrenjas, Librazhd, Gramsh, Cërrik, Gjirokastër, Përmet, Lezhë, Tiranë, Pogradec (Tushemisht and Verdovë), Lushnjë, Elbasan, Krujë, Rrogozhinë, Peqin, Kurbin, Pukë, Dropull, Korçë and Durrës.⁶

3. Submit a detailed report to the Assembly on the domestic violence and sexual abuse of minors.

In the context of this point of the Resolution, the People's Advocate (through the General Section) prepared a detailed report **on domestic violence and violence against women** covering the period January 2020-September 2021 which was submitted to the Assembly of Albania.⁷

⁵ <https://smpdf.avokatipopullit.weather.al/botime/>

⁶ These activities were implemented thanks to the financial support offered by UNICEF.

⁷ Sent through official note no. 15 dated 13.01.2022.

The report highlights the most important developments and particularly the issues related to the legislation and measures taken in combating violence against women, by the various institutions according to their legal and institutional responsibilities, and the submission of concrete recommendations. The report focuses on the responses by the institutions in addressing the violence against women and domestic violence during the COVID-19, because this pandemic influenced in increased cases of violence; this holds true in other countries around the world.

The report covers domestic violence and violence against women mostly in the period 2020-2021. The baseline is the People's Advocate report 2016-2020 prepared for the CEDAW Committee 2016-2020.

The report focuses not only on physical violence, but also on other forms of violence against women, because all these forms are intertwined. It refers mainly to upgrading the legislation, measures to protect women and girls from violence, provision of services to the survivors and prevention. *More information on this report is found in Chapter 4 "Other institutional engagements"*.

In the context of the engagement against the *sexual abuse of minors*, the People's Advocate through the Section on Protection and Promotion of Child's Rights developed the Report "On protection of children from sexual exploitation and abuse as one of the most serious violation of child's rights".

The report is based on the evaluation and analysis of the national and international legal framework on the phenomenon of sexual abuse, as one of the most serious violations of the child's rights committed against this special and vulnerable category of our society. It aims to shed comprehensive light on this consequences, its consequences and the legislative measures to prevent it at the national level in the Albania.

The first part of the report presents an in-depth analysis of the legal and administrative provisions at national and international level and the existing international acts against the sexual abuse of children, as well as a summary of the Albanian legal and institutional framework.

The second part presents the institutional response, coordination, cooperation and coordination of institutional efforts at horizontal and vertical level, and the capacities available to implement the legal framework and deliver the duties in protecting the children sexually exploited or abused.

The third part presents the situation of the phenomenon of sexual abuse in our country. The fourth part focuses on the administrative practices of the People's Advocate in handling this phenomenon from the cases initiated *ex officio*, the information collected from administrative investigations and the implications of sexual abuse.

The last part presents the conclusions and recommendations based on the comparative analysis of the Albanian legislation to the international legislation. This report drafted by the Section on the Protection and Promotion of Child's Rights is already sent to the Parliament of Albania⁸.

4. Implement the Cooperation Agreement between the People's Advocate and the Commissioner for Protection against Discrimination by taking concrete measures.

As highlighted earlier, the ECRI (European Commission against Racism and Intolerance) recommendations require that equality bodies coordinate and collaborate amongst them and with other human rights institutions, including the NHRIs (Ombudsmen). This cooperation is and remains indispensable in maximising their overall impact in delivering their equality mandate. Coordination and cooperation include the consistent and sustained communication and dialogue on planning and joint initiatives.

In light of above, the cooperation between the People's Advocate and the Commissioner on Protection from Discrimination has been fruitful and included a multitude of sensitive topics that both institutions may address in the context of the right to equality before the law and fight against discrimination of all forms.

Not only this, but the cooperation was synergic in organizing the regional offices established by the People's Advocate and the Commissioner on Protection from Discrimination in many cities across the country. In order to have a realistic and coordinated approach, both institutions agreed that their local representatives in those offices may receive individual complaints and address problems in the remit of each institution.

Both these institutions agreed to deliver training courses to their local staff during 2021 in various fields of law, in order to upgrade their capacities, strengthen their cooperation and improve the quality-of-service delivery to citizens. So far, 3 (three) joint online trainings have been carried out for the regional representatives of both offices. The novelty is that these trainings were attended also by the representatives of the Free Legal Aid Office, specifically:

The first training on 28 May 2021, focused on the role, powers and remit of the two institutions (PA and CPD), filling out complaint forms and where and how to address them, cases of mediation and joint monitoring and so on, sharing concrete experiences in this regard.

The second training on 21 September 2021 dealt with the Sustainable Development Goals and the role of local government in their implementation. This is because all SDGs have objectives directly related to the responsibilities of local governments, especially their role in providing basic services. This is why local government units should be at the centre of 2030 Agenda. Local authorities and local civil society are closer to citizens and therefore able to develop service models in line with the evolutive needs of their communities. Local managers have a democratic

⁸ Enclosed to the official note no. 17 dated 14.01.2022.

mandate to lead the local development and are accountable to their citizens if they fail in this mission.

The third online training on 3 December 2021 attended by the representatives of regional offices of both institutions focused on the protection of child's rights. The training elaborated the legal framework governing the protection of child's rights, the notion of the integrated protection and the basic principles underlying these rights, the NHRI activity in the protection and promotion of the child's rights, the special reports and recommendations, the cooperation with civil society, proactiveness, and the institutional cooperation and challenges in living up to the constitutional obligations to effectively guaranteeing the exercise, respect and protection of the child's rights and best interest.

This cooperation will continue in the future with an agreed training on the introduction to the activity of international organizations engaged in human rights protection.

Based on the agreement and training delivered, the PA regional offices received 12 complaints referred by the CPD regional offices during the reporting period.

As informed before, both institutions continue to be active in the Cooperation Agreement on the establishment of the *Alliance against Hate* whose aim is to engage the main stakeholders involved in the prevention of hate speech, by coordinating and joining the efforts to raise awareness and advocate as a single front against this phenomenon.

An online discussion was organized on 17 May 2021 as part of IDAHO 2021 (International LGBTIQ Day) with the participation of the People's Advocate Ms. Erinda Ballanca, the Commissioner for Protection from Discrimination Mr. Robert Gajda, the Ombudmsan of Kosovo and representatives from the civil society organizations of Albania and Kosovo. The purpose of this meeting was to share positive practices and give sensitizing messages on the social inclusion of the LGBTIQ community members in the respective societies.

Representatives from both AP and KMD participated in a 3-day training (16, 17 and 20 December) organized by OSCE on the topic *Monitoring Hate Speech and Gender-based Discrimination in Albania*. During this training, there was also a discussion on how these issues are dealt by each institution.

5. Take concrete measures for the implementation of agreements signed during 2020, such as the Memorandum of Understanding between the People's Advocate and the Institute of Statistics (INSTAT) "On cooperation in strengthening data collection, dissemination and analysis in the light of human rights and the Sustainable Development - 2030 Agenda" and the agreement signed with UNICEF "New cooperation agreement for the period 1 October 2020 - 30 September 2021", which refers to the 2020-2021 work plan between UNICEF and the Albanian government.

For the practical implementation of the above-mentioned Memorandum of Understanding between the PA and INSTAT, a joint order by the heads of each institution set up a technical working group with three representatives from INSTAT and three representatives from the PA.

Then, each Section in our institution collected and analysed concrete cases against indicators to measure the level of human rights observation in our country. This information was forwarded to INSTAT to understand the methodology and indicators for complaints reviewed by our institution; besides, several meetings were held between the parties. In addition to the working group set up under the Memorandum of Understanding, it was agreed to set up technical working subgroups which will discuss how the needs of the People's Advocate are to be included in the statistics issued by INSTAT (note that INSTAT generates statistics based on formats approved by Eurostat).

INSTAT in cooperation with UN Women organized a workshop with the aim of identifying and compiling possible indicators for the People's Advocate. This workshop also served the PA experts to properly understand and use official statistics.

In its legal role as a promoter of the highest standards of human rights with a special focus on increasing its capacities in the promotion of gender equality, protection of the rights of women and girls and monitoring the implementation of international conventions ratified by our country, as has been informed before, the PA undertook training sessions where the training on *Using gender indicators for monitoring human rights and SDG* stands out. These training events aimed at the standardization of gender data produced by the PA, the use of this disaggregated data for monitoring human rights and the UN Global Goals, and the introduction of gender indicators in the annual publication of INSTAT "Men and Women in Albania".

In the context of the agreement signed with INSTAT, the People's Advocate provided its input that was included in the publication *"Men and Women in Albania 2021"*. This is an annual publication with gender-segregated data in different areas of life, aiming to reflect the problems of society in view of achieving gender equality. It also includes a chapter with indicators on human rights. Human rights statistics are gender-segregated and provide information on complaints about alleged rights violations handled by the People's Advocate, by type of right.

On 14-15 December, both institutions organized a training event on *Building staff capacities of the People's Advocate, INSTAT and Kosovo Ombudsman concerning the 2030 Agenda and Human Rights*⁹. The purpose of this training was to enhance the People's Advocate role in the protection and respect of human rights, which also form the basis of the Sustainable Development Goals. The People's Advocate has and should play a specific role in the process of implementation and monitoring of the 2030 Agenda.

⁹ This training was financially supported by the UN Office in Tirana.

For the effective implementation of the Memorandum of Cooperation with the Institute of Statistics, the People's Advocate with the assistance of the UN is preparing a consultancy service in this regard. This consultancy intends to identify the current statistics produced by INSTAT, their periodicity, the specific report in which they are published, and the methodology used. This consultancy seeks to identify the sources from which INSTAT collects human rights data and the difficulties it encounters, organize workshops, clarify the list of indicators to be used and published, and prepare an action plan to determine the deadlines, tasks and funding sources for the publication of this data.

It has been agreed with the UN Office in Tirana to implement a project for the establishment of a new case management system. It will technically enable the collection of more data and additional indicators to measure the progress and ensure that no one is left behind on the 2030 Agenda for Sustainable Development.¹⁰

The People's Advocate signed a *Cooperation Agreement*¹¹ with UNICEF to support the Section on the Protection and Promotion of Child's Rights for the period 2020-2021. The main components of this agreement include:

- ✓ ensure promotion and monitoring of child's rights by public administration bodies at central and local level;
- ✓ assess the implementation of the PA recommendations after monitoring the conditions and treatment of juveniles deprived of liberty, particularly focusing on measures to ensure observance of child's rights during the pandemic Covid-19;
- ✓ advocate and shape consistent dialogue with the multidisciplinary teams at national and local level, and with the relevant State mechanisms that address the social protection of children, considering their special needs during the pandemic.

In this content, the Section on Protection and Promotion of Child's Rights conducted 4 inspections at the penitentiary institutions (police station of Përmet, Elbasan and Saranda and at the juvenile penitentiary in Kavaja). Following the inspections, the People's Advocate addressed the relevant recommendations to the competent institutions.

The People's Advocate organized a *Round table for the presentation of the presentation of findings and recommendations for guaranteeing the rights of juveniles in conflict with the law, victims and/or witnesses during the pandemic period*". Representatives from the Ministry of Justice, the General Directorate of Prisons, the Ministry of Health and Social Protection, the Agency for the Rights and Protection of Children, the General Directorate of State Police, etc. participated in this event. All the participants appreciated the PA work for the findings and recommendations presented, and the

¹⁰ The UN Office in Tirana is in charge of implementation and the procurement procedure is underway to select the company which will develop the new case management system.

¹¹ Cooperation Agreement prot. no. 338 dated 28.9.2020.

measures that should be taken by these institutions to ensure the implementation of children's rights during the Covid-19 pandemic.

In the context of the action plan under the agreement between UNICEF and the People's Advocate, 14 round tables/monitoring activities were organized with representatives of public authorities at the local level (including second-level municipalities) - responsible for the social protection of children – and part of the integrated child protection system, in the municipalities of Dropull, Saranda, Gjirokastër, Përmet, Përrenjas, Cërrik, Gramsh, Pogradec, Shkodër, Lezhë, Durrës, Kavajë, Elbasan and Librazhd.

Following the meetings and monitoring carried out, the relevant recommendations were made to some social service structures in the above-mentioned municipalities, based on the information collected from interviews and questionnaires. We are finalizing the recommendations - with main problems and findings - for the challenges of multidisciplinary teams and public institutions that address the issues of social protection for children at the local level and, especially in the implementation of the measures during the Covid-19 pandemic.

The People's Advocate presented the findings and recommendations at a promotional event *Round table for the presentation of findings and recommendations for child protection at the local level* on 24 November 2021. This hybrid round table was attended by representatives from the 61 municipalities, representatives from the group of MPs "Friends of Children" of the Albanian Youth Council, representatives from the line ministry, the State Social Service, international organizations and civil society that promotes child's rights.

Furthermore, after a wide consultation, the People's Advocate launched the child-friendly publication *Children and their rights* on the cases handled by the People's Advocate in the context of protecting child's rights on 18 November 2021. This event saw the wide participation of children, youth, State administration institutions that are part of the integrated child protection system and civil society. The publication *Children and their rights* briefly summarizes the efforts and good practices of the People's Advocate in protecting child's rights from actions or omissions of public administration institutions. It is published in hard copy and online¹² on the official website of the People's Advocate.

6. Monitor health services delivery in regional hospitals, in order to improve the quality of free health services offered to citizens, and address systematic violations.

In the framework of this commitment, the People's Advocate submitted a request to several institutions to hire the human resources required to address this objective as soon as possible, bearing in mind the limited capacities we have in this field. After the request was approved, two external experts were contracted who, in cooperation with the experts of the People's Advocate, carried out inspections in 6 regional hospitals to conduct interviews and check the provision of

¹² <https://www.avokatipopullit.gov.al/media/manager/website/reports/Botimi%20miqesor%20-%20SMPDF.pdf>

dignified service to patients. The special report related to this monitoring in 6 regional hospitals is already drafted and undergoing consultation with NGOs. Once the consultation is over, this report will be submitted to the Assembly.

For more information on this report, see Chapter III, paragraph 3.19 Respect of the right to health care.

CHAPTER III

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

3.1 Summary of the activity of the PA Sections during 2021

➤ *Special Section*

The Special Section focused continued to be on issues related to the guarantee and protection of the fundamental rights and freedoms of citizens from the actions or omissions of law enforcement bodies.

During 2021, for the cases (complaints and *ex officio* cases) that we completed the administrative investigation and proved that the citizens' complaints were founded, 42 recommendations were issued and (re)addressed to 128 law enforcement bodies and public administration with a total of 134 *sub-recommendations* to be implemented by them.

The *rights of imprisoned persons* have been the focus of our work, because apart from being isolated from society, they faced several restrictions of their guaranteed rights due to the pandemic situation even during 2021. Their concerns addressed to the People's Advocate included: complaints about their legal right to defence, asking for meetings with their lawyers any time and as often as they request; complaints related to health treatment, the right to be employment and remuneration for work performed, the right to information amongst others.

We have also paid importance to the complaints submitted by *prison police officers*, not only because this category is in the remit of our work in terms of rights they enjoy, but also because the way they are treated reflects upon their relations and services to prisoners.

The People's Advocate monitored the *role of State Police structures* and found a multitude of cases in which it did not respect the fundamental rights of citizens, for which the PA sent the relevant recommendations.

Among the investigated complaints and *ex officio* cases, stand out the illegal take-in or holding citizens in police stations beyond the legal time-limit; physical or psychological ill-treatment at the moment of arrest, take-in or questioning of citizens by the police authorities; illegal arrests or detentions; poor conditions at the detention premises; violation of privacy through searches in houses and other premises owned by citizens; hampering free movement to go abroad freely, etc.

In the context of respect and protection of human rights, the People's Advocate paid growing attention to the problems and concerns of citizens towards the *justice system* in general and the *prosecution offices* in particular. The justice reform has been going on for several years now and the

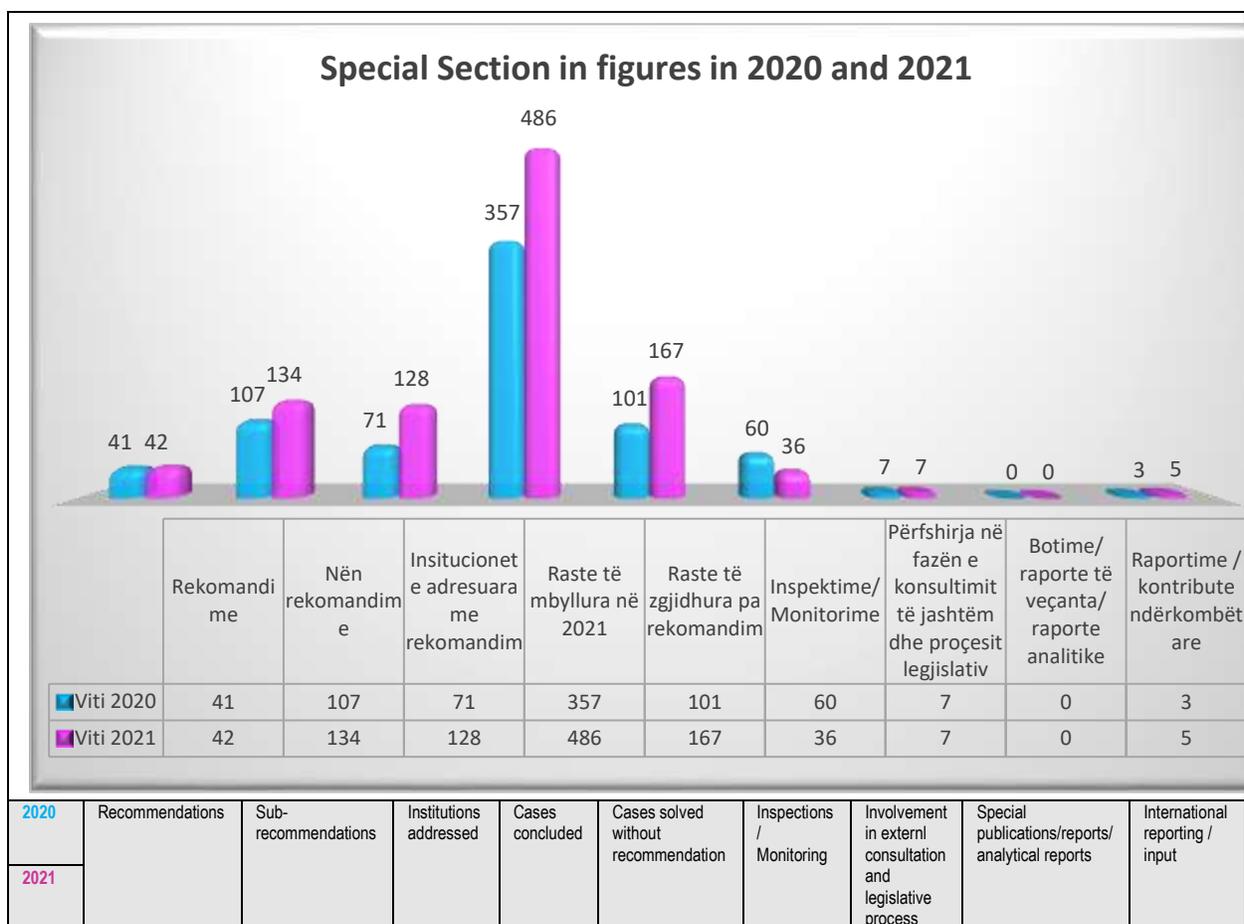
vacancies resulting from the dismissal of a big number of prosecutors has led to delays and problems in conducting investigations for criminal reports and handling of cases.

The monitoring by the People's Advocate found that even the *functioning of courts* at all levels has been marred by difficulties during 2021. The vetting process increased the workload due to staff shortage and dismissal of a significant number of judges who were not substituted. In some cases we found delays in court proceedings, postponement of trials, late submissions of reasoned decisions to the secretary, and problems in respecting the procedural rights during proceedings.

Law no. 111/2017 "*On State-guaranteed legal aid*" introduced the relevant structural and procedural changes for the provision of free legal aid and all the legal safeguards by the competent institutions, in order for citizens to enjoy their fundamental rights equally. It is our view that the functional and effective implementation of this law requires the cooperation of all stakeholders who must live up to their responsibilities.

The Special Section also focused on the *payment of compensation instalments to former political prisoners and their legal heirs*, which frankly speaking did not progress at the desired or expected pace mainly due to lack of the necessary funds. Following citizens' complaints about delayed or unclear distribution of instalments, the People's Advocate addressed individual recommendations to the Ministry of Finance and Economy.

5 International Reports, Inputs	42 Recommendations	134 Sub-recommendations	486 cases concluded in 2021
0 Publications, Special reports, Analytical reports	SPECIAL SECTION in figures		167 cases solved without recommendation
7 involvements in external consultations and legislative process	2 applications or submissions as intervenor at Constitutional Court	36 Inspections / Monitoring	128 institutions addressed by recommendation



Special Section statistics for 2020 and 2021.

➤ *National Preventive Mechanism against Torture (NPM)*

During 2021, the National Preventive Mechanism against Torture conducted *68 inspection visits* and sent *76 inspection reports* with recommendations to public institutions, with the intention to improve the human rights situation of persons deprived of liberty. Responses indicate that the most commendations were accepted. We consistently check that measures are taken and seek responses for those recommendations that are still unanswered.

NPM conducted inspection visits in penitentiary institutions, specifically: *24 prisons, 32 police units, 6 centres, 4 psychiatric hospitals and 3 elderly homes*. In 2021, NPM handled *38 complaints and 9 ex officio cases*.

There were 34 complaints against the prisons (alleged violence, lack of medical treatment and medicaments, vaccination requests, insufficient meetings with family members, etc.) and *4 complaints against police* (alleged violence, unfair take-in in police station).

NPM in cooperation with the Department of Border and Migration Police and FRONTEX has been part of the flight group in monitoring *26 operations*. During the reporting period, NPM published *2 separate reports* on its activity in 2018 and 2019.

Problems in penitentiary institutions, as in previous years, involved mainly: failure to issue the implementing legislation under the Law no. 81/2020 "On the rights and treatment of prisoners and pre-trial detainees"; extremely degrading material conditions and the impossibility to renovate the premises in internal regimes, in some penitentiary institutions; increased overcrowding in many penitentiary institutions such as in PI 302, Berat, Durrës, Shën Koll Lezhë, Elbasan and Fushë-Krujë; lack of doctors in the penitentiary system; the need to improve the food for the prisoners and increase the food quota; significant deficiencies in providing the opportunity for education and social-cultural activities for prisoners, due to Covid-19 restrictions; delays and deficiencies in equipping prisoners/detainees with health booklets or electronic data in the health insurance system in most PIs; difficulties in carrying out medical visits, examinations and specific lab tests; shortage in the supply of basic personal hygiene products, etc.

The National Preventive Mechanism against Torture (NPM) continued to *inspect the premises of State Police*, checking particularly the legality and regularity of take-in, detainment or arrest of individuals, conditions and treatment inside police stations, infrastructural and material problems, etc. For all identified shortcomings, NPM sent recommendations with indicated measures to the superior bodies of the State Police.

The People's Advocate has always drawn the attention on the conditions and situation at the mental healthcare hospitals in Albania. The NPM *inspected these facilities* in 2021 and asked central and hospital authorities to comply with the international and national acts, specifically the implementing legislation adopted for the Law no. 44/2012 "On mental health" as amended.

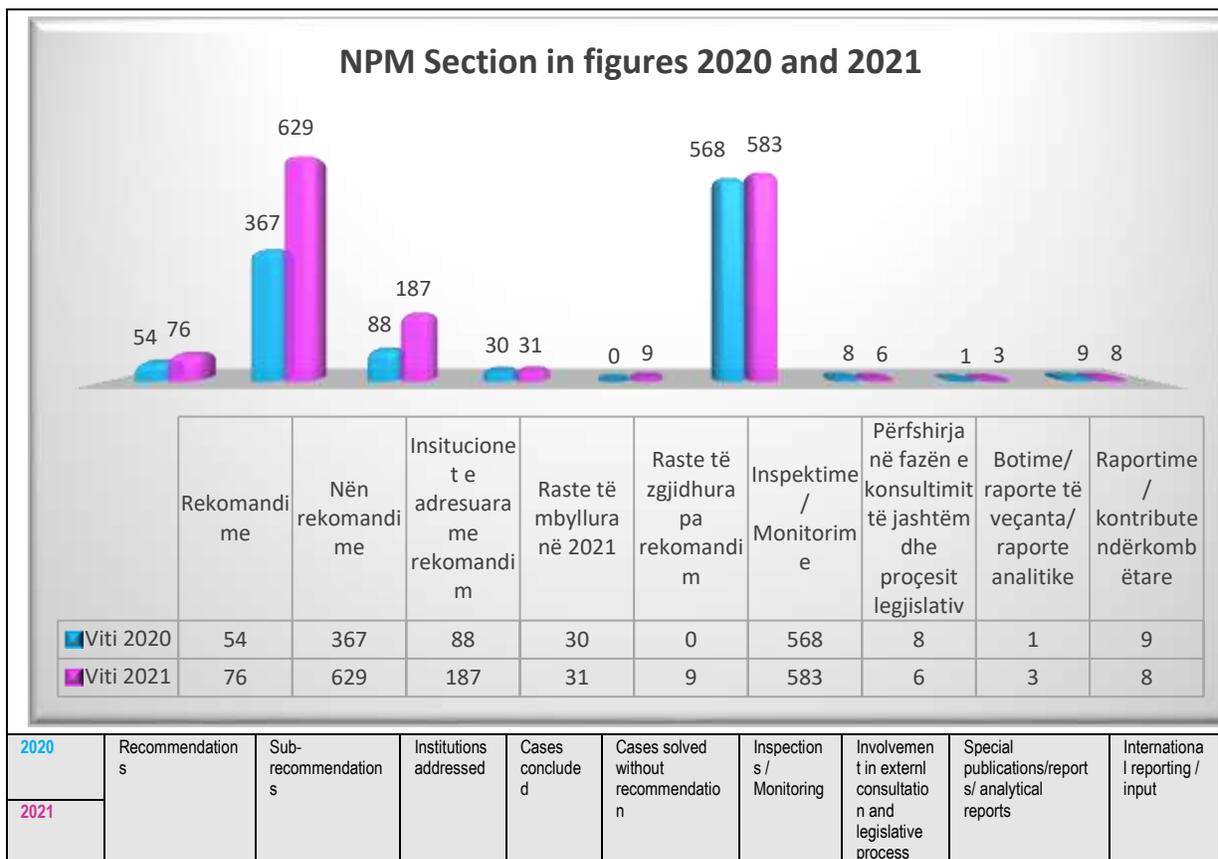
As for the observance of human rights of foreign citizens, the People's Advocate through the NPM conducted inspections at the *Detention Centre for Foreigners in Karreç*, the *National Reception Centre for Asylum-seekers in Babrru, Tirana*, and also at the *National Reception Centre for Victims of Trafficking in Linzë, Tirana*. Following these inspections, the People's Advocate sent the relevant recommendations to the State administration bodies at central and local level.

Implementation of the Cooperation Agreement with UNHCR in the context of the joint project *Refugees and Asylum-seekers in SEE countries* continued smoothly during 2021. It focuses on the border control and protection of refugees in the south (Gjirokastër, Sarandë, Përmet) and southeast (Korçë, Devoll Bilisht) of Albania.

During meetings and monitoring visits with FRONTEX and the Border and Migration Department, the NPM suggested taking measures to ensure humane return by fully respecting the fundamental rights of immigrants whether these Albanians or foreigners, as well as rigorous adherence to the EU standards and Albanian legislation.

The People's Advocate through the NPM has been an important part of the B-COMPETENT project "Boosting Competences in Penitentiary Staff in Europe". The project was successfully completed at the end of 2021, bringing innovation to the capacities of both civil and police prison staff in dealing with foreign prisoners and in meeting their special needs in line with the domestic legislation and international standards.

8 International Reports, Inputs	76 Recommendations	629 Sub-recommendations	31 cases concluded in 2021
3 Publications, Special reports, Analytical reports	NPM SECTION in figures		9 cases solved without recommendation
6 involvements in external consultations and legislative process	0 applications or submissions as intervenor at Constitutional Court	583 Inspections / Monitoring	187 institutions addressed by recommendation



NPM statistics for 2020 and 2021

➤ *Administration Section*

The Administration Section focused its efforts on monitoring the fundamental human rights enshrined in the Constitution of the Republic of Albania and the European Convention on Human Rights and its additional protocols, as follows:

Right to property remains one of the most vulnerable and relevant rights in the scope of work of the Administration Section. Out of all the complexity of the enjoyment of this right, issues such as property registration, legalization of informal buildings and property expropriation procedures without a due process of law are the most persistent and acute problems. The Administration Section continues to closely monitor and ensure attention to the realization of the right to property by drafting and sending a series of recommendations to the State administration bodies at the central and local level.

Housing and the right to housing are among the sharpest social issues in 2021. The main problems identified involve: the lack of implementation of transparent procedures and in accordance with due legal processes; lack of transparency on acts or documents resulting in consequences to individuals; delays in reviewing the application files; lack of transparency during the definition of selection criteria and in the decision-making procedure, which is passed for approval to the collegial bodies of the local government units. The Section addressed this right also in the context of proactive inquiries / complaints filed by citizens affected by the November 2019 earthquake, concerning the right to fair expropriation for individual houses to be demolished for public interest and the social housing procedures.

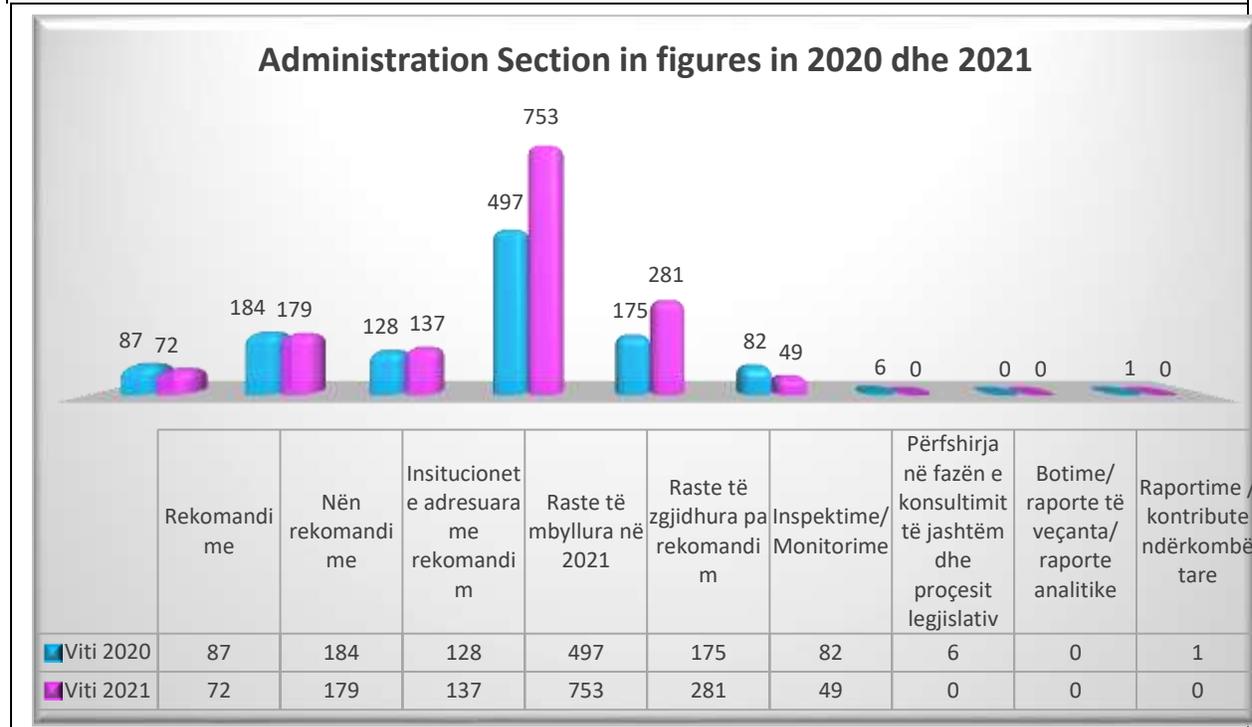
Regulation of labour relations and respect for the right to a due process of law in administrative proceedings continue to be handled by the Administration Section, because there were many complaints – by persons who enjoy the civil servant status or not - against alleged unfair dismissals, release from duty, transfers and appointments in the State administration. Also, relevant recommendations were addressed and drafted for cases arising from the labour relationship, both at the local and central level. Also, the Section addressed recommendations for labour relations cases at both central and local level.

Consumer protection is another right under the remit of the Administration Section. It has played a proactive role in meetings with the Energy Regulatory Entity (ERE) to ensure changes in their Regulation in handling complaints and providing responses concerning the increased price of the electricity. The Section also held meetings with managers of the Power Distribution Division (OSHEE) and the Water Utility (UKT) on problems raised by the complainants. Explanations and documentation provided by institutions were carefully analysed and, in this light, the Section considers that there is room to improve the procedures and reinstate the breached rights.

Respect for the freedom of speech is another important field of law under the remit of the Administration Section. In this view, the Section monitored the multitude of discussions by the State authorities and the recommendations/comments by stakeholders and international partners concerning the media services in the Republic of Albania reflected in the Law no. 91/2019 "On some amendments and additions to the Law no. 97/2013 'On audio-visual media services in the Republic of Albania" as amended.

In this regard, the Administration Section has been active during 2021 to fulfil the institutional obligations through influence and bringing to the attention of the State authorities many problems related to the amending Law no. 91/2019 and to ensure the international safeguards and standards to the media and journalists, focusing on certain issues.

0 International Reports, Inputs	72 Recommendations	179 Sub-recommendations	753 cases concluded in 2021
0 Publications, Special reports, Analytical reports	ADMINISTRATION SECTION in figures		281 cases solved without recommendation
0 involvements in external consultations and legislative process	0 applications or submissions as intervenor at Constitutional Court	49 Inspections / Monitoring	137 institutions addressed by recommendation



2020	Recommendations	Sub-recommendations	Institutions addressed	Cases concluded	Cases solved without recommendation	Inspections / Monitoring	Involvement in external consultation and legislative process	Special publications/reports/ analytical reports	International reporting / input
2021									

Figure 1. Administration Section statistics for the years 2020 and 2021

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

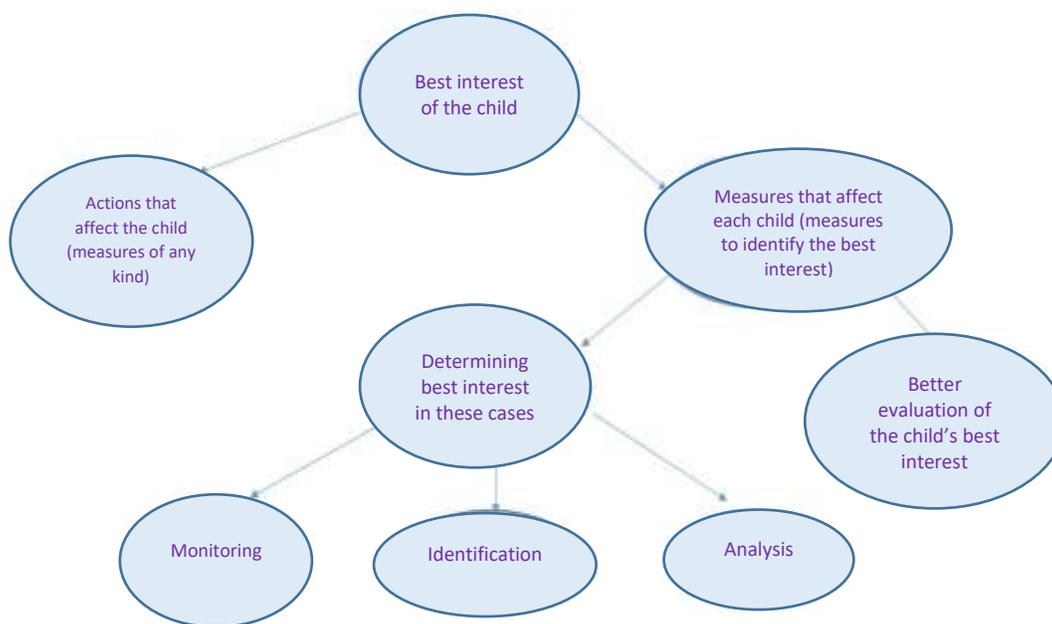
The activity of the Section on Protection and Promotion of Children's Rights focused on the main functions of *protection, promotion and guaranteeing the children's rights*, driven towards the views and experiences of children and the *principle of the best interest of the child*.

Unlike 2020, the People's Advocate promoted the protection of children's rights in 2021 making an in-depth analysis of impacts of the Covid-19 administrative actions on children. So, in analysing whether the competent State institutions issued these measures by accommodating the principle of the best interest of the child, the Section focused on three fundamental aspects:

- *physical welfare* in terms of ensuring good health and proper development of the child;
- *mental welfare* by providing the child with the possibility to normal mental development;
- *social welfare* in terms of ensuring that the child has a healthy social and spiritual life.

Guaranteeing the well-being of children in their best interest requires the consistent commitment of the competent State institutions for the consolidation and effectiveness of the integrated child protection system. Such effective system that includes the laws, policies, procedures and practices, prevents and combats various issues like ill-treatment, any kind of violence and discrimination that can harm a child's physical, mental and social development; besides that, paramount to society is also the fight against customary practices and *taboo* mentalities that lead to and encourage discrimination, ill-treatment and violence against children.

The Section on Protection and Promotion of Children's Rights has translated its administrative activity in the protection of children's rights to their best interest as follows:



In the context of the identification of violation(s) of children's rights, the Section handled 227 *complaints/proactive cases* during 2021, from which 66 *ex officio* and 102 *directly from children*. Also, the Section conducted 21 *inspections* and 37 *open days/promotion activities* and addressed 28 *recommendations (124 specific recommendations in total)* to State institutions.

In contrast to the years 2018, 2019, 2020¹³, the year 2021 marked an increase in handling the number of *complaints/requests directly from children* to 102. This higher number of complaints/requests by children is a result of a 3-year work by the People's Advocate through the Section on Protection and Promotion of Children's Rights to facilitate access of children to PA, placing them at the centre of our legal and administrative activity. Similarly, the engagement of children and civil society in promotional activities have been an indicator of guaranteeing the freedom of opinion and expression, participation and hearing the voice of children, presenting a new and effective approach to the PA work in promoting the best interest of the child. This is also the result of the implementation of the Agreement with UNICEF, which has enabled part of the human and financial capacities.

In view of fulfilling the monitoring role, the Section on Protection and Promotion of Children's Rights conducted 21 *inspections/monitoring visits* during 2021, of which 6 (six) at the police stations in Elbasan, Durrës, Korçë, Sarandë, Përmet and Kamëz, and 1 (one) inspection at the Juvenile Penitentiary Institution in Kavajë. Premises, conditions and treatment of juveniles deprived of liberty were monitored. After the inspections and identification of problems, concrete recommendations were drawn up and addressed to the competent State authorities.

¹³ 1 direct complaint/request by children in 2018; 10 in 2019; 15 in 2020 and 102 in 2021.

In order to guarantee the rights of children and the exercise of the ombudsnorms, the People's Advocate under drafted and published/launched several important documents (of recommendary, suggestion, informative or advisory nature) targeting the children, the State administration bodies at central and local level, and the civil society.

as civil society. Also, the AP institution, through CPPCR, is involved in the external consultation and the legislative process, for several normative and by-laws, and proposed strategic documents in the field of protection of children's rights. In addition, the PA through the Section was involved in the external consultation and legislative process on some proposed legislative acts, implementing legislation and strategic documents on protection of children's rights.

As ENOC member, Albanian children were selected to participate in the Fundamental Rights Forum (FRF) and represent our country in the context of the ENYA project. This event focused on learning for the future: Covid-19 impact on children's rights.

6 International Reports, Inputs	28 Recommendations	223 Sub-recommendations	193 cases concluded in 2021
3 Publications, Special reports, Analytical reports	CHILDREN'S SECTION in figures		142 cases solved without recommendation
4 involvements in external consultations and legislative process	0 applications or submissions as intervenor at Constitutional Court	21 Inspections / Monitoring	104 institutions addressed by recommendation

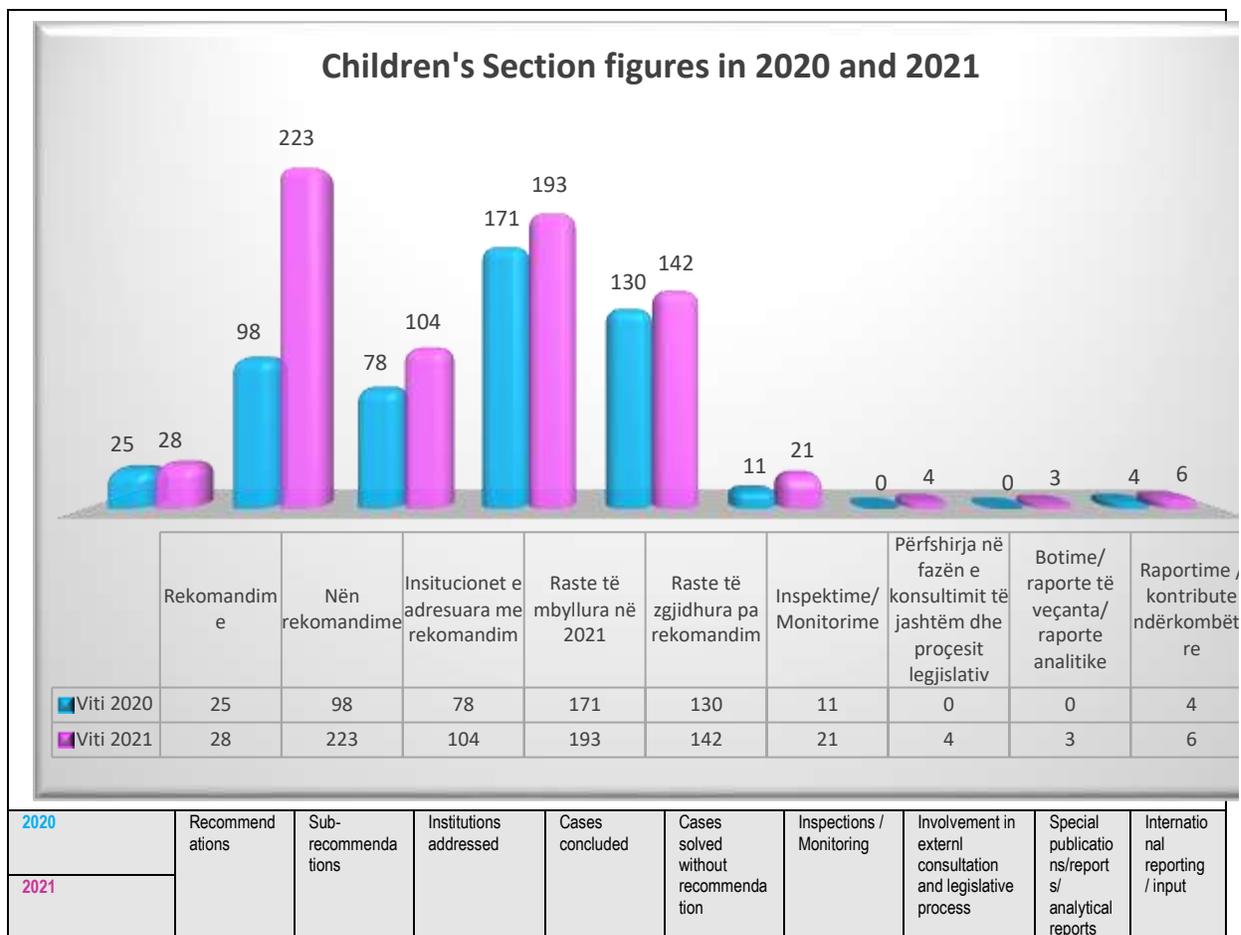


Figure 1. Statistics of the Children's Section during 2020 and 2021.

➤ *General Section*

Even during 2021, the General Section, as part of the Ombudsman Institution, has continued to pay special attention to vulnerable or at-risk groups, communities and individuals, who are more vulnerable and unprotected than the rest of the population. from the consequences of the emergency situation created by the Covid 19 pandemic.

The General Section, as part of the People's Advocate, continued to pay special attention to vulnerable or at-risk groups, communities and individuals, who are more vulnerable and unprotected than the rest of the population from the impacts of the emergency situation created by the Covid-19 pandemic.

In the context of this activity, we emphasize that the recommendation of the People's Advocate for the completion of the implementing legislation to the Law no. 96/2017 "On the protection of

national minorities in the Republic of Albania" remains relevant¹⁴. As described below, the entry into force of the Law no. 96/2017 was followed by the approval of 8 by-laws by the end of 2021, but still 4 by-laws are still to be drafted and approved. With a specific focus *on the rights of the Roma and Egyptian national minorities*, the fight against *anti-gypsyism* must be coupled with the designation of concrete policies for the real integration and inclusion of the Roma and Egyptian communities, not only at the central but also local level of government, in order to make them feel part of a diverse, all-inclusive and democratic society.

The *economic aid* remains too low compared to the monthly sustenance expenses, according to the complainants. Problems related to the right to benefit from the social security system persist and are almost the same as those reported in previous years. Many complaints involve failure to receive a response to the request for verification of work seniority and the low old-age pension.

The special report on the *Minimum Living Standard in Albania* prepared and sent to the Parliament in 2021 sought to make an assessment of the economic, legal and social situation regarding the normative void created by the absence of an official minimum wage, because its definition serves as basis not only for the Economic Aid, but also for other policies supporting poor individuals and families in Albania. The main recommendation in this report is that the government must develop and approve a methodology for the estimation of the minimum living standard in the Republic of Albania, so that it serves as an official cornerstone and reference for the periodic estimation of the minimum living standard.

As pointed out earlier, the pandemic has deeply compromised the current level of *education*, making it worse. The alternative online teaching through platforms adopted by the government has been implemented with many challenges. These difficulties are also due to the absence of training to teachers on delivering online teaching.

Pursuant to the Resolution of the Assembly of Albania,¹⁵ the General Section in cooperation with health-care experts prepared a report on Monitoring service delivery to increase the quality of free health services provided to citizens and address systematic misdemeanours. The recommendations were based on the findings stated in this report.

In the context of the right to *quality health care*, the persisting Covid-19 pandemic highlighted the fact that the poor and financially vulnerable individuals faced additional high economic costs in terms of health care. Complaints and *ex officio* cases reviewed by the People's Advocate pointed out the existence of some main problems such as: medical treatment not conforming to standards; bureaucracy related to waiting lines at "Mother Teresa" University Hospital Centre (QSUT) and Covid hospitals; lack of medical protocols for the treatment of Covid-19; lack of protective

¹⁴ Official letter no. K1/I10-2 dated 25.02.2020 addressed to the Head of the Council of Ministers and the Head of the Central Election Commission.

¹⁵ Adopted on 07.07.2021.

equipment for the health personnel and the lack of disinfectants in hospitals and polyclinics, or even the lack of medical personnel and nurses in regional hospitals and rural areas.

Pursuant to the aforementioned Resolution, the *Report on domestic violence and violence against women in Albania during January 2020-September 2021* was drawn up and submitted to the Assembly. It provides information on the situation of violence in family relationships, and deals with other forms of violence against women. The report aims to identify in particular the shortcomings in the legislation and the measures taken by various institutions in combating violence against women, according to their legal and institutional responsibilities, as well as to present concrete recommendations.

Problems identified for *persons with disabilities* have been numerous, consisting mostly of non-provision of food packages and economic support to persons with disabilities, especially those living in remote areas or to homeless persons who are also disabled. Again, lack of accessibility to public and private premises, to obtaining information, access to justice, delays in disbursement of funds to persons with disabilities, incompliance with the legal obligation to employ persons with disabilities, non-refund of the public transport tickets and special didactic tools remain unsolved for these individuals.

The elderly, as one of the most vulnerable groups, have been most prone to health problems and the most affected by the risk of loss of life during the pandemic. The People's Advocate has called for social solidarity and specifically asked the State to expand the range of social services offered to this category, especially for the elderly with disabilities and those who live alone. Adoption of the *Law on the third-age status* remains a must, in order to fully and effectively support the participation of the elderly in society, based on their needs and preferences.

The LGBTIQ community continued to face increased issues throughout 2021, such as the deteriorating economy, employment, housing and security, and their ability to meet their basic needs. The systemic high unemployment among the LGBTIQ community is due to discrimination, bullying and the departure of the LGBTIQ community from the education system.

8 International Reports, Inputs	49 Recommendations	91 Sub-recommendations	470 cases concluded in 2021
4 Publications, Special reports, Analytical reports	GENERAL SECTION in figures		232 cases solved without recommendation
6 involvements in external consultations and legislative process	0 applications or submissions as intervenor at Constitutional Court	378 Inspections / Monitoring	124 institutions addressed by recommendation

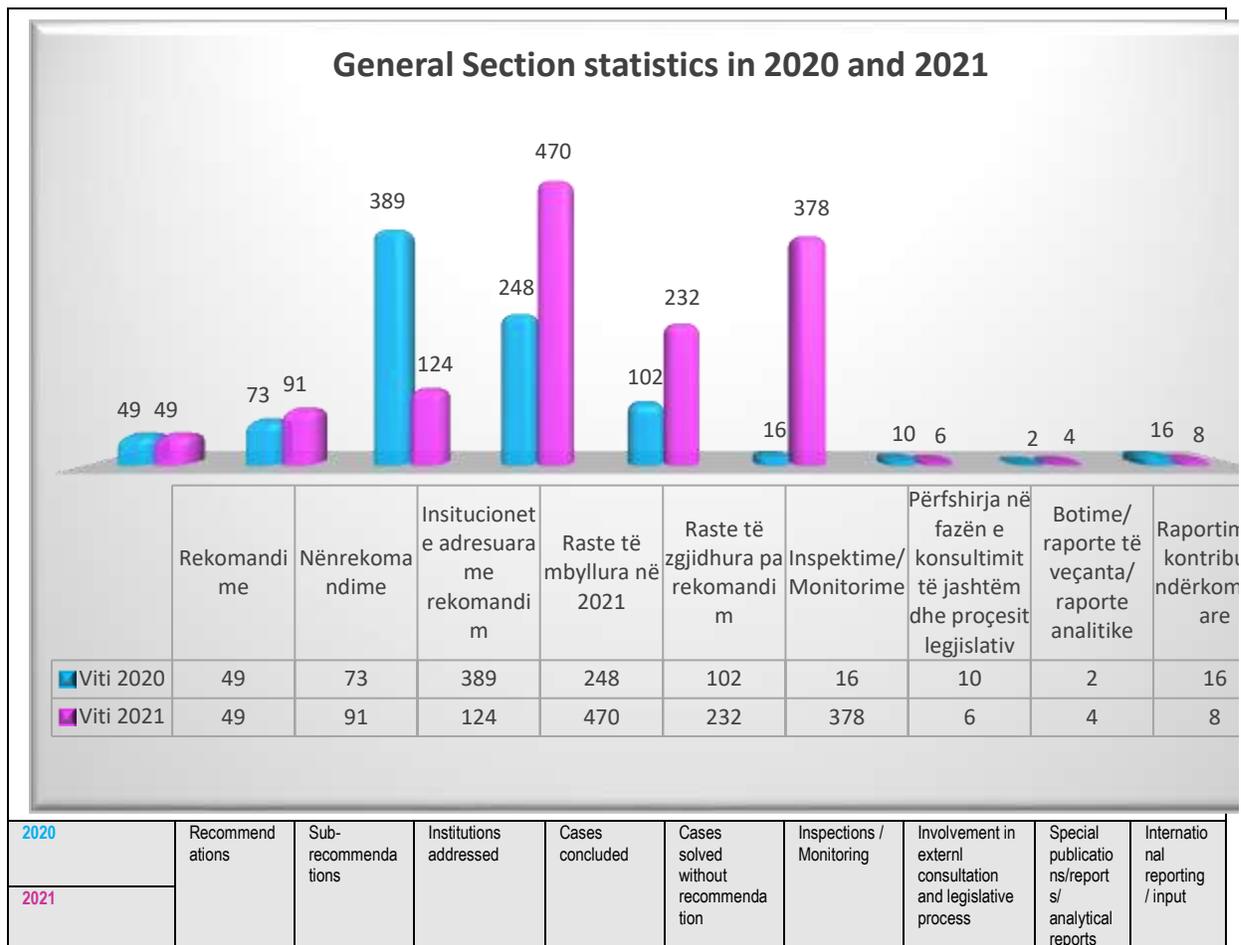


Figure 2. General Section statistics for 2020 and 2021

3.2 Rights of persons deprived of liberty¹⁶

Even during 2021, the Covid-19 pandemic has fairly affected our work to verify the complaints by prisoners; however, we have had a cautious return to normality, carrying out on-site inquiries where necessary. Our focus continued to be on some issues addressed over the years.

The People's Advocate, in fulfilment of its constitutional and legal mission to protect the rights and freedoms of citizens, reviewed the complaint by the Shkodër Local Bar Chamber that raised a legitimate concern regarding an order/official letter sent by the General Directorate of Prisons to all the penitentiary institutions on 17.11.2021, because it triggered legal implications albeit lacking the required elements of an administrative act. The legal counsels were denied entry in the penitentiary institutions to meet their imprisoned clients, although the latter had issued

¹⁶ This field of law is covered by the Special Section at the People's Advocate.

proper representation acts (power of attorney) signed by them and verified by these institutions. The official letter imposed the obligation that all representation acts must be made before the notary public, although it is universally known that no notary in our country conducts their activity in the premises of the internal regime of any prison.

Once we received this complaint, the news came out in the media on 04.12.2021 that the Ministry of Justice ordered the cancellation of the order issued by the General Director of Prisons which required all prisoners to sign powers of attorney for their counsels in the presence of a notary public. We express our appreciation for the coherent and positive stand by the Minister of Justice to repeal such a legal act that jeopardizes the fundamental right to be represented by a lawyer, specifically the prisoners at the penitentiary institutions.

Although the legal act for which the Shkodra Local Bar Chamber complained has been repealed, the People's Advocate decided to handle this issue given the concerns it caused and the fact that such problems have been identified before in local police forces and penitentiary institutions. The People's Advocate consistently receives complains from citizens taken in, arrested/detained or imprisoned, who raise the concern that they were not allowed to meet the defence counsel during the initial procedural actions of the police or the prison administration when the individuals are sent to prison. We take the occasion to underline that the People's Advocate even before had expressed its institutional stand against the denial of the right to a defence counsel for persons who are taken in, arrested/detained or imprisoned.

In conclusion of our analysis, the People's Advocate addressed recommendations¹⁷ to the Ministry of Justice, the General Directorate of Prisons, the General Directorate of State Police, 22 penitentiary institutions and 12 local police directorates as follows: the State Police and penitentiary institutions must take the necessary measures to respect right to defence to persons taken in, arrested/detained, detained or imprisoned, and to allow lawyers to meet with their clients any time and as often requested by them; take measures to provide ongoing training to the employees of the State Police and penitentiary institutions so that they fully recognize and strictly respect the constitutional and legal rights of citizens; the Ministry of Justice must take organizational measures to exercise the right to check the legality of by-laws issued by the General Directorate of Prisons, so that the violation of the legal rights of detained /imprisoned persons is not repeated in the future.

The People's Advocate noted itself and from the complaints that General Regulation of Prisons pursuant to the Law 81/2020 "On the rights and treatment of detainees and prisoners" has not been approved, although the time-limit to do so set out in Article 91 and in the Juvenile Justice Code has expired.

¹⁷ For more information, see the relevant recommendations on the PA website.

<https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandimi%20lidhur%20me%20te%20drejten%20e%20mbrojtjes%20me%20avokat%20te%20personave%20te%20shoqeruar,%20arrestuar,%20ndaluar,%20denuar.pdf>

Article 91 of Law no. 81/2020 requires that the General Regulation of Prisons be drafted and approved no later than 6 months from the entry into force of this law¹⁸. In addition, it is our consideration that failure to approve it creates the prospects for the violation of the rights of prisoners by the penitentiary administration.

In conclusion of our analysis, we sent a recommendation¹⁹ to the Ministry of Justice to take promptly he required measures for the preparation of the new General Regulation of Prisons based on the obligation set out in the Law no. 81/2020 and the Juvenile Justice Code; send the draft General Regulation of Prisons for comments to the People's Advocate and the civil society organizations dealing with the rights of detainees/prisoners and children; take actions to send this Regulation for approval to the Council of Ministers.

We commend the coherent and positive stand of the Ministry of Justice which did send for comments the draft General Regulation and its explanatory report, by organizing joint meetings to improve the draft in order to ensure the rights of detainees and prisoners.

We also pushed for the approval of the by-law on the employment and remuneration of prisoners, proportionate to the quantity and quality of work performed.

Employing prisoners is important to their rehabilitation and preparation for re-integration into society. The domestic legislation foresees both the employment and remuneration of the prisoner for the work done. Their employment is aimed not only at the earnings and developing labour skills and professional knowledge, but also at rewording them for the work done, because this gives prisoners a sense of independence which they have lost while serving the sentence; at the same time, it eases the financial burden of their family members as some of them come from families in difficult economic conditions and the meetings in prisons entail additional costs.

In 2013, the People's Advocate sent a recommendation to the Ministry of Justice to develop a draft DCM determining the criteria for rewarding the work of prisoners and send it for approval to the Council of Ministers as soon as possible. Despite our year-on-year interest, this act was only approved in 2021 as DCM no. 602, dated 13.10.2021 "*On special rules for the employment of prisoners, working conditions, duration and remuneration*" which determines *inter alia* the payment for work offered by the penitentiary administration and private entities. Now it remains to evaluate and monitor the interest of private entities to employ imprisoned persons and how the by-law in question will be implemented in guaranteeing their right to a decent job.

¹⁸ This law was published in the Official Gazette no. 137 dated 23.07.2020 and came into force on 08.08.2020. So, the 6-month time-limit ended on 08.02.2021.

¹⁹ For more information, see the recommendation on the PA website.

<https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandimi%20per%20pergatitjen%20dhe%20dergimin%20per%20miratim%20ne%20KM%20te%20Rregullores%20se%20Pergjithshme%20te%20Burgjeve.pdf>

As for prisoners' complaints related to health treatment, our inquiries concluded that it is necessary to check their clinical file, in order to have a clear picture of the actions or omissions of the penitentiary staff. We highlight the fact that, in almost all cases, we could hardly understand all the notes/records made by the doctors, including both the PI medical staff (doctors/nurses) and the specialised doctors at the hospitals where prisoners were taken for consultations and specific examinations, this because of the illegible handwriting. After reviewing dozens of prisoners' clinical files over the years, the People's Advocate raised the concern about the unclear and incomprehensible notes by doctors. Illegible handwriting (calligraphy) can lead to misunderstandings by health staff. Reading and then wrong application of the notes may lead to wrong medication or wrong dose, thus unjustifiably putting at risk the patient's health and life. The documents in the patient's clinical file are not exclusive to the doctor who compiles them. The notes must be readable by any doctor, health staff and authority that has the competence to know the patient's data, family members of the patient too. During our handling of a case, we deemed important to improve this situation by recommending to the Ministry of Health and Social Protection and the General Directorate of Prisons to take measures so that the documents in the clinical file are filled out by doctors in a clear and understandable manner, and possibly switch from the handwritten to electronic prescription.²⁰

Health care for the prisoner is provided by the penitentiary administration in cooperation with the penitentiary hospital centre and the relevant State health bodies. Like many public institutions, the global pandemic put PIs in quite difficult conditions. Several restrictive measures were imposed to prevent the spread of the infection in the prison system, including the suspension of consultations and examinations outside the penitentiary institution, except for medical emergencies. The easing of the restrictive measures - dictated by the pandemic and the figures reported by the competent health authorities - resulted in concrete measures sending the prisoners for medical visits or consultations with specialized doctors outside the penitentiary institution. Prisoner S.G. who complained of cardiac problems was sent by Kruja PI twice to the cardiology pavilion at QSUT "Mother Teresa" to perform the exercise test, but it failed in either case because it was closed due to the pandemic. This was the verbal response received by the Krujë PI staff regarding the case. After our inquiries with the QSUT "Mother Teresa", we received the response that the cardiology pavilion was open and operational even during the pandemic period. In these circumstances, we found that there was a lack of coordination between the relevant authorities, so we recommended to Krujë PI to improve the communication procedure with public hospital institutions. On our part, we held that written formal communication instead of verbal communication would be more convenient in such cases to prove all the actions performed by the prison administration in providing health services to prisoners.

In another case, we inquired into the passive resistance of a prisoner to the order to change the room because he considered it unjust. The use of physical force and coercive means by Prison

²⁰ For more information, see the recommendation on the PA website.

<https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20per%20plotesimin%20ne%20menyre%20te%20kuptueshme%20te%20dokumentave%20mjekesore.pdf>

Police officers in some situations is unavoidable to maintain order and security in the penitentiary institution. Some prisoners, for various reasons and circumstances, do not obey the orders of the PI staff. In the specific case dealt with, the police officers of Korçë PI forcibly moved the prisoner from one room to another. This prisoner submitted a complaint to our institution for physical violence. At the end of the inquiries, the allegation of excessive force was not proven, but it was established that the staff did not perform a medical examination of the prisoner, an obligation that had to be fulfilled in accordance with the legislation in force and the recommendations of the CPT in cases where force is required to contain the prisoner. According to these provisions, the medical check-up must be done not only in cases involving physical force or bodily injuries. In any case of the use of force against a prisoner, the PI doctor must examine the prisoner, as there may be an excess of force or the prisoner may suffer injuries, even when the actions of the prison staff are legitimate. This visit must be reflected in the prisoner's clinical file like any other visit by the PI doctor. In conclusion, we recommended to the General Directorate of Prisons and to Korçë PI to take measures to fulfil this legal obligation.

The complaint of another prisoner activated us to inquire into his treatment during the transportation from one penitentiary institution to another or to the court and back. Specifically, the prisoner complained that during the transportation from "Jordan Misja" PI to Fier PI, the vehicle stopped several times to pick up and hand over other prisoners riding on the same vehicle. This trip lasted several hours and the prisoner asked water to the police officers accompanying him, but he was given just some crisps purchased by them on their own pocket. In conclusion of the inquiries into this complaint, we held that the prisoners and accompanying staff must be provided food during transportation to court, medical visits or other purposes (if there is a long distance or wait), because this is an obligation stemming not only from the legislation, but construes humane treatment of prisoners who have to endure long hours in the vehicle (particularly in the case of juveniles, women or persons with health problems or special needs). This treatment is in line with the duties performed by the prison staff who themselves have to cope with added stress and difficult conditions during these long hours. We recommended to the General Directorate of Prisons to provide one meal and drinking water to both prisoners and accompanying staff during the transportation in cases of long distances or extended wait.²¹

Another case handled by us involved keeping the lights on at the sleeping premises during night hours. This case was also handled by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in its published report based on its visits in several penitentiary institutions in Albania from 20 to 30 November 2018²². This Committee

²¹ For more information, see the recommendation on the PA website.

<https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20per%20trajimin%20me%20ushqim%20tete%20burgosurve%20gjate%20shoqerimit%20i%20denuari%20O.pdf>

²² The report of the European Committee for Prevention of Torture and Inhumane and Degrading Treatment (CPT) of the Council of Europe was published on 17.09.2019.

<https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-publishes-report-on-alban-3>

stated that, as a rule, the lighting of cells at night must be reconsidered and ensure at least dimmed artificial lighting during the sleep periods. The night lighting in the sleeping premises of prisoners was considered necessary by the General Directorate of Prisons to supervise and watch the prisoners, keep the normal security parameters and prevent self-harm and escapes.

The People's Advocate asked information from the General Directorate of Prisons if measures were taken to find a solution to this complaint, and the explanation was that it is difficult to find a solution because of the infrastructure of the prisons, as it is not designed to have dimmed lighting. Currently, the penitentiary institutions were advised to replace ordinary lamps with lower-voltage LEDs. This measure is intended as a partial and quick solution to the problem. The People's Advocate estimates that a plan should have been designed since 2019 to find a solution that does not affect the prison security and addresses this concern for the prisoners.

We received another complaint from prisoner Sh.Sh. who had filed a petition to have a decision of Elbasan District Court reviewed concerning the joinder of sentences, but was not notified that such proceedings had finished. The administrative investigation found that the court notification of that decision had been sent to his residential address in Tirana and not to Rrogozhina PI (where he was serving he sentence) as required by the provisions of the Criminal Procedure Code²³. Besides, the court had not respected the deadline set out in the Criminal Procedure Code to reason the decision²⁴ and the operative clause did not indicate the deadline for the appeal and the court where it may be lodged with. Following this, we recommended to the Elbasan District Court to take administrative measures to ensure compliance with the legal provisions regarding the notification of the court decision to the prisoner at the penitentiary institution and that the operative clause must indicate the deadline for the appeal, the time such deadline commences and the court with which it must be lodged, in order to guarantee the right to appeal in the context of fair trial.²⁵

The People's Advocate paid particular attention to complaints submitted by prison staff, not only because they fall in our remit for the rights they enjoy, but also because their treatment reflects on their relations with prisoners. Complaints by penitentiary staff involve unfair dismissal from duty, non-granting of allowances, non-refund of the transportation costs from their place of residence to the workplace and non-payment of supplementary contributions. The administrative investigations we undertook focused on two cases: the dismissal of a police officer from "Jordan Misja" prison in Tirana and the dismissal of the director of Berat prison. Our findings showed that the procedure provided in the law for the termination of employment was not respected. In the case of the director of the Berat prison, the employment contract signed with the directors did not have concrete provisions on disciplinary sanctions. As for the police officer at "Jordan Misja"

²³ Article 139 of the Criminal Procedure Code.

²⁴ Article 386 "Filing of decision" of Criminal Procedure Code.

²⁵ For more information, see the recommendation on the PA website.

<https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20drejtuar%20Gjykates%20Elbasan%20lidhur%20me%20njoftimin%20dhe%20permbajtjen%20e%20dispozitivit%20te%20vendimit%20penal.pdf>

prison, we asked the General Directorate of Prisons to review the dismissal order and reinstate him in duty, and also to meet all the requirements related to the content/elements of a decision and the documentation attached in the event of disciplinary sanctions against prison police officers.

Our institution believes that the General Directorate of Prisons and the Ministry of Justice must be cautious when making a decision to dismiss prison staff, particularly one from the command level, not only because this means that a person with considerable professional experience is leaving the institution for whom time and budget has been spent to train, but this reduces confidence among other prison police officers that merit and professionalism are appreciated.

3.3 Respect for human rights by State Police²⁶

During 2021, the *ex officio* cases and complaints²⁷ handled by the People's Advocate against the State Police officers and authorities had various scopes, specifically: illegal take in or detention beyond the legal time-limit; physical or psychological ill-treatment on arrest, take in or questioning by police; illegal arrests or detentions; poor conditions in the take-in premises; failure to receive, record or follow up the criminal reports or complaints made by citizens; violation of privacy by searches in houses or other private premises; obstruction of free movement to go abroad; failure to execute criminal judgements related to financial obligations; refusal of notifications by NGOs or various civic groups to exercise their constitutional right to assembly during the pandemic; withholding information or documents requested by citizens; imposition of administrative penalties by the traffic police; not keeping or withholding the reports filled out by police officers for their actions; refusing enrolment to the Security Academy; violation of the rights of foreign nationals in Albania and refusal to provide them with a stay permit; violation of the legal rights of State Police employees due to failure to execute court judgements on their labour relations, etc.

When our investigations found violations of constitutional and legal rights of citizens, we made the relevant recommendations by these types:

- *Take-in of citizens in police premises, respect for legal requirements and their rights*

Take-in of citizens is a routine administrative action by the local police. But, given that this action results in the restriction of their freedom for a maximum of ten hours, this right must be applied correctly and strictly in compliance with the criteria explicitly stated in Articles 6/26, 109 and 122/1 of the Law "On State Police" and the standard operating procedures laid down in the *Technical rules of taking in citizens to the police premises*" approved through Order no. 938 dated 24.07.2019 of the General Director of State Police. From the examination of complaints and our

²⁶ This field of law is covered by the Special Section at the People's Advocate.

²⁷ The number of *ex officio* cases and complaints administered during 2021 is 89.

inspections at the police premises, we noted a high number of persons taken in, particularly in protests / rallies organized by various stakeholders, civil society organizations and civic groups.

It must be emphasized that take-in of citizens in police premises entails additional concerns such as the lack of the infrastructure/adequate rooms, furniture to sit, hygiene and sanitation conditions, disinfectants against Covid-19, etc. This situations resulted in inhumane treatment of citizens. This problem is particularly evident in Tirana police stations, specifically in the police stations no. 1, 2, 3, 4 and 5 out of six in total in the capital almost half of the population resides.

Such problems were identified by the People's Advocate in an *ex officio* case initiated after the protests in Tirana by groups of citizens, mainly young people, from 9 to 13 December 2020, due to the murder of the citizen K.R. by a police officer. This serious event fuelled the reaction of citizens throughout the country, who demanded that the incident be clarified promptly and the responsible persons be brought to justice. In the following days, several protests were held in different cities of the country, where the participants were mostly young people, including minors under 18. In Tirana, these protests were scattered in several areas of the city and there were cases where some participants committed aggression against police officers hitting them with hard objects, and damaged several public institutions and facilities. The People's Advocate took a public stand on these incidents, considering them unacceptable and unjustified, despite the indignation of the citizens over the incident. In all cases, the People's Advocate has called for peaceful exercise of the right to protest, demanding restraint from all parties.

A considerable number of protesters were taken in during and after these protests. Our inspection made by the expert groups at the premises of police stations and the Tirana local police directorate found several problems involving the violation of the legal rights of the persons taken in or arrested, specifically: the high number of taken-in and arrested persons, including minors; lack of disinfectants and protective masks from Covid-19; minors under 14 taken in; accompanying some minors under the age of 14; not filling out the Take-in Report for minors; not performing the medical examination of some arrested persons and not completing the health cards/files; inappropriate conditions in the take-in and security premises; failure to inform the family members of some of the arrested about their location, in particular for those transferred to police stations outside the city of Tirana due to lack of accommodation capacity; questioning of arrested persons without the presence of a lawyer, etc.

After the completion of the investigation based on our findings, we issued the following recommendations to the General Directorate of State Police and the Tirana Local Police Directorate: take the necessary measures to strictly respect the legal criteria when taking in citizens to the police premises; take the necessary measures to implement the legal obligations to complete the Take-in Report whenever citizens are brought to the police premises, regardless of their age; take the necessary measures for conducting medical visits as quickly as possible to arrested/detained citizens and completing their medical records within the legal time-line of 12 hours from the arrest/detention; take the necessary measures to equip taken-in, arrested/detained

citizens with anti-Covid-19 protective equipment such as masks, disinfectants, detergents, etc., in accordance with the normative acts in force; taking measures; take the necessary measures to ensure continuous training to police forces on the use of force and other means available in line with the principle of proportionality; take the necessary organizational measures to reduce overcrowding in security premises, particularly during massive take-ins or arrests, by transferring them to other police stations; take the necessary measures to respect the rights of persons taken-in, arrested/detained, such as allowing their meetings with lawyers at any time and as frequently as required by them, provide psychologists and lawyers to minors from the first moments of their take-in and promptly notify their family about the minor's whereabouts; analyse the legal violations and initiate disciplinary proceedings resulting in the punishment of the offenders, and generalization of these violations so that they are not repeated in the future. *The recommendation was welcome and accepted.*

We followed with great concern the take-in to police stations of media reporters during the protests after the tragic murder of the 25-year-old K.R., who were on duty reporting on site. Our institution, after the completion of the administrative investigation, has specifically recommended²⁸ specifically to the General Directorate of State Police and the Tirana Local Police Department to take the necessary measures to analyse the cases subject to this administrative investigation point out the responsibilities, in order to ensure correct treatment of the media staff by the police officer during gatherings or other activities while they report events; guarantee the right of media reports to exercise their profession and report gatherings and other activities of this nature; ensure continuous training to police officers to improve their behaviour in dealing with media staff present at gatherings or other activities of this nature during the exercise of their profession and while reporting events; strictly respect the legal criteria during the take-in of citizens to police premises; ensure non-repetition of the violation of the rights of persons taken in to the police premises and treatment of media staff present in gatherings or other activities of this nature during the exercise of their profession and reporting of events.

We were informed by the aforementioned structures that our recommendations were welcome and accepted. However, despite this stand, we believe that the State police must take concrete and effective measures and actions to implement the specific recommendations sent by us, because even after these events we noted repeated problems, so we consider necessary that the police officers are continuously trained on the role and mission of the media in covering events for the public interest.

➤ *Right to respect for physical integrity and decent treatment*

²⁸ For more information, see the recommendation on the PA website.

<https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20p%C3%ABr%20zbatimin%20me%20korrekt%C3%ABsi%20t%C3%AB%20rasteve%20dhe%20kritereve%20ligjore%20t%C3%AB%20shoq%C3%ABri%20t%C3%AB%20shtetasve,%20n%C3%AB%20ambientet%20e%20organeve%20t%C3%AB%20Policis%C3%AB%20s%C3%AB%20Shtetit.pdf>

During 2021, the People's Advocate handled several complaints and *ex officio* cases that became public on the media, concerning physical and psychological violence by police officers and excess of force in cases of taking in, questioning or arrest/detention of criminal suspects in gatherings organized during the pandemic by various groups of citizens. In cases where violations of the constitutional and legal rights of citizens were proven, the People's Advocate addressed recommendations to the State Police to initiate disciplinary proceedings, impose administrative sanctions and adopt technical and organizational measures to prevent reoccurrence in the future.

Some of these complaints and cases:

- A case initiated *ex officio* by the People's Advocate following the serious incident in Tirana on 8 December 2020. The citizen K.R. was fatally shot by a police officer who was arrested and criminally prosecuted.

The State Police intervened to disperse the protesters by using physical force, tear gas and pressurized water cannons.

Use of force is unavoidable in certain situations/conditions during the performance of the duties by the police officers. The police officer may be in such circumstances that endanger his or another person's life and may encounter violent or passive resistance from citizens. Several cases were reported in the visual and electronic media when police officers used unjustified force against some citizens. On our part, we administered and carefully examined the footage to state whether the police actions were in accordance with the normative acts that regulate the use of force.

At the end of our analysis, we estimated that at least in four cases there was unjustifiable use of force by police officers. The detailed report describing the cases taken into consideration and the legal reference has been sent to the General Directorate of State Police, the Internal Affairs and Complaints Service at the Ministry of Interior and Tirana Local Police Directorate. We issued the following recommendations to these institutions²⁹:

Take measures to ensure an in-depth, comprehensive, objective and professional analysis of the police actions towards citizens participating in the protests of December 2020; initiate disciplinary proceedings and identify police officers who committed legal violations against protesting citizens, pinpoint the concrete responsibilities and impose the disciplinary sanctions as applicable; the Internal Affairs and Complaints Service must take the necessary actions within a reasonable period to investigate the legal violations committed by some police officers against some protesters; take the necessary measures to ensure continuous training to police officers on the recognition and respect for the constitutional and legal rights of citizens, concerning the

²⁹ For more information, see the recommendation on the PA website.

<https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20p%C3%ABr%20zbatimin%20e%20parimit%20ligjor%20t%C3%AB%20proporcionalitetit%20kur%20p%C3%ABrdoret%20forc%C3%AB%20fizike%20p%C3%ABr%20t%C3%AB%20kontrolluar%20sjelljen%20e%20protestuesve.pdf>

manner and extent of the use of force, as well as for ethical and correct behaviour with citizens; and generalize this case among State Police structures. It is worth noting that these investigations are exceedingly difficult to conduct and substantiate. *The recommendation was welcome and largely accepted.*

- Complaints by the citizens L.K., M.K. and D.M. against the use of tear gas during the protest of 11 December 2020 in Tirana, after the murder of the young K.R. by a police officer. According to the complainants, tear gas was used indiscriminately among the peaceful protesters, passers-by or citizens who committed violent actions by damaging objects. They also raised the concern that tear gas was thrown at the crowd without a prior warning by loudspeaker for them to disperse.

At the end of our administrative investigation where we examined some footage from the protests posted on social networks and made available by the complainants, we concluded that the protesters were not warned about the use of tear gas and pressurized water in four cases; there was unreasonable use of pressurized water and the tear gas in densely populated areas. For the established violations, we recommended to the General Directorate of State Police to take the necessary measures to objectively and professionally analyse the actions carried out by some police officers in throwing tear gas without warning and disproportionately and pressurized water on some by-passers during the December 2020 protests; initiate disciplinary proceedings and identify the police officers who committed legal violations against protesting citizens and assign concrete responsibilities against them; take the necessary measures to ensure the continuous training of police officers to respond effectively to the progress of gatherings both announced in advance and those organized spontaneously, and generalize this case so that the use of tear gas and pressurized water in the future is done in accordance with the rules and procedures on the use of force. *The recommendation was welcome and accepted.*

At the end of our administrative investigation, during which some film footage of the protests made public on social networks and made available by the complainants was administered, we found that the protesters, in four cases, were not warned about the use of tear gas and water with pressure, there was an unreasonable use of pressurized water and the risk of using tear gas in an area with high residential density was not taken into account. For the detected violations, we recommended to the General Directorate of State Police: taking the necessary measures to objectively and professionally analyse the actions carried out by some police officers for the cases in which they threw tear gas without warning and disproportionately and pressurized water on some passers-by and citizens participating in the December 2020 protests; the initiation of disciplinary proceedings, the identification of police officers who have committed legal violations against protesting citizens and the issuing of concrete responsibilities against them; taking the necessary measures for the continuous training of police officers to respond effectively to the progress of gatherings both announced in advance and those that are organized spontaneously as well as the generalization of this case, with the aim of future use of tear gas, pressurized water

and other means in accordance with all the rules and procedures provided for regarding the use of force. The recommendation was welcome and accepted.

➤ *Constitutional right to privacy*

The right to privacy is one of the fundamental constitutional rights enshrined in Article 37 of the Constitution and Article 8 of the ECHR. According to the Constitution, the inviolability of the dwelling is guaranteed. Searches in houses and other private premises can be done only in the cases and in the ways provided by the law. Both the special law governing the activity of police officers and the concrete procedural provisions that regulate the searches on the initiative of the Judicial Police, do not legitimize the unauthorized intervention in every case. In these cases, the fulfilment and strict observance of the legal rules that legitimize the search in private premises takes on a special importance because in these situations a constitutional right is restricted. There are cases where Judicial Police officers conduct searches in houses or other private premises not in line with legal provisions; these situations bring irreparable consequences to the citizens and damage the public image of the State Police.

Regarding the violation of this right, we refer to the complaint of the citizen H.I. who raised the concern that on 28.08.2020, police officers in Durres went during night hours to the apartment of his son-in-law named G.K. residing in Shënepremte village, Divjaka and conducted a house search. Although the police found nothing prohibited by law, they accompanied him to the Durres Police Station as a suspect for the theft of some jewellery from an apartment in Durres – and he was held for 16 hours. He was released after verifications that indicated that, at the time of the theft, G.K. had been working in an apartment in Lushnja.

From the review of this complaint, we concluded that the procedural action of the house search by the JPOs was not in accordance with the provisions of the Criminal Procedure Code, because there were no well-founded reasons to carry out the search, nor it was a pressing action that could be done without an order by the prosecution office. The search took place at an inconvenient time, from 22:30 to 23:00, outside the legal deadline and without a written order from the prosecutor. Meanwhile, the search report was not sent to the prosecutor for validation within the legal time-limit set out in Article 298/4 of the Criminal Procedure Code. Also, the investigative materials related to this event were referred to the prosecution office beyond the legal deadline. These actions come in complete contradiction with the obligations defined in Articles 30, 206, 293, 294 and 298 of the Criminal Procedure Code and in the Articles 116, 117 and 118 of the Law no. 108/2014 "On the State Police".

We also found that the Durres Prosecution Office did not validate the search carried out in the apartment of citizen G.K., in breach of Article 298/4 of the Criminal Procedure Code.

In addition to the above, during the examination of this complaint we found *a serious concern related to the indifferent and passive attitude of the Durres Prosecution Office regarding the legal violations*

committed by the judicial police in this case. This institution did not express itself about the validation of the search by the JPO at the residence of the citizen G.K., but sufficed with the finding that there is no decision on its validation. Also, the prosecution office did not express itself regarding the fact that the search was done beyond the legal deadline and without a written order of the prosecutor. Although the prosecution office established that the investigative materials were sent beyond the legal deadline by the judicial police of the Durrës Police Station, it did not result in the initiation of disciplinary proceedings for the punishment of the responsible persons based on Article 32 *et seq.* of Law no. 25/2019 "On the organization and functioning of the Judicial Police" in order to analyse this case and improve the work in the future.

For this case, we issued the following recommendations to the General Directorate of State Police, the General Prosecution Office and the High Prosecutorial Council: take the necessary measures to initiate disciplinary proceedings against the judicial police officer and sanction him with a disciplinary measure; take measures to ensure ongoing training of judicial police officers regarding the performance of procedural actions, on the recognition and respect for the constitutional and legal rights of citizens during the performance of their legal mission; generalize this case in all local police structures so that such breaches are not repeated in the future; the High Prosecutorial Council and the General Prosecution Office have to analyse this case and allocate the responsibilities, and generalize it so that such breaches are not repeated in the future, either by the judicial police officers or the prosecutors and Heads of district prosecution offices. *The recommendation was welcome and accepted by the General Directorate of State Police and the General Prosecution Office, whereas the High Prosecutorial Council did not respond.*

➤ *Constitutional right to access to information*

Regarding the right to access to information, our review of complaints found cases where the Ministry of Interior and the State Police fail to respect this constitutional right of citizens. This situation stems from the lack of knowledge about the normative acts that regulate this right, but also the past legacy mind-set that these bodies are the holders of classified *State secret* documents and that this right is their monopoly.

In the context of this right, we refer to a complaint by citizen H.Sh. who was employed at the Republican Guard. He had addressed a request to the Human Resources Unit to provide him a copy of a document that was in his personal file that, according to him, was crucial to his career progress. The complainant received a reply from this Unit that the document was not in his personal file. Subsequently, he requested a copy of the entire personal file but it was not provided, according to him.

The reply from the Republican Guard informed us that the complainant had not requested a copy of his personal file, but a document that was not there. Referring to this reply and Article 23 of the Constitution and the Law no. 119/2014 "On the right to information", we informed the complainant about this reply and suggested to him to go to the Human Resources Unit and make

a request for a copy of his personal file. The complainant addressed us again saying that he asked the Human Resources Unit to have a copy of his personal file, but it was provided to him only to look at.

In conclusion of the administrative investigation, we found that the complainant's claims that he was not given the requested document (personal file) were true. From the replies received, it did not appear there was any legal impediment to giving the personal file to the complainant.

For the above case, we made the following recommendations³⁰ to the Republican Guard: take immediate action to ensure that the Human Resources Unit provides a copy of the personal file to the citizen H.Sh.; analyse this case and allocated legal responsibilities and take administrative measures against the responsible persons who violated the constitutional and legal right to information of citizens H.Sh.; and generalize this case with the aim of not repeating it in the future, both towards the Republican Guard staff and with third parties that may request information on official documents. *The recommendation was welcome and accepted.*

➤ *Legal rights of State Police employees*

Protection and respect for the legal rights of the State Police employees during this year has been in the focus of the People's Advocate. Protection of the legal rights of public administration employees, of which the State Police is a part, is both a legal and a moral obligation. This because police officers have to cope with many different difficulties, such as: their profession forces them in collusion with the malevolent elements that violate public order and security by committing criminal activities, or administrative violations; work in shifts; the real working hours, sometimes overtime which is not paid in full; work even on holidays and weekends and away from their families; although they enjoy some economic and social rights provided for in the organic law, they still do not benefit them to the full extent, etc. In our view, the observance of the rights of State Police employees is a valuable contribution and an impetus that directly boosts their motivation and dedication in carrying out the legal mission of the State Police and in enhanced observance by them of the citizens' rights. Regarding this issue, let us refer the following case:

A State Police officer called A.C. complained that while employed as police officer, he entered into a contract with the General Directorate of the State Police to attend the first-cycle studies at the Security Academy for a period of 3 years. Based on this contract, he would receive allowance during the study period according to the normative acts in force. Despite the fact that the contract stipulates that the study period lasts 3 years, in fact each academic year lasted less than 6 months and according to the DCM no. 200, dated 15.03.2017, he was entitled to the baseline monthly salary he received before starting his studies.

³⁰ For more information, see the recommendation on the PA website.

<https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20per%20dhenien%20e%20dosjes%20personale%20H.%20Sh.pdf>

The complainant claimed that the State Police applied the by-law unfairly, by giving him only 40% of the baseline salary for almost twelve months in the second and third year cumulatively. According to him, even his student colleagues were in the same situation and some filed a lawsuit with the Administrative Courts in Tirana and Shkodra and won the case, so, they were granted the right to receive the salary difference unduly retained. Although he did not file a lawsuit, considering the decision of the courts, he addressed a request to the General Directorate of State Police asking to be treated the same as his colleagues given that he was in the same situation, but his request was rejected.

From the examination of the complaint and the responses received from the State Police, the Security Academy and the final decisions of several first-instance Administrative Courts and the Administrative Court of Appeal, it turned out that the State Police had incorrectly applied the DCM no. 200/2017 by treating the complainant and his colleagues according to paragraph 12/b of this VKM and giving them 40% of the baseline monthly salary they received (according to the rank) before starting the studies. Instead, it had to apply paragraph 12/a of this DCM and grant them full monthly salary.

A positive development in this case was that the Council of Ministers had amended and improved the formulation of paragraph 12 of DCM no. 200/2017, treating the students of the Security Academy with the full salary during the study period.

In order to reinstate the right of the complainant and other State Police officers during their first-cycle studies at the Security Academy, we recommended³¹ to the General Director of State Police: take the necessary measures to revoke the administrative acts issued against the former student/police employee A.C. and give him the salary difference unfairly retained in breach of paragraph 12/a of DCM no. 200/2017, over the 3-year academic period 2017-2020 in which he attended the first-cycle studies at the Security Academy, respectively for the second academic year 2018-2019 and for the 6 months of the third academic year 2019-2020; take the necessary measures as the superior body to ensure revocation of administrative acts issued by local police structures against the former police students/employees who attended the first-cycle studies at the Academy of Security during the 3-year academic period 2017-2020 and grant the salary difference retained in breach of paragraph 12/a of DCM no. 200/2017, despite the fact that they have not filed a lawsuit for violation of this right; generalize this case and draw the attention of the relevant structures in order to correctly implement the normative acts in force.

Because the above recommendation was not accepted, in the recent months we made a recommendation to the Minister of Interior and asked that in the capacity of the superior

³¹ For more information, see the recommendation on the PA website.

<https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20p%C3%ABr%20dh%C3%ABnie%20e%20diferenc%C3%ABs%20s%C3%AB%20pag%C3%ABs%20t%C3%AB%20ndaluar%20n%C3%AB%20kund%C3%ABrshtim%20me%20pik%C3%ABn%2012-a%20t%C3%AB%20VKM%20nr.%20200-2017,%20punonj%C3%ABsit%20t%C3%AB%20policis%C3%AB%20A.pdf>

authority to the General Directorate of State Police, exercise his powers to reinstate the financial right of the complainant and other police officers/former students at the Security Academy. No response received so far, albeit the legal deadline is overdue.

3.4 Prevention of violence and torture³²

The People's Advocate in the role of the National Mechanism for Prevention of Torture and Inhumane and Degrading Treatment³³ (NPM) continued to fulfil its functional duties during 2021. Specifically, the National Mechanism conducted *68 periodic physical inspections* or checks on particular topics. Also, in cooperation with Frontex, monitored the operations of compulsory return of Albania citizens illegally staying in EU countries. All these activities resulted in *76 recommendations* with a dense official correspondence in order to clarify many details and phenomena noted during the inspections.

In 2021, the NPM handled *38 complaints* and *9 ex officio cases*. There were *34 complaints for prisons* (alleged violence, denied treatment and medicaments, vaccination requests, more meetings with family members, etc.) and *4 complaints* for the State Police (alleged violence, unfair take-in).

The purpose of these visits and inspections was to assess the progress of the competent authorities in implementing the recommendations of the People's Advocate, and in respecting the rights of prisoners and persons deprived of liberty, the rights guaranteed by the Constitution of the Republic of Albania, as well as the legal and by-laws in this field. Furthermore, the NPM has engaged in promotional events on human rights, in cooperation with the Ministry of Justice, the Prison Administration and the State Police.

NPM findings from inspections in penitentiary institutions are listed below:

1. *Inappropriate infrastructure conditions in some penitentiary institutions, without the possibility to reconstruct the internal-regime premises and this makes it impossible to guarantee the rights of prisoners (in the penitentiary institutions in Lezhë, Sarandë, Benç, Tepelena and 302 Tirana), sanctioned in international acts and the domestic legislation. These findings continue to be found repeatedly, even in more degraded conditions due to lack of investment and amortization.*
2. *The construction infrastructure of accommodation and shared areas has problems of dilapidation, dampness, intermittent supply of electricity and water, natural lighting and ventilation of cells, the presence of insects, extremely poor condition of toilets, kitchens, showers, ventilation rooms, confinement rooms, etc. Institutions with urgent infrastructural problems are the penitentiary institutions in Durrës, Rrogozhinë, Tepelenë and Shënkoll, Lezhë. The*

³² This field of law is covered by the NPM Section at the People's Advocate.

³³ Article 81 of the Law no. 81/2020 "On the rights and treatment of detainees and prisoners" and Articles 30 and 30/1 of the Law no. 8454 dated 04.02.1999 "On the People's Advocate" as amended.

exception is the new and reconstructed ones, which have practically created a double-standard situation in the Albanian penitentiary system.

3. *Overcrowding increased throughout 2021 in some penitentiary institutions such as 302, 313, Jordan Misja, Tirana and in Durres. During the visits, the inspection teams found 4 to 6 persons accommodated in one cell, not respecting the 4m2 standard for each prisoner. Annex 1 shows the population figures in penitentiary institutions.*
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". Failure to establish the Special Medical Institution resulted in their treatment instead in penitentiary institutions which are in very bad condition and overcrowded. The People's Advocate has repeatedly recommended to the competent authorities to close the penitentiary institution in Zahari, Krujë, the place where most of the prisoners are treated, and has insistently demanded the establishment of the special medical institution provided by law. Until then, the People's Advocate has demanded the fulfilment of the standards and infrastructure conditions in those premises through investments and provision of quality services primarily by increasing the number of medical and support staff.*
5. Following the recommendations by the NPM³⁴ and the People's Advocate, the Ministry of Justice and the General Directorate of Prisons took a decision for a provisional solution to this problem. As a start, reconstruction and adaptation of the two buildings 4 and 5 at the penitentiary institution in Shën Koll,³⁵ Lezhë, which will provisionally accommodate the persons treated at Zahari PI – until the establishment of the special institution prescribed by law. 314 prisoners under compulsory treatment³⁶ were successfully transferred from Krujë PI and accommodated in both buildings in Lezhë PI³⁷ during 27-28 November 2021. According to the information provided by the General Directorate of Prisons, the entire staff of Krujë PI including psychiatrists, nurses, social workers, guards and janitors were deployed in full capacity in the two buildings at Lezhë PI and are providing specialized treatment to patients under medical measures. The number of staff that will treat this category of persons in Lezhë is 35.³⁸ The accommodation premises are much better there, and access to specialized health

³⁴ In the last CPT report on the visit in November 2018 [1680a64e5b \(coe.int\)](#), the executive summary CPT/inf (2019) 28 highlights that: *The situation of forensic psychiatric patients in Albania has been the subject of a longstanding dialogue between the CPT and the Albanian authorities. In the report on the February 2017 ad hoc visit, the CPT expressed serious concern that, despite the specific recommendations repeatedly made and contrary to national legislation, forensic psychiatric patients continued to be held in the Prison Hospital in Tirana and Zaharia Special Institution in Kruja and that under unacceptable conditions (poor state of repair, severe overcrowding, totally insufficient psychiatric care, etc.)*.

³⁵ CPT Report 2018, pp. 7, 37, 38 and 45 "Management of the new hospital at Lezha prison by the Ministry of Health and Social Protection will ensure specialized services to this category and Access to meaningful out-of-cell activities, the required human care and contacts with specialists (psychiatrists, psychologist, caretakers)".

³⁶ 217 citizens under court-ordered compulsory hospitalization and 97 citizens under court-ordered temporary hospitalization.

³⁷ Lezha penitentiary institution was classified as ordinary-security prison (under Order no. 8927/1 dated 27.9.2018 of the Minister of Justice), with a special section for compulsory treatment patients.

³⁸ Specifically, 2 full-time psychiatrists Konkretisht, 1 cardiologist, 1 general physician, 2 psychologists, 1 stomatologist, 1 chief nurse, 10 nurses, 5 caretakers, 5 janitors, 6 social workers and 1 pharmacist.

services has been facilitated – and to be provided by the medical services of State health centres/hospitals.

6. *Lack of physicians in the penitentiary institutions* is a persistent concern. From inspections in penitentiary institutions in 2021, the People's Advocate recommended to ensure a full-time physician in the organizational structure of the institution. More problematic the situation is in the penitentiary institutions in Kavajë, Tepelenë, Kukës, Korçë, Durrës, Fier, Peqin and Lezhë. Annex 2 shows the number of medical staff in prisons in 2021.
7. *Quality and variety of food* remains a concern in virtually all penitentiary institutions.
8. *Serious shortcomings in the provision of education opportunities and social-cultural activities* to the prisoners due to Covid-19 restrictions.
9. *Remuneration for work done in all penitentiary institutions.*³⁹
10. The health care staff in prisons needs *appropriate premises to conduct medical visits*, because they are lacking the necessary equipment and auxiliary materials.
11. *Provision of health cards to detainees/prisoners is marred by delays and shortcomings*, as provision of electronic information to the health insurance system; this is a problem in most penitentiary institutions, resulting in non-refunding and problems in the supply of medicaments.
12. *Difficulties in the provision of consultation, examinations and lab tests* are noted in several penitentiary institutions, due to the lack of full-time physicians or ambulances, and the resistance of regional hospitals to treat the persons because of the poor security conditions, etc.
13. *Problems in the provision of the dental services* due to lack of equipment and auxiliary materials. Besides tooth extractions, other dental services were provided with difficulty in public polyclinics or private clinics on the expenses of the prisoners.
14. *The heating/cooling systems were not operational* in virtually all penitentiary institutions, either due to technical glitches or lack of fuel. In most cases, the detainees /prisoners are not provided heating as per legal provisions.
15. *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 – these were noted in most penitentiary institutions.
16. *Lack of cupboards and shelves for clothes.* The prisoners/detainees kept the clothes in plastic bags or sacks, usually underneath the bed.
17. *Expensive prices of products in the PI shops*, a problem noted in almost all the inspected institutions.

The NPM has sent recommendations to the competent authorities for the problems identified, which need to be addressed by the higher bodies, because most involve the harshened criminal justice policy, the lack of funds and need to issue by-laws to significantly improve the system both in form and content.

³⁹ This issue is elaborated under paragraph 3.2 "Rights of persons deprived of liberty".

- *Non-issuance of by-laws to the Law no. 81/2020 "On the rights and treatment of detainees and prisoners" within the deadlines set out in the law.*

The monitoring reports of the People's Advocate and other national and international organizations raise the critical concern of enforcement of the legislation, where issuance of by-laws and their implementation is paramount. The missing bylaws to implement the laws of the Penitentiary Package *adopted in July 2020*⁴⁰ undermines the effect enforcement of this law and makes it unapplicable. Consequently, the lack or late issuance of by-laws seriously jeopardizes the principle of the rule of law in Albania and triggers concerns in the integral implementation of the law.

The following by-laws are yet to be issued:

- ✓ Decision of the Council of Ministers on "Detailed rules and criteria for the technical, safety, suitability and accessibility conditions for persons with disabilities, which must be met by the buildings of the penitentiary institutions", an obligation provided in Article 32(2); should have been issued no later than six months from the entry into force of this law.
- ✓ Joint Instruction of the Minister of Justice and the Minister responsible for Health on "Daily food intake", an obligation provided for in Article 36 (8); should have been issued within three months from the entry into force of this law.
- ✓ Joint instruction of the Minister of Justice and the Minister responsible for Health "On diagnosis and treatment at the University Hospital Centre and regional hospitals", an obligation provided for in Article 41(13); should have been issued within three months from the entry into force of this law.
- ✓ Joint Instruction of the Minister of Justice and the Minister responsible for Health "On detailed rules for the provision of health care services and the health insurance scheme for imprisoned persons", an obligation provided for in Article 41(17); should have been issued within three months from the entry into force of this law.
- ✓ Joint Instruction of the Minister of Justice and the Minister responsible for Education and Vocational Training "On detailed rules for the development of education and vocational", an obligation provided for in Article 45(9); should have been issued within three months from the entry into force of this law.

Whereas the Decision of the Council of Ministers "*On the approval of the General Regulation of Prisons*"⁴¹, an obligation provided for in Article 25 of the Law 81/2020 was approved much later than the deadline set in the law. This by-law should have been issued six months from the entry into force of this law.

- *Observance of the rights of persons taken in, detained/arrested at the police units*

⁴⁰ In reference to Article 91 of the Law 81/2020.

⁴¹ Approved on 6 April 2022.

The National Mechanism for the Prevention of Torture has continued to carry out inspection at the premises of the State Police, focusing on the legality and regularity of take-in, detention and arrest of individuals, their conditions and treatment in police stations, infrastructure problems and their materials, etc. For all the findings, we sent recommendations to the superior bodies of the State Police.

The inspections in police units during the year 2021 aimed to observe the premises and collect and evaluate the information on the actions/practices followed by the State under its organic 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 security of arrested/detained persons at the premises of the State Police, and identification and resolution of their requests /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 state of implementation of the People's Advocate recommendations from previous inspections.

Findings from the inspections in police units are summarized below:

1. In some cases, there has been considerable overcrowding in the Tirana DPV as well as in some of the police stations depending on it, where there are security facilities. In these structures, most of the time, work was carried out in an official capacity. The overcrowding was created mainly as a result of numerous arrests and detentions made during the year by the police for criminal offenses newly included in the Penal Code, but also because persons convicted by a final decision, in their absence, were delayed in being accepted by General Directorate of Prisons.

*1. In some cases, there was considerable overcrowding in the Tirana Police Directorate and in some police stations that have security facilities. These police units worked almost all the time above the official capacity. Overcrowding was due to many arrests and detentions for criminal offenses recently introduced in the Criminal Code, but also because there were delays by the General Directorate of Prisons to accommodate persons convicted *in absentia* by a final court decision.*

*2. Allegations of torture and physical and psychological abuse of citizens by police officers. Despite a correct approach and respect for human rights by State Police employees, we still had several complaints. Complaints established to be well-founded were mainly followed up by joint groups with the Special Section, followed by concrete recommendations to initiate disciplinary proceedings. The NPM sent a recommendation to police station no. 2 in Tirana regarding *the take-in of Ms. L. H.* The National Mechanism for the Prevention of Torture has brought to attention the special importance of the conduct of State Police from the first hours of taking persons in. These persons are in a situation of particular vulnerability, as they are at the hands of law enforcement agents. This imbalance of power poses the risk of abuse and arbitrary actions that breach the inviolability of the person.*

Protection measures are particularly important in the early hours of the take-in to prevent abuses. These measures include:

- *give information to taken-in persons about their rights;*
- *ensure access to a lawyer;*
- *notify the family members and/or a third party related to the person;*
- *ensure examination by a physician to confirm or dispel ill-treatment claims and offer medical assistance if required.*

Besides this case, the NPM found from frequent monitoring of the premises of police stations that the persons arrested/detained by police officers sign a statement declaring that they received the charter of rights only after their questioning at the police station.

The CPT recommended to the competent authorities 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. According to the NPM findings, the explanatory paper with the rights of detained persons is given to them only after the questioning is over. In this concrete case, it was not given to the complainant until she met with the People's Advocate. Also, in a significant number of police stations, the charter of rights is not posted in evident places to be seen by persons brought in/arrested.

The National Mechanism during the inspection at police station no. 2, Tirana, found that Ms. L.H wrote in the register that she has been ill-treated by the police officer of that station. The response of the police station to the People's Advocate⁴² makes no mention of this note by the lady L.H.

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 31/31⁴³ of the UN Human Rights Council in 2016, 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;*

⁴² Official letter prot. No. 375 dated 20.01.2021.

⁴³ https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/31/L.26/Rev.1

- 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.*

The Human Rights Council also recommended to the State to communicate this information to the detained person or his/her legal counsel.

3. The People's Advocate in the role of the National Mechanism for Prevention of Torture, referring to the purpose of inspections, verifications and observance of standards laid down 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 security of arrested/detained persons at the premises of the State Police, and identification and resolution of their requests /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", the CPT Working Programme no. 5949 dated 09.07.2019 "On the fulfilment of the recommendations of the EC Progress Report for Albania 2019", the recommendations of the People's Advocate and those of the European Committee against Torture (CPT) *on improving the treatment and observance of the rights of persons deprived of liberty at the State Police premises*, has the legal obligation to intervene for the solution of identified problems. The People's Advocate recommended to the police station no. 2 in Tirana: examine the case and allocate the administrative sanctions for the violations by the police officer related specifically to:

- ✓ *failure to provide the charter of rights;*
- ✓ *failure to respect the standard procedure on reporting complaints by detained persons in the registers;*
- ✓ *take the necessary measures to ensure that arrested/detained persons are fully informed of their rights from the moment they are deprived of liberty, providing clear verbal information on their legal/procedural rights from the onset, and give them the charter of rights;*
- ✓ *take measures to fill in and specify in the register the time of deprivation of liberty by the police officer.*

4. *Failure to fulfil legal obligations for the construction or adaptation of companionship facilities according to the required standard (at least 3 companionship rooms, 1 for adults, 1 for women and 1 for minors). The escort rooms in most of the police stations did not meet the standards for dignified treatment of persons, as they were few in number and did not create suitable, dignified premises, equipped with the necessary furniture for stay, separated separately for women, adults and minors.*

5. *Failure to comply with legal obligations for the construction or adaptation of security facilities, according to the standards required and approved by International Conventions and the Order of the Director General of State Police no. 925, dated 18.07.2019. The exceptions were the security premises in police directorates in Tirana, Gjirokastër, Kukës, Korçë and Fier. The police stations under the Tirana Police Directorate which had security rooms were also in obvious violation of these standards. Inspections in the police stations no. 1, 2 and 3 in Tirana showed that some*

security rooms were closed and officially put out of use.

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

7. *Problems in the installation of security cameras in corridors*, detention and questioning facilities in several police stations. Nevertheless, it is worth mentioning that the conduct of police officers towards citizens is significantly improved.

➤ ***Situation at national level in the take-in and interviewing rooms for juveniles, at the local police units***

In cooperation and with the support of the Swiss-funded Project *Enhanced capacity of Albanian law enforcement agencies and courts to meet human rights standards in juvenile justice – a comprehensive justice chain approach*, friendly premises used to interview juveniles were adapted and equipped with audio-visual equipment at the local police units, specifically:

- ✓ *Police station no.3, Tiranë*
- ✓ *Local Police Directorate Durrës*
- ✓ *Local Police Directorate Shkodër*
- ✓ *Local Police Directorate Vlorë*

UNICEF funded the adaptation and equipment for seven friendly premises to interview juveniles in the following local police units:

- ✓ *Local Police Directorate in Berat*
- ✓ *Local Police Directorate in Gjirokastër*
- ✓ *Local Police Directorate in Dibër*
- ✓ *Local Police Directorate in Kukës*
- ✓ *Local Police Directorate in Fier*
- ✓ *Police station in Sarandë*
- ✓ *Police station in Korçë*

World Vision and Arsis Initiate supported the adaptation and equipment of seven friendly premises for interviewing juveniles, specifically:

- ✓ *Lezha Local Police Directorate*

- ✓ *Police station no.5 Tiranë*
- ✓ *Police station no.6 Tiranë*
- ✓ *Police station in Kurbin (but this unit cannot be used because of damages it suffered from the earthquake in November 2019).*

➤ ***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 2021, the National Mechanism inspected the mental health institutions such as the Psychiatric Hospitals in Vlora, Shkodra and Elbasan, Zahari special penitentiary institution, the special health institute for prisoners (SHIP) and the Psychiatric Hospital "Xhavit Gjana" in Tirana.

Problems identified from these inspections include:

1. *Non-implementation of the legal obligation to establish a special medical institution, provided for in Law no. 44/2012, dated 08.05.2012 "On Mental Health", with the aim of accommodating and treating persons who have received a court-ordered measure of "compulsory" or "temporary hospitalization".* The People's Advocate, through the National Mechanism, has repeatedly drawn attention to the conditions and treatment in penitentiary institutions of convicts with mental health disorders who have committed criminal offenses or persons with medical measures of "compulsory treatment". Non-implementation of Law no. 44/2012, dated 08.05.2012 "On Mental Health", for the establishment of a special medical institution for the purpose of treating this category of persons, has brought the problem of their treatment in penitentiary institutions that suffer from poor conditions, dilapidation and overcrowding. The People's Advocate repeatedly recommended to the competent authorities to close the penitentiary institution in Zahari, Krujë where they are mostly treated, and has strongly demanded the establishment of the special institution provided by law. Until then, the People's Advocate demanded that the infrastructure standards be met in those premises - directly linked to insufficient investments – and provide quality services that involves first of all increased medical and auxiliary staff. Referring to the recommendations by the CPT and the People's Advocate, the Ministry of Justice and the General Directorate of Prisons made a decision in 2018 to provisionally address this problem, by starting the reconstruction and adaptation of two buildings (4 and 5) inside the Shën Koll penitentiary institution in Lezha, where persons treated at Zahari would be temporarily accommodated until the establishment of the special institution provided by law. 314 citizens under medical measure were transferred from Krujë PI and accommodated in Lezhë PI during 27 and 28 November 2021. According to the information provided by the General Directorate of Prisons, the entire staff of Krujë PI including psychiatrists, nurses, social workers, guards and janitors were deployed in full capacity in the two buildings at Lezhë PI and are providing specialized treatment to patients under medical measures. The number of staff that will treat this category of persons in Lezhë is

35.⁴⁴ The accommodation premises are much better there, and access to specialized health services has been facilitated – and to be provided by the medical services of State health centres/hospitals.

2. *Non-implementation of Article 28⁴⁵ of the 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 convicts with mental health disorders, who have committed a criminal offence and for which the competent court ordered "compulsory treatment", for detainees or convicts 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. NMP has continuously recommended that a swift, effective and sustained solution be found for the courts to examine the decisions "compulsory treatment to a medical institution" within the legal deadlines, and to send their decisions to the institutions where these persons are treated.*

3. *Add psychiatrists, caretakers/nurses, task force, security officers, janitors and barbers to the hospital staff and beds, in order to provide suitable mental health services given the specifics. 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, as well as with age and physical skills suitable 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.*

6. *Equip hospitals with mechanical restraint equipment in line with paragraph 1.2 "Restraint elements", letter 'b' "Mechanical restraint" of the above-cited legal act.*

⁴⁴ Specifically, 2 full-time psychiatrists Konkretisht, 1 cardiologist, 1 general physician, 2 psychologists, 1 stomatologist, 1 chief nurse, 10 nurses, 5 caretakers, 5 janitors, 6 social workers and 1 pharmacist.

⁴⁵ This Article stipulates that: "1. Special medical institutions shall serve to treat persons with mental health disorders, who have committed a criminal offence for whom the competent court ordered compulsory treatment at a medical institution 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 at a special medical institution, in accordance with Article 239 of the Criminal Procedure Code. 2. 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".

7. Reorganize wards to ensure that acute patients are accommodated separately. *It is necessary to separate and reorganize the special wards of disabled people, residents, acute and sub-acute patients, in order to provide a thorough service and 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*
8. *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.*
9. Provide/make fully operational the *clinical bio-chemical labs and ECG devices.*
10. *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.*

Based on the above, the NPM *recommended* specifically for Psychiatric Hospitals:

- ✓ Implement the agreement between the Ministry of Justice and the Ministry of Health for the establishment of a special medical institution, provided for in the Law no. 44/2012, dated 08.05.2012 "On Mental Health", with the aim of accommodating and treating persons who have received a court-ordered *compulsory treatment* or *temporary hospitalization*.
- ✓ Implement Article 28 of the Law no. 44/2012 "On Mental Health" amended, by the Ministry of Justice and the Ministry of Health and Social Protection, for the establishment of special medical institutions and for the treatment of persons with mental health disorders who have committed a criminal offense.
- ✓ Add psychiatrists, caregiver/task force nurses, security officers, janitors and barbers to the hospital staff, in order to provide a service suitable to the specifics of this mental health service with beds.
- ✓ Set up a camera surveillance system in the common premises of psychiatric hospitals.
- ✓ Construct/renovate confinement rooms in accordance with paragraph 4.6 "Confinement Infrastructure" of the "Physical Restraint Standards in Specialized Mental Health Services with Beds".
- ✓ Equip hospitals with mechanical restraint means.
- ✓ Reorganize wards to accommodate acute patients separately.
- ✓ Improve the conditions in the wards, heating, showers and bathroom, in order to offer dignified service to people treated in psychiatric hospitals.
- ✓ Equipment/commission clinical bio-chemical labs and ECG machines.
- ✓ Improve material conditions and support with security staff for medical personnel.

- ✓ Separate and reorganize in separate wards the persons with intellectual disability, residents, acute and sub-acute patients, in order to provide a thorough service according to the needs of each category.
- *Observance of rights in Detention 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 2021 to monitor the observance of rights in the reception centres for emigrants, the centre for the protection of trafficking victims and many others.

- *Detention Centre for Foreigners in Karreç*

The NPM conducted an inspection at the Closed/Detention Centre for Foreigners in Karreç.

Problems identified during the inspection include:

- ✓ The problem of staff shortage persisted, such as: doctors, lawyer, dentist, shortages which directly affect the respect for the rights of irregular foreigners in the Republic of Albania.
- ✓ Lack of telephones for foreigners to communicate with their families. The inspection team was informed by the staff that the communication of the accommodated persons with their family members or legal representatives was resolved through the circulation of mobile devices of the persons who had them.
- ✓ Lack of interpreters/translators at the centre continues; they are indispensable to ensure communication with the foreigners either in English or other mother tongues of the foreigners. This made the communication and interaction of the accommodated foreigners with the Centre staff difficult.
- ✓ Lack of recreational and sports facilities. There was a lack of cultural, entertainment and sports activities and the only sport was football on a field unsuitable for foot games.
- ✓ Absence in all premises of the Centre of posters with the legal rights of the irregular foreigners detained.
- ✓ The periodic painting of the bedrooms of foreign persons accommodated in the Centre had not been carried out; besides, the common corridor of the living rooms was unclean, unpainted and had an unpleasant smell.
- ✓ Dental services were not offered at the Centre.
- ✓ The centre had only one nurse who responded to medical service needs.
- ✓ There were no emergency bells in the bedrooms.
- ✓ Maintenance of hydro-sanitary and electrical systems in the confinement rooms is only partially done.

➤ *National Reception Centre for Asylum-seekers in Babrru, Tirana*

The National Reception Centre is the only one in the territory of the Republic of Albania where foreigners seeking protection in Albania are accommodated and treated. This centre accommodates foreigners who submit an application for asylum, or those whose application has been rejected and the appeal procedure is underway. This centre⁴⁶ has its own budget - as part of the budget of the Ministry of Interior - which covers asylum and refugee issues.

Problems identified during the inspection include:

- ✓ The centre received a large number of asylum-seekers, therefore, many doors, windows, furniture, etc., suffered significant damage.
- ✓ Urgent need in the Centre for support in staff and maintenance, as financial and human resources are limited, which makes it impossible to cope with overcrowding - which creates the prospects for the violation of the rights of foreign asylum-seekers.
- ✓ Lack of a full-time general physician and a night caretaker in the Centre's staff. The lack of a physician has created an unfavourable situation in the provision of health care services to foreigners. Many have significant health care needs, as they come from a long and arduous journey.
- ✓ The need to increase the daily food quota for asylum-seekers, taking into account the increased prices of basic consumption food items and that this increase continues year-on-year.
- ✓ Imperative need to take measures for the reconstruction of the 4-storey building and single-storey building (no. 3 and no. 4) to ensure normal living conditions to these people, because the increased number of foreigners was not matched by increased support staff capacities. Due to the big inflow of foreigners last year, the residential premises and the structure of buildings suffered significant material damage, putting them out of commission, because there were conflicts between the asylum-seekers carried over from where they came from and the accommodation facilities fuelled disputes.

➤ *National Reception Centre for Victims of Trafficking in Linza*

The National Mechanism conducted an inspection at the National Reception Centre for Victims of Trafficking in Linza.

This Centre's mission is to improve the social status of potential victims of trafficking, raise their awareness and empower them to live independently in the community, through the continuous development of self-esteem, combating the stigma and discrimination against this category, as these have a direct bearing on their full reintegration. The purpose of this Centre is to rehabilitate

⁴⁶ Pursuant to Article 44 of the Law no. 10/2021 "On asylum in the Republic of Albania" and DCM no. 322 dated 4.5.2016 "On the organization and functioning of the national reception centres for asylum-seekers".

women and girls trafficked or at risk of trafficking. It offers a safe temporary place of residence, out of danger, and specialized assistance for the rehabilitation and return to normal life.

Problems identified during the inspection include:

- ✓ The need for the partial reconstruction of the two-story building, as its premises have suffered considerable damage and the living quarters in it are unsafe.
- ✓ The need for the completion of the reconstruction of the three-story building within the Centre as soon as possible.
- ✓ It is necessary to immediately equip the institution with a vehicle to guarantee the provision of services outside the Centre.

3.5 Observance of human rights by the Prosecution Service⁴⁷

During 2021, the People's Advocate registered and dealt with 35 cases involving complaints and concerns against the activity of the Prosecution Service. Simultaneously, we continued to handle 54 cases carried over from 2020 due to their submission in the last weeks of the year or delayed responses from the prosecution offices to our requests for information and explanations concerning the claims and concerns presented by the complainants.

From these cases registered in 2021, five cases were handled and examined *ex officio* by the People's Advocate, clearly proving the increased attention that is continuously paid by us to the problems of citizens and their public concerns towards the prosecution offices at all levels and the justice system in general. This special focus and attention is mainly related to the fact that the Justice Reform has been implemented for several years now and caused problems in the investigation of criminal reports and criminal proceedings, due to the vacancies caused by the dismissal of a significant number of prosecutors across all prosecution offices.

The complaints are grouped below according to the gravity of the violated rights in criminal proceedings:

First: unjustified delays in the investigation of criminal cases.

The majority of citizens' complaints handled by the People's Advocate involve delays in the criminal investigations. Based on the responses by the prosecution offices, these delays in handling criminal reports and cases stem from the reduced number of prosecutors due to the dismissal of a significant number of prosecutors by the justice reform; high number of cases assigned to one prosecutor; the complexity of cases, particularly those related to domestic violence, sexual relations with minors, or other serious criminal offenses; problems and delays by

⁴⁷ This field of law is covered by the Special Section at the People's Advocate.

foreign authorities in responding to letters-rogatory letters; and secondment of case prosecutors to other prosecution offices to fill the vacancies.

Second: problems in the implementation of the procedural provisions that foresee and regulate the rights of the parties in criminal proceedings, and more specifically failure to provide access to the acts and evidence underlying the pressed charges; failed or delayed notification of the prosecutor's decisions to the parties, mainly the reporting persons, particularly in the cases where the prosecutor decides not to initiate criminal proceedings.

Delays in the notifications of the parties in criminal proceedings also occurred when the prosecutor decided to dismiss the case. It is noted that in some cases, the prosecution office did not notify or inform the relevant parties about the decision.

Over the years, the People's Advocate has insisted on respecting the citizen's right to access to information about the prosecution office's decisions, aiming to guarantee the right of appeal to individuals at every stage of proceedings.

The People's Advocate consistently receives complaints and requests by citizens for legal aid with the special scope of verifying the actions or omissions of the prosecution offices in the registration of criminal reports, the performance of investigative actions and making the corresponding decision within the procedural deadlines. This situation is emerging, as explained above, due to the significant reduction of the number of prosecutors at all levels, causing an infringement of the standard of due process of law in all its dimensions.

We note an abnormal reality in the exercise of legal responsibilities and powers by the prosecution offices in protecting the legal relations and guaranteeing the rights of individuals affected by various criminal offenses and who require the assistance and protection of the State authorities - a duty which in this case must be exercised by the prosecutor within a reasonable time. Currently, we note lacking effectiveness in the investigation of various criminal offenses due to the reduced number of prosecutors and an expansion of the range of criminal offenses, but also increased awareness of individuals about the reporting and referral of various criminal offenses that were unusual for Albanian reality and society, such as domestic violence and sexual relations with minors or family members.

The People's Advocate seeks and aims to raise the maximum awareness of all structures engaged in the smooth running and operation of the prosecution system, in order to take effective, appropriate, quick and concrete measures to normalize and guarantee the exercise of criminal prosecution within the scope and provisions of the Criminal Code and the Criminal Procedure Code.

3.6 Right to a due process of law⁴⁸

⁴⁸ This field of law is covered by the Special Section at the People's Advocate.

The People's Advocate notes that the functioning of the justice system faced difficulties this year as well. The justice reform has increased the volume of work in the system due to the dismissal of a significant number of magistrates and failure to substitute them.

In addition, the global Covid-19 pandemic did exacerbate these difficulties during 2021, resulting in delays in court proceedings, postponed trials, delayed delivery of reasoned decisions, and problems in the full respect of procedural rights.

Restoration of the third branch of power is sluggish; completion of the Constitutional Court, after a long period of absence, has not yet been completed. The same situation is with the Supreme Court.

The President of the High Court stated that there is a backlog of over 35,000 cases⁴⁹ at this court, which should function with a number of 19 judges, but so far has to do with only 10 judges. Case disposal saw an improvement compared to 2020, with 3,609 decisions rendered in 2021.

Albania has a single Administrative Court of Appeal which displays problems in handling cases.⁵⁰ Article 48(2) of the Law no. 49/2012 "On the organization and functioning of administrative courts and adjudication of administrative disputes" as amended stipulates that *"the Administrative Court of Appeal examines the case within 30 days from the date the appeal comes from the court where the appeal was submitted"*. Also, Article 3 of the same law states that the due process of law within an expedited and reasonable period is one of the fundamental principles of administrative proceedings, in order to ensure effective protection of the subjective rights and legitimate interests of persons.

On the other hand, the Civil Procedure Code which defines binding, same and equal rules for the adjudication of administrative civil and other disputes, following the introduction of amendments in 2017, paid particular attention to the respect for a reasonable length of the proceedings and dedicated a whole chapter to this institute of law. Specifically, the provision in Article 399/2, paragraph 1 of this law stipulates that:

"1. Reasonable timing for completion of an investigation, trial or execution of a decision with final force and effect, for the purposes specified in Article 399/1 shall be considered:

⁴⁹ Media conference of the deputy President of the High Court on 30.12.2021 on *reduction of the backlog of cases is a challenge! 500 casefiles annually for one judge.*

<https://www.google.com/url?sa=i&url=https%3A%2F%2Ftop-channel.tv%2F2021%2F12%2F30%2Fzv-kryetari-igjykates-se-larte-ulja-e-ceshtjeve-te-prapambetura-sfide-500-dosje-ne-vit-per-nje-gjyqtar55%2F&psig=AOvVaw1v1sMyT4->

⁵⁰ The European Commission approved and published the Progress Report for Albania 2021. It concludes that the highest backlog is at the Administrative Court of Appeal with 15,178 cases from which 7,463 are older than two years; whereas disposal rate is 37%. For more information, see the link: https://ec.europa.eu/neighbourhood-enlargement/albania-report-2021_en

a) The completion of a trial, in administrative adjudication at first instance and on appeal, within one year of its starting in each instance;

The above-mentioned provisions of the of Civil Procedure Code and Law no. 49/2012 aim to introduce the standards and a reasonable time limit in case disposal. Thus, in any case, the first-instance and appellate administrative cases must not last more than one year - according to Article 399/2 of the Civil Procedure Code.

The big workload of judges⁵¹, particularly at the Court of Appeal in Tirana or the Administrative Court of Appeal is another contributing factor to the delays in handling cases. Based on the complaints received, the People's Advocate deems that this issue required intervention, because the delays are harming the citizens.

We note that the Administrative Court of Appeal currently has only 5 judges, instead of 13. Even the other ordinary jurisdiction appellate courts operated at similar conditions during this period.

Delays in the consolidation of the functional justice institutions is detrimental and undermines public confidence in the justice system. Acceleration and finalization of the justice reform are indispensable.

A positive effect to this situation would be the progressive filling of vacancies in the Constitutional Court, the High Court, the appellate courts and the district courts, with the aim of increasing the quality of the administration of justice and the provision of judicial services within reasonable time limits, as well as capacity building both in increasing the number of judges by filling in the vacancies and in increasing their training, professional and support capacities.

The judicial reorganization in consultation with all stakeholders such as judges, prosecutors, lawyers, independent institutions, representatives of civil society, citizens, etc., optimization of human resources in justice and the improved service delivery to citizens without affecting their access to justice are processes that must be carried out.

Complaints filed with the People's Advocate focused on:

- ✓ delays in court proceedings, particularly the period it takes for cases to be handled by the Appellate Courts, the Administrative Court of Appeal and the High Court;

⁵¹ According to the EC Progress Report for Albania 2021, 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 Commission for the Efficiency of Justice (CEPEJ), the European averages are 21 judges/12 prosecutors per 100,000 inhabitants.

For more information, see the link: https://ec.europa.eu/neighbourhood-enlargement/albania-report-2021_en

- ✓ late delivery of reasoned decision or court failure to notify the parties within the deadlines set in the Procedure Codes;
- ✓ non-consideration of new cases by the first-instance courts for a period of several months;
- ✓ numerous requests for speeding up the appellate proceedings for justified reasons such as illness and economic difficulties;
- ✓ request for secondary legal aid from the courts, etc.

The People's Advocate addressed these complaints/requests to the competent judicial bodies, stressing that they are related to the essence of the due process of law. Despite the common sense for the created situation, the right of citizens to a due process of law (fair trial) under Article 6 of the ECHR cannot be neglected for any moment.

Also, several recommendations have been addressed to the High Judicial Council, the High Prosecutorial Council, the High Inspectorate of Justice and the courts⁵².

The People's Advocate dealt extensively with problems during the *December 2020* protests following the murder of citizen K.R. by a police officer; these problems involved the investigations and trials by the prosecution offices and courts, mainly for citizens who were taken in, arrested or detained, and particularly the treatment of minors.

From the analysis of international acts and domestic legislation, the People's Advocate stated that that international human rights standards require that any restriction of freedom must be an exception, objectively justified and for a duration no longer than is absolutely necessary. International standards expressly encourage the non-use of coercive measures to restrict freedom during the investigation and trial, until the decision is rendered.

In our assessment, the spectrum of fundamental human rights and freedoms provided for in the Constitution is complemented by the constitutional provisions that no one shall be subjected to arbitrary arrest or detention and that everyone equally enjoys the right to due process of law, in

⁵² For more information on the relevant recommendations, see the official website of the People's Advocate:
<https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20p%C3%ABr%20marrien%20e%20masave%20p%C3%ABr%20respektimin%20e%20garancive%20t%C3%ABr%20procesit%20t%C3%ABr%20regullt%20ligjor.pdf>
<https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandohet%20marraja%20e%20masave%20p%C3%ABr%20respektimin%20e%20afateve%20procedurale%20p%C3%ABr%20arsyetimin%20dhe%20dor%C3%ABzimin%20e%20vendimeve%20gjyq%C3%ABsore.pdf>
<https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20p%C3%ABr%20marrien%20e%20masave%20t%C3%ABr%20nevojshme%20p%C3%ABr%20zbatimin%20e%20akteve%20normative%20dhe%20atyre%20individuale%20p%C3%ABr%20kufizimin%20e%20p%C3%ABrhapjes%20s%C3%ABr%20virusit%20COVID.pdf>
<https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20drejtuar%20Gjykates%20Administrative%20te%20Apelit.pdf>
<https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20Gjykates%20se%20Apelit%20Shkoder%20-akronime.pdf>

determining his rights and obligations and for the decision on any type of criminal charge against him.

It is the duty of the court to assess the motions of the prosecution body for the assignment of personal remand measures, taking into consideration all the circumstances, in favour of or against the public interest, which justify an exception to the principle of respect for individual freedoms, having considered the presumption of innocence and its presentation in the argumentation of the given decision⁵³.

The court must carefully analyse whether the evidence presented in the trial proves that there is a risk of the suspect leaving or avoiding the investigation, the risk of tampering with evidence or committing another [more] serious crime. *The number of detainees in Albania is 50 percent of all prisoners, while the average of detainees in European countries is 20 percent.*

The Convention on the Rights of the Child (CRC) provides for the principle of the best interest of the child. This principle also permeates the Law no. 18/2017 "*On the rights and protection of the child*". The best interest of the child must be the main goal in every decision made on the child's life, whether by State or private entities. The best interest of the child is applied in all actions and decisions taken by public and non-public authorities, as well as by courts regarding children.

The Juvenile Justice Code provides in Article 14 that the prosecution of juveniles must give precedence to the alternative sanctions to criminal prosecution. These measures intend to avoid the criminal prosecution and the application of the restorative justice measures as a first option.

In Article 15 of the Code, the arrest, detention or imprisonment of the juvenile is provided as a last measure, for the shortest possible time, and these measures are subject to periodic review by the court. Also, given that the persons under investigation who participated in the protest was attributed *inter alia* the criminal offence of "*Organizing and participating in illegal gatherings and demonstrations*", we would like to highlight the decision no. 24 dated 04.05.2021 of the Constitutional Court of Republic of Albania⁵⁴.

In this case brought forward by the Shkodër Court of Appeal, the inconsistency with the Constitution of the phrase " in the first paragraph of Article 262 of the Criminal Code of the Republic of Albania was examined. The People's Advocate, called in this process as an intervenor, submitted in summary the following:

- ✓ The legislation covering freedom of peaceful assembly should be clear and drafted in accordance with international human rights standards. According to the latter, it is not

⁵³ *Tomasi v. France*, 27.08.1993.

⁵⁴ Constitutional Court's Decision no. 24 dated 04.05.2021. For more information, see::

https://www.gjk.gov.al/include_php/previewdoc.php?id_kerkesa_vendimi=3251&nr_vendim=1, published in the Official Gazette no. 87 dated 7.6.2021.

necessary for domestic legislation to require prior notification of a gathering, but the notification enables State authorities to facilitate the gathering of protesters as well as ensure public order and protect the rights of others.

- ✓ The freedom of assembly is not subject to any formality of approval by police bodies, but for the exercise of this right, according to Law no. 8773/2001, it is only required to make a notification to the police bodies at a specified time. The fact that the Law no. 8773/2001 uses the term "notice" and not "request" addressed to the police bodies for the assembly is important, as it guarantees the exercise of the right of assembly by the citizens. So, the decision to exercise the right of assembly is taken by the notifying entity itself and the approval/permission of the police body is not required.
- ✓ The phrase/wording in Article 262(1) of the Criminal Code brought forward in this application is incompatible with Article 47 of the Constitution and Articles 11 and 18 of the ECHR, as the permit limits the exercise of the right to assembly and it [permit] is not provided for either in the Constitution or in the Law no. 8773/2001 on gatherings. This phrase is not only out of date, as it belongs to the period before the adoption of the 1998 Constitution, but it is not even adapted in the Law no. 8773/2001 on gatherings.
- ✓ The provision in the legal provision subject to review for the punishment of the organizers and/or participants in a peaceful assembly with a fine or imprisonment of up to one year is disproportionate, contrary to Article 17(1) of the Constitution and Law no. 8773/2001. Even though Article 262(1) does not involve any public interest being violated, the penalty provided for in it is more severe than the penalty provided for in the Law no. 8773/2001.

In conclusion, the Constitutional Court decided to grant the application and *repeal the phrase* "without first obtaining permission from the competent body according to special provisions" in the Article 262(1) of the Criminal Code; and the Constitutional Court compelled the Assembly to remedy the legal norm no later than 6 months from its publication in the Official Gazette. *This obligation has not been fulfilled by the Assembly, until the date of preparation of this report.*

3.7 Free legal aid ⁵⁵

The People's Advocate attention has been on the implementation of Law no. 111/2017 "*On State-guaranteed legal aid*", the issuance of by-laws, the establishment of the structures provided by the law and its effectiveness, in the context of the citizens' needs for the State to guarantee this service.

Based on individual complaints⁵⁶ during the year 2021, we addressed the issue of citizens who have benefited from a court decision of free legal aid and exemption from paying court fees and expenses, but these decisions in some cases remained on paper, i.e., not implemented by the local bar chambers, thus failing to fulfil the legal obligation of appointing a lawyer.

⁵⁵ This field of law is covered by the Special Section at the People's Advocate.

⁵⁶ In 2021, there were 4,188 cases handled as advice or guidance on legal channels to be pursued by complainants.

For this issue, we addressed a recommendation to the Ministry of Justice copying the National Bar Chamber⁵⁷. Assignment of lawyers to provide secondary legal aid is in the remit of the Local Bar Chambers, according to the domestic legislation.

Specifically, Article 24 of the Law no. 111/2017 "On State-guaranteed legal aid" titled "provision of secondary legal aid by lawyers" and the Joint Instruction no. 18 dated 05.08.2020 "On rules for the implementation of the rotation principle in the assignment of lawyers who shall provide secondary legal aid in civil and administrative proceedings" stipulated that:

"If the request for secondary legal aid is granted, the following rules shall apply:

- a. the local bar chamber assigns a lawyer from the list of lawyers who provide secondary legal aid services, according to the principle of rotation;*
- b. the local bar chamber shall forward the decision of the competent court together with its decision on the assignment of the lawyer to the latter and to the person whose request for secondary legal aid has been granted".*

The Free Legal Aid Directorate informed us that in the framework of inter-institutional cooperation, after communicating the decisions of the courts, addressed the local bar chambers requesting that they implement the court decisions and assign the lawyers to provide secondary legal aid, but repeatedly its requests remained without response.

The People's Advocate addressed the local bar chambers and the National Bar Chamber underlining their obligation to implement court decisions, and asking for cooperation in solving this issue. We note that there has been **no reaction** and **no response** by the local chambers or the national bar chamber.

We note that, albeit the bar chambers are not public administration bodies, in this particular case they exercise a function of a competent institution responsible together with other State institutions in providing a service - free legal aid. In this context, the lack of cooperation with the People's Advocate to implement the court decisions and to guarantee free legal aid to citizens in the scope of the due process of law, shows marked negligence.

Article 6 of the Law no. 111/2017 "On State-guaranteed legal aid" explicitly defines the competent institutions and their powers in the management and functioning of the legal aid system, specifically:

- ✓ Minister of Justice
- ✓ Free Legal Aid Directorate
- ✓ National Bar Chamber
- ✓ Competent courts

⁵⁷For more information, see the recommendation on the PA website.

<https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim-F.pdf>

The Free Legal Aid Directorate plays an essential role for secondary legal aid services. Specifically, it publishes the list of lawyers who provide secondary legal aid, publishes the template contract with lawyers and makes their payments. Also, this structure approves together with the National Bar Chamber a draft instruction on the criteria and procedures for the selection of lawyers who offer secondary legal aid services and must conclude, by March 1 of each calendar year, the annual service contracts with the lawyers included in the list approved by the National Bar Chamber for the provision of secondary legal aid.

The duties of the National Bar Chamber are set out in Article 9 of the Law no. 111/2017.⁵⁸ Pursuant to this law, the Free Legal Aid Directorate signed the contract for the provision of free secondary legal aid with the local bar chambers for the year 2021.

In the case handled by our institution, the court rendered a decision in which it ordered the provision of free legal aid and exemption from court fees and expenses for the citizen who meets the legal criteria, and this translated into a direct obligation on the local bar chamber to implement it.

Article 24 of the Law no. 111/2017 stipulates that:

“a) the local bar chamber shall appoint a lawyer from the list of lawyers who provide secondary legal aid services, according to the principle of rotation; b) the local bar chamber shall forward the decision of the competent court together with its decision to assign a lawyer to the latter and to the person whose request for secondary legal aid has been granted”.

There has been no response from various bar chambers (Vlora, Gjirokastër, Elbasan, Fier, Shkodër) on the implementation of court decisions, which runs counter to the legal provisions provided for in the Law no. 55/2018 "On the lawyer's profession in the Republic of Albania" and the Law no. 111/2017, denying the petitioners the basic right provided by the Constitution, i.e., the right to equal access to the justice system.

⁵⁸ Article 9 of the Law no. 111/2017 stipulates that this competent authority:

“a. approves, by joint instruction with the Free Legal Aid Directorate, the criteria and procedures for the selection of lawyers who shall deliver secondary legal aid services;

b) approves, in cooperation with the Ministry of Justice, the rules on the implementation of the principle of rotation in the assignment of lawyers who shall provide secondary legal aid services in accordance with the provisions of Article 245 of this law and monitors their effectuation by the local bar chambers;

c. no later than 1 February of each calendar year, the National Bar Chamber shall approve the list of lawyers who provide secondary legal aid services and shall forward this list to the Ministry of Justice, the Free Legal Aid Directorate and the local bar chambers. In compiling this list, the National Bar Chamber shall consider, as much as possible, the inclusion of lawyers of all specialties and level and observe the principle of gender equality;

ç. publish the list of lawyers who provide secondary legal aid services on the official website of the National Bar Chamber;

d) prepare and organize, in cooperation with the Free Legal Aid Directorate, the continuous training programmes for the lawyers included in the list of lawyers who provide secondary legal aid services;

dh. conduct other duties assigned to it by law”.

We hold that the not only the adoption of the Law no. 111/2017, but also the cooperation of all stakeholders and the implementation of their obligations are indispensable to making this law operational and effective.

The Constitutional Court has repeatedly stated that the good administration of justice begins with the safeguard that an individual has access to the court and is duly informed on the status of the case. If this right is denied, the process is considered irregular, because access to the court is a *must* to ensure the protection of other individual rights. The rule of law cannot be conceived unless individuals are recognized and given the possibility to exercise their right to access the court.⁵⁹

Similarly, the Council of Europe established the standard that the legal aid must be provided to all citizens who cannot afford it, not only in their legal defence in court, but also when they need legal advice.⁶⁰

3.8 Rights of former political prisoners and persecuted by the communist regime⁶¹

During 2021, the People's Advocate focused on the payment of the compensation to the former political prisoners and their legal heirs, pursuant to the Law no. 9831 dated 12.11.2017 "*On the compensation of former political prisoners convicted by the communist regime*", as amended.⁶²

In particular cases brought by complainants concerning delays or ambiguities in the distribution of instalments, the People's Advocate drafted and addressed individual recommendations to the

⁵⁹ Constitutional Court's Decision no. 52 dated 14.11.2014.

Constitutional Court's Decision no. 17 dated 18.07.2008; no. 5 dated 06.03.2009; and no. 48 dated 24.09.2014.

⁶⁰ The Recommendations of the CoE Committee of Ministers R(81)7 and R(93)1 aimed to extend the free legal aid to all stages of the civil, administrative and criminal proceedings, and to include NGOs in the provision of legal aid and advice, and to take measures to reduce court fees, etc.

See Recommendation R (81)7: <https://rm.coe.int/168050e7e4>.

See Recommendation R (93)1: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016804df0ee

⁶¹ This field of law is covered by the Special Section at the People's Advocate.

⁶² During 2021, the People's Advocate handled 14 cases on payment of compensation instalments to former political prisoners and their heirs.

Ministry of Finance and Economy⁶³. Due to the public sensitivity of this issue, we also followed up *ex officio* the overall process of compensation to the politically persecuted.⁶⁴

The media (daily "Panorama", 17 February 2021) found that a second list is published, including the legal heirs of political prisoners who receive the third instalment of the compensation. In the same media, the President of the National Union of Political Prisoners and Persecuted of Albania declared that the instalments are lagging behind in time and, at such pace, there is the risk that even the third generation of legal heirs will perish. This concern was raised also by the President of the Association of Former Politically Persecuted, Shkoder branch, regarding the postponement of the third instalment.

In the context of the administrative investigation launched by us, we requested information from the Ministry of Finance and Economy on the funds earmarked for the compensation of former political prisoners for the years 2020 and 2021, the number of files already processed to give the third instalment, the beneficiary persons during 2020 and how many files are expected to be processed during 2021.

The Ministry of Finance and Economy explained in its response that the *funds approved for the category of former political prisoners convicted by the communist regime for the year 2021 is 1 billion ALL. The number of files expected to be processed with the 2021 funds available is 1,827 accounting for 10,2018 beneficiary entities (individuals) in total.*

In fulfilment of its constitutional mandate, the People's Advocate has been and remains committed in its mission to protect, guarantee and promote human rights, including those of the former political prisoners and their relatives who continue to suffer the severe consequences of the former dictatorial regime. In this context, *Transitional Justice* takes on special importance, as a multidimensional process where efforts are waged in several parallel aspects.

Transitional Justice according to Buckley-Zistel entails *instruments and efforts to cope with the past after a violent conflict or regime that enable the transition towards a more sustained, peaceful and democratic society.*

⁶³ For more information, see the relevant recommendations on the official website of the People's Advocate.
[https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20p%C3%ABr%20marrjen%20e%20masave%20p%C3%ABr%20dh%C3%ABnien%20e%20k%C3%ABstit%20t%C3%AB%20tret%C3%AB%20t%C3%AB%20d%C3%ABmshp%C3%ABrblimit%20trash%C3%ABgimtar%C3%ABve%20t%C3%AB%20z.%20S.pdf](https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20p%C3%ABr%20marrjen%20e%20masave%20p%C3%ABr%20rishikimin%20e%20dosjes%20s%C3%AB%20d%C3%ABmshp%C3%ABrblimit%20t%C3%AB%20ish%20t%C3%AB%20d%C3%ABnuarit%20politik%20H.K.%20duke%20rivler%C3%ABsuar%20trash%C3%ABgimtar%C3%ABt%20dhe%20m%C3%ABnyr%C3%ABn%20e.pdf)

⁶⁴ For more information, see the recommendation on the PA website.
<https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20-%20drejtuar%20Ministrise%20se%20Financave%20dhe%20Ekonomise%20-%20Dhjetor%202021.pdf>

By the provisions of Law no. 7514, dated 30.09.1991 as amended "*On the innocence, amnesty and rehabilitation of the former politically convicted and persecuted*", the rehabilitation of former politically persecuted should have already been completed; unfortunately, they remain marginalized and a fundamental problem of our society.

The Law no. 7748, dated 29.07.1993 "*On the status of former political prisoners and persecuted by the communist regime*" sanctions the legal and moral obligation of the State to implement the law and the right to compensation, and initially the law provided that the compensation would be completed by the end of 1994. Similarly, the law guaranteed facilitations and priority to individual and collective requests in the economic, financial and social fields.

Although the pecuniary indemnification and compensation of the former political prisoners and persecuted by the communist regime stems from the Law no. 7514 dated 30.09.1991 "*On innocence, amnesty and rehabilitation of the former political prisoners and persecuted*" as amended, it is specified and thoroughly regulated by the Law "*On the status of the former political prisoners and persecuted by the communist regime*" which defines the notion of pecuniary compensation to these persons as an immediate cash payment, life pension, compensation for wage, land, premises and other forms of material benefits, awarded to the persecuted person or his family when he has passed away, as a compensation for the loss of life, liberty, unpaid labour and sufferings; its main purpose was to create the conditions and opportunities for the swift integration of these persons and their families to the normal economic and social life.

The analysis of the implemented measures defined in the legal framework, often this category did not benefit fully or on time from the full applicability of the legal framework, mostly due to State bodies' negligence in drafting the by-laws that implement the above laws, resulting in serious consequences to their rehabilitation. The State bodies not only have not fulfilled their obligation, but there is no exact date /deadline for the completion of the compensation process, thus postponing it for an indefinite period and prolonging the rehabilitation of these persons.

The Law no. 9831 dated 12.11.2007 "*On the compensation of the former political prisoners of the communist regime*" was adopted in 2007 and its implementation legislation was issued, aiming to introduce a compensation distribution scheme. The percentage of funds allocated in the annual budget to compensate the former politically persecuted is insufficient to conclude this process within an optime period, but will continue to linger over the years unable to be seen through within a reasonable period.

Several initiatives launched by the executive power to modify the procedures have often complicated the compensation process and still there is no set deadline to finalize the compensation to the former politically persecuted and their legal heirs and therefore meet this obligation of the Albanian society towards them. There is nothing to envy about the conditions in which these people live, mostly in poverty.

It should be possible to accelerate the granting of benefits/compensations, reinstating their rights and improving the quality of life. This already 30-year-old process is making this right unattainable, because the majority of these people who suffered in that regime are getting old and the cycle of life is inevitable.

Funds available to the compensation were reduced in the last four years, almost halved. The State Audit Institution highlighted in its Report on the Execution of the State Budget for 2019 that:⁶⁵ *"The outstanding obligation recognised by the Albanian State to the politically persecuted until the end of 2019 is 33.182 million ALL. If budgeting of these funds continues at this pace, the full compensation shall be paid off after 32 years"*. These years are added to 30 years already passed from the collapse of the communist regime, so, meaning that the compensation is lasting longer than the regime itself.

The People's Advocate appreciates the efforts, but expects it to be increased in the future, also in the context of recommendations addressed to the Ministry of Finance and Economy. It is recommended that the executive branch and the Ministry of Finance and Economy in particular take the necessary measures to ensure the effective fulfilment within a reasonable time-limit of the right of the former political prisoners/prosecuted to receiving the compensation instalments.

By early 2022, the Ministry of Finance and Economy informed us that it appreciates and considers every recommendation sent by the People's Advocate, but it pays instalments depending on funds available/approved for each budget year. The approved fund for the former political prisoners of the communist regime for the budget year 2022 is only 1 billion ALL. It is indispensable that this fund be revisited in the following budget years.

On the other hand, the Ministry of Finance and Economy rejected our recommendation to take organizational measures to launch a draft DCM on the approval of a special pension scheme for the internees and deportees during the totalitarian regime.

3.9 Enforcement of civil and administrative court decisions⁶⁶

The civil and administrative court decisions and executive titles assigned to the Bailiff Service for execution is an integral part of the justice administration and continues to suffer from the same problems as reflected in the previous reports, because the authorities tasked by law with the execution are not doing so or execute beyond the deadline or a reasonable period.

During 2021, the People's Advocate *administered 15 complaints* on mandatory execution of executive titles. The number of complaints compared to 2020 (29 in total) is smaller, but the

⁶⁵It is also underlined in the Report on the Execution of the State Budget for 2020, see link below: <https://panel-klsh.almotech.co/storage/phpbuok14.pdf>

⁶⁶ This field of law is covered by the Administration Section at the People's Advocate.

problems raised remain the same or similar to previous years. *From 15 complaints reviewed by the People's Advocate, 9⁶⁷ were closed because the complaints were unfounded.*

It is worth noting that the spirit of law enforcement in the mandatory execution of executive titles is more *aggressive* and efficient against the private entities, compared to the public institutions.

The issue of non-execution of the final court decisions rendered by the domestic courts or the judgements of the ECtHR within a reasonable time, remains a fundamental issue for the rule of law, because it is related to the establishment, strengthening and development of a justice system respectful to all. The delays in the execution and the *questioning* of justice made by the court increases the number of pending cases and the duration of their execution. Non-execution of final court decisions within a reasonable time by the Public Administration bodies - in the capacity of the debtor - remains an issue that is incompliant with Article 142/3 of the Constitution of the Republic of Albania, Article 451/a of the Civil Procedure Code, and the principles underlying the activity of public administration bodies.

Lack of financial sources of the public administration bodies to fulfil the pecuniary obligations cannot justify the failure to execute the right that citizens win in court. This is clearly established in the decisions of the Constitutional Court and the judgements of the ECtHR⁶⁸.

Also the execution of ECtHR judgements is problematic about the delivery/fulfilment of the established obligation. Although the entities had to wait long until the restoration of their right by the ECtHR, still the materialization of this gained right is not respected in all cases within the 90-day deadline for their execution⁶⁹. The non-execution of ECtHR judgements against Albania will be the topic of a special report under preparation by the People's Advocate.

The People's Advocate draws the attention on the fact that execution of ECtHR judgements entails not only the payment of the obligation to the individuals, but also a change in administrative practices/approach so that the breach is not repeated in the future.

The main purpose of the Court's judgement *is the elimination of practices in violation of the rights and obligations of the Convention, while the compensation is entirely secondary to the purpose of this mechanism for the implementation of the Convention.* In Albania, we note with regret that in the field of property rights, this aspect is not handled in the right way and the decisions are seen only as obligation amounts and not as orientation or interpretation to determine illegal practices and depart from violations of human rights, in the light of the provisions of the Convention. In this regard, we think that the Assembly, first, and the State administration in general and the State's

⁶⁷ In our responses to these cases, we gave exhaustive explanations to the complainants by guiding them to the competent authority or informing them that the alleged violation did not happen.

⁶⁸ See the Constitutional Court's Decision no. 16 dated 04.05.2011; and ECtHR judgement dated 18.11.2004 in *Qufaj v. Albania*.

⁶⁹ *Sharxhi and others v. Albania*, no. 10613/16; *Beshiri v. Albania*, no. 29026/06; *Veveçka v. Albania* no. 40554/04; *Kasmi v. Albania* no. 1175/06"; *Tërshana v. Albania* no. 48756/14; *Budo v. Albania* no. 75763/17; *Xhoxhaj v. Albania*, no.15227/19.

Advocate in particular, should have a proper focus on evaluation, prevention and elimination of practices that led to the violation of the citizen's rights in general and the right to property in particular, given that the most applications to the ECtHR involved property rights.

From the review of complaints received during 2021 concerning the non-execution of executive titles, the People's Advocate notes that contributing to this problem is also the Instruction no. 1 dated 04.06.2014 of the Council of Ministers "*On the execution of pecuniary obligations of general government units in favour of the Treasury*". In order to improve this situation, the People's Advocate has intervened in each case at the competent authorities to remedy the situation. Although the goal of the Government is to prevent the accumulation of arrears as stated in the DCM no. 50 dated 05.02.2014 "*On the approval of the strategy for the prevention and settlement of arrears and its action plan*", it turns out that this goal has not been achieved.

When paying the pecuniary obligation ordered by the court, the debtor authorities did not and do not perform the procedures defined in Instruction no. 2, dated 06.02.2012 of the Minister of Finance "*On standard budget execution procedures*" (Article 62) or in Instruction no. 1, dated 13.06.1997 of the Minister of Finance, according to Financial Act no. 1, dated 13.10.1997, paragraph 7, which obliges the Head of the debtor authority to order the audit of the entire procedure that led to the economic loss and initiate administrative and civil proceedings against the persons who caused the loss.

Non-compliance with the aforementioned acts has and will bring infringement of the property interests of every taxpayer in the Republic of Albania.

Breach of due process of law because of non-execution of final court decisions within a reasonable time-limit, according to the People's Advocate, comes also from 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 law⁷⁰;
- ✓ bailiff officers lack the professional skills and this reflects on 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 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.

⁷⁰ Failure by the General Directorate of Public Roads Lighting at the Tirana Municipality to pay the pecuniary obligation decided by the First-Instance Administrative Court (decision no. 3104 dated 1811.2020), albeit around 1.5 years have passed since this obligation became executable.

A long-standing problem is the execution of final court decisions compelling private debtors to pay certain amounts in cash. Often the bailiff officers collect the monthly income of the debtor and this creates situations that undermine the latter's living interests. Because there is no minimum living standard officially determined, the provision in Article 533 of the Civile Procedure Code has become unapplicable to the bailiff service. It states that the seizure measure on the debtor's wage shall not violate the minimum living standard, but it is undefined so far. 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) in a situation where the minimum living standard is not determined by law.

3.10 Respect for the right to property⁷¹

The right to property is a particularly important fundamental right in a democratic state. The continued failure to respect this right represents a disturbing phenomenon for the Albanian reality. The respect and protection of the right to property has been the focus of a considerable number of complaints, *133 in total, submitted to the People's Advocate, with a significant increase compared to 59 complaints in 2021.*

In exercising its functional powers and duties, the People's Advocate has been quite active and focused on dealing and examining some of the key, sensitive and delicate issues for large communities of individuals, such as communities of residents in the administrative units no, 4, 6 and 8 in Tirana, who are being continuously affected in the new areas for development.

The complaints filed with the People's Advocate are mainly against the State Cadastre Agency, its local directorates, the municipalities and their territory protection inspectorates, the Property Handling Agency and the authorities tasked with the reconstruction of buildings damaged by the November 2019 earthquake.

The complaints targeted the actions or omissions of the above-cited institutions regarding:

- ✓ non-registration of ownership deeds, mainly Land Acquisition Acts (LAAs) for agricultural lands given in ownership or use;
- ✓ non-compliance with legal deadlines in processing the applications of individuals;
- ✓ non-completion of the procedures by the local government units for the formalization and finalization of legal acts on plots given for construction /development purposes;
- ✓ not issuing ownership deeds for assets that do not have a title, or *yards in use*;
- ✓ non-completion of the examination of the self-declarations made in 2005, 2006 and 2014, by the subjects possessing informal constructions;
- ✓ failure to meet the obligation to correct/clarify the cadastral data related to the area of the property, its boundaries and location;

⁷¹ This field of law is covered by the Administration Section at the People's Advocate.

- ✓ violation of the property rights through in compliance with the procedures for limiting this right;
- ✓ double-standard approach in real estate (State owned/private) registration;
- ✓ obligation of the individuals to receive services from the SCA local directorates only through the government gateway e-Albania;
- ✓ violation of the right to property by non-compliance with procedures to limit this right;
- ✓ violation of the right to property and due process of law during the expropriation and demolition of buildings in the new areas for development;
- ✓ pending by-laws on the creation, collection and storage of digital data, to guarantee the storage and security of cadastral data;
- ✓ non-disclosure without a request of the basic information on the cadastral map, property address, owner's name, DCMs, court decisions or information on the operation of the real estate market.

We highlight that the violation of the constitutional and legal rights of citizens by actions or omissions of the local SCA directorates resulted from sketchy knowledge of the law or its misapplication in solving the disputes. *However, the situation on the right to property is improved compared to the 2020 Report submitted by the People's Advocate to the Assembly.*

The People's Advocate emphasizes that the right to property should enjoy protection not only in the texts of laws and by-laws, but should be at the foundation of the work of every State administration body to guarantee the effective implementation of this right.

Respect for the right to property and the due process of law has been the main focus of the People's Advocate in examining the activity of the public bodies in the implementation of the project "*On the designation of the new area for development, administrative units no. 4, 6 and 8, Kombinat area, and "5 Maji", Tirana Municipality, and designation of the Tirana Municipality as implementing unit*".

Cases were initiated based on individual complaints or *ex officio*. In order to establish the alleged violation of this right, the People's Advocate asked information from the public bodies about their actions and explanations against the claims raised by the complaining individuals.

The information and explanations provided by public bodies such as the Tirana Municipality and the Ministry of Infrastructure and Energy were not accurate and thorough in reference to our inquiries. Although we addressed repeated requests to the Tirana Municipality, the information and explanations were not exhaustive. This attitude has prevented and prevents the People's Advocate from drawing conclusions about the situation and the respect for the right to property and the principle of due process of law about matters that concern the complaining individuals and from concluding the administrative procedure within a reasonable period.

Our examining the self-declarations made in 2005, 2006 or 2014 by the subjects possessing informal constructions found that the former ALUIZIIC or the current State Cadastre Agency violated and continue to violate the principle of due process of law, by their failure to complete the administrative review of these self-declarations. This attitude by the public bodies has brought and will bring negative consequences to the individuals owning informal constructions. If the examination of the self-declarations were to be carried out within the legal deadline, every person/subject possessing an informal construction in the mentioned areas would be able to obtain a legalization permit for the informal construction and consequently be entitled to expropriation for the construction that falls under the scope of the public development project.

Registration in the SCA real estate register of 26 thousand decisions made over the years by the Property Handling Agency that recognise the properties for compensation remains unresolved. This obligation provided for in Articles 193/h and 196 of the Civil Code and Article 24 of Law no. 111/2018 "On Cadastre" is still unfulfilled.

Non-completion of the compensation of properties recognized for compensation in one of the forms provided for in Law no. 133/2015 "*On the treatment of property and finalization of the property compensation process*" remains a very acute issue because it has been lingering for a long time. This issue remains problematic also due to the fact that the subjects who were granted ownership mainly under the Law 7501/1991 "*On land*" as amended and other special laws, possess the properties of former owners in a situation where compensation is far from complete. The main form of compensation for recognized property should be the physical compensation, because there is land available. This form of compensation comes at lower cost for the Albanian taxpayers rather than the cash compensation.

The correct and complete implementation of the requirements and provisions of the law has not been seen by SCA as its most important function. Failure to fulfil and exercise the legal duties in an efficient, appropriate and swift manner continues to permeate the administrative activity of the SCA local directorates. Finding such situations shows that the effective fulfilment of public administrative duties has not happened. Establishment of a single institution, the State Cadastre Agency, with the aim of centralizing all the activities of the former institutions such as LIPROs, ALUIZIIC and the Agency for Inventory and Transfer of Public Properties did not deliver the expected effectiveness in the solution of property registration issues.

A long-standing issue is that the existing cadastral maps have a high probability of not matching the situation on the ground. The most frequently encountered problem is that the real estate units (plots and buildings) are in many cases incorrectly positioned. Over time due to changes in specifications and reference, the problem has increased. In many cases, when there are different copies of map sheets, it is disputed which map is updated or correct.

SCA does not have lacking data on the plots, but the property status is not precisely known. The situation is generally more complicated in urban areas, especially in and around Tirana, and in

larger coastal areas, where there are many informal constructions. Errors are mostly accumulated due to inconsistencies arising also from the lack of documentation. Errors in property records are generally reflected in incorrect boundary, plot size and ownership documentation. Errors are usually discovered at the time when a transaction is made for the relevant real estate unit, as the property owner or bordering owners are unaware of the errors in the cadastral data.

In addition to the aforementioned findings, the examination of individual complaints by the People's Advocate also found that:

Public administration bodies at the local level have an extremely low level of cooperation and interaction and do not fulfil the legal obligation to provide explanations and information to the People's Advocate within the legal deadline, a situation that has been observed year after year. Besides, these local bodies do not fulfil the legal obligation to respond on the implementation of the recommendations addressed to them by the People's Advocate.

Another issue encountered in the activity of the SCA local directorates is that the errors that came from the former LIPROs [currently SCA local directorates] are not corrected even though the Law no. 111/2018 "*On Cadastre*" obliges the institution to correct the errors by its own initiative.

Also, it should be noted that the SCA local directorates have not started or completed the initial registration of properties in 359 cadastral zones⁷². Lack of initial registration in these cadastral zones resulted in uncertainty among individuals over the ownership documents they possess. Property may be owned by documents by more than one individual. The legal uncertainty over the ownership documents held by title holders in these areas is reflected in conflicts among the owners of the same property [by documents]; this situation not only violates the right to property in the civil circulation of an item, but also triggers conflicts.

Even in those cadastral zones where initial registration is completed in accordance with Law 111/2018 "*On Cadastre*", there are many problems in issuing cadastral documents to individuals such as ownership certificates, cards, etc. individuals or entities with cadastral documents, such as certificates, cards, etc.. The reason is that SCA local directorates still request additional documentation, although this is an obligation to be met by them.

We emphasize that the registration of property titles is a service guaranteed by the State, and it is based on respecting and guaranteeing the right to property. The right to property cannot be questioned or violated by the failure of real estate registration systems. The applicable legislation guarantees that the creation and registration of ownership titles shall be carried out by the public body in any case. Therefore, any error in the cadastral data that results in the violation of the right to property, makes the public body responsible to solve it and bear the indemnification. In this situation of the creation and registration of ownership titles, the SCA local directorates often

⁷²Report on the Action Plan for the 5 EC priorities: <https://www.drejtesia.gov.al/raportim-per-planin-e-veprimit-per-5-prioritetet-e-komisionit-evropian/>

delegate the cases to the individual/owner of the property, rather than to the competent body of the public administration.

A current issue in the relationship between the interested entities and SCA is the provision in paragraph 6 of the DCM 389, dated 13.5.2020, "*On the approval of the list and fees of cadastral services*" which states that: "*All interested entities, including public institutions, shall submit the request for cadastral services online through the e-Albania platform. The service fee is paid at the time of submission of the request by the interested entity or upon giving the consent to receive this service through the notary public*". Based on the above provision, SCA accepts requests/applications only online via the e-Albania platform. The meaning and application of paragraph 6 of DCM no. 389/2020 is wrongly interpreted and applied by SCA – which delivers this service online only. This understanding and application of paragraph 6 runs counter to Article 10/2 of the Administrative Procedure Code which stipulates that: "*2. The public organ shall promote the possibility of the party to access the public authority electronically. This possibility is not linked to any duty of the party to use electronic communication tools*".

In the situation where the SCA fails to respect the above legal obligation, it comes against the principle of legality, giving active assistance and the legal obligation set out in Article 10(1) and (3) of the Administrative Procedure Code that:

- ✓ *The public body shall ensure that all parties and other persons involved in the procedure are able to follow and protect their lawful rights and interests in as much effective and simple way possible. He shall inform the parties on their rights and duties, including all the information concerning the procedure and shall warn them on the legal effects for their actions and omissions*
- ✓ *The public organ, conducting the administrative procedure, shall ensure that the ignorance of the party does not lead to a deterioration of the protection of the rights and interests that the party has by law.*

Another issue arising from the incorrect understanding and application of paragraph 6 of the DCM no. 389/2020, dated 13.05.2020, is the SCA request that the People's Advocate pay the fee for the requests for information and explanations about the issues under review. The People's Advocate addressed a recommendation to the Council of Ministers and the SCA⁷³ to solve this problem. We note that this DCM was not consulted in advance with us and its application has affected the activity of the People's Advocate.

Most complaints against the Property Handling Agency in accordance with Law no. 133/2015 "*On the treatment of property and finalization of the property compensation process*", involve the delays in the financial compensation process - a process which has not been carried out fully and, furthermore, the entitled subjects have not yet received the financial compensation. There is no comprehensive answer to this problem from the relevant institutions, further aggravating the problem of financial compensation to former owners.

⁷³ <https://www.avokatipopullit.gov.al/sq/list/publications/rekomandimet-4/?page=2>

Regarding the right to compensation based on DCM no. 699, dated 30.10.2019, "*On the transfer of the right of ownership over the plots of legalized buildings and the compensation of the owners of real estate affected by them*" based on which the Public Notice was made on the reception of compensation application from real estate owners affected by informal constructions, whose identity details and information are according to DCM no. 699 dated 30.10.2019, still property owners affected by informal constructions have not received financial compensation according to this by-law. This situation has been ascertained from the complaints reviewed by our institution.

Another problem identified in past years and that persists in 2021 is the expropriation of private property by the State for public interest. Such expropriation, in addition to the constitutional guarantees and the provisions of the ECHR⁷⁴, is also regulated by the provisions of Law no. 8561, dated 22.12.1999 "*On the expropriation and temporary use of private property for public interest*" (amended by Laws no. 20/2016, dated 10.3.2016 and Law no. 11/2020) and its implementing by-laws. In almost all cases, it is found that the State administration bodies behave *arbitrarily* with the property right holders/owners and the possessors, since they strip the latter of the right of ownership and do not compensate them in advance with a fair remuneration [just satisfaction] and within the legal deadlines.

Citizens feel powerless by the coercive force of the State which in this case uses *force* not in their defence but against them. The State, through public administration bodies, must 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. Indeed, the Constitution, the ECHR⁷⁵ and the 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 remuneration and based on the principle of proportionality. Expropriation and compensation of property is not only applicable to registered assets, but also to those under a legal process such as the property legalization.

For this problem, the People's Advocate administered a number of complaints in which individuals complain against the competent authorities for violation of their right to due process of law, as well as cases initiated *ex officio* by us. From the complaints filed with our institution, for

⁷⁴ The Convention for the Protection of Human Rights and Fundamental Freedoms opened for signature on 4 November 1950 and entered into force on 3 September 1953 by the governments as members of the Council of Europe, took stock of the Universal Declaration of Human Rights declared by General Assembly of the United Nations on 10 December 1948. The purpose of the Declaration is to ensure the universal and effective recognition and implementation of the rights proclaimed therein. The member countries of the Council of Europe, with the aim of achieving a closer union between them as well as the protection and development of human rights and fundamental freedoms, signed the Convention, reaffirming their deep commitment to the fundamental freedoms that constitute the very foundation of justice and peace in the world, the preservation of which rests primarily on a truly democratic political regime, on the one hand, and, on the other, in a shared notion and respect for the human rights they have undertaken to protect.

⁷⁵ Given the purpose of the signature of the Convention by the CoE member countries, Albania adhered to all the ECHR protocols except for the protocols 9, 103 and 14 bis, ratifying it through the Law no. 8137, dated 31.07.1996 "*On the ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms*", published in the Official Gazette no. 28/2008 (12 years after its ratification).

which we addressed recommendations to the competent authorities, it is established that the reward is recognized only against those individuals who have registered the property. A problem presented in complaints is that although the property is taken from individuals for public interest, there is a delay in administrative procedures that have the obligation to complete the documentation for awarding the compensation.

In conclusion, we emphasize that the expropriation of private property in the public interest constitutes a sensitive/delicate limitation in the constitutional law that must be handled with due care and be in the attention of State institutions, so that it is not or perceived as arbitrary by individuals.

The Strasbourg Court, in its judgements on the compensation⁷⁶ has made it clear that the right to housing also includes the case of illegal constructions or lacking ownership deeds. The essence of the court's ruling was that the State authorities did not consider whether the demolition of the appellants' houses was in accordance with the principle of proportionality, before proceeding with the demolition itself. State institutions during their administrative activity must take into account and refer to these decisions which over the years have burdened the State budget and consequently the Albanian taxpayers. State administration bodies must be an example of the implementation of the principle of legality, where legality means the requirement for the strict and unconditional observance of the Constitution, laws and by-laws by all the State administration bodies, officials, social organizations and citizens in Republic of Albania. Legality means *inter alia* to guarantee the human rights, but this has not been the case in Albania by the municipalities and their territory protection inspectorates, the State Cadastre Agency and the ministry responsible for expropriations, among others.

Another problematic issue in the relationship with the SCA local directorates is the impossible communication through the telephone line, even though the lines are available, which means that this method of access for citizens is not functional.

IKMT and IMT

The National Inspectorate for Territory Protection (IKMT) and the Territory Protection Inspectorate (IMT) at the municipalities are the main authorities whose functional duties entail the observance of territory development norms, standards and conditions as well as the protection of the territory from illegal constructions. Their jurisdiction and powers are laid down in the Law no. 9780 dated 16.07.2007 "*On the inspection and protection of the territory from illegal constructions*", as amended. Both these authorities have decision-making/executive powers including the imposition of fines, suspension of construction works and even demolition of illegal constructions.

⁷⁶Affaire Bagdonavicius and others v. Russia (application no.19841/06), Strasbourg 11 October 2016.

During 2021, the People's Advocate administered a considerable number of complaints against the IKMT activity and duties at national level and the IMTs at local level. In fact, only a few complaints are directed to the IKMT, because most are about the IMTs at the municipalities.

These complaint involve mainly the violation of legal procedures during the demolition of constructions by IMT to clear the territory for big public projects. In the case of demolitions in the administrative units no. 4, 6 and 8, the citizens complaint that there were not notified about the decision to demolish, nor were given a reasonable time-limit to vacate their houses and take out the things and furniture /appliances.

IMT justifies the demolitions in those administrative units by the fact that the owners were aware of the DCMs on the expropriation for public interest. But this is not proper and supported by law, because the permit for the demolition of constructions is issued by the Mayor of Tirana and it is an integral part of the construction permit as defined in Chapter IV, paragraphs 1 and 6 of DCM no. 887, dated 24.12.2019, as amended. In the absence of a construction permit, the permit for the demolition of constructions has not been issued either, therefore, the IMT demolitions are considered illegal in the meaning and application of the provisions of Article 108 of the Administrative Procedure Code.

From our examination of these cases, we noted the following issues with the IMT activity:

- ✓ Short notice of demolition of constructions and illegal public *en bloc* notification of subjects. Such public notice of demolition of buildings in the administrative units no. 4, 6 and 8 is illegal, because the subjects/persons owning these buildings are known, their place of abode is known, and their notification at their address is possible.
- ✓ Lack of transparency in the IMTs activity in criminally reporting the citizens for obstruction, because IMTs did not inform or officially notify them in advance about the demolition. This has denied citizens the right to a due process of law.
- ✓ Delays and lack of information in the legal obligation of IMTs to report to IKMT, in accordance with the vertical subordination.
- ✓ Lack of concrete reaction by IKMT as a filter of the legality of decisions made by other bodies, in the context of the principle of legality in construction inspection. The concrete administrative procedures to be followed by IKMT must have as a necessary element the active inquiry of facts, evidence and procedures followed in advance, in order to prevent the breach of law.
- ✓ Economic damage caused by IKMT and IMTs during the demolition of legally-constructed buildings included in the expropriation process for public interest but that have not yet received the entitled compensation; this triggers additional cost and places the activity of these bodies in the conditions set out in the Law no. 8510 dated 15.07.1999 "On extra-contractual liability of public administration bodies", as amended.

- ✓ Lack of cooperation during our investigation of the concerns presented by citizens, causing delays in our administrative investigation into many problems in the activity of these important authorities in the protection of legality on the territory.

3.11 Regulation of labour relations and respect for the right to a due process of law in administrative proceedings⁷⁷

The People's Advocate continues to treat labour relations as a key issue in the context of examining complaints about dismissals from the public administration of persons - who enjoy or not the civil servant status – and issues recommendations to guarantee the stability and protection of the rights stemming from 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 have been among the areas in which the People's Advocate invested itself with in-depth administrative investigations and addressing recommendations, following up on the complaints filed by employees for alleged unfair dismissal, transfer, suspension or disciplinary sanctions.

During 2021, the People's Advocate handled 47 cases/complaints related to labour relations were handled, of which 20 cases were resolved in favour of the employees and the administrative investigation for the rest is underway or close to finalization.

In principle, the proper regulation and management of labour relations in the public administration - either for employees whose labour relations are regulated by the Labour Code, or the civil servants whose labour relations are regulated by the civil service legislation - is extremely important to guarantee the establishment, functioning and sustainability of a public administration based on the principle of equal opportunities, non-discrimination, merit, transparency, professionalism and political impartiality⁷⁸.

It must be said that sometimes the public administration bodies have insufficient understanding and applicability regarding the principles and procedures that must be followed to guarantee respect for the right to a due process of law in the administrative proceedings, not only regarding the relationship of work, but also in general⁷⁹. In some cases, we found that administrative

⁷⁷ This field of law is covered by the Administration Section at the People's Advocate.

⁷⁸ The due process of law is guaranteed as a fundamental human right and is applied also in administrative proceedings, albeit not explicitly stated in the horizontal law on administrative procedures (Administrative Procedure Code).

⁷⁹ In cases where – after a careful analysis of the explanations and documentation provided by the institutions – the People's Advocate concluded that there is room for improvement in the administrative proceedings, it addressed the relevant recommendations. In this context, the People's Advocate recommended – for both the labour relations and the legal relations in general – that the institutions conduct an analysis of the concrete cases (factual circumstances) and prepare thorough and detailed reports on the responsibilities that must be allocated at the hierarchy level concerning the appointments, releases from duty and dismissals of the complainants in breach of the law. This serves to clearly indicate the responsibility to the persons who committed the wrongdoing. See the concrete recommendations on the labour relations on the official website of the People's Advocate:

procedures were ambiguous and incomplete, not creating guarantees for the observance of the principle of legal clarity and certainty, which is one of the most important principles in administrative proceedings, even more so in cases where the administrative proceedings directly violate a legitimate interest and right of the party, such as the right to employment, and consequently, to social and economic well-being⁸⁰.

Effective cooperation with the People's Advocate to enable thorough and swift administrative investigation was lacking even in this case. Our institution concluded that there is room for improvement of the administrative procedure and addressed the relevant recommendations⁸¹.

In this context, the People's Advocate recommended – for both the labour relations and the legal relations in general – that the institutions conduct an analysis of the concrete cases (factual circumstances) and prepare thorough and detailed reports on the responsibilities that must be allocated at the hierarchy level concerning the appointments, releases from duty and dismissals of the complainants in breach of the law. This serves to clearly indicate the responsibility to the persons who committed the wrongdoing⁸².

The main problems identified by the filed complaints or by the *ex officio* cases pursued by the People's Advocate on labour relations in the public administration, include:

- ✓ *complaints/cases related to unfair dismissal/dismissal;*
- ✓ *complaints/cases related to appointment procedures in public administration;*
- ✓ *complaints/cases for unfair transfer to another position;*
- ✓ *complaints/cases related to the implementation of the institute of suspension of the relationship in the civil service;*
- ✓ *complaints/cases related to restructuring procedures of public administration institutions;*
- ✓ *request/complaint for the enforcement of final court decisions for the reinstatement of civil servants.*

<https://www.avokatipopullit.gov.al/sq/list/publications> .

⁸⁰ This right is fully sanctioned and enshrined with all its elements such as legality, transparency, information, proportionality, fairness, impartiality, objectivity, use of a language known to the subject, the right to access to court and representation, the right to information, the right to be heard, the right to adversariality, reasonable period, reasoning of the decision, the right to administrative and judicial appeal, etc. The right to a due process of law (fair trial) in administrative proceedings, sanctioned in Article 6 of the European Convention on Human Rights and Article 42 of the Constitution of the Republic of Albania serves as a safeguard for subjects of law against actions or omissions of government authorities, extensively reflected in the Administrative Procedure Code as the horizontal law that governs the organization and functioning of the administrative activity and the public administration in general.

⁸¹ <https://www.avokatipopullit.gov.al/sq/list/publications/rekomandimet-4/>

⁸² The need to intervene in the solution of these issues with recommendations was exacerbated *inter alia* by the fact that the documentation made available by State authorities to the People's Advocate related to the complaints often contained the wrong administrative act or did not have such act at all. The administrative act serves to validate the methodology used by the institution to reach a decision, or the steps taken to identify the responsibility across the hierarchy levels for infringing upon the rights of citizens. Often, a fair decision for the employee was due to the fact that the institutions do not conduct reasoned analysis of cases.

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

3.12 Right to a healthy environment⁸³

The People's Advocate continued to carefully monitor the environmental situation in the Republic of Albania and the implementation of environmental legislation by central and local institutions, in order to contribute to the improvement of the environment in Albania and guarantee the standards of a healthier environment.

It is increasingly recognized that the climate crisis is among the greatest human rights challenges of our time, exacerbating inequalities, deepening insecurity and thus threatening lives, health and livelihoods. Human rights organizations at the regional and international level are increasingly addressing climate change as a core issue. At the international level, it is worth mentioning Resolution 46/7 of the UN Human Rights Council, adopted in March 2021, which again recognizes the negative impacts of climate change on human rights, emphasizing that environmental damage can have direct and indirect adverse implications on the effective enjoyment of all human rights⁸⁴.

Consequently, the People's Advocate in the context of global developments and the need that the responsibility over the environment be actualized in our country as an expression of the mandate that this national institution has in the protection and promotion of human rights, organized a National Conference in December 2021 with the support of the UN Office in Albania, on the topic *Rights of Future Generations and Climate Change*⁸⁵.

Participants in the Conference included important State actors such as the Speaker of the Parliament and representatives of international organizations such as the UN Resident Coordinator in Albania and the Head of the EU Delegation.

The participants stated the point of view that the rights of millions of people around the world have been affected by the climate crisis. Albania is no exception. This raises questions about justice, peace, security, equality in and between nations and generations. Climate action must be taken at all levels and by all actors. Many individuals and groups such as children, youth and

⁸³ This field of law was covered by the Administration Section until 18.10.2021. By Order no. 154 dated 18.10.2021 of the People's Advocate "On the definition of the scope of responsibility and specific rights to be covered by the assistant commissioners of the sections at the People's Advocate", this field of law was transferred to the Secretary-General of the People's Advocate institution.

⁸⁴ UN Human Rights Council, Resolution on the Environment and Human Rights, UN Doc. A/HRC/46/L.6/Rev.1, 17 March 2021.

⁸⁵ <https://www.avokatipopullit.gov.al/sq/articles-layout-1/home/news/this-article-is-available-only-in-albanian-739/>

environmental human rights advocates have taken bold initiatives to be on the front line of the fight to build climate justice.

During 2021, the People's Advocate handled a total of 41 *complaints* against public administration bodies tasked by law with environmental protection, including a significant number of cases initiated by the institution itself. In this context, we note the pollution and waste burning in Elbasan, Fier, Lushnjë, Durrës, Vlorë, etc., that caused toxic smoke and heavy smell in these cities.

On our side, we continuously established that the cause of pollution is precisely the inaction of competent State bodies towards the entities that cause environmental pollution. This situation resulted from dumping urban waste in these places. Measures were taken to eliminate this waste in the landfill of Sharra, Tirana and in Fier, in order to restore normality.

Complaints filed and examined involved also acoustic pollution, which in its entirety harms the quality of health and life of the residents. The People's Advocate has made recommendations on both the air and acoustic pollution⁸⁶.

The People's Advocate reaffirms the importance that should be given to the conditions and protection of the environment in Albania. These areas require special attention and cooperation of all stakeholders, in order to guarantee health care and increase the quality of life for present and future generations.

3.13 Consumer protection⁸⁷

The People's Advocate continues to handle and analyse with priority the complaints in the field of consumer protection. It has also played a proactive role with the Energy Regulatory Entity (ERE), especially in online meetings related to amendments to their Regulation on the complaint handling deadline, and frequent communications on issues related to the electricity price increase.

The People's Advocate carefully analysed the explanations and documentation sent by the competent institutions, concluding that there is room for improvement of the procedure and the possibility of restoring the violated rights. These irregularities or improvements were addressed also in the meetings held time to time with the executives of the Universal Service Provider who

⁸⁶ Recommendations: *Take immediate measures for the exercise of administrative authority in the capacity of superior bodies to authorities that have the obligation to measure noise pollution and air pollution, in order to analyze the situation and solve the problem of the complainant; Take administrative measures to identify public administration officials who are responsible for failure to fulfil their functional duties in guiding the complainant, analyze the situation and solve the problem; Take measures to draft a special joint inter-institutional regulatory framework where the orientations for citizens are clearly addressed, for the handling of complaints related to these issues. For more on these issues, see the link:*

<https://www.avokatipopullit.gov.al/sq/list/publications/rekomandimet-4/>

⁸⁷ This field of law is covered by the Administration Section at the People's Advocate.

have established a bridge of communication in handling the cases referred by our institution, but this is not formalized in order for the cooperation to be more constructive.

During 2021, the People's Advocate was maximally committed to give its institutional contribution to any initiative and complaint/request, in order to guarantee the space for individuals to exercise their fundamental rights and freedoms.

As pointed out above, the lack of cooperation from the Water and Sewerage Utility (UKT) was manifested several times; this has hindered our work and made the examination of registered cases/problems within a reasonable time difficult. One of the problems is also the setting of fees and taxes, and their collection by UKT.

Our institution continues to receive complains mainly related to over-billing of electricity and water, power/water cuts, fixed-rate billing, inaction of operators to complaints filed by citizens, lack of meters, unaffordable service, and quality of service offered by them.

The right to some basic services such as drinking water and electricity supply is an essential human need, a fundamental right, the absence of which constitutes a serious violation of human rights. Increased investments and development of service models driven from the evolutive needs of the communities would enable the achievement of the sustainable development goals.

In particular, measures must be put in place to protect consumers in need, including measures to assist and avoid interruption of electricity and water supply. In some complaints, the energy and water supply operators suggest an agreement for citizens to pay their arrears in instalments - as the only relief option to pay off the accumulated debts, but without analysing and solving the problems in essence.

3.14 Respect for rights related to the local government⁸⁸

The role of local government in preventing inequalities and promoting and protecting human rights is now becoming more critical with recent developments in Albania. Their actions are or should be essential to preserve civic space and freedom of expression, to ensure access to basic services and to improve urban planning and aim at achieving the social objectives of the State. This role of local government is already recognized and confirmed in many acts adopted by international organizations, including the resolutions of the UN Human Rights Council.

- *Right to housing*

The right to housing is one of the most important rights in the remit of the local government. It is one of the most important basic human rights, directly related to the right to life and health. The

⁸⁸ This field of law is covered by the Administration Section at the People's Advocate.

State must guarantee legal protection for housing and provide a basis for the progressive realization of all aspects of the right to adequate housing.

It is worth highlighting the proactive role of the People's Advocate in the protection of this right, as the bulk of cases involving the right to housing handled during 2021 were initiated by the institution itself. These cases present various problems, but the biggest weight is shared by the problems related to the November 2019 earthquake.

From the total of around 60 cases, around 83% involved problems caused by the earthquake (with an upward trend compared to 2021 as this problem accounted for 67% of the cases), mostly the right to housing. The rest had to do with social housing, soft loans and rent bonuses, improvement of living conditions, shelters, etc. Cases on the right to housing include those pertaining to the Roma and Egyptian communities.

During the administrative investigation into the reconstruction process in general and some specific cases, we encountered obstacles from the State bodies responsible for tackling these problems. We note with constant concern the fact that the competent bodies (such as the Municipalities or Minister of State for Reconstruction) are not collaborative – either not responding at all, or sending responses that are not exhaustive to all our requests.

It should be emphasized that cooperation during the administrative investigation is closely related to the principle of transparency and accountability. The mission of the People's Advocate in this regard is to contribute to the transparency and accountability of public bodies in terms of fair exercise of administrative powers on their part, related to the rights and legitimate interests of individuals.

Regarding the administrative review, up to this stage of the process, it appears that the main concerns of the complainants are about the rent bonus, their housing, the reconstruction process, the transparency of State bodies in the validation of buildings and in drafting of the relevant documentation, the delays of the reconstruction process, etc.

The administrative investigation found that not all affected residents were awarded rent bonus. Many citizens were unable to apply for the rent bonus, or they had difficulty in doing so as many have low access to electronic communication means. This prevented them from being in the list of beneficiaries.

Residents state that they are unclear and have no information about the duration of the reconstruction, and even the location where the new buildings are to be constructed, because the institutions are not transparent. Even in our requests, we have constantly asked for information on the duration of the reconstruction efforts, the transparency of this process overall and in specific cases, the stage it is in, or the administrative acts issued for this purpose, but we received no correct responses that entail a transparent stand by the competent institutions.

It is established that the responsible bodies have not shown increased care towards groups in need, regarding families living in tents or other environments adapted for housing, especially in cases where they have sick members, disabled people of different groups, children, pregnant women or divorced with children, elderly, etc. Living in these shelters seriously violates legal and sub-legal norms and principles of law. The Law "On Housing" in its provisions sanctions the principle of suitable housing, also providing the conditions that must be met to be considered a suitable housing.

It is noted that the competent bodies have not shown increased care towards groups in need, specifically families living in tents or other make-shift/adapted premises, particularly when these families have sick or disabled members, children, pregnant women or single mothers, the elderly, etc. Living in these shelters seriously violates legal and sub-legal norms and principles of law. The Housing Law sanctions the right to adequate housing and lists the requirements to be met for a shelter to be considered adequate.

Moreover, the continuation of the pandemic Covid-19 further worsened the situation of these families. Living in tents or make-shift shelters impedes the from taking anti-virus measures. Lack of water and electricity, limited spaces to maintain social distancing and other problems have made their life extremely difficult. The competent institutions should have taken measures and treated with priority the situation of these families / individuals who live in poverty and shelters that pose risk to their lives and health in this unusual pandemic situation.

Some residents complain about the lack of an in-depth expert report for their damaged apartments, because the decision relied only on one report. There is a need for an in-depth, accurate and fair assessment, in order to determine the extent of damage and the needs for intervention. Appraisal of damages suffered from ambiguous actions and lack of transparency with citizens. Many residents who insisted for another expert appraisal and the second one indicated *higher damage*. This testifies the need for in-depth appraisals to precede the repair efforts so that they address the real damage in their houses.

It is also claimed that the allocation of funds according to the level of damage does not meet the repair and reinforcement costs, and each case has its own specificities. In collective buildings, the damage of the apartments is not the same from floor to floor and the lack of in-depth individual appraisal means that the equal cash-quota distributed for the reconstruction is not proportionate to the need. For many families, especially those with minimum income, this leads to the deterioration of their economic situation as they need additional income for a safe house and a normal standard of living.

This situation is having a significantly adverse impact on residents in rural areas, who continue to live in difficult conditions and are unable to leave their residential areas because, in such emergency situation, they have to take care of the agricultural economy and the livestock – as

their only means of livelihood. In some cases, residents stated that they live in tents that meet no minimum living conditions or even in cattle sheds or other shelters designed for living. It does not seem that the maximum efforts were made for this category, because two years have passed from the earthquake and they are still living in such inadequate shelters.

Meanwhile, another problem raised by the affected residents is that they were not given a copy of the reconstruction aid benefit contract they signed, in order to check the time-limits and the form of inspections. Withholding the contract to from a signatory party is an infringement of their right to transparency and places the contracting parties in unequal conditions. State bodies are equally responsible for the rights of citizens, either in ordinary or extraordinary situations, and the latter must not be abused in its name.

Going back to the handled cases, the most frequent and biggest concern of the residents is the lack of transparency of the State bodies regarding the reconstruction procedures. These residents complain that they have no information about the apartments they will benefit from this process, their location, the completion period and other issues. The People's Advocate confirmed this lack of transparency first hand, because all the requests addressed to the competent bodies, especially the Minister of State for Reconstruction, received no definitive and clarifying answer on the specific cases, but also on the reconstruction efforts in general. It seems that lack of transparency has permeated this process, in terms of damage appraisal and funds committed.

The main principles underlying the reconstruction process are control, accountability in using funds, right to information and transparency. These principles are sanctioned directly in the Constitution, in special laws and in the Normative Act no. 9, dated 16.12.2019, "*On coping with the consequences of the natural disaster*" which specifies the role of the government through its representative bodies and the role of donors in the context of the reconstruction process. Transparency means that the design of the national reconstruction program, its specifications and the decisions made in the framework of the national reconstruction program should be publicly accessible by anyone and with the minimum technological knowledge. The criteria for determining the beneficiaries, the method of compensation and the relevant funds must be clear and subject to independent verification mechanisms. All indicators of progress, the progress of the reconstruction, the time needed for its completion and the funds used in each case, must be transparent and published on the relevant pages in the interest of transparency.

The published data appear to be minimal and do not express the principle of real transparency and in some cases are difficult to access by all persons, even those with basic knowledge of electronic communication tools. The government, the competent bodies have the obligation to report continuously on the use of funds. Also, there should be a clear communication strategy in place, and a complaints mechanism that ensures swift and legally correct examination of complaints. The house reconstruction program must have in its core the beneficiaries, the owners of houses or other facilities damaged by the natural disaster, ensuring their effective participation through consultative mechanisms.

In such a situation, every municipality, local government unit or other competent authority should assess the social-economic situation of all families living in tents or other alternative shelters and create the possibility of decent housing in accordance with legal norms.

Appropriate measures must be taken for the economic recovery in these affected areas and the improvement of living conditions, especially for vulnerable and poor groups whose livelihood was severely damaged by the earthquake. Increased care must be paid to residents in rural areas who are prone to becoming more impoverished, because often livestock is their main source of income. The People's Advocate is reviewing a number of cases and we will express our position once the administrative investigation is completed.

- *Right to provision of public services*

In the context of the violation of human rights in the provision of public services, the People's Advocate has continuously demanded from the local government bodies to respect these rights. In this aspect, the most frequent complaints filed with the People's Advocate involve infrastructure, mainly in poor standard and maintenance of roads, and shared/common premises according to the norms of living in community and beyond.

During 2021, the People's Advocate received *19 complaints* on this issue.

The People's Advocate draws attention on the key importance of living in normal and suitable environments as a prerequisite to the State's obligation to provide and guarantee public services. For this, we asked the competent institutions through recommendations to act positively and undertake the required steps to guarantee and ensure the provision of services that have an impact on the safety and protection of life.

3.15 Protection of the rights of children⁸⁹

The primary source of cases about violation of children's rights in 2021 was the complaints by the children themselves. In our administrative practice of handling these complaints, we aimed not only at solving the identified problems, but also at promoting and encouraging a new culture and the correct breakdown in practice of the principle of the highest interest of children and, in the capacity of the monitoring body, compliance with the legal obligations arising from the Law no. 18/2017 by the entire mechanism of the integrated child protection system.

The problems identified during 2021, in contrast to 2020, are mainly related to the impact that administrative measures introduced by the government and public institutions against the spread of Covid-19 had on the rights of children. The systemic and structural barriers in these cases are mainly related to access to rights by children, particularly the children in need. The

⁸⁹ This field of law is covered by the Child Protection Section at the People's Advocate.

challenge for the competent State institutions continues to be the appraisal of the best interest of the child.

Our monitoring of the integrated child protection system at central and local level, and the review of complaints, *ex officio* cases and inspections, found these violations of children's rights:

- *the right to education;*
- *the right to protection, family environment and alternative care;*
- *right to participation;*
- *rights of juveniles in conflict with the law, victims and/or witnesses.*

Our country has embarked on important reforms in education, which have improved access to education and increased learning outcomes, including the decentralization of the governance of educational institutions and the introduction of a competency-based curriculum. One of the measures taken by the government for 2021 in the framework of the pre-university education reform is the extension of the free-books scheme to the 9-year education, which led to increased access of children to the compulsory education.

Despite the positive achievements of the reform, the main problems in this area include:

- *inequality in opportunities for educational results⁹⁰;*
- *environments and infrastructure of educational institutions⁹¹;*
- *ambiguity in roles, powers and responsibilities, between authorities at central and local level⁹²;*
- *lack of budget planning for pre-university education⁹³.*

⁹⁰ Unequal opportunities in education due to gender, ethnicity, social affiliation and geographical location, have highlighted the decrease in the number of students from year to year in some municipalities, particularly in small municipalities (Rrogozhinë, Peqin, Gramsh, Prenjas, etc.), as a result of emigration. Meanwhile, a higher number of students can be observed in some other municipalities (Tirana, Durrës, Elbasan). In addition, poor infrastructure in rural areas and lack of transportation bring other limitations to students' access to schools.

⁹¹ From field visits, it is observed that educational institutions do not meet appropriate standards, especially in rural areas, where difficulties are encountered in meeting basic infrastructural and operational needs, including natural science laboratories, etc., along with didactic and necessary equipment and tools to make them functional.

⁹² For example, the decision to close educational institutions due to the cold throughout the country was taken by the central authorities (MES), while the local authorities, in the capacity of the competent authority for providing heating in educational institutions were placed in disparity in terms of financial support from the state budget. This because the lack of a clear process of funds allocation among educational institutions and students, while schools do not have the autonomy to spend funds in accordance with their needs.

⁹³ The medium-term budget programme for 2021-2023 does not bring a significant increase in funds for the pre-university education. The supplementary measures under the revised budget during the pandemic did not add funds for children and the realization and protection of their rights. Only the local self-government units doubled the emergency funds that were used for groups in need, including children in need of protection and their families. However, financial resources were insufficient.

For this purpose, the People's Advocate addressed recommendations to the competent State mechanisms at central and local level, which have education under their remit. More specifically, the main recommendations to be mentioned include:

Regarding the children's right to quality and comprehensive education, recommendations addressed to the *Ministry of Education and Sports and local self-government bodies*:

- ✓ *ensure effective and efficient management of the educational system at all levels, based on functional mechanisms for ensuring quality, transparency and accountability;*
- ✓ *plan additional budget year-on-year for the pre-university education;*
- ✓ *draft and approve concrete plans for the management of emergency situations in the pre-university system;*
- ✓ *creating suitable environments for effective learning, through the improvement and expansion of school infrastructure;*
- ✓ *train the pedagogical staff of educational institutions to identify/recognize the emotional state, feeling of anxiety and fear in students, in cases of emergency situations.*

As a need for reflecting the problems and presenting recommendations, for further increasing the effectiveness in the implementation and respect for the right of the child to be educated in this pandemic situation, but not only, the People's Advocate (SMPDF) drafted and a synthesis report on the problems identified in the exercise of the child's right to education during the pandemic and beyond.

The People's Advocate (Section for protection and promotion of children's rights) drafted a synthetic Report on problems identified in the exercise of the children's right to education during the pandemic and beyond, as a need to reflect the problems and issue recommendations to further enhance the effectiveness in the implementation and respect of children's rights in this pandemic situation.

➤ *Child's right to protection, family environment and alternative care*

Growth of well-being in our country is guided by various planning, management and development programmes, but these lack a child-driven comprehensive approach. Despite the legal framework for child protection and the establishment of competent structures at the central and local level, the sectoral systems at the local level do not have adequate financing and human resources. This leads to the non-fulfilment of children's needs according to their best interest. As for the obligations of State institutions in the protection of children, there is still much work to be done given the identified violations as follows:

- ✓ *interruption of protection services during and after the Covid-19 period⁹⁴;*

⁹⁴ The competent State institutions did not take the appropriate measures in time to respond to the needs of children living in poverty, children without parental care or with mental health problems, especially children with disabilities.

- ✓ *National Electronic Register of Social Care Services is not operational*⁹⁵;
- ✓ *lack of additional funds or specific arrangements*⁹⁶;
- ✓ *operation of the Child Protection Unit with only one employee (CPW)*;
- ✓ *lack of funds for the management of child protection cases*⁹⁷;
- ✓ *problems in the operation of the cross-sector technical groups (CTGs) in dealing with cases of children in need of protection*⁹⁸.

For this purpose, in the context of guaranteeing children's rights to social protection, family environment and alternative care, we addressed the relevant recommendations to the Ministry of Health and Social Protection and local self-government bodies; the most relevant include:

- ✓ *draw up a detailed action plan for the management of emergency situations and its budgeting, in order to guarantee the rights and protection of the child*;
- ✓ *strengthen inter-institutional cooperation and coordination of work among the competent institutions part of the cross-sectoral technical group*;
- ✓ *integrate the national electronic register with cases of children in need of protection into the National Electronic Register of Social Care Services and make the latter functional*;
- ✓ *increase the number of child protection workers in the social services at the municipalities and at the administrative units, as well as budgeting of the child protection unit*;
- ✓ *apply sanctions for administrative contraventions by the State Agency for the Rights and Protection of the Child in accordance with the legislation in force*;
- ✓ *cooperate with INSTAT for the generation and generation of quantitative data on the number of children from 0 - 18 years old in each municipality, through the CENSUS that is expected to be conducted soon; this data finally solves the problems related to the number of child protection workers in each municipality*⁹⁹.

➤ *Rights of juveniles in conflict with the law, victims and/or witnesses*

It is a fact today that juvenile delinquency and deviant behaviour constitute disturbing phenomena in societies around the world, which affect not only the victim of the crime, but also

⁹⁵ Pursuant to the social services legislation, DCM no. 136, dated 7.3.2018 "On the operation and administration of the National Electronic Register for Social Care Services", the State Social Service is the structure responsible for its updating and maintenance. The register is an electronic database of beneficiaries, provider entities, competent institutions, type and duration of social care services.

⁹⁶ Measures against the spread of Covid-19 had an organizational nature and aimed to protect the health of the population, but they *did not clearly address the needs of children as individuals* and how they had to be implemented in line with the principle of the child's best interest.

⁹⁷ In most municipalities, children need specific social care services, but these are still not established and missing.

⁹⁸ Although the municipalities fulfilled their legal obligation to set up the cross-sector technical group, challenges and problems were identified in the practical implementation of the tasks and functioning of the Cross-Sectoral Technical Group, as one of the main local mechanisms essential to the proper functioning of the child protection services.

⁹⁹ The People's Advocate will closely monitor the implementation of this recommendation, in order to support the municipalities in complying with this legal standard set out in the Law no. 18/2017 in the context of the cooperation with INSTAT.

the family of juvenile delinquents, their future and society in general. In the society we live in today, juvenile justice is a widespread concern for law enforcement. The People's Advocate, as a national institution for the protection of human rights, has continuously prepared synthetic reports on the findings and problems found in the justice system for minors in our country, and addressed recommendations to the competent State authorities.

The People's Advocate has always emphasized that the key actors that administer the criminal justice have the obligation to protect the rights of children and young teenagers accused of violating the criminal law. In this view, the People's Advocate clarifies that a juvenile justice system must ensure that children and teenagers *enjoy all the same rights* as other human beings. Also, this system should provide them with *special protection* necessary for their age and stage of development, in accordance with the main principles of the juvenile justice system, namely, the rehabilitation of children and teenagers, their comprehensive development and re-integration in society, in order to enable them to play a constructive role within this system.

The juvenile justice system must respect the principles sanctioned in the Juvenile Criminal Justice Code¹⁰⁰, applicable specifically to juveniles and particularly must assess and respect the rules that ensure the implementation of the general principles of the Code for the persons who have not reached the criminal liability age or maturity. The problems noted in the juvenile criminal justice administration include:

- ✓ *lack of application of alternative measures to imprisonment*¹⁰¹;
- ✓ *the existence of a considerable gap between what is foreseen and sanctioned in the legislation and the experiences of juveniles in conflict with the law and young teenagers, accused of violating criminal laws*¹⁰²;
- ✓ *improper treatment of juveniles in conflict with the law, victims and/or witnesses and young teenagers by the State Police, which arrests, detains or takes in mainly those juveniles who come from families with a poor socio-economic structure*¹⁰³;

¹⁰⁰ Law no. 37/2017 "Juvenile Criminal Justice Code".

¹⁰¹ Imprisonment of persons under 18 must be applied as a last resort. So, the People's Advocate urges the competent authorities to move away from the prison sentences for juveniles and young teenagers.

¹⁰² The People's Advocate notes that, except for a few examples of best practices, the juvenile criminal justice in Albania is characterized by some manifestations of discrimination, forms of violence, the lack of professionals specialized in juvenile justice issues and a lacking application of alternatives to imprisonment, or even worse, abuse of these measures used to deprive minors of their liberty.

¹⁰³ The first contact of the juveniles and teenagers with the juvenile justice system is through the police and, for them, this is not a very good experience. The People's Advocate found from its administrative investigations about police practices that juveniles and teenagers are kept routinely in police stations, precisely based on the perception about their behavior, or simply because it is assumed that they are "at risk" or abandoned, as they live on the street or wander around, those who belong to minorities, or those who identify themselves as belonging to certain communities such as Roma and Egyptian. It often happens that children and teenagers who commit or are accused of committing criminal offenses are cut off from all contact with their family and community - contacts which are essential to the enjoyment of their rights and their development.

- ✓ *non-observance of the rights of juveniles in conflict with the law and young teenagers, when they are deprived of liberty*¹⁰⁴.

For this purpose, in order to guarantee a friendly justice for juveniles in conflict with the law, victims and/or witnesses, the People's Advocate addressed recommendations to the Ministry of Justice, the Ministry of Interior, the General Directorate of Prisons, General Directorate of State Police, among which the most relevant include:

- ✓ *ensure access of juveniles in conflict with the law, victims and/or witnesses*¹⁰⁵;
- ✓ *improve the quality of services provided by professionals at criminal justice administration institutions for juveniles;*
- ✓ *support specialized units at criminal justice institutions to equip them with the necessary capacities, infrastructure, financial and human resources;*
- ✓ *strengthen institutional cooperation within the juvenile criminal justice system;*
- ✓ *apply rehabilitation programs and/or mediation for alternative sentences, or apply the alternatives to imprisonment set out in the Juvenile Criminal Justice Code;*
- ✓ *punishments or the application of alternative punishments provided for in the Juvenile Criminal Justice Code;*
- ✓ *apply alternative sentences to imprisonment for juveniles in conflict with the law.*

In order to prevent juveniles and young teenagers from becoming delinquents in society, the key actors in the administration of juvenile criminal justice, professionals, organizations and NGOs, local or foreign, and the community, should be actively involved in providing essential services for their well-being and best interest.

➤ *Children's right to participation*

Every child enjoys rights in accordance with the standards of the UN Convention on the Rights of the Child in their best interests. One of the rights of the child is the right to participate in any decision-making that is related to and directly affects children. This right is guaranteed by the presence of effective processes where the child's voice is heard, valued and respected in decision-making related to their rights. Our legislation¹⁰⁶ explicitly provides for the participation of the child and, in this regard, good efforts were launched by the legislative and executive branches in involving children as one of the main parties, during the drafting and consultation of laws and

¹⁰⁴ The People's Advocate has often found that the conditions in the premises in which the juveniles and teenagers are deprived of liberty are generally inadequate and often cause psychological trauma on them, or even impede their harmonious, physical and social development. Moreover, conditions in detention facilities not always adequately guarantee other rights of children and teenagers - rights that should never be restricted when they are in detention, such as the right to life, physical integrity, health, food, education, leisure and cultural activities.

¹⁰⁵ This implies correct implementation of the general procedural rules of juvenile criminal justice in an integral manner by the competent bodies of social and educational services, the state police, free legal aid, etc.

¹⁰⁶ Article 35 of the Law no. 18/2017 "On the rights and protection of children", Article 36 of the Law no. 69/2012 "On the pre-university education system in the Republic of Albania" as amended.

by-laws. It is worth mentioning here the group of parliamentarians *Friends of children*, the National Council of Children's Rights, etc. Children present a perspective, expertise and wisdom that must be considered and valued during any decision-making process. Despite this, the participation of children and hearing their voice in decision-making processes at the central and local level is still a new concept and we still do not have a consolidated structured process for their involvement. Specifically, the identified problems are:

- ✓ student governments at schools are *weak structures* that do not represent the voice of children;
- ✓ *non-inclusion of children in decision-making related to them*, found in local government decision-making;
- ✓ *lack of support* from State institutions to empower and expand the role of children.

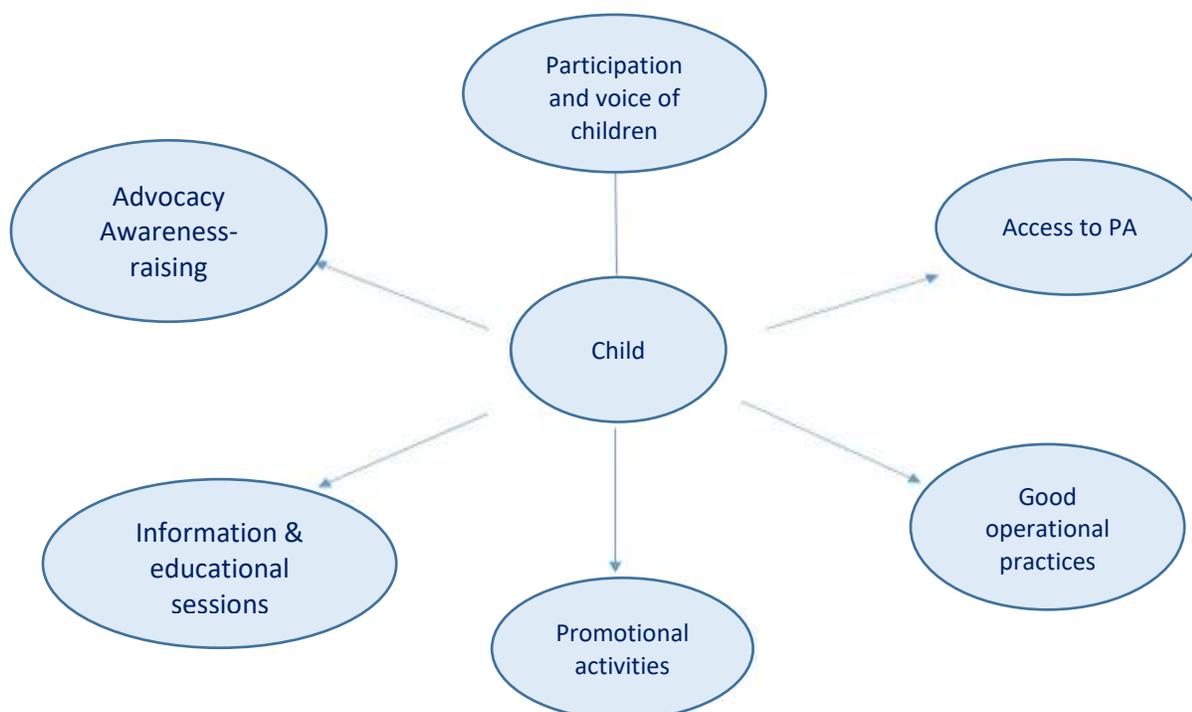
For this purpose, in order to guarantee the children's participation and that their voice is heard, the People's Advocate addressed recommendations to the competent State institutions at the central and local level, and the most relevant include:

- ✓ *strengthening the role of student governance* by MES;
- ✓ *ensure cooperation and coordination* among the integrated child protection system structures, in order to empower and support the students government;
- ✓ *all line ministries must invest and support with resources and energy*, in order to provide children with space for action and thought.

We believe that this kind of investment in children is the start of a good working practice, so that they can enjoy the rights and raise the bar in society to protect their interests at the same steps as adults.

Promotion and guaranteeing children's rights

In the context of the promotional activities, the People's Advocate focused on:



For this purpose, the People's Advocate through the Commissioner and the Section for the Protection and Promotion of Children's Rights carried out various promotional activities, playing a proactive role in the promotion of children's rights, aiming to inform and raise awareness among State administration institutions at the central and local level so that they deliver their functional duties in accordance with the applicable legislation.

The activities with informative and awareness-raising nature were posted on the official Facebook page of the People's Advocate in the children's section, through which a call on each State administration institution to respect the dignity, integrity and realization of children's rights¹⁰⁷.

Also, the People's Advocate in partnership with international organizations made publications to bring the respect for children's rights to the attention of State bodies. Specifically, we mention ENOC's recommendations¹⁰⁸ to the Council of Europe to ensure that the rights of the child are guaranteed in accordance with the UN Convention on the Rights of the Child and the Comments of the UN Committee on the Rights of the Child; and the experience gained during the

¹⁰⁷ For example: publications for the National Orphans Day, for 1 June, for persons with disabilities/children with different abilities, for the first day of school at pre-university education, in order to raise awareness of the competent institutions; institutional response to protect the children from any form of violence, neglect and sexual abuse, because strengthening the physical and emotional health of children is not only a key component of promoting their rights, including their best interest, but it also has extraordinary advantages.

¹⁰⁸ Recommendations of the annual conference of the ENOC Network on 27.9.2021 on the topic: "Covid-19 and children's rights: Learning for the future". This conference had the main purpose/focus of children's rights in the situation of the Covid-19 pandemic: how and how much Covid-19 has affected the exercise of rights.

management of the Covid-19 situation must serve as a lesson for the management of any emergency and crisis situation in the future. These ENOC recommendations will enable the Council of Europe to draw up and issue guidelines that will reflect a comprehensive strategic approach to respecting, protecting and fulfilling the rights of the child in crisis and emergency situations.

In addition, the Commissioner for the Protection and Promotion of Children's Rights has actively participated in many activities and presented the institutional approach of the People's Advocate oriented towards two main components:

First, share operational experience and best practices;

Second, bring forth problems and violations found during inspection/monitoring visits and info sessions on the field.

In the context of sharing experience and best practices, among the main events organized are the round table to launch the friendly publication "*Children and their rights*" including positive cases handled by the People's Advocate¹⁰⁹ and 19 promotional events "*Open days*" with the participation of pupils, students, teachers and parents across the country¹¹⁰.

Regarding the presentation of the problems and violations found during inspections/monitoring visits and info sessions in the field, the main events organized include: a round table to present the findings and recommendations on the rights of juveniles in conflict with the law, victim and/or witness during the pandemic period¹¹¹; round table to present the findings and recommendations for child protection at the local level¹¹²; participation in online meetings in implementation of the ENYA project¹¹³, participation of the Section for the Protection and Promotion of Children's Rights and the young L.B., representative of our country in ENYA 2021 in the Fundamental Rights Forum (FRA) on learning for the future; the impact of Covid-19 on children's rights, etc. Through these events with informative and awareness-raising nature, we have aimed for the rights of children to be respected and treated with all the appropriate and necessary care for their age and best interest.

¹⁰⁹ Publication launched on 18 November 2021 with the extensive participation of children and youth, State administration bodies part of the integrated child protection system, civil society and international organizations.

¹¹⁰ These events sought to inform the pupils/students on the People's Advocate role and promote cooperation with the PA, inform them, parents and teachers on children's rights and how these are exercised, administration of complaints directly from children, parents and teachers, and hearing the children's voices in various matters and problems.

¹¹¹ Under the working plan developed in the context of the agreement between the People's Advocate and UNICEF, six inspections were made in police stations and penitentiary institutions. The findings and recommendations were presented at this round table on 28.7.2021.

¹¹² This hybrid round table on 24 November 2021 was attended by representatives of 61 municipalities, representatives from the MPs group *Friends of Children*, the line ministries, the State Social Service, international organizations and CSO defending children's rights.

¹¹³ The European Network of Young Advisors 2021: "Let's Talk Young, Let's Talk About the impact of Covid-19 on children's rights". The People's Advocate was selected for the second time to this important project by ENOC. Two children from Albania represented our country among children from various countries of the world.

In the framework of awareness and advocacy role that the People's Advocate plays in the promotion of children's rights, a series of promotional events and presentation of studies were organized.

The Section for Protection and Promotion of Children's Rights as representative of the People's Advocate in the promotion of children's rights, participated actively in the annual online conference of the ENOC Network on the topic *Covid-19 and children's rights: learning for the future*.

Even during 2021, the People's Advocate through the Commissioner has played a proactive role by participating in the visual and print media, in order to raise awareness, educate and inform the public on the identified problems, addressing solutions to the competent State administration bodies in the area of children's rights, and the constitutional and legal obligation that the State bodies of the integrated child protection system have to implement the recommendations of the People's Advocate¹¹⁴.

3.16 Respect for the right to health care¹¹⁵

The right to health entails several rights that include: (i) the right to a health care system that creates equal opportunities for everyone to have the highest possible level of health, (ii) the right to disease prevention, treatment and control, (iii) the right of access to basic medicine, (iv) maternal, child and reproductive health care, (v) the right to equal and timely access to basic health services, (vi) the right of health information and education, (vii) the right of the population to participate in health-related decision-making at the national and community level, (viii) the right to non-discrimination, which constitutes the key principle in human rights and is the main principle in the enjoyment of the right health in its highest possible standard.

The main goal of equal access to health care for all social groups is to reduce, or at least not to further deepen the existing health inequality. The data shows that individuals from the most vulnerable groups are most in need of health care. It turns out that the vulnerable population displays high rates of morbidity and poor health, and it is precisely this category that does not always receive the health care they specifically need. Inequality is present almost everywhere and is attributed to many geographical, financial and socio-cultural barriers. The burden of paying for health care is a growing concern for vulnerable groups.

¹¹⁴ Participation in the programme "My story" on the national TV Klan to discuss on the sexual abuse of minors and their protection; participation in the programme "Speak about it" on Scan TV on juvenile delinquency, a concerning phenomenon in Albania recently and the People's Advocate role in monitoring the enforcement of the Juvenile Criminal Justice Code; participation at the TV A2CNN to discuss on the negative phenomenon of economic exploitation and trafficking of children; participation at TV A2CNN and the TV Euronews Albania to discuss on the increasing number of cases of sexual abuse of children; interview for UNICEF Albania on the topic *Protection and promotion of the children's rights – at the heart of the People's Advocate*.

¹¹⁵ This field of law is covered by the Secretary-General at the People's Advocate.

Following an approach focused on the respect for human and patient rights, including those from vulnerable groups, expressly sanctioned in the national and international acts, and in fulfilment of its legal mandate, the People's Advocate examined and monitored in 2021 the problems raised in complaints filed with us and those made public in the print and online media. The People's Advocate addressed to the Ministry of Health and Social Protection several problems raised in the media by health professionals, intellectuals and academics, with the aim of enabling the effective exercise of citizens' right to health care and equal access to these services.

70 complaints were filed with the People's Advocate in 2021, of which *40 are based on ex officio investigations*, because of the successful implementation of the monitoring mechanism on a daily basis to collect problems made public in mainstream and online media, through specially established working groups. Review is completed for 65 complaints, while five are still under administrative investigation. From the total complaints and cases initiated proactively, about 50 were solved in favour of the citizens who raised the concerns in their complaints.

Complaints/ex officio cases evidenced the existence of problems such as: (i) medical treatment for many different diseases not in conformity with standards, except for Covid 19, (ii) bureaucracy related to waiting lines at the Tirana University Hospital Centre "Mother Teresa" (QSUT), (iii) non-provision of health services in many health centres across the country due to their dilapidation; and (iv) lack of staff, specifically physicians and nurses.

The People's Advocate initiated proactively in 2021 the identification of beneficiary categories and the financial implication (in terms of easing the financial burden) on the Covid-19 infected citizens from the approval of the DCM no. 908, dated 18.11.2020 "*On the approval of the Package of Medicaments for Outpatient Home Treatment of Persons Diagnosed with COVID-19*", addressing the following recommendations to the Ministry of Health and Social Protection (MHSP):

- *Expand the package of medicaments for outpatient treatment at home of persons diagnosed with COVID-19, by including laboratory tests and imaging examinations for diagnosis and monitoring of the patient's clinical progress;*
- *Provide health services without any discrimination by including as beneficiaries even individuals diagnosed with Covid-19 during March-November 2020 before the entry into force of DCM no. 908, dated 18.11.2020 , as well as patients diagnosed after with Covid-19 from private health institutions after the entry into force of this DCM. Find relevant mechanisms to refund these expenses.*
- *Take measures to find instruments to raise awareness of citizens entitled to refund of the Covid-19 medicaments package.*

No response received from the MHSP about these recommendations.

Referring to specific cases examined by the People's Advocate and finalized with the relevant recommendations in 2021, we can pick out the following addressed to the Ministry of Health and Social Protection:

- *Recommendation to take measures and find opportunities to carry out the laboratory test in a European country, and then fully or partially refund patients suffering from fibromyalgia for the diagnosis, treatment and cure of this rare disease in the most developed and advanced countries in treating this disease. (This recommendation was not accepted).*
- *Recommendation to find legal opportunities to ensure medications for children with leukaemia as soon as possible, avoiding unnecessary suffering and pain for patients, especially when it comes to children who are a priority category that should enjoy special protection from the State. (This recommendation was accepted)*
- *Recommendation to take immediate measures to provide financial remuneration equally and without discrimination to the emergency staff of the "Mother Teresa" University Hospital Centre, Tirana according to the legal obligation defined in DCM no. 207, dated 10.03.2020. (This recommendation was accepted).*

In addition, the People's Advocate examined the complaint by a nurse N.Z. who, in blunt violation of all the applicable legislation, was transferred to a health centre far from his place of residence, although he was disabled and even more this happened during the election campaign period.

For this case, our institution recommended to Vlora Health Care Operator as follows:

- *Revoke the administrative act /Order no. 128 dated 06.04.2021 of the Vlora Regional Health care Operator to transfer the nurse N.Z. from the health centre in Qesarat, Tepelenë to the health centre in Luftinj, Tepelenë (This recommendation was accepted and implemented).*

The Assembly of Albania, in the framework of the evaluation of the People's Advocate activity in 2020 and tasks assigned for 2021, adopted a resolution on 07.07.2021 asking our institution to *Monitor the provision of health services in the regional hospitals of Albania with the aim of increasing the quality of health services offered free of charge to citizens and addressing systematic offenses.*

Pursuant to the obligations defined in the above-mentioned resolution, the People's Advocate began drafting a report in the second half of 2021 with the conviction that such monitoring of health services in regional hospitals (to identify problems and address them adequately with the right tools) requires specific technical expertise.

Our institution in cooperation with health experts/professionals drafted the report with the scope *Research on the provision of health care in some regional and municipal hospitals in Albania over the period October-November 2021*".

The report highlights the situation and the problems in the provision of health services in regional hospitals. The evaluation analysis of the People's Advocate is concluded with recommendations to improve the situation in the coming years.

The recommendations are addressed to central and local authorities in order to improve the performance of the regional and municipal hospitals, listed below:

- More attention should be paid to emergency services regarding work organization, reviewing of the competencies of emergency staff, ensuring sufficient and specialized staff to provide this type of service.
- Evaluate again the organization of work in the out-of-hospital emergency, related to the delegation of calls. It would be good to activate dispatch centres in the districts, to avoid problems in communication (not knowing the terrain, addresses and dialectics), with the sole purpose of shortening as much as possible the response time in providing first aid to patients - which is crucial in saving life or in prognosis.
- All treatment protocols in hospitals must be updated and approved according to the procedures and regulations in force. Hospitals had old protocols which could not be applied.
- The patient's rights charter must be displayed in every area of the hospital that is accessed by patients. It should be displayed in large formats in order to be readable. Hospitals must design strategies to inform patients of their rights. Almost all interviewees in hospitals claim that patients do not know their rights.
- The complaint mechanism and the complaint box in hospitals should be regulated by a special act (regulation or order) and have a special register for their administration.
- The Ministry of Health and Social Protection should take measures to fill the shortage of medical staff. In all hospitals there was an immediate need for specialist physicians such as paediatricians, obstetrician-gynaecologists, resuscitators, surgeons, cardiologists, haematologists, emergency physicians, toxicologists, neurologists, radiologists, etc.
- The Ministry of Health and Social Protection should provide training programmes to the medical nursing staff. The medical staff *coming from the portals* are often unsuitable to the workplace and untrained.

- The health information system should be extended to all hospitals. This system should contain not only elements that describe the health status of patients and their care, but also many managerial elements.
- Explore the possibility of networking all hospital pharmacies; this facilitates communication among them, increases control and ensures real-time response to requests that may come from different hospitals, maximally reducing the response time.
- Salary increases for medical staff should be based on performance evaluation, based on measurable indicators for their work.
- Hospital budgets should not be historical budgets; budgeting must be based on the real needs of the hospitals, on the performance evaluation in health services provision in each hospital, and on fulfilment of the hospital services indicators.
- Plan budget items in the health sector based on the performance and activity of each hospital will better meet the requests, and enhance the autonomy and flexibility of health managers to make decisions to improve the efficient delivery of health services.

The People's Advocate appreciates the constant efforts of the competent institutions in managing the pandemic Covid-19, and states that it is indispensable that the government keeps up the commitment for a more cautious and effective management guided by an approach that aims at the provision of all health care services at the right quality.

The People's Advocate considers that accountability mechanisms are essential to ensure that the State's obligations arising from right to health care are respected. Monitoring and holding the authorities accountable are achieved through administrative, political and judicial mechanisms and by including in the process several stakeholders such as NGOs, national human rights protection institutions, and the citizens themselves who are growing aware of their right to decent health care.

The State bears the responsibility and plays an active enabling role in other economic-social factors that affect health, in the provision of material infrastructure and human resources needed to diagnose and combat diseases, and in improving the quality of life and health.

3.17 Respect for the right to education¹¹⁶

The Constitution of the Republic of Albania has included the right to education as a constitutional right under the heading of economic and social-cultural freedoms and rights. The constitutional right to education is seen as an obligation: on one hand, everyone enjoys the opportunity to be

¹¹⁶ This field of law is covered by the General Section at the People's Advocate.

educated and, on the other, some obligations are foreseen to implement this right - obligations that fall on the State, parents and even the children themselves. Parents have an obligation to enrol their children in school to attend at least the mandatory cycle by law. The State mechanism has the obligation to provide the necessary infrastructure free of charge to enable the exercise of the right to education.

Education for all has been an integral part of the sustainable development agenda, but gained more attention in the 2030 Agenda for Sustainable Development whose fourth goal is to *Ensure inclusive and equitable quality education, and promote lifelong learning opportunities for all*. It emphasizes the elimination of gender disparities in education and ensuring equal access to all levels of education and vocational training for vulnerable children. Also, the agenda calls for the creation and improvement of educational structures that are sensitive to the child, disability and gender issues, and that provide safe, non-violent, inclusive and effective learning environment for all.

Efforts were made in the last decade to promote and enable an inclusive learning environment in primary and secondary schools in Albania, and many of these efforts targeted the pre-university education. The Government of Albania has a relatively new Law on Pre-University Education (2012) and normative acts (Normative Provisions, 2013) that define the basis for the revision of the National Strategy on Pre-University Education.

From the point of view of access to higher education in Albania, some progress can be seen, however, even though the open and legal discriminations that existed are no longer evident, a series of discriminations, more hidden, but equally problematic, persist. Potential students from marginalized communities, people with disabilities and those from poor and isolated socio-economic groups face inherent barriers to accessing higher education. The implementation of 'targeted' programs to address their difficulties is now a necessity and an obligation (although not an easy undertaking, either structurally or financially), and an important step on the way to consolidating and expanding access in higher education in Albania.

In the framework of its legal mandate, the People's Advocate has monitored the problems regarding the right to education, either from complaints or cases made public in the print and online media.

The People's Advocate *registered 100 complaints* in 2021, of which 70 are based on ex officio investigations, because of the successful implementation of the monitoring mechanism on a daily basis to collect problems made public in mainstream and online media, through specially established working groups

Complaints/ex officio cases identified these main problems: (i) deficiencies and gaps created in transmitting the knowledge to pupils and students, due to the online teaching over an extended

period during the 2020-2021 school year, (ii) difficulties in adaptation and the return of full-time children to schools in the first semester of 2021.

A serious problem that persists from last year and raised in many individual complaints filed with our institution is the employment of teachers not based on meritocracy.

Special focus was paid to numerous complaints by students who did not receive with enthusiasm – and even protested – against the mandatory vaccination decided by the Technical Experts Committee at the Ministry of Health and Social Protection, as a condition to allow them to enter the school/teaching premises.

Again in 2021 we received many individual complaints about the process of awarding student scholarships. These cases were referred to be solved to the Rectorate, Universities and the Ministry of Education, Sports and Youth .

From the total number of complaints, review is completed for 90 and the rest is under administrative investigation. From the total complaints and cases initiated proactively, *about 65 were solved in favour of the citizens who raised the concerns in their complaints.*

As for more specific cases examined through an administrative investigation and concluded with a recommendation in 2021, we would single out the one addressed to the Ministry of Education, Sports and Youth on the proactive case with scope: *"Students of the football school have no pitch and pay on their own to train"*. Our institution recommended as follows:

- *Take immediate measures for the financial compensation of the payments made by students at the football high school "Loro Boriçi", Tirana over the period September-December 2020. (This recommendation was accepted and implemented).*
- *Take immediate measures to reach an agreement with the Albanian Football Federation and, if this fails, covering the financial expenses of students who train on the pitches of the AFF (This recommendation was accepted and implemented).*

Another problem addressed and finalized with a recommendation was the complaint of a teacher B.D. from the city of Fier, who was dismissed on political grounds during the election campaign, in blunt violation of the applicable legislation that prohibited dismissals in this period. For this case, our institutions sent this recommendation to the Local Pre-University Education Office in Fier:

- *Revoke the administrative act, specifically Decision no. 1, dated 11.03.2021 "On the immediate termination of the employment contract", for Mr. B D. (This recommendation was rejected).*

Another problem worth highlighting as it has become representative of many teachers in the

hiring process, is the case of Ms. D.Xh. who albeit ranked first on the portal *Teachers for Albania*, her appointment was delayed by the Fier Municipality administration. For this case, our institution recommended to Fier Municipality:

- *Take measures to hire citizen D.Xh. in a long-term position and near her residence, as a legal obligation based on merit and as a mother of two children, in order to deliver the honoured teacher's profession in the healthiest spirit (This recommendation was accepted but not implemented).*

The People's Advocate also examined a complaint by citizen M.F. who was denied the academic title *Associate Professor* by the Sports University in Tirana, and issued the recommendation as follows:

- *Take immediate measures to proceed with the procedure of awarding the title Associate Professor to Mr. M.F. according to the criteria set out in the applicable legislation at the time that his file was submitted to the Council of Professors.*
- *Forward the Recommendation of the Council of Professors no. 15 dated 02.03.2015 and a full copy of the relevant file to the Ministry of Education, Sports and Youth (This recommendation was rejected by the Sports University).*

In view of its promotional mandate, the People's Advocate further consolidated the cooperation with Civil Society Organizations that operate in the field of the right to education, through active participation in many online activities to present studies, reports and monitoring findings in educational institutions. It is worth mentioning in particular the activities organized by the EU project "Education for Democratic Citizenship", in close cooperation with the Ministry of Education, Sports and Youth under the project "Strengthening Education for Democratic Citizenship in Albania" , funded by the Swedish Agency for International Cooperation and Development.

While the People's Advocate appreciates the policies/efforts of the Albanian government to prevent the spread of the Covid-19 pandemic in the education system - in a setting difficult to teachers who were untrained in online teaching, and to students who had to learn and obtain knowledge in an online context that was entirely new to them – finds that much needs to be done to ensure the continuity of training and the adaptation of textbooks, and find the most accessible technologies not only for students in urban areas, but also those in rural areas. It also remains a challenge to find financial mechanisms for the support and motivation of pre-university education teachers, especially that *armada* of teachers who practice this honourable profession in the remote rural areas.

The People's Advocate highlights the need for further in-depth reforms in the education system seeking to solve the systemic and sporadic problems evidently faced by this system currently, in order to guarantee *de facto* the right to quality education for all citizens who live in the Republic of Albania.

3.18 Respect for the right to social care¹¹⁷

The program that targets poverty is the Economic Aid (EA) defined in Law no. 57/2019 as "*payment given to vulnerable individuals and families defined in the law*". The latest data of the Living Standard Measurement Survey (INSTAT, LSMS 2020) shows that severely materially deprived individuals *make up 21.8% of the population*. It is estimated that the level of poverty or social exclusion in Albania, i.e., individuals at risk of poverty or severely materially deprived, or with extremely low employment intensity comprise around *46.2% of the population* (INSTAT, Household Budget Survey 2019).

In the framework of sectoral policies, the National Social Protection Strategy (2020 - 2023) has as a general vision to build the social protection system to combat socio-economic inequalities with policies and mechanisms to protect all individuals in need or excluded, through prevention and social reintegration programmes combined with employment schemes. This strategy, as well as the National Gender Equality Strategy (2021-2030) and the Action Plan for Persons with Disabilities (2021-2025), share the principle "*no one is left behind*", focusing on equality, protection and social reintegration of victims of violence or persons with disabilities.

Although the legal framework is in place, the practical implementation of the economic aid programme proved challenging for the beneficiaries.

The People's Advocate handled *38 cases in total* (both complaints and ex officio cases initiated based on publications in visual, print and online media) in 2021, which highlighted these main problems: non-eligibility to the economic aid, suspension or termination of the economic aid, and unclarity about the reasons citizens are not eligible or excluded from the economic aid scheme.

The amount of economic aid continues to be reported by citizens in their complaints as **very low** compared to the basic monthly expenses to survive, and no longer alleviates poverty and enables the social integration of individuals and families - as the main objective of this social protection instrument. The People's Advocate appreciates the time-limited intervention to double it, however, it still remains low.

The handling of these complaints, requests or proactive cases with the local administration bodies has resulted not only in the clarification of complainants about the legal reasons for the termination or non-eligibility for the economic aid and suggestions about the re-application period, but also in recommendations sent to the competent State administration bodies¹¹⁸.

¹¹⁷ This field of law is covered by the General Section at the People's Advocate.

¹¹⁸ For example, official letter no. 202002323 dated 3.3.2021 addressed to Shkodër Municipality recommending to the social administrator to verify the socio-economic situation of the citizen M.O. and allocate economic aid to her from the contingency fund of the conditional economic aid fund"; official letter no. 202003298 dated 3.2.2021 addressed to

Albania is among the countries that does not have a legally defined minimum living standard or, in other words, how much an Albanian citizen needs as a minimum to live. Social protection programmes laid down in the Law no. 57/2019 "On social assistance in the Republic of Albania" and its by-laws provide for the distribution of economic aid.

Considering the lack of an official minimum living standard which should be the basis in drafting of the social policies pursued by the State for groups in need, the People's Advocate prepared a special report "*On the minimum living standard in Albania*" which can be consulted on the official website of the People's Advocate¹¹⁹.

The report aimed to make an assessment of the economic, legal and social situation created by the lack of an official minimum living standard as a definition and as a basis not only for economic aid, but also for other policies in support of poor individuals and families in Albania. The objectives of the report are to provide a current overview of the economic situation and poverty in Albania, and project the level of minimum living standard. It provides an analysis of the legislation, social protection policies and economic aid, as well as an evaluation whether these developments comply with the principle of "*life with dignity*" in poverty alleviation and reintegration of vulnerable groups. The report includes recommendations for improving the impact of economic aid in alleviating poverty and reintegrating beneficiaries into society.

The analysis concluded that the minimum living standards in Albania in 2019 amounted to roughly 17,875 ALL. This level is 9.9% higher than the minimum pension in urban areas, 37.5% higher than the unemployment payment and about 3 times higher than the economic aid, while it is 45.5% lower than the minimum wage.

The minimum living standard must ensure a dignified life with basic services and must enable citizens to participate actively in society, regardless of their ability to work¹²⁰. . Legislation should provide the forms and means of how this minimum should be applied, until it enables every citizen to easily benefit from such a guarantee and not suffice with determining the numerical value of this concept. The estimated minimum living standard and its amount should be the basis for the amount of economic aid. The economic aid must be increased, and it must reflect the needs of individuals and families not only for food, but also for other human development activities. With the aim of not excluding the categories that can benefit from the economic aid scheme, we suggested simplifying the categorization of individuals and families and that the minimum living standard be used as basis in drafting social policies for the needy and as a reference in determining the economic aid and the unemployment payment.

Dibër Municipality recommending that it take measures to provide immediate assistance for the housing and economic empowerment of the family of A.P."

¹¹⁹ <https://www.avokatipopullit.gov.al/media/manager/website/reports/Minimumi%20jetik%20ok.pdf>.

¹²⁰ The report suggests amending the Law no. 57/2019 "On social assistance in the Republic of Albania" and including a special provision for the definition of the minimum living standard.

The amount of economic aid provided by law is not sufficient to cover food expenses, but also for other human development activities for individuals and families when they need social protection. This report was launched for discussion at a conference¹²¹ with the UNDP permanent representative in Albania, the experts engaged in compiling this report, and representatives from the Ministry of Health and Social Protection, the State Social Service and INSTAT.

Even throughout the year 2021, the People's Advocate considers that poverty remains an acute problem at national level and that poverty is not only a lack of income but also a lack of services and participation in society, which are essential for the enjoyment of human rights. Poverty as a cause, but also as a consequence of human rights violations, must be addressed in the context of the State's obligations to respect and guarantee human rights.

3.19 Respect for the rights of persons with disabilities¹²²

As in previous years, support and observance of the rights of persons with disabilities as one of the vulnerable groups has been at the focus of the People's Advocate activity in 2021. From the point of view of vulnerability, persons with disabilities are that part of society who need continuous support from the State to respect and guarantee their basic rights and freedoms, and accessibility and reasonable adaptation in any field of life.

53 complaints were handled in 2021, mostly cases based on *ex-officio* investigations. The administrative investigation is complete for 45 complaints, while 8 complaints are still under review. Out of the total number of reviewed complaints, *28 complaints were resolved positively in favour of the citizens*.

Complaints/proactive cases highlighted the existence of problems such as: lack of living means, exposing individuals with disabilities to poverty and survival; the problem of accessibility in the road infrastructure for the visually impaired, etc.

A prominent problem handled with priority this year was that the disabled person did not receive a date for their evaluation by the Medical Commission for Determination of Ability to Work, as the competent body for the evaluation for the purpose of eligibility to the disability benefits.

After our institutional intervention at the State Social Service (SSS), this authority improved its modus operandi and now regularly notifies the complainants about the assessment date at the Evaluation Commission/SSS. For the persons who were found ineligible for the disability benefits

¹²¹ In cooperation with the UN Development Programme in Albania, on 28.7.2021.

¹²² This field of law is covered by the General Section at the People's Advocate.

by the Commission, the People's Advocate provided detailed legal information about their right to re-evaluation¹²³.

Even this year, the People's Advocate dealt with a problem reported over the years by citizens, still unresolved, such as the non-payment of arrears for the period 2005-2010 to persons with disabilities, mainly in the cities of Korça and Pogradec, due to the non-indexation of the disability payment. Indexation of disability payments resulting from the increase in the minimum wage was fully implemented until 2004. For the period 2005-2010, such indexation was marred by many shortcomings creating unpaid differences. Despite the filing of final court decisions with the scope "*Clarification and recognition of arrears, calculating the tax values for each claimant due to the disability, guardianship, unemployment and education, sight-impairment and damage compensation, blindness, as well as compensation for damage*", this right has not been implemented by the local government.

After our institutional intervention at the Ministry of Health and Social Protection, we received information that this institution allocated a fund of 296,705,000 ALL to 20 (twenty) municipalities during 2021.¹²⁴

Another problem identified, examined and reported earlier is the failure to issue by-laws in implementation of Article 6(3) and Article 7(3) of the Law no. 93/2014 "*On the inclusion and accessibility of persons with disabilities*" as amended, for services for independent living and assisted decision-making.

Following the examination of this issue, we were informed that the Ministry of Health and Social Protection has finalized the draft legal acts to improve the lives of persons with disabilities who benefit from assisted decision-making and services, in respect for the principles of Law no. 93/2014 "*On the inclusion and accessibility of persons with disabilities*". Given the needs identified in the legal analysis and the situation created by the Covid-19 pandemic, this institution engaged to present these draft legal acts for public discussion within a short time.

A representative problem addressed and concluded with a recommendation is the failure to provide financial compensation for the electricity bill for the year 2016 to the citizen F.K., in the Pezë Administrative Unit.

Considering that the legal rights of the beneficiaries of financial compensation for electricity expenses in the Peze Administrative Unit have not been respected, with continuous and unjustified inaction on the part of the competent bodies, we addressed this recommendation to Tirana Municipality:

¹²³ Regulation "On the organization, rights, obligations and functioning of the Medical Commission for the Determination of the Ability to Work, for the evaluation of persons with disabilities and the Medical Commission for the Determination of Blindness".

¹²⁴ On 17.12.2021, Korçë Municipality was allocated 7,605,000 ALL and the Pogradec Municipality 22,740,000 ALL for the outstanding differences created from the non-indexation of the disability payment.

- *Take immediate measures to guarantee the legal rights denied and identified by the Regional Directorate of the State Social Service, Tirana according to Audit Report no. 1103/1 dated 12.10.2018 for the allocation of the necessary funds for the payments of arrears of electricity expenses for the year 2016 to the beneficiaries at the Peze Administrative Unit, whose list includes the citizen F.K. (No response received from Tirana Municipality for this recommendation).*

The People's Advocate has a consolidate practice of monitoring the election process with the aim to identify potential problems and take relevant measures in order to guarantee the right to vote to persons with disabilities.

For the creation of facilitating conditions for the access of persons with disabilities to the Voting Centres, in implementation of the work plan for the monitoring and accessibility of the infrastructure of persons with disabilities in the voting centres in several cities of Albania, within the framework of the Elections of the General Election 2021 in Albania, inspections were carried out in the premises designated as voting centres, during the period 02.04.2021 - 25.04.2021, to identify:

In the context of the 2021 general elections, our institution conducted inspections in the premises designated as voting centres during the period 02.04.2021 -25.04.2021 to check whether accessibility is ensured for persons with disabilities, as provided in the *work plan to monitor infrastructure accessibility for persons with disabilities in voting centres in several cities of Albania*. The inspections particularly checked:

- ✓ *Installation of ramps for paraplegic and tetraplegic persons;*
- ✓ *Suitability of the infrastructure (signals with yellow stripes) for the visually impaired;*
- ✓ *Brail ballot papers to guarantee independent and secret voting to the visually impaired and blind people.*

Besides the inspection of infrastructure at the voting centres, we addressed the following recommendation to the Regulatory Commission at the Central Election Commission in order to guarantee the right to vote to persons with disabilities:

- *Take immediate measures to improve as soon as possible the Instruction No. 1 dated 5.12.2020, "On the rules for setting up, assigning and announcing the location of voting centres and preparation of the election map by the local self-government units", approved by the Regulatory Commission at the CEC. Add detailed provisions to this instruction to create facilitations in voting centres for persons with disabilities to exercise their right to vote, and address other issues presented by us in this recommendation.*
- *Set up an effective mechanism to check the fulfilment of legal criteria by the relevant local self-government units intended to ensure suitable conditions in voting centres for the free exercise of the right to vote by the persons with disability.*

In response to our recommendation, we were informed that the Central Election Commission will make a general assessment of the problems encountered in the general elections of 25 April 2021, in relation to the supporting infrastructure which is set up entirely according to a well-defined mechanism, criteria, deadlines and institutional interaction for the creation of facilitations to persons with disabilities to vote in the voting centres.

In the context of its legal remit, the People's Advocate as a monitoring institution for the implementation of Law no. 93/2014 *"On the inclusion and accessibility of persons with disabilities"* in accordance with the UN Convention on the Rights of Persons with Disabilities has found – from a combination of complaints and proactive cases – that the infrastructure accessibility for persons with motor and visual is extremely problematic and lacking in all cities of Albania.

The agenda adopted at the United Nations Summit on *Sustainable Development 2015 - 2030*, goal no. 9¹²⁵, in addition to the promotion of comprehensive industrialization and innovation, also connects it with the construction of resilient infrastructure.

People with disabilities, in addition to the difficult access to sidewalks and intersections, continue to face barriers at the entrance of public institutions to receive services, as a result of the lack of infrastructure accessibility for them.

For this purpose, in accordance with the work plan *"On monitoring the infrastructure accessibility of persons with disabilities in State institutions, where services are offered to citizens"*, we prepared a list of State institutions subject to our monitoring. After the inspections, in December 2021, relevant recommendations were addressed to State institutions at the central and local level as below:

- *Take immediate measures to ensure that the construction infrastructure meets the accessibility standards and elements, involving in this process the persons with disabilities themselves.*¹²⁶

With the same vision, the People's Advocate also monitored Residential Social Care Institutions that accommodate persons with disabilities. We periodically checked the protection measures taken against the spread of Covid-19, establishing a solid correspondence with the State Social Service and the heads of the institutions, regarding the vaccination of beneficiaries and staff in residential institutions.

Responses received by our institution confirm that the vaccination process was carried out in line with approved protocols and there were no problems with the beneficiaries and the staff.

¹²⁵ Goal 9: Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation.

¹²⁶ Recommendation addressed to these municipalities and water utilities: Durrës, Tropojë, Korçë, Pogradec, Lezhë, Elbasan, Dibër, Kukës, Berat, Përmet; and to the prefectures in Gjirokastrë and Durrës; and to Albanian Post Office; State Cadastre Agency; Social Insurance Institute.

Persons with disabilities continue to face problems as in previous years, concerning the lack of access to justice, information, services, public and private premises; non-compliance with the legal obligation for the employment of persons with disabilities; and failure to refund the public transport (bus) ticket, amongst others.

The People's Advocate considers that for the integration into society of persons with disabilities, it is essential and extremely important to provide them with equitable and equal opportunities as the rest of the society.

3.20 Gender equality and rights of LGBTQI community¹²⁷

Gender equality

The People's Advocate finds that the current situation of the rights and freedoms of women and girls in Albania is characterized by acute problems, especially in terms of gender-based and domestic violence, access to justice, employment and the provision of social services.

The development of promotional and awareness-raising activities that highlight the problems already expressed in the field of protection and respect for women's rights (as an integral part of human rights), accompanied by suggestions or recommendations on how to adequately address and resolve such issues have an added value and direct impact on the community of women and girls in our country.

This is mainly because there is still no culture among the society in Albania that guides people towards addressing the institution of the People's Advocate, with complaints presenting their claims regarding gender-based violence. The above is also reflected in the limited number of complaints about this issue filed and handled throughout the year 2021 by our institution.

The year 2021, with the pandemic continuing to be aggressively present, had an impact on the entire economic and social life of society, presenting additional problems for the vulnerable groups, including women and girls.

From the perspective of the People's Advocate as a defender of individual rights and freedoms, the most prominent problems identified this year, continuing from the previous year, include; (i) loss of jobs; (ii) difficulties in accessing social and legal services; (iii) increased violence by partners or other family members, manifested as violence in all forms, including physical, psychological and sexual violence.

Referring to the complaints registered for 2021, it results that the main problems at the individual level included (i) lack of economic aid or parallel access to the benefit of economic aid by women victims of domestic violence; (ii) non-employment or denial of the right to old-age pension; (iii)

¹²⁷ This field of law is covered by the General Section at the People's Advocate.

poor access to justice for women and girls; (iv) nonexecution of court decisions; (vi) non-provision of housing through rent bonus, etc.

The People's pays addition attention to guaranteeing the rights of women and girls in electoral processes, their right to vote and to be elected throughout 2021, as an election year. The representation of women in politics still remains an unfulfilled obligation. Discouraged from participating in politics or neglected when they do participate, even despite making up 50% of the electorate and the population, they still have to deal with "gender quotas" which do not faithfully reflect their percentage in society.

The use of a sexist and discriminatory language towards women candidates by the political parties clearly characterized the electoral campaign of the political parties. The institutional reaction of the People's Advocate against the use of this language was immediate, through statements published on the institution's official website or on social networks, drawing attention to the fact that this type of rhetoric used by political leaders leads to transforming hatred and violence into a model of behaviour for our society.¹²⁸

The participation of the institution through its representatives in television shows or discussion forums was increased, calling on political parties to immediately distance themselves from this approach, leave behind the superficial practices of public relations where scandals are used as a tool to divert debate at the cost of violating the dignity of every citizen, especially women, with a direct negative impact on the destruction of hard-won standards in respect of human rights.

Support for greater participation of women in politics has been provided mainly through policy reforms such as electoral gender quotas. However, the adoption and implementation of gender equality reforms is not enough. Also, the quotas remain quotas in lists and not in representation, and thus women in the Parliament of Albania or in public policy-making institutions remain underrepresented.

Considering an assessment analysis on the level of inclusion and participation of women and girls in politics, to determine what happens in concrete terms to women and girls when they join politics, the People's Advocate in cooperation with The Commissioner for Protection from Discrimination, and with the support of UNDP, took the initiative to draft the study report "*Violence against women in politics*"¹²⁹, arguing that violence against women in politics constitutes a violation of human rights and reinforces the marginalization of women in politics.

The study report is based on three methods of data collection: sharing stories, group discussions, and a survey with political candidates addressing the following questions: What do women's stories tell us about their experience of political violence? What are the types, motives and impacts

¹²⁸ <https://www.avokatipopullit.gov.al/sq/articles-layout-1/media/neës/this-article-is-available-only-in-albanian-609/>

¹²⁹ Full study report :

<https://www.avokatipopullit.gov.al/media/temp/VIOLENCE%20AGAINST%20WOMAN%20IN%20POLITIC.pdf>

of political violence? Are there differences between women and men regarding the types of violence they experience?

The findings of this report are expected to be discussed throughout this year with the interest groups, in order to supplement it from a content point of view with the opinions of the interest groups, and at the end of the report, the relevant recommendations will be addressed to the state authorities at the local and central level.

Another problem identified by the People's Advocate and referred to our institution during 2021, was the lack of parallel access of women and girls to the economic assistance scheme, as victims of domestic violence and as a vulnerable category. From the available data, it appears that women and girls, victims of domestic violence, cannot access and benefit economic assistance as victims of domestic violence parallel with benefitting it as a vulnerable category, and the explanation given for it is that the same person cannot simultaneously benefit from two support schemes with economic assistance. We found that this practice is widely applied throughout the country, with some insignificant exceptions.

Under these conditions, unemployed victims of domestic violence are placed in a disadvantageous position compared to victims of domestic violence who are employed. This way, unemployed victims of domestic violence are deprived of an opportunity to receive economic assistance both as a victim of domestic violence and as a category in need.

Based on this identified problem, the People's Advocate, after the institutional meeting with the General Director of the State Social Service, addressed this problem, together with the Anti-Discrimination Commissioner, in an evaluation report on the practical implementation of social assistance legislation, with a focus on assessing the parallel access of beneficiaries of financial support to the social assistance scheme.

The report, initiated in 2021, will assess the current situation of beneficiaries of economic assistance according to Law no. 57/2019 *"On Social Assistance in the Republic of Albania"*, more specifically for victims of violence who have been granted a Protection Order, persons with disabilities, as well as beneficiaries of the 6% municipal fund.

The report 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 promoting the improvement of the quality and effectiveness of social protection, emphasizing the need to increase the capacities of the responsible structures of the administration for the implementation and periodic evaluation of the social policies in force.

The findings of this report are expected to be discussed throughout this year with the interest groups, in order to supplement it from a content point of view with the opinions of the interest

groups, and at the end of the report, the relevant recommendations will be addressed to the state authorities at the local and central level.

Violence, harassment and sexual harassment in the workplace, as one of the frequent forms through which gender-based violence is manifested, is a prominent problem and widely addressed by the People's Advocate throughout 2021.

Sexual harassment and sexual violence are considered to be one of the forms of gender-based violence that is unfortunately still under-reported. Sexual harassment in the workplace, specifically in the public administration, constitutes an even more negative concern and phenomenon, since in addition to individual concerns regarding the dignity of the person, it also affects working relations related with the operation of the state, generating double consequences for anyone who falls prey to such phenomenon by their employer.

The presence and tolerance of the phenomenon of sexual abuse in the public administration, including sexual abuse of by senior public administration leaders, creates a great harm to the society, damages its image in the eyes of the public and seriously affects the respect of human rights.

It is necessary for the state structures and legislative bodies to take all the necessary measures to eliminate all forms of sexual harassment at work, encouraging the punishment of this phenomenon.

With this institutional approach, the People's Advocate, in cooperation with the Department of Public Administration, supported by UNDP, drafted the Guide "*On Preventing and Addressing Violence, Harassment and Sexual Harassment in the Work Environment in State Administration Institutions*".¹³⁰

The purpose of this Guide is to:

- ✓ Engage state administration institutions in creating, guaranteeing and promoting a safe working environment by preventing, reducing and eliminating any form of violence, harassment, sexual harassment and abuse of authority in the workplace.
- ✓ Establish policy and procedure/s to prevent and address violence, harassment, sexual harassment and abuse of authority in the workplace.
- ✓ Provide the public with mechanisms to address violence, harassment, sexual harassment and abuse of authority by civil servants in the exercise of their public function.
- ✓ Make civil servants in the state administration aware of the easier and clearer evidence of situations related to harassment, sexual harassment and abuse of authority in the workplace as well as the ways and techniques of stopping and preventing them.

¹³⁰ https://www.avokatipopullit.gov.al/media/manager/website/reports/Udhezues_web.pdf

Through this document, every employee of the state administration is familiar with the necessary steps to address, reduce and eliminate any form of violence or harassment in the workplace.

In the framework of the evaluation of the activity of the People's Advocate for 2020 and the tasks left for 2021, the Assembly of Albania, through the resolution approved on 07.07.2021, has asked the People's Advocate to draw up a report on the situation of violence in the family and violence against women in Albania.

As part of its obligations defined in the above-mentioned resolution, considering the monitoring of the situation of domestic violence and violence against women in Albania as of vital importance in terms of the dimensions that the phenomenon has already taken, the People's Advocate, with the support of UN Women, drafted during 2021 a report "*On the situation of domestic violence and violence against women in Albania, for the period January 2020-December 2021*".

The report analyses the information that has been sent by the main institutions responsible for addressing gender-based violence at the central and local level, as well as reports of civil society organizations and recommendations of international human rights organizations in this field.

The report includes quite positive developments in the legislative field, but finds the need for the drafting a more comprehensive legislation to address all forms of gender-based violence, the need for budgeting specialized services, as well as the need to improve criminal legislation regarding the offense of sexual relations with violence and other forms of violence, provided for in the Istanbul Convention, to which Albania is a party. *The issues related to this report are also mentioned in point 3, Chapter II of this annual report .*

In the framework of its monitoring legal powers, the People's Advocate has monitored throughout the year 2021, the level of respect for the rights of women and girls, victims of gender-based violence respectively in: (i) the National Centre for the Treatment of Victims of Domestic Violence and (ii) the Crisis Management Centre for cases of sexual violence "LILIUM".

The National Centre for the Treatment of Victims of Domestic Violence is a state institution, subordinate to the State Social Service. This centre operates based on the standards, procedures and policies of the Ministry of Education and Culture according to the legislation on the social protection system. The aim of the centre is to protect, rehabilitate and integrate girls, women and children, victims of domestic violence to lead them to an independent life.

The People's Advocate appreciates the improvement of the legal framework and the possibility of providing a wide range of services to the women housed in the centre.

The analysis of the information collected during the performed inspection was concluded with the following recommendation for the relevant institutions:

- *Take immediate measures to improve living conditions and treatment, as well as to guarantee the rights of beneficiaries at the National Centre for the Treatment of Victims of Domestic Violence.*¹³¹

¹³¹ 1. Fill the vacancies of the National Centre for Victims of Domestic Violence with full-time employees: 2 social workers/case managers; 1 psychologist; 1 lawyer;

The first crisis management centre for cases of sexual violence, "LILIUM", was established on 04.12.2018, with funds from the state budget, in accordance with the recommendations of CEDAW and the Committee of the Parties and the initial assessment report of GREVIO.

In this centre, a one-stop shop, 24/7 and short-term (24-72 hours) emergency service is provided for victims/survivors of sexual violence and their families.

The People's Advocate considers the establishment of this centre as very necessary to assist victims of sexual violence. The sub-legal framework for the operation of the centre is also appreciated. The analysis of the information collected during the performed inspection was concluded with the following recommendation for the relevant institutions:

- *Take immediate measures to improve treatment conditions, as well as guarantee the rights of the beneficiaries in the Management Centre for cases of sexual violence, LILIUM.*¹³²

In response to the above-mentioned recommendations, we are informed that the responsible institutions addressed, welcome these recommendations of the People's Advocate and have already started to implement them. Also, the statistics on human rights, which reflect data by gender on complaints about claims of violation of rights, handled by the Ombudsman according

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2. Provide initial and continuous training for the Center staff, regarding the standards of social care services, for victims of domestic violence, in residential, public and non-public Centers;
 3. Secure funds for the purchase of clothing for women and children;
 4. Secure funds for the purchase of didactic, educational and entertainment materials as well as books for children;
 5. Secure the necessary funds for the installation of the central heating system of the Centre;
 6. Organize entertainment and educational activities for the beneficiaries and their children;
 7. Make sure the Centre provides beneficiaries and their children with transport, especially when they needed health services, etc.;
 8. Provide beneficiaries and their children immediately with a library, toys, and other educational materials available in the Centre;
 9. Ensure anti-Covid vaccination of the Centre staff and new beneficiaries on an ongoing basis.
 10. Ensure more frequent monitoring of the activity of the Centre by the State Social Service.

¹³² 1. Ensure implementation of the standards approved for the National Center for the Treatment of Victims of Sexual Violence (LILIUM), in particular the basic standard for examining cases in the Center premises - as its basic principle of "security and human dignity" has been violated.

2. Provide and train a dedicated staff from University Hospital Centre (QSUT), responsible for providing emergency support and psychological assessment.
3. Secure a budget for the services to be provided to the Center by QSUT and provide a fund for the purchase of clothing and hygiene-sanitary packages for the beneficiaries of the services at this Center.
4. Immediately install the equipment for conducting the interview (already purchased by UNDP) and make them operational.
5. Secure equipment that facilitates gynecological and forensic examination inside the Center.
6. Ensure coordination of other medical services that should be offered to the victims in the center, such as in cases of trauma/attacks, etc., the victim should not be referred to the QSUT, but to the Trauma Hospital.
7. Ensure direct referral by the Police to the Center of cases of sexual violence.
8. Establish other regional centers, specialized for the immediate treatment of victims of sexual violence, since one center for the whole country is insufficient and may be not easily accessible for victims of sexual violence who live far from it.

to the type of right, are now an integral and periodic part of the publication "Men and Women in Albania" of INSTAT.

During 2021, the People's Advocate has continued its work to promote the rights of women and girls and encourage higher standards by organizing its own activities or by participating in activities and meetings with civil society organizations, women and girls from vulnerable groups, or distribution of leaflets with the necessary information on legislation and institutions for the protection of women's rights.

Gender-based violence remains an open wound in our lives and society. It appears not only in the most traditional forms but also in new, more hidden and sophisticated forms and affects all layers of society. Therefore, the fight and efforts to prevent it need to be even stronger and more comprehensive with all actors of society.

The media has an especially important role and is a key entry point for the promotion of women's rights and prevention of violence against women and girls and especially in this period when going out of the house or meetings were more limited due to the pandemic situation and when the only possibility or window of communication certainly remained the media, print media, electronic media or social media.

This purpose was also served by the discussion forum "*Media, freedom of speech and women's rights*", organized on March 8, 2021, by the People's Advocate, in cooperation with the Audio-visual Media Authority, supported by UN Women.

The relationship between the media and women's rights, the complex relationship between the right of the media to be free in its reporting and the right of women to be protected from discrimination and discriminatory portrayals when reporting episodes of gender-based violence in the media was the topic of this discussion forum which also generated the relevant recommendations for the responsible state authorities.

Even throughout the year 2021, the People's Advocate has joined, as every year, all the activities of the National Campaign of 16 Days of Activism against violence with the slogan: "*Make the World Orange: Stop violence against women NOW!*"

The People's Advocate appreciates the work of the relevant institutions in terms of prevention and fight against the most basic gender-based violence and domestic violence, but also states that it will continue to be engaged in encouraging these institutions to do even more in respect for the highest standards of guaranteeing the rights of women and girls.

Rights of the LGBTIQ community

Although the Constitution of the Republic of Albania guarantees the basic rights and freedoms of every person, the LGBTIQ community continues to experience discrimination and intolerance, which are encountered within the family, and further escalated in society, work environments, school, and public life in general.

From the point of view of the People's Advocate, the most expressed problem of this community is the difficulty on the part of the society with understanding diversity and the society's level of knowledge about the LGBTIQ community.

The situation of LGBTIQ people in Albania seems to be more favourable in big cities and especially in the capital city. There is a tendency of young members of the community to move from small towns to big cities (mainly Tirana), in order to find support in people, groups or communities in a similar situation, for more security, employment opportunities, and a more inclusive physical and cultural environment.

Providers of public services, in the fields of health, education, law enforcement, judiciary, etc. seem to not always understand or correctly consider the legislative basis and implement the rights and obligations defined in it, as far as LGBTIQ persons are concerned. As a result, this community continues to be subject to inappropriate treatment in terms of receiving public services at the right time and in the right quality.

The activity of the People's Advocate for ensuring protection and respect for the rights of persons belonging to the LGBTIQ community for the year 2021, has continued as a combination of its two main functions, i.e., protection and promotion of the rights of this community.

Even throughout this year, the People's Advocate has been maximally engaged in openly supporting the community demand for having their rights guaranteed, encouraging state institutions to undertake policies in accordance with the highest international standards, as well as promoting the rights of this community, raising the awareness of the society about this community demanding only the rights that are already guaranteed by the Constitution of Albania and that are enjoyed by all, and not any category of rights specifically designed and implemented for this community.

Throughout this year, after the identification of several episodes of violence against some activists for community rights, as well as after the physical aggression against a transgender person in June 2021, the People's Advocate organized a discussion forum in the institution own premises about the role of the media in addressing hate speech and promoting the rights of the LGBTIQ community.

The forum identified the need for the rights of every community, including those of the LGBTIQ, to be treated with impartiality and respect in the media, and conveyed messages of solidarity with the victims of violence from the LGBTIQ community. Also, the forum participants shared the conclusion that ignorance and lack of information about the rights of the LGBTIQ community are the causes of misunderstandings and discriminatory language, language that inspires verbal and physical violence in everyday life.

During 2021, the People's Advocate has consolidated its partnership with its counterparts and civil society organizations protecting the rights of this community, playing a proactive role in all activities organized with the aim of raising awareness of the society regarding these rights.

The above forum was followed by an online meeting of the People's Advocate of Albania, the People's Advocate of Kosovo, and the Commissioner for Protection from Discrimination and civil society of both countries on the International Day (May 17th) Against Homophobia, Transphobia, and Biphobia. The purpose of this meeting was to confirm once again that despite the differences and diversity, we are all equal in terms of enjoying basic human rights and freedoms.

Furthermore, the institution has continued its active participation in meetings with civil society organizations in defence of human rights, through which it aims to convey the necessary information on the legislation in force, the institutions in defence of human rights, what to do in case of rights being violated or denied, etc.

One of the problems addressed by the People's Advocate is hate language and discrimination, which happens to be used in newspapers, used by certain politicians, and citizens commenting on social media, which creates a situation for which the People's Advocate, as the main institution for the protection and promotion of human rights in Albania, has continuously expressed its position in support of the LGBTIQ community.

The People's Advocate has continuously supported the community through statements and public positions published both on the official website of the institution, and in the visual media or social media and finds that the most prominent problem in relation to the LGBTIQ community continues to be the low level of awareness of both the state and the society regarding the rights of this community. Therefore, drafting specific legislation on the recognition of changed gender identity, amending the Criminal Code and the Family Code, combined with promotional activities by the relevant institutions is the right approach to enhancing protection and respect for the rights of this community.

3.21 Respect for the rights of elderly people¹³³

One of the priorities of the institution of the People's Advocate, as an institution that guarantees basic human rights and freedoms, is the protection of the rights of the elderly, who are categorized as one of the most vulnerable groups and as the most exposed to the risk of not having their rights respected and guaranteed, i.e. the rights enshrined both in the local and international legislation.

¹³³ This field of law is covered by the General Section at the People's Advocate.

As part of its promotional role, the institution of the People's Advocate, in 2021, on the occasion of *October 1st, the World Day of the Elderly*, organized a meeting at Shkodra Elderly Home, focusing on the role of the People's Advocate in protecting the elderly.

In the framework of monitoring respect of the rights of the elderly in Residential Social Care Institutions regarding the measures taken by the state authorities to prevent the spread of Covid-19, as well as in the previous year, we have contacted throughout this pandemic period with the managers of Elderly Homes in Tirana, Shkodra, Kavaja, Gjirokastra, Fier, and the Polyvalent Center in Poliçan.

In *February 2021*, we addressed the General Director of the State Social Service, regarding the planning made regarding the vaccination of the beneficiaries and the staff of these residential care institutions. Referring to the answers received, the vaccination process was carried out regularly according to the protocols and there were no problems among the elderly or the staff.

In addition, the People's Advocate has continued to monitor in 2021 the level of respect for the rights of the elderly, who are accommodated in Gjirokastra, Shkodra, Kavaja, and Tirana Elderly Homes. After the inspections carried out for this purpose and the identification of the problems, concrete recommendations were drafted which were sent to the relevant state structures, Mayors and the State Social Service, which were oriented towards the improvement of living conditions and standards of social care for the elderly.

In order to lead a more dignified life in the best possible way, we have recommended, as in previous years, the establishment of socio-sanitary centres, where elderly people with serious health problems can be treated with special care.

Based on complaints we have received; we have identified problems that affect more than one individual. The complaint of two elderly people for not being granted the right to apply for biometric passports after the 10-year expiry period has been addressed.

From the examination of the case, it was found that this elderly, who live alone, and who have health problems, were provided with a biometric passport before 31.12.2011. Among major difficulties, they visited ALEAT offices to apply for new passports. Before applying for a meeting in Aleat Office, they were asked to first apply for passports through e-Albania, the online platform.

In *February 2021*, we suggested to the General Directorate of Civil Status and the General Directorate of the State Police to exempt from online application on e-Albania platform the elderly and people with mobility and sight impairment, who have been already equipped with a biometric passport before 31.12.2011.

In analysing the acts issued for equipping Albanian citizens with biometric passports, we found that Instruction no. 289 dated 02.09.2020 " *On determining the procedure for equipping Albanian citizens with biometric passports* ", recently amended on 16.12.2020, point 2, provides:

“2. A citizen, who applies for the first time to be provided with a biometric passport according to letter a of point 1 of this instruction, fills out a self-declaration form with a photo online through the e-Albania portal. The online self-declaration form is sent electronically to the General Directorate of the State Police. The online self-declaration form is also completed by citizens who are not applying for the first time, who were provided with a biometric passport before 31.12.2011”.

In this by-law, all categories of Albanian citizens are included, without excluding any social group, the category of the elderly and those with health problems, who, apart from difficulties with applying the self-declaration form, must also go in person to comply with one of the procedures for getting a biometric passport, [the taking of the] photographs.

In order to help all citizens who are unable to apply on the e-Albania portal, in February 2021 we recommended to the General Directorate of the State Police and the General Directorate of Civil Status to exclude those categories from the online application on the e-Albania platform.

Both institutions found the findings and suggestions of the People’s Advocate appropriate and reflected them on Order No. 488, dated 28.05.2021 of the General Director of the State Police " *On the implementation of Instruction No. 289, dated 02.09.2020 of the Minister of Interior "On determining the procedure for equipping Albanian citizens with a biometric passport "*.

Point 5 of this Order provides that all citizens, who are unable to complete the self-declaration form for being equipped with a passport via the e-Albania portal, can apply in-person at the offices of the Police Commissariat, where the applicant is registered in the Fundamental Register of Civil Status.

Over the years, the People's Advocate has insisted on the approval of a Status for the Third Age to guarantee the rights of the elderly, to fully and effectively support the participation of the elderly in society, based on their needs and preferences.

3.22 The right of national minorities¹³⁴

The state of the rights of national minorities during 2021 has been part of an increased institutional attention, with special consideration to the legal rights of the Roma and Egyptian national minorities, who have faced a difficult situation due to the continuation of the Covid-19 pandemic.

The People’s Advocate has continued to be a proactive institution through the interventions carried out based on its recommendations, at the systemic level of solving issues and how the public administration and our society should consider and offer solutions, for equality, inclusion, and the integration of national minorities not only in a normal situation but also in unusual and challenging conditions for the state and society itself. The media has also played an important role by identifying concrete concerns, which we have addressed by our initiative.

¹³⁴ This field of law is covered by the General Section at the People’s Advocate.

In order to be as close as possible to individuals and communities that are part of national minorities, we have increased our " *online* " contacts with those who need to submit their complaints to our institution, and we have intensified our cooperation with non-profit organizations working to protect and respect the rights of national minorities.

During 2021, *8 issues were handled ex officio* regarding problems affecting the relevant communities or even individual members of national minorities, throughout the country, as well as *4 individual complaints* were taken into consideration.

We emphasize that, in many other complaints handled by the People's Advocate, the latter has identified concerns raised by individuals who are members of national minorities, but which are not directly related with the rights of national minorities, or even individual legal rights in case of members of a national minority. Such complaints continue to be submitted regarding the right to housing, the right to employment, the right to benefit from the social care system and the need for improvement of living conditions as a whole.

Our recommendations for a systemic approach to the identified problems has been of special importance. More specifically, the following recommendations were prepared and sent:

- ✓ Recommendation for speeding up the decision-making process regarding self-declarations for legalization made by individuals belonging to the Roma and Egyptian national minorities.¹³⁵
- ✓ Recommendation for necessary improvements in access to health care services for the Roma and Egyptian communities.¹³⁶
- ✓ Recommendation for the improvement of the Decision of the Council of Ministers no. 361 dated 29.05.2019, " *On determining the procedures for the relocation of individuals/families from their place of residence or housing, in the cases provided for in the law, and institutional cooperation* ".¹³⁷

We need to draw attention to the fact that the recommendation of the People's Advocate to conclude the process of issuing by-laws, based on and for the implementation of Law no. 96/2017 " *On the protection of national minorities in the Republic of Albania* " is still to be implemented.¹³⁸

As we found with the approval and entry into force of Law No. 96/2017 " *On the Protection of National Minorities* ", until the end of 2021, eight by-laws out of 12 required by the law are already drafted and adopted. More specifically, four decisions in the field of education, two decisions on participation in public, social and cultural life, and two decisions on the creation and functioning

¹³⁵ This recommendation was sent with our letter no. K1/Q3-11 dated 20.01.2021 to the State Cadaster Agency.

¹³⁶ This recommendation was sent with our letter no. K1/I201-5 dated 4.05.2021 to the Health Care Operator and the Institute of Public Health.

¹³⁷ This recommendation was sent with our letter no. K1/I132-2 dated 17.12.2021, to the Chairperson of the Council of Ministers.

¹³⁸ Addressed through our letter No. K1/I10-2 dated 25.02.2020, to the Chairperson of the Council of Ministers and the Chairperson of the Central Election Commission

of the National Minorities Committee. Meanwhile, four other by-laws still remain to be approved and come into force.¹³⁹

Even in 2021, conditioned by the covid-19 pandemic, the wide participation in many activities organized *online* by various NGOs in defence of the rights of national minorities, as well as by responsible state institutions, has continued , where the situation of the rights of national minorities is analysed and discussed.

With a special attention to the Roma national minority and the Egyptian national minority, during this year we have found that the complaints handled as well as the cases initiated by the People's Advocate are mainly related to the right to health care and equal and decent treatment by service providers, the right to education and the prohibition of segregation practices, the right to benefit from the social care system, the right to due process within the legalization processes of informal constructions, as well as the improvement of the living conditions as a whole for the representative communities of the Roma and Egyptian national minorities in Albania.

The phenomenon of "anti- *Gypsyism*", which appears as a manifestation of individual expressions and acts as well as institutional policies and practices of marginalization, exclusion, physical violence, denigration of Roma culture and lifestyle, in the hate language directed towards Roma as well as towards other individuals or other groups perceived, stigmatized or persecuted during the Nazi period, as well as today, known as "gypsies", remains the focus of our activity.

As we have emphasized in our previous positions, expressed in our recommendations for the local self-government units, but also for the public bodies of the central government, in addition to our fight against "gypsism", we will also have to design concrete policies for the real integration and inclusion of Roma and Egyptians, not only at the level of central government but also specifically at the level of local self-government, to make them feel part of a diverse, inclusive and democratic society in the light of the new international strategic framework for equality, inclusion and participation, .

¹³⁹ The following must be approved and enter into force:

1. Draft decision " *On determining the composition, functions and procedure of the Commission for examining the request for the recognition of national minorities (new minorities, in addition to the minorities recognized by law no. 96/2017)*".
2. Draft decision " *On the use of national minority languages in relations between persons belonging to national minorities and local self-government bodies* ".
3. Draft decision " *On determining the documentation and procedures for the collection/verification of data on the belonging of persons to a national minority* ". The purpose of this draft decision is to guarantee the principle of self-identification of persons belonging to minorities and the verification of data to establish whether a person belongs to a national minority. The decision is related to the objective criteria of the identity of national minorities and serves to enable the exercising of the rights provided by law.
4. Draft decision " *On the criteria for supporting initiatives, projects aimed at protecting the rights of national minorities, preserving and promoting their distinct cultural, ethnic, linguistic, traditional and religious identity and the selection criteria for financing and administration of a "Fund for national minorities"* .

A positive development in this direction is the approval of the National Action Plan for Equality, Inclusion and Participation of Roma and Egyptians 2021-2025, prepared on behalf of the Government of Albania by the Ministry of Health and Social Protection, in coordination and consultation with other relevant ministries, local self-government units, independent institutions, civil society organizations, as well as international organizations working for the integration of Roma and Egyptians in Albania. The results remain to be seen and evaluated in the future, in terms of the impact they will really have on improving the lives of the Roma and Egyptian communities in our country. And from this perspective, we think that a transparent and open inventory for discussion from time to time would be useful with all institutional actors and civil society to see the results achieved and the obstacles or even failures, and to draw coherent conclusions and in favour of a comprehensive process.

In this report, we reemphasize two recommendations related to the need for a systemic approach to legal rights, mainly regarding the representative communities of the Roma and Egyptian national minorities in our country. Thus:

- *The People's Advocate has closely followed the approval and entry into force of the legal basis for handling the issues of displacement of individuals or families from their places of residence, otherwise known as the issue of "forced eviction".*

Pursuant to Law No. 22/2018 "On Social Housing", the Council of Ministers issued Decision (DoCM) No. 361, dated 29.05.2019, " *On determining the procedures for the relocation of individuals/families from their place of residence or housing, in the cases provided for in the law, and institutional cooperation* ".

From a careful analysis of the content of this DoCM, we have found that there is room for improving point 19¹⁴⁰ of this normative, sub-legal act, as the definition given in this point is incomplete and creates ambiguity regarding the time of notification of the People's Advocate by the local self-government unit, for the relocation procedure. This notification is defined in a general way and not specifically related to the moment of initiation of the administrative relocation procedure.

On the basis of a careful analysis, by letter no. K1/I132-2 prot., dated 17.12.2021, the People's Advocate has recommended to the Chairperson of the Council of Ministers, expressly: "*Amend and improve the first sentence of point 19, of the Decision of the Council of Ministers, no. 361 dated 29.05.2019 "On determining the procedures for the relocation of individuals/families from their place of residence or housing, in the cases provided for in the law, and institutional cooperation", for all legal*

¹⁴⁰ Point 19 of DCM no. 361, dated 29.05.2019 states expressly that: "The local self-government unit notifies the People's Advocate of any resettlement procedure initiated. When the People's Advocate, in accordance with the Constitution and legislation in force, approves recommendations, they are also published on the official website of the local self-government unit".

reasons and according to findings cited in this recommendation". This recommendation is accepted by the relevant public body.

In the meantime, we note with regret that the provision of the DoCM has not been implemented since 2019, the year when the act was issued.

- *Take expedited measures aimed at the necessary improvements in access to health care services for the Roma and Egyptian communities.*

As a matter initiated and reviewed by the People's Advocate and based on the official data sent by Durrës Local Health Care Unit, we have found that:

- ✓ The relationship created between the possession of an identity card and access to health insurance has created a gap and problems with the current situation of the Roma and Egyptian communities. On the other hand, it is recognized that many members of the Roma and Egyptian communities do not have health insurance cards due to the fact that they are neither regularly employed nor registered as unemployed. In the current conditions of the Covid 19 pandemic, this leads to provision of treatment with health care services only for those individuals belonging to the Roma or Egyptian national minority, who are registered and have a health card. The rest who do not meet these conditions are excluded and therefore do not have access to these services.
- ✓ Carrying out educational and informative activities for health promotion, their management and efficiency among the Roma and Egyptian communities, encounters concrete problems.
- ✓ Regarding provision of health care services, accurate statistical evidence (non-discriminatory) for treated patients, members of the Roma and Egyptian communities, would help in the process of formulating policies or sectoral strategies as efficiently as possible, whether at the local level or even at the national level. The necessary statistical evidence would have a direct impact on the awareness of the members of these communities on health issues.

Given the above, we have expressly recommended to the Health Care Operator and the Institute of Public Health the following:

- ✓ Take quick measures aimed at the necessary improvements in access to health care services, for the Roma and Egyptian communities, regarding the access and treatment with these services of all individuals who are members of these communities, representatives of the Roma or Egyptian national minority, in administrative territorial units where they reside.
- ✓ Ensure rigorous provision of health care services for the Roma and Egyptian communities, awareness raising and educational activities, promoting a healthy lifestyle and especially taking the necessary measures against Covid-19. Include health mediators in these activities as direct representatives of these communities and as a useful and efficient bridge in the relationship between health care institutions and the Roma and Egyptian communities.
- ✓ Collect the necessary statistical data on the number of Roma and Egyptian tested for Covid-19, or diagnosed as "Covid positive" in the country.

What is required today is to shift from the "stuck" state of formal equality guaranteed by law, to the essential guarantee materialized in the concrete activity of state bodies, of independent institutions in defence of human rights, and of our society as a whole. This real breakthrough will guarantee equality before the law and non-discrimination. And we must be convinced that if this is achieved, we have laid sound foundations of an effective human rights system. Equality, inclusion and real integration of national minorities in all spheres of life, at the level of local and central government, will undoubtedly bring the expected product of a democratic society and traditional harmony of coexistence, remains a genuine and fully feasible objective.

3.23 Respect for the rights in the field of social security¹⁴¹

The Social Security System in our country is the main social protection scheme in Albania. The pension scheme plays an important role in social protection and the fight against poverty. According to the legislation in force, in order to benefit from the current scheme, all the citizens of Albania are obliged to pay social and health contributions, with the state thus committing to meet their basic individual and family vital needs for the future.

Even throughout the year 2021, citizens generally continued to address the same problems reported over the years regarding rights in the field of social insurance. Specifically, their complaint consisted of a violation of rights due to the non-correct calculation or non-revision of the amount of old-age pensions; non recognition of work experience; low amount of pensions; failure to provide copies of pension file documentation; the age people are eligible for old-age pension; procrastination in relation to the old-age pension; unfair termination of old-age pensions and identification of pensioners as debtors to the state; failure to provide the elderly with additional financial treatment; nonrecognition of additional work-related difficulties for certain professions, etc.

Referring to the complaints registered and administered for the year 2021, a total of *86 complaints* have administered. An administrative investigation is carried out for *71 cases, of which 30 cases have been resolved in favour of the citizens.*

Regarding the problems in the field of social insurance, it is worth mentioning that in cases of complaints being found ungrounded, we have explained to the citizens the need to file administrative complaints addressing: the Regional Appeal Commissions at the Regional Directorates of Social Insurance, as well as the Central Appeals Commission at the Social Insurance Institute.

Despite the reform of the public social insurance system, adapting to economic and social developments, violations of the rights of individuals have been found again by our institution, regarding the different benefits from the public social insurance system, listed according to the most representative issues, as follows:

¹⁴¹ This field of law is covered by the General Section at the People's Advocate.

- *Failure to provide on time the immediate bonus for work experience and a transitional payment*

From the examination of the case, we found that law no. 10142 dated 15.05.2009 " For the supplementary social insurance of the Armed Forces Soldiers, State Police Employees, Republic Guard, State Intelligence Service, Prison Police, Fire Protection and Rescue Police and of the Employees of the Internal Control Service in the Republic of Albania ", which provided for a transitional payment to start for the beneficiaries of this law in the third month from the date they are released or in reserve. The citizen has received immediate reward for work experience in the amount of two monthly reference salaries 1 month and 15 days after leaving office, and a transitory payment one month later than entitled.

According to the legislation in force, the termination of the transitory payment determines the citizen's right to the start of early retirement for experience in service. The non-granting of the transitory payment for the claimed period, in addition to the financial loss, affected the starting date for the citizen's entitled early retirement.

After the verifications and ascertainment of the non-application of the aforementioned law, we proceeded with a recommendation for the granting of the transitional payment for the claimed period, a recommendation which was accepted and implemented by the I EVP (Institute for Execution of Criminal Convictions) and the complainant benefited from his legal rights.

- *Nonrecognition of all the years of work in calculating old-age pension*

In this aspect, in order to help citizens who have turned to our institution for non-recognition of years of work by the Regional Directorates of Social Insurance, resulting in a lower amount of old-age pension benefits, the activity of the People's Advocate consisted of an institutional intervention at the Central Archive of Social Insurance, as well as other state institutions, leading to the citizens getting proof for an additional two years of work experience.

Having sent the proof of work experience, we advised the citizens to submit them to their local Regional Directorates of Social Insurance, where they have their residence, in order to benefit from a higher pension or to complete the missing documentation to apply for an old-age pension.

- *Incorrect calculation of old-age pension*

A number of complaints reviewed by the People's Advocate related to the unfair calculation of the old-age pension. In order to improve the situation of the beneficiaries, during the examination of the cases, we have suggested to the Regional Directorates of Social Insurance to recalculate the amount of the old-age pension, by re-examining the documentation deposited in the pension file. Citizens, after the recalculations, have had their pensions changed and at the same time have benefited from credit extensions.

Despite the achievements of the Albanian state so far, through the reform of the public social insurance system, the Institution of the People's Advocate, argues that the system should now rather aim at being more effective in the policies related to the field of social insurance, as some issues remain very sensitive in the public opinion, mainly the low pensions, the amount of which is insufficient to cope with a normal life.

We also appreciate the government's initiative for drafting changes related to the non-exercise of recourse to the Supreme Court by state institutions for the decisions given by the Court of Appeal and the Administrative Court of Appeal for cases of social insurance, mainly for the recognition of work experience. This initiative will enable faster closure of court processes for the citizens and help them enjoy their rights.

3.24 Electoral issues¹⁴²

Over the years, the People's Advocate has monitored the electoral processes developed in the country, both local and parliamentary elections, in accordance with its mandate. We emphasize that free and fair elections are one of the essential pillars of the rule of law, so we are of the opinion that in these processes, the role of the People's Advocate is very important.

In order to achieve this objective, the People's Advocate has taken the initiative to deal with issues related to access and facilities created in voting centres for persons with disabilities, implementation of the provisions of the Electoral Code that guarantee gender equality, compliance with legal provisions that guarantee the posting and distribution of propaganda materials during the election campaign, the exercise of the right to vote by elderly people in Homes for the Elderly, the exercise of the right to vote by people living in places of deprivation of liberty on the day of voting, the use of an ethical language for communication during the election campaign, etc.

In relation to the general parliamentary elections, which were held on April 25, 2021, the People's Advocate has developed an extensive monitoring process that focused on the following stages of the electoral process: *a. Preparation for the election process ; b. Election day.*

The activities carried out during the preparations for the electoral process were related to the provision of opinions and suggestions on the drafting of electoral legislation, as well as the drafting of recommendations for the institutions responsible for the development and smooth running of the electoral process.

Thus, during the discussions on the amendment of the Constitution of the Republic of Albania, in relation to the issues of elections¹⁴³ and amendments to the Electoral Code¹⁴⁴ , the People's

¹⁴² This field of law is covered by the General Section at the People's Advocate.

¹⁴³ Approved on 30.07.2020.

¹⁴⁴ Approved on 05.10.2020.

Advocate was invited to give its opinion during the legislative process in the discussion regarding the proposed changes. The institution's position on the proposed changes was only related to issues related to the fundamental freedoms and rights of citizens who are affected or influenced by the electoral processes. The opinions and suggestions of the People's Advocate were partially taken into account during the discussions held and the approval of the relevant draft laws.

Taking into consideration the troubling problems that were found from the monitoring of the previous election processes, or even the issues found during this election process, the People's Advocate made two recommendations to the relevant state institutions, including:

1. Recommendation dated 6.4.2021 addressed to the Central Election Commission/Regulatory Commission " *Recommendation for the improvement of Instruction no. 1 dated 5.12.2020 "Determining the rules for setting up, assigning, and announcing the location of voting centres and preparing the map of local self-government unit for the elections", approved by the Regulatory Commission, in the CEC "*

Despite the fact that this recommendation was sent to the Central Election Commission, about a month and a half before the voting day, the latter's response was only sent about two weeks after the voting date.¹⁴⁵ . In this response, it has been confirmed that the Central Election Commission will make a general assessment of the problems encountered in the elections for the Assembly of Albania, held on April 25, 2021, related to the supporting infrastructure which is set up entirely according to well-defined mechanisms, criteria, deadlines and institutional interaction.

2. Request for information¹⁴⁶ , addressed to all the mayors of Albania for information regarding " *The creation of conditions in the voting centres, which will enable the effective exercise of the right to vote by persons with disabilities" , under the subject "The provision of an effective mechanism for checking compliance with the legal criteria by the relevant bodies of the local self-government units, which aim to create suitable conditions in the voting centres, for the free exercise of the right to vote by persons with disabilities.*

This information includes the measures taken by the responsible bodies of the local self-government units ¹⁴⁷ for a smooth running of the elections in this specific component, as well as some of the problems encountered in fulfilling the obligations arising from the law. Our field monitoring of the implementation of the measures required by the law for ensuring access for voters with disabilities to the voting centres showed that there were many problems in this direction.

Our field monitoring of the implementation of the measures required by the law for ensuring access for voters with disabilities to the voting centres showed that there were many problems in this direction. The People's Advocate addressed the Central Election Commission, with two

¹⁴⁵ Letter no. 3412/1 dated 7.5.2021.

¹⁴⁶ Letter sent on 2.4.2021.

¹⁴⁷ A request for information was sent to the mayors of 61 (sixty-one) municipalities throughout the country. Meanwhile, 32 municipalities did provide us with this information within the deadline (before the date of the elections).

repeated requests for the provision of detailed information, regarding the measures taken, or to be taken, for the creation of facilities for the voting of persons with disabilities.¹⁴⁸ In the answer given by the State Election Commissioner¹⁴⁹, apart from the clarifications related to the legal provisions in the designation of voting centres, it was confirmed that all voting centres are located on the first floors of the buildings to facilitate their access by persons with disabilities. The answer also mentions that, in polling centres where there are such voters on the voter list, and where the infrastructure of the building allows, ramps for paraplegic and tetraplegic invalids have been installed.

Our field monitoring of the implementation of the promised measures showed that there were many problems. More specifically, our monitoring teams deployed on the day of the elections found, among other things, that there were voting centres that were on the second floors of the buildings.¹⁵⁰

Based on its previous experiences, in the framework of a project of the Council of Europe Office in Tirana, the People's Advocate, as part of the Anti-Hate Alliance,¹⁵¹ initiated the drafting and consultation process of a Code of Conduct for the Albanian political parties, during the election campaigns.¹⁵² In cooperation with the State Commissioner for Elections, in an activity developed by the Anti-Hate Alliance, this Code of Conduct was consulted with the political parties represented in the Parliament of Albania, as well as with all the other election contestants that participated in the elections of April 25, 2021.

At the end of the consultations, this Code was approved (signed) by the main political parties in the version proposed by the Anti-Hate Alliance, and it is worth noting that this Code will also be valid for the next local or parliamentary elections.

On April 19, 2021, the Technical Committee of Experts at the Ministry of Health and Social Protection proposed, as a preventive measure for the spread of Covid-19, that all Albanian citizens coming to Albania, from North Macedonia and Greece, be quarantined for a period of two weeks, a proposal which was materialized through Order of the Minister of Health and Social Protection, no. 219, dated 19.04.2021 " *On the quarantine of persons coming to the Republic of Albania from the Republic of North Macedonia and Greece*".

The People's Advocate considered such a measure as an obstacle preventing Albanian citizens coming from Greece or North Macedonia from effectively exercising their fundamental right to vote, and made therefore a recommendation for the Minister of Health and Social Protection¹⁵³ for the above order to be completely and immediately cancelled.

¹⁴⁸ Letter No. K1/S4-12 prot., dated 14.04.2021 and letter No. K1/S4-26 prot., dated 21.04.2021.

¹⁴⁹ Letter no. 4153/1, dated 18.05.2021.

¹⁵⁰ The People's Advocate inspected 280 polling stations, while the representatives of the Regional Offices inspected 582 polling stations.

¹⁵¹ In addition to our institution, the Commissioner for Protection from Discrimination and the Authority of Audio-Visual Media, as well as the Non-Profit Organization "Albanian Media Council" participated in this Alliance.

¹⁵² The code contains ethical rules for the behavior of political parties during election campaigns.

¹⁵³ Letter no. 1413/2 prot., dated 22.4.2021.

Despite the fact that article 21, point b, of the law "On the People's Advocate", as amended, states expressly that: " The presentation of a recommendation suspends the illegal or irregular acts or actions until the review of this recommendation and the response to the People's Advocate ", not only didn't the recommendation result in the cancellation of the above-mentioned Order of the Minister of Health and Social Protection, but as it was reported by the media, the order started to be implemented by the State Police, without yet entering into force.¹⁵⁴

Following our recommendation, the President of the Republic, by letter no. 1413/2 prot., dated 22.4.2021, addressed to a number of public institutions, international presence in the country, political parties with representation in the Assembly of Albania, and independent MPs,¹⁵⁵ also requested the fulfilment of the recommendations of the People's Advocate for the cancellation of Order no. 219, dated 19.4.2021 of Minister of Health and Social Protection.

In response to this recommendation, the Ministry of Health and Social Protection sent letter no. 1938/1 dated 12.05.2021, in which an analysis was made of the powers of the Minister of Health and Social Protection to issue orders, in accordance with the provisions of law no. 15/2016 "On the prevention and fight against infections and infectious diseases", as amended.

From the perspective and judgment of the People's Advocate, this answer does not analyse the essence of the recommendation sent to the Minister of Health and Social Protection, on this issue. The formal response returned by this institution, although within the procedural deadline established by law no. 8454 dated 4.02.1999 "On the Ombudsman", as amended, did not respond to the urgency of the issue raised in the recommendation by the Minister of Health and Social Protection. It is worth emphasizing the fact that the response of the Ministry of Health and Social Protection was sent after the Order of the Minister of Health no. 219 dated 19.04.2021 "On the quarantine of persons coming to the Republic of Albania from the Republic of North Macedonia and Greece", *had lost its legal force and had no longer any consequences.*

Another problem during the election campaign was the use of a database, which contained the personal data of citizens. Having found this use of personal data in contradiction with the specific

¹⁵⁴ <https://www.asp.gov.al/kakavije-gjirokaster-drejtore-i-departamentit-te-kufirit-dhe-migracionit-eduart-merkajinspektim-ne-piken-e-kalimit-kufitar-per-masat-ne-prag-te-zgjedhjeve/>

¹⁵⁵ Letter no. 1413/2 prot., dated 22.4.2021 of the President of the Republic, addressed to the Council of Ministers, the Ministry of Health and Social Protection, the Technical Committee of Experts, the governing bodies of the Central Election Commission, the General Directorate of the State Police. This document was brought to the attention of the Assembly of the Republic of Albania; the OSCE/ODIHR election observation mission, the OSCE Presence in Albania, the Delegation of the European Union in Albania, the Embassy of the United States of America, the British Embassy, the Office of the Council of Europe in Tirana, as well as to the Social Democratic Party, National Front Party, Albanian Democratic Movement Party, Democratic Obedience Party, People's Union Alliance Party, Socialist Integration Movement Party, Nisma Thurje Party, New Movement Party, Democratic Party, New Democracy Alliance Party, Movement for Change Party, the Socialist Party and the independent candidate Mr. Boyken Abazi.

legislation in this area, the People's Advocate made a public statement on the media,¹⁵⁶ and gave a series of interviews on different television stations of the country, emphasizing the position that the receipt and use of personal data of citizens, by any political party, is illegal, except when the citizens themselves have given a special authorization in writing for their agreed use, or for any other special cases provided by the legislation in force. The position of the People's Advocate is based on the principle that the protection of personal data is a fundamental human right and that the collection of personal data of citizens without their consent is directly related to their private life.

The People's Advocate asked the state and law enforcement authorities to take any necessary measures to stop any illegal use of personal data and any political force to clearly distance itself from such practices that violate human rights. Likewise, it was brought to the attention of law enforcement bodies and it was requested that anyone who had collected, processed, or stored personal data, was responsible for compensating for the damage caused to the subjects of this personal data, in accordance with the provisions of the legislation in force.¹⁵⁷

Monitoring in Voting Centres, on the day of voting

The monitoring carried out was based on a monitoring and reporting methodology, which was based on the definition of some specific legal criteria that had to be verified locally by the field monitoring groups, physically and directly checking compliance, reflecting all their findings on a standard form, approved for this purpose. On the day of the voting, the staff of the People's Advocate monitored 840 voting centres throughout Albania checking access for people with disabilities to exercise their right to vote. Also, monitoring also included some institutions for the execution of criminal decisions.

In addition to checking the infrastructure in the buildings where the voting centres were located, we also monitored whether these voting centres were equipped with special voting materials for blind voters, and whether Covid-19 protocols were observed. In order to ensure smooth monitoring of the voting centres, which were to be visited on the election day, the People's Advocate officially informed the State Election Commissioner.¹⁵⁸

Recommendation

Based on the concrete engagement and analytical treatment of certain issues and problems, ascertained by the People's Advocate for the Elections for the Assembly of Albania, held on April 25, 2021, the following recommendations were presented:

1. For the correct implementation of the normative acts in force:

¹⁵⁶ <https://www.avokatipopullit.gov.al/sq/articles-layout-1/media/neës/peoples-advocate-position-ëith-regard-to-the-large-number-of-personal-data-of-albanian-citizens-compromised-for-political-purposes-622/>

¹⁵⁷ Article 17 of the law "On the Protection of Personal Data".

¹⁵⁸ Letter no. 223 prot., dated 22.04.2021.

- ✓ Make sure facilities are created by the responsible bodies of local self-government and the Central Election Commission for persons with disabilities to vote, even where this is not possible, meeting a mandatory minimum standard, in the voting centres.
- ✓ Guarantee the right to vote for persons with disabilities, starting from the infrastructural access to the buildings of the voting centres, by doing the following
 - a. instal ramps in every voting centre building for paraplegic and tetraplegic invalids;
 - b. place yellow strip signs for the visually impaired voters.
- ✓ Ensure the secrecy of the vote, especially for voters of the third age and those with disabilities, when voting is carried out electronically.
- ✓ Take measures to raise the awareness of voters (elderly, persons with disabilities, etc.), on the way of conducting electronic voting.
- ✓ Take measures voters with mobility disabilities are identified and assigned to vote only in the voting centres located on the first floors of the buildings, in order to guarantee their right to vote.
- ✓ Make sure the municipalities take the necessary measures for sending the voter lists to the IEVPs (prisons), which are in their territorial jurisdiction, within the legal deadline provided by the Electoral Code.
- ✓ Take immediate measures to equip the prisoners with the identification document, from the moment of admission to the IEVP premises. This should be considered a legal obligation¹⁵⁹ and as a need for the development of the regular electoral process and the exercise of the right to vote.
- ✓ Take measures to find legal solutions, to equip prisoners with alternative means of identification when it is clear that they cannot afford it.
- ✓ Make sure the IEVP Directorates take the necessary measures to ask the respective municipalities to send them the voter lists on time, for persons deprived of their liberty, convicted, or detained.
- ✓ Make sure the IEVP Directorates take the necessary measures to notify the detainees a few months before the voting day and to make them aware of the need for them to have the identity documents (have them available if applicable or equip them with new ID documents if they do not already have one) in order to guarantee their basic right to vote.

2. Legislative recommendations:

- ✓ The Central Elections Commission should improve in a short time, in the future, the legal basis related to the binding provisions, towards the state bodies responsible for creating facilities for the voting of persons with disabilities in the voting centres.
- ✓ It is recommended that the legislation guaranteeing the vote of immigrants be completed.

¹⁵⁹ Based on the law no. 81/2020, in article 88, point 1, letter "dh" where "1. The admission of detainees is carried out in accordance with the rules provided for in Article 38 of this law and is accompanied by the following documentation: dh) personal certificate and identification document and in their absence, an identification document prepared by the State Police."

- ✓ The decision-making of the Minister of Health and Social Protection, for taking preventive measures against the infection of the spread of Covid 19, as well as the activity of other professional advisory structures, created for this purpose, must include in the preliminary consultations, the opinions and positions of specialized state institutions for sensitive issues affecting directly basic human rights.

All findings and observations made during this monitoring process are presented in a public report, prepared by the People's Advocate and published on the institution's official website.¹⁶⁰

¹⁶⁰<https://www.avokatipopullit.gov.al/media/manager/website/reports/Raport%20monitorimi%20per%20zgjedhjet%20vendore%202021.pdf>.

CHAPTER 4

Other institutional commitments

4.1 People's Advocate Report "On the situation of domestic violence and violence against women in Albania over the period January 2020 – September 2021"

In the context of the evaluation of the People's Advocate activity, the Assembly of Albania adopted a Resolution on 07.07.2021 asking our institution to submit a detailed report on domestic violence issues.

For this purpose, the People's Advocate prepared the report "*On the situation of domestic violence and violence against women in Albania over the period January 2020-September 2021*" and submitted it to the Assembly. It provides information not only on the situation of violence in family relationships, but dwells upon other intersected forms of violence against women.

The report is organized in 4 sections as follows. It presents an overview of the situation, the findings of the People's Advocate and recommendations for each issue.

➤ **Legislation on domestic violence and gender-based violence**

This section summarizes the most important developments in recent years. It states that the legislation against gender-based violence, domestic violence and criminal law have improved significantly, in particular the legal and sub-legal framework that addresses domestic violence, but there are still some shortcomings that must be addressed in the light of the standards required by the Istanbul Convention.

➤ **Protection of women and girls from violence**

This section addresses issues related to reporting, safeguards, implementation and monitoring; legal aid for abused women and punishment of offenders, including the rehabilitation programmes.

➤ **Planning and coordination of services to survived victims at central level**

This section deals with issues related to the design, implementation and coordination of policies and measures for the fight against domestic violence and gender-based violence at the central level, analysing the role of the central government in terms of case management and service provision (in accordance with the relevant legal obligations under the legislation against domestic violence). This part also deals with the provision of services by long-term shelters (National Shelter) and emergency shelters, as well as specialized centres (Lilium).

➤ **Case management by referral mechanisms and service delivery at local level**

This section addresses issues related to the management of domestic violence cases at the local level by the National Referral Mechanisms, cooperation among members of the mechanism and the provision of services to victims of domestic violence and other forms of gender-based violence. The People's Advocate commends the measures taken in the last two years for the establishment of the National Referral Mechanisms (NRMs) in all municipalities, both as an indispensable need and obligation that should have been fulfilled years ago. Similarly, it commends the efforts to expand and provide various services such as legal, psychological, economic assistance, amongst others.

Main findings of this Report include:

The People's Advocate notes that very important measures have been taken in the last two years to address domestic violence and gender-based violence, especially in terms of improving legislation and the by-laws. Also, there is improvement in the protection of victims and setting up the necessary structures at the local level to address this problem.

Despite these positive developments, there was less progress in the provision of services to victims of violence and rehabilitation of offenders, where the main role continues to be played by civil society with the support of international organizations and donors.

Main recommendations of this Report include:

1. Legislation on domestic violence and gender-based violence

- ✓ Develop a legal framework that comprehensively addresses all forms of gender-based violence, in addition to domestic violence, such as harassment and sexual violence, stalking, forced marriages, etc.
- ✓ Introduce legal amendments to ensure alternative ways to implement legal obligations that are currently impossible due to the lack of some services, such as the court-ordered obligation for offenders to attend rehabilitation programmes - which in practice do not exist in most of the country.
- ✓ Change the definition in the Criminal Code (for both adults and juveniles) of the criminal offense of violent sexual relations, in accordance with Istanbul Convention.
- ✓ Introduce punitive measures in the Criminal Code against forced marriages, and criminalize forced sterilization and genital mutilation, as both are sexual crimes provided for as such in the Istanbul Convention .
- ✓ Take measures for the effective implementation of the improved legislation.
- ✓ Amend the Law no. 57/2019 "On social assistance in the Republic of Albania" to enable parallel access for victims of violence and beneficiaries of economic aid.

- ✓ Amend the legislation to ensure effective implementation of the rehabilitation programmes for offenders.
- ✓ Amend and improve the existing legislation to give victims of domestic violence the opportunity to appear directly at the Forensic Medicine Institution for examination, without having to obtain a decision from the prosecution office or the People's Advocate.

2. *Protection of women and girls from violence*

- ✓ Improve coordination of NRMs with police structures to mutually refer cases of domestic violence and other forms of violence.
- ✓ Expand awareness-raising campaigns for reporting violence throughout the country, as an efficient way to make victims break the cycle of violence and get the necessary help; accompany awareness-raising campaigns with capacity building programmes for the structures in whose jurisdiction violence is reported.
- ✓ Take measures to extend the Advice Line or the creation of similar structures throughout the country, particularly in remote rural areas, even for women from disadvantaged groups such as women with disabilities, Roma women, the elderly and LBT.
- ✓ Raise awareness of all competent authorities obliged to respond to any distress notification made by the victim or other persons defined in the law.
- ✓ Hold accountable the persons who receive information because of their duty or authority granted to them to implement the legislation against violence, but take no action.
- ✓ Organize awareness-raising activities against gender-based violence continuously and not be limited to specific campaigns, such as the international campaign of 16 days of activism against gender-based violence.
- ✓ Take immediate measures for the implementation of approved risk assessment procedures throughout the country and expedite the training programmes for police officers by the Albanian institutions themselves, in addition to the support provided by international organizations.
- ✓ Check the implementation of risk assessment procedures and immediate protection orders and periodically identify the problems encountered in practice – by the relevant oversight structures.
- ✓ Oblige the General Directorate of Police to share information and the applicability of the immediate protection orders.
- ✓ Ensure as priority the removal of the offender from the common dwelling as the first and main measure to be taken by the Courts when the offender and the victim live in the same house, and the issuance of immediate protection orders by the police until the Court issues the temporary restriction order.
- ✓ Increase human resources in bailiff offices and provide continuous training to staff on the strict implementation of immediate protection orders and restricting orders, and on effective protection.

- ✓ Enhance the continuous cooperation among the local bailiff offices, police bodies and local units/coordinators of domestic violence to ensure the effective implementation of protection measures.
 - ✓ More specific monitoring by the justice governance bodies of the causes behind the big gap between the reports to the police and the court-complaints seeking protection measures, indicating the number of restriction orders issued by the courts.
 - ✓ Ensure the involvement and cooperation of local government bodies (social services, coordinators against domestic violence, etc.) in monitoring the implementation of protection/restriction orders in accordance with their legal obligation, and seek accountability for non-fulfilment of this obligation.
 - ✓ Follow up and clarify the inconsistency of information reported by police directorates and municipalities on the immediate protection orders / restriction orders.
 - ✓ Treat specifically as femicide the murder of women in family relations or the murder of women in general, in all the complexity of this phenomenon, as well as ensure rigorous implementation of risk assessment procedures once violence in family relation is reported or ascertained, in order to immediately provide appropriate protection measures that prevent murders and other forms of domestic violence, in particular the immediate removal of the perpetrator from their common home.
 - ✓ Initiate criminal and administrative liability proceedings against representatives of State institutions who fail to fulfil their legal obligations for the prevention of domestic violence and protection measures, in particular when their inaction results in murder in family relations or serious injuries.
 - ✓ Increase the number of victims of domestic violence who benefit from legal aid through public funds (Legal Aid Directorate).
 - ✓ Enhance cooperation between the Ministry of Justice and supervisory bodies of the justice system to train and monitor courts in their decisions on protection measures.
 - ✓ Accelerate procedures in implementing the legislation on State-guaranteed legal aid, in order fill the gap created for many years by the implementation of the law on free legal aid.
 - ✓ Monitor the issuance of forensic reports, whose number is much smaller that the court cases on protection measures and domestic violence crims, and continuously train the forensic staff and all the justice system stakeholders at national level upon the initiative of the justice institutions themselves.
 - ✓ Engage the governance and monitoring bodies of the justice system to improve and guarantee the quality of decisions related to protection measures and criminal proceedings on domestic violence and gender-based violence.
 - ✓ Ministry of Justice must ensure as soon as possible the publication of statistical data on domestic violence and gender-based violence for the years 2020 and 2021.
- 3. *Planning and coordination of services to survived victims at central level*
- ✓ Increase Social Fund financing of projects for the establishment of emergency centres, in particular for municipalities in indispensable need of funds due to the high number of cases.

- ✓ Monitor projects on the establishment of existing centres and the efficient use of relevant funds.
- ✓ Clarify and complete information on MHSP expenses on various services to victims of domestic violence for whom immediate protection order or restriction order are issued.
- ✓ Increase funds and define clear, transparent and competitive legal procedures for the sub-contracting of NGOs by central and local government bodies to provide services to victims of domestic violence (and potentially to victims of other forms of violence).
- ✓ Accelerate support measures for NRMs by the Ministry of Health and Social Welfare to ensure effective operation of all NRMs, particularly those newly established, in order to ensure that their establishment is not just a formality but a real mechanism to handle cases of violence in family relations across the country, including rural areas.
- ✓ Engage and allocate public funds for the capacity building of NRMs members to ensure sustainability of their duties, besides the assistance currently provided by the civil society, international organizations and donors.
- ✓ MHSP must present information on the measures taken to provide financial and technical support for all the necessary infrastructure, in accordance with the principle of *reasonable accommodation*, which serves to support and meet all the needs of victims of domestic violence.
- ✓ Deliver training and ensure oversight of the health sector which displays most problems in terms of its role to refer cases of violence and prepare medical reports on injuries, which victims need to be used in court.
- ✓ MHSP must intensify support and monitoring measures for the collection and coordination of the data system and extend the REVALB system across the 61 municipalities, because this service is currently provided in just over half of the municipalities; ensure regular entry of data by institutions that have the legal obligation to report data, particularly the local ones, and publish the data periodically.
- ✓ Expedite efforts to establish rehabilitation centres/programmes for offenders in all regions of the country, as soon as possible and ahead of the deadline set out in the National Strategy on Gender Equality, because current programmes are insufficient.
- ✓ Ensure cooperation and coordination among the relevant institutions, including the police, the court, the probation services and the prison directorate, in order to identify and include domestic violence perpetrators in the rehabilitation programmes.
- ✓ Extend provision of these services also to perpetrators of other forms of gender-based violence such as sexual violence, harassment, stalking, etc.

Recommendations on the National Center for Victims of Domestic Violence and the Centre for Victims of Sexual Violence

- ✓ Immediately implement the approved standards for the National Center for Victims of Domestic Violence in order to ensure all the necessary services including the basic needs of women and children sheltered there such as clothing and heating, care provision measures

for their rehabilitation from trauma; and ensure capacity building of the centre's staff in recognizing these standards.

- ✓ Establish long-term centres for the treatment of victims of domestic violence and gender-based violence in the main regions in Albania to be accessible to all women, including those from rural areas and women with disabilities.
- ✓ Immediately implement the approved standards for the National Center for Victims of Sexual Violence (LILIUM), in particular the basic standard for the examination of cases at the premises of the centre, because its basic principle of *security and human dignity* has been infringed; provide psychological support to victims and equipment that facilitates examinations; ensure direct referral by the Police to the centre of cases of sexual violence and coordination with other medical services that must be provided.
- ✓ Establish other regional centres specialized in the immediate treatment of victims of sexual violence, because one centre for the whole country is insufficient and may be difficult to access by victims of sexual violence who live far from it.
- ✓ The government must further support NGOs and shelters that can offer longer-term and specialized services to victims, as usually, even in other countries, these centres are more specialized and have more capacities in offering all the necessary support to victims of sexual violence.

Recommendation to the Ministry of Education and Science

- ✓ The Ministry of Education and Science must fulfil its obligations explicitly stated in the legislation against violence in family relations.

4. Case management by referral mechanisms and service delivery at local level

- ✓ The local government must take measures to increase the capacities of the NRM members and local coordinators for the management and coordination of cases of domestic violence and other forms of violence.
- ✓ Ensure the necessary planning and budgeting at local level for the services to be delivered to victims of violence, separately from the social services, specifically identifying the required funding and enhance the transparency and accountability of the authorities. Budget priorities must be accompanied by concrete measures for their realization, taking into account the direct beneficiaries and evidencing them with figures. There is a need to change the budgeting policies to ensure that funds are allocated at the central and local level, because small municipalities have no funds at all for such services.
- ✓ Continue and foster cooperation with civil society organizations which are specialized and often have the necessary capacities to help victims of violence, also providing local government co-financing to these organizations in order to ensure sustainability, besides foreign donors funding, as well as monitor their activity regularly.
- ✓ Establish emergency centres/shelters whose cost is not necessarily too high, and cooperate with NGOs that provide this service.

- ✓ Enhance oversight over the activity of coordinators and Technical Multidisciplinary Teams by the Steering Committees of the Referral Mechanisms, the governing bodies of the municipalities and central institutions having authority over local offices of some TMT members, in order to ensure smooth operation in line with the legislation.
- ✓ Take administrative and criminal measures against NRM members who fail to fulfil their legal duties in accordance with the applicable legislation.
- ✓ Maintain and regularly update the data on the number of cases handled by the NRMs; this is important for the transparency of the municipalities and the analysis of the effectiveness of the NRMs and the work of the anti-violence coordinators.
- ✓ Ensure mutual coordination of the local government with the police and judicial authorities.
- ✓ Ensure clarification between police and municipalities concerning monitoring reports on protecting orders that municipalities must send to the police, because there is a contradiction between the information provided by the Police Directorate in which there is no monitoring report by the local coordinators, on one hand, and the information sent by the municipalities which claims that monitoring reports are prepared in most cases and are shared with police.
- ✓ Establish social centres that help the reintegration of victims of domestic violence into society, especially those who have been isolated - due to physical, psychological and economic violence – and had no chance to engage in social life and employment. These centres may be set up specifically for this purpose, or integrated with services offered to other vulnerable groups.
- ✓ Cooperate with civil society organizations to extend their operation in all regions of the country and ensure co-financing to them.
- ✓ Supervise the centres and prepare specific information for the beneficiaries, in order to identify their needs and effectiveness.
- ✓ Extend long-term and medium-term services for victims of gender-based violence in all municipalities, in particular those related to employment opportunities, in order to ensure the economic independence of women victims of violence.
- ✓ Take measures for expedited implementation of the obligations arising from DCM no. 327/2021 dated 2.06.2021, "*On work coordination mechanisms among authorities responsible for the referral of cases of violence in family relations and the support and rehabilitation of victims of violence*" and in particular novelties that it introduced, specifically:
 - Obligation of Local Self-Government Units (LGUs) to handle not only cases of domestic violence, but also other forms of gender-based violence.
 - Obligation for an anti-domestic violence unit to be established in big municipalities with over 200,000 (two hundred thousand) inhabitants, consisting of no less than 2 full-time local coordinators who cooperate with one social administrator/workers in each administrative unit;
 - Set up the Steering Committee of NRM which must meet at least every three months in ordinary meetings and, according to needs, in extraordinary meetings.
 - Enhance the Steering Committee's monitoring of the TMTs over the financial costs in case management and prevention and management of cases of violence, in order to ensure support with specialized emergency rehabilitative (medium-term) and reintegration (long-term)

services based on which each institution makes the general gender budgeting, depending on the functions and responsibilities that each member of the steering committee has.

- Organizing regular meetings of the TMT every month and extraordinary meetings whenever the need arises for concrete cases of domestic violence and violence against women.
- Oblige the Police and other authorities to duly notify the local coordinator of any reported case of violence.
- Make a risk assessment and management of any case of domestic violence – by the State Police in cooperation with the local unit at the municipality.
- Regular cooperation between the Police and KVDHF for the coordination of short-term and long-term protective measures and the involvement of the coordinator for monitoring the implementation of protective measures against violence.
- Ensure regular cooperation between police and coordinators against domestic violence, in order to coordinate the short-term and long-term protection measures as well as involve the coordinator in monitoring the protection measures.

2 Application filed by the People's Advocate with the Constitutional Court to repeal a legal provision as incompatible with the Constitution and the European Convention on Human Rights.

The People's Advocate, in delivering its constitutional mandate on the protection and promotion of human rights in the Republic of Albania, filed an application to the Constitutional Court on this scope:

- ✓ *Repeal Article 131 of the Law no. 108/2014 "On State Police" as amended, as incompatible with the Constitution of the Republic of Albania; and*
- ✓ *Suspend the application of Article 131 of the Law no. 108/2014 "On State Police" as amended, in order to prevent implications that may be caused to citizens from the application of special measures by the State Police structures.*

and interested parties: the Assembly of the Republic of Albania; the President of the Republic of Albania; and the Council of Ministers of the Republic of Albania.

Applicant: People's Advocate, claimed¹⁶¹ briefly as follows:

The People's Advocate has repeatedly expressed on the media its institutional stand and concern regarding the draft law in question, pointing out that some provisions pose serious problems, fail to offer the minimum constitutional safeguards for the rule of law and respect for human rights, and that its adoption would result in violation of the constitutional and legal rights of citizens.

¹⁶¹ Constitutional Court's Decision no. 30 dated 05.07.2021. For more information, see: https://www.gjk.gov.al/include_php/previewdoc.php?id_kerkesa_vendimi=3276&nr_vendim=1

On 29.10.2020, the Assembly adopted the Law no. 133/2020 "*On some additions and amendments to Law no. 108/2014 'On State Police', amended.*"¹⁶² The law was forwarded to the President of the Republic for decree and promulgation. The President exercised his right under Article 85(1) of the Constitution and returned it to the Assembly for reconsideration on the grounds that it directly violates Articles 7, 17, 116 and 148 of the Constitution and Article 8 of the European Convention on Human Rights.

Meanwhile, the Assembly adopted the Decision no. 73/2020 to overturn the Presidential Decree no. 11841 dated 20.11.2020 that remanded the draft law back. Eventually, this law was published in the Official Gazette no. 217 on 14.12.2020 and entered into force 15 days after publication.

The People's Advocate considered this particular case to be a violation of the right guaranteed by Article 8 of the European Convention on Human Rights, and therefore also a violation of constitutional rights and guarantees for Albanian citizens. On our part, we referred several ECtHR decisions that establish violations of the ECHR norms and provisions in similar cases, because in similar cases, the CoE Member States adopted laws or other acts to allow interceptions, which have violated and undermined human rights provided for in the ECHR.

The decisions of the European Court of Human Rights in the interpretation and guarantee of fundamental rights and freedoms constitute the highest standard to which the State Parties must refer to in the protection of these rights for their citizens, and in turn *serve not only to decide on the issues brought forward, but, in general, namely to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties.*¹⁶³

ECHR has instituted and guaranteed several fundamental human rights and freedom, including the *right to respect for private and family life*¹⁶⁴.

The primary purpose of Article 8 is to protect against arbitrary interferences with private and family life, home, and correspondence by a public authority.¹⁶⁵

It is the People's Advocate view that the amendments introduced in the above-cited law do not pass the test of constitutionality of norms and safeguards sanctioned in our Constitution and then in the ECHR, if we also consider the hierarchy of laws. The People's Advocate appreciates the measures in striking down and prevention of crime, but these must be taken within the margins provided by the Constitution and national and international acts.

¹⁶² Adopted on 31.07.2014.

¹⁶³ Ireland v. United Kingdom, § 154, 18 January 1978, Series A no. 25, and, later, Jeronovičs v. Latvia [GC], no. 44898/10, § 109, ECHR 2016

¹⁶⁴ Title added under the provisions of Protocol no. 11 (ETS No 155).

¹⁶⁵ See ECtHR application *Libert v. France*, §§ 40-42.

In our application, we did not state or request that the State Police must not be recognized the prerogative to take special measures in tracking suspects who could potentially expand their criminal activity in Albania. However, we held that this right must be exercised within the legal limits and checked by the prosecution office and the court, in order to respect the constitutional and legal safeguards of citizens.

The adoption of these new provisions has boosted the powers of the State Police, giving it the opportunity to exercise them without limitation on subjects and criminal offenses outside the procedural control of the prosecutor and the court as provided for in the Criminal Procedure Code. These amendments do not even stipulate the obligation of the General Director of Police to dispose of the materials administered from interception within a certain period - if they are not referred to the prosecution body.

The lack of clear provisions for these limitations proves the reduction of procedural safeguards. The constitutional norm provides that no one should be intercepted, except in special cases regulated and provided for by law. However, interception procedures are always subject to control by the Prosecution and the Court.

This police activity was regulated in this way in the previous law, and the State Police had to obtain authorization from the prosecutor. Interference with private life cannot be abusive and massive, on grounds that it seeks to prevent a possible crime. Also, the lack of an appeals body or structure makes these Police action assailable and disputable, because the person subject to interception cannot identify even before the judicial bodies a particular State structure against which he can raise claims for violation of his fundamental rights and freedoms. The ECtHR has also established that national law must be clear, foreseeable, and adequately accessible.¹⁶⁶ In our judgement, the provision of legal safeguards such as judicial control before the application of special measures, the duration of their application, the right to appeal to the court against the imposition of these measures, and the obligation of the bodies that collected information from these measures to dispose of it after a certain period, etc., are necessary to prevent the arbitrariness by State structures – as proven from practice so far – in carrying out secret actions such as interception, tracking and special surveillance.

It is the People's Advocate judgement that the truncated or missing clarity and precision of the legal provisions provided for in the amendments to the law "On State Police" serves as ground and indicia to examine their constitutionality for blunt violation of human right protected and sanctioned in our Constitution and the ECHR.

The European Court of Human Rights has repeatedly stated that any interference by a public authority with an individual's right to respect for private life and correspondence must be *in accordance with the law*. This expression not only requires compliance with domestic law, but also

¹⁶⁶ Silver and others v. United Kingdom, § 87.

relates to the quality of this law, requiring that it be consistent with the rule of law¹⁶⁷. The People's Advocate has expressed and maintains its institutional position that the law must be subject to the constitutional principle of the rule of law. Constitutional standards do not foresee only the fact that a situation or relationship is regulated by law, but also the fact that the law itself must be in accordance with other constitutional standards and principles, emphasizing here also the fact of respect for human rights, the principle of the rule of law and the check and balance. The Assembly's prerogative to adopt a law is not unlimited and, in this context, the Constitution of the Republic of Albania sets limits to this procedure and these are the rule of law and respect for human rights.

In the present case, we consider that this is an unlimited possibility vested on State Police to carry out massive, legally unjustified interceptions, and without a control by the Prosecution Office and the Court. The term envisaged and dealt with above "*in accordance with the law*" should foresee not only the possibility of carrying out the interception by the competent structure, but also the fact that the procedures provide and foresee the safeguards of due process of law, provided also from article 42/2 of our Constitution and Article 6/1 of the ECHR, in order for the individual to have and be able to use all the safeguards and legal remedies provided by the above-mentioned instruments.

The People's Advocate emphasizes the fact that interception in itself constitutes an infringement of the individual fundamental rights and freedoms, therefore, it must be subject to limitations and specifications how it is applied. On the other hand, the burden of proof falls on the legislator to prove that this restriction pursues a legitimate aim. In the present case, there is no clear evidence of any legitimate aim that justifies this restriction and, moreover, this restriction is not proportionate as it is intended to be applied in open public spaces.

Regarding the terms used in the law, the People's Advocate deems that they reduce the safeguards for the protection of the individual, and may lead to abuse by State authorities that may supervise and track indiscriminately and without the control of the authorities provided for in the Criminal Procedure Code, i.e., limiting the individual right protected and sanctioned in the Constitution and Article 8 of the ECHR. As highlighted above, the limitation of the right must be clear, provided for in the law and proportionate to the aim sought. Limitations are allowed if they are *in accordance with the law* or *prescribed by law* and are *necessary in a democratic society* for the protection of one of the aims defined above.

It is worth noting that the Criminal Procedure Code foresees the limits of interception; it cannot be done for all types of criminal offenses - as the State Police is empowered by Law no. 133/2020. Contrary to the provisions of the Criminal Procedure, the Law no. 133/2020 in its amended Article 131 allows the State Police to conduct special visual surveillance (it may include interception, photo or video surveillance, as appropriate) and trailing/tracking and special surveillance through means, equipment or special techniques in order to identify or locate crime suspects. So,

¹⁶⁷ Halford v. United Kingdom, § 49.

this is not in line with the Criminal Procedure Code, without a Court decision and without preliminary actions by the prosecutor.

On the other hand, the People's Advocate holds that infringement of the principle of reasoning the decision to carry out the interception violates the safeguards set out in the applicable legal framework on the protection of the individual rights and freedoms. The reasoned decision constitutes the basis for the initiation of the respective procedures; avoidance of this obligation is a ground for violation of the fundamental principles of law. The reasoning of the court decision is a constitutional obligation, clearly defined in Article 142(1) of the Constitution of the Republic of Albania.

Besides, this provision does not provide for the duration/deadline for the implementation of these special measures¹⁶⁸, but just provides that it shall be regulated by a joint instruction of the Minister responsible for public order and security, the Prosecutor-General and the Head of the Special Prosecution Office against Corruption and Organized Crime. This too shrinks the safeguards in the criminal procedure legislation in favour of citizens, due to the interference and limitation of powers that one State structure has over another, which may also be subject to tracking for possible /suspected corruption of a high official.

We emphasize that, although the restriction (infringement) of the individual right to privacy is made by law, it does not appear that it sought *a public interest*, or *the protection of the rights of others*. The public interest presented during the procedures for the adoption of the law is not evident; moreover, it fails to provide the minimum safeguards guaranteed by the national and international law - already part of our legal corpus.

Article 8 of the Convention is the most elaborated in the broadest terms among all the articles of the Convention. The principle from which this article stems is that an individual has the right to live free and unconcerned by the State, that is, that the private person is in a higher position than the State in relation to the enjoyment of this right.

The European Court of Human Rights has dealt with and provided for the principles and criteria of State intervention through the procedures it applies for the interception of various persons, which have been specifically elaborated in the application filed by our institution. The Court has reiterated that any interference by a public authority with an individual's right to respect for private life and correspondence must be "*in accordance with the law*". This expression not only requires compliance with domestic law, but also refers to the quality of this law, requiring that it be consistent with the rule of law¹⁶⁹.

¹⁶⁸ Special audio interception of non-electronic communications of suspects, special visual surveillance, tracking and special surveillance of suspects through the use of special means, equipment and techniques to identify or localize them.

¹⁶⁹ Halford v. United Kingdom, § 49.

The Court has continuously emphasized that even in such a case, the fundamental principle according to which domestic law must offer protection against arbitrariness and abuses in the use of interception and recording techniques is equally applicable¹⁷⁰.

In conclusion, the Constitutional Court, having heard the parties and examined their claims, decided to grant the application: Repeal Article 6, paragraph 29/1 and Article 131 of Law no. 108/2014 "On State Police" as amended; Suspend the implementation of Article 131 of Law no. 108/2014 "On State Police" as amended, until the entry into force of the final decision of the Constitutional Court.

4.3 Opinion *Amicus Curia*¹⁷¹ on the lawsuit filed by the claimants A.A., E.M., H.M. and A.M. with the First-Instance Administrative Court

The People's Advocate is familiar with court complaint filed by the citizens, A.A., E.M., H.M. and A.M. with the First-Instance Administrative Court with the scope: "*Modify the administrative act, reply letter no. 2627/1 dated 15.04.2021 and compel the respondent (Local Civil Registration Office) to register the children H.M. and A.M., female twins, born on 18.01.2021 in Tirana, and to register as mothers the claimants A.A. and E.M. with equal maternity rights in the same family composition*".

Main claims presented in this court complaint:

- The claimants A.A. and E.M. are in a factual relationship for over 10 years and they have been cohabitating for over 7 years. They have conceived life and family together from the start, despite the legislation does not recognise the right to marriage or cohabitation for same-sex couples.
- During the factual cohabitation, they wanted to expand the family and this wish became true with the birth of twin children, girls, on 18.01.2021, from the pregnancy developed by the citizen E.M. through artificial insemination methods.
- The claimants A.A. and E.M. (H.M. and A.M.) expressed their volition to register the children born with artificial insemination by E.M. and requested that they be recognised and registered as *mothers* in the relevant civil register. But this resulted impossible, because the civil registration office rejected their request (letter no. 2627/1 dated 15.04.2021 by the Civil Registration Office, Administrative Unit no. 2, Tirana), *on the grounds inter alia that children born to parents of the same sex cannot be registered, because this is not explicitly recognized by law*.

Analysis of facts and evidence submitted by the claimants:

¹⁷⁰ See also the judgement of 16 July 2002 in the application *Armstrong v. United Kingdom*.

¹⁷¹ See full opinion in this link:

<https://www.avokatipopullit.gov.al/media/manager/website/media/Opinion%20Amicus%20Curia,%20mbi%20k%C3%ABrkes%C3%ABn%20e%20sjell%C3%AB%20nga%20Gjykata%20Administrative%20e%20Shkall%C3%ABs%20s%C3%AB%20Par%C3%AB%20Tiran%C3%AB,%20p%C3%ABr%20padin%C3%AB%20e%20paraqitur%20nga%20ana%20e%20padit%C3%ABseve,%20A.%20A.,%20E.%20M.,%20H.%20M.%20dhe%20A.%20M..pdf>

- According to the *Convention on the Rights of the Child* (Articles 4 and 54), the child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents. This right, according to the claimants, is denied to the minors H.M. and A.M. due to the lack of legal provisions for the recognition of families and parents of the same sex. This registration impossibility contradicts the Constitution and the principle of special protection that children and young mothers should enjoy from the State.
- According to the *European Convention on Human Rights*, everyone has the right to respect for their private and family life (Article 8), and even the Constitution (Article 53) sanctions that everyone has the right to marry and have a family. In these circumstances, the claimants A.A. and E.M. find themselves in a situation where none of the domestic laws provide legal certainty for effective protection of their rights and respect for private and family life, the right to have a family. They *de facto* created their own family and gave birth to children.
- *Law no. 10129 dated 11.05.2009 "On civil registration" as amended* stipulates in Article 8 that: "Birth, gender, first and last name, relationships of paternity, motherhood and citizenship are recognized and can be removed, extinguished, changed or passed on to others only in the cases and in the manner expressly defined in this law, or in any other special law". However, this law does not provide how the civil status components of claimants H. and A., from two mothers, are to be marked/recognized.
- Despite the definition in Article 10 of the *Law no. 10129 dated 11.05.2009 "On civil registration" as amended*, and although the claimants A.A. and E.M. are faced with a *fait accompli* having conceived their family, the law does not recognize this legal fact, i.e., the birth of claimants H. and A. from two mothers.
- Although the *European Convention on Human Rights* (Article 12) and the *Family Code* of the Republic of Albania (Articles 7 and 163), link the notion of marriage and cohabitation directly with the union between a man and of a woman, the *European Court of Human Rights* has oriented the case towards the principle of subsidiarity by suggesting an evolutive interpretation of the Convention and by referring to the domestic legislations of the CoE countries that have accepted in their legislation such unions.
- Although the claimants' claim is not related to their right to marry, the claimants A.A. and E.M. have created *de facto* their family and have given birth to their children, H. and A.
- On this basis, they seek the modification of the administrative act, specifically the official letter no. 2627/1 dated 15.04.2021 of the Civil Registration Office, Administrative Unit no. 2, Tirana, and the obligation of this office to register the twin children H.M. and A.M. born on 18.01.2021 and to be registered as mothers with maternity rights in the same family composition.
- Similarly, since the applicable legislation of the Republic of Albania regulating the registration of maternity does not regulate the creation of maternity relations due to the joint will of the biological mother with her cohabitant, the court is asked to examine the case in the light of Article 145 of the Constitution, suspend the proceedings and send the case to the Constitutional Court.

- **Applicable regulatory legislation:**

The applicable regulatory legislation refers to the *Constitution of the Republic of Albania*, the *European Convention on Human Rights*, the *Convention on the Rights of the Child* and with specific consideration to the *Family Law and the Family Code of the Republic of Albania*.

The Constitution of the Republic of Albania (Articles 53 and 54) recognizes and affirms the special protection of the institution of marriage and simultaneously the right that anyone has to marry. The family is affirmed as an important social formation for society, enjoying the special protection of the State. The Constitution guarantees a special protection for children and young mothers, recognizing and equating the rights of children born out of wedlock with the rights of children born from a wedlock. Indeed, the Constitution does not directly state the prohibition of same-sex marriages, despite the fact that everyone's first, general and natural understanding remains that marriage is the union between a man and a woman. Meanwhile, the Constitution refers to the connection and dissolution of marriage in the Family Code, where the prohibitive provisions are made.

The European Convention on Human Rights, in Articles 8 and 12, provides respectively the right to respect for private and family life and the right to marry.

The Convention on the Rights of the Child defines the meaning of the term "child" - Article 1, the primary consideration that all State activity must have towards the best interest of the child - Article 3 and Article 5, affirms and sanctions the rights of the child to registration immediately after birth, the right to a name, the right to acquire nationality, to know his parents and to have their care - Article 7, and the obligation to respect the right of the child to preserve his identity his, including the nationality, name and family ties that are recognized by law without any illegal interference - Article 8. The basic concepts of this convention are also reflected in Law no. 18/2017 "*On the rights and protection of the child*".

In the Family Law and the Family Code of the Republic of Albania, the Family is the basic and natural unit of society. So the family is the basic unit of society and the basic natural unit, the origin of which is not related to the existence of the State. The Family Code of the Republic of Albania does not have a final definition for the family, apart from the fact that the family is the group of persons connected to each other in a special relationship. *The legal family is created on the basis of marriage*.

As far as family relations are concerned, it should be clarified that the Family Code understands them as relations created by marriage, adoption, guardianship and in-laws.

The family membership, according to the family law of the Republic of Albania, is understood as the whole circle of persons with such kinship or legal relationship, which is considered as a prohibition for marriage (family in the broad sense - *communi iure*). As for the family in the narrow sense - *proprio iure*, the family consists of spouses and their born or adopted children. The notion

of family and family life has seen developments that run parallel to social and legal changes, especially in the conditions where the institution of cohabitation of couples without marriage is growing. The marriage-based family is not the only alternative to enjoying family life. However, enjoyment of family life is also the relationship between a mother and her child, regardless of her marital status. Unmarried couples enjoy family life together with their children. Family life exists even in cases of lack of blood ties.

The *right to family life* and the *right to have a family*. According to the Constitution of the Republic of Albania, everyone has the right to have a family, even more so children, who, in order to have a complete and harmonious personality development, have the right to grow up in a family environment, in an atmosphere of joy, love and understanding (Article 5 of the Family Code). In case of impossibility of the natural family to provide family life, legal framework provides for the *foster family*, as an alternative family chosen by the courts in cases where the parents of the children are unable to exercise parental responsibilities.

The Constitution of the Republic of Albania does not have a special provision regarding the *principle of the best interest of the child*, although its Article 54/1 stipulates that children, like marriage and family, enjoy special protection from the State. The primary consideration of the child's best interest is primarily the duty of the parents, as well as the competent bodies and the courts, which in all their decisions and activities must have the child's best interest as paramount.

According to Article 5 of the Family Code, every child has the *right to grow up in a family environment* (the subjective and objective elements that make up the family), in an atmosphere of joy, love and understanding, for a complete and harmonious personality development.

Marriage is the expression of the enjoyment of the right to marry by the individual who intends to marry. According to the Constitution of the Republic of Albania (Article 53), everyone has the right to marry and have a family. According to our legislation, marriage, as a voluntary union between a man and a woman must be, a monogamous union; a heterosexual union; a free and voluntary association; a potentially eternal (indefinite) union; union between persons who have reached a certain age; a union announced publicly in front of the responsible State official and as a union that is supported as a moral, spiritual and material community, related to the free consent of the spouses. Even in the European Convention on Human Rights, the right to marry is recognized only to a heterosexual couple who want to marry and create a family. Diversity of the sexes is provided as a principle not only for marriage in our current legislation, but also for factual cohabitation. We have a family even when the couple lives together, thus evidencing a new form of family life. The legislator, by not foreseeing the same-sex marriage as a legal obstacle, has completely ignored the existence and the possibility of these types of marriages.

Maternity and paternity of the child (origin). These together with the name, surname, citizenship, nationality and other components of the civil registration are personal data of the person, and non-property rights that can only be enjoyed by the human being who was born alive. Paternity

and maternity are important elements to determine the origin and family affiliation of a person, including parental relationships. According to Article 165 of the Family Code, "*Maternity and paternity of a child born in wedlock is proven by the birth act, registered in the civil register*". In Article 34 of the Law "On Civil Status", the declaration of the child's birth is the second action that conditions the compilation of the birth certificate. This law determines that as a rule, the declaration of the birth of the child is made by one or both parents, but the law provides that this declaration can be made by other persons permitted by law.

According to our family law, a child born out of wedlock is considered a child born from an unknown woman, from a woman who has never been legally married, or when more than 300 days have passed since her last marriage, or when the paternity that was determined formally by law has been revoked by final court decision. According to Article 170 of the Family Code: "*Maternity and paternity of a child born out of wedlock can be established through voluntary recognition or through a court decision...*". Scientific developments in the field of health, such as artificial insemination, bring out the need not only for the most detailed legal regulation on ways of using these scientific discoveries in favour of citizens, but also for ways of using them as facts and evidence in the process of determining or proving the maternity and paternity of a child registered without a mother or father, of those born out of wedlock, as well as for challenging these.

You become a parent for natural or legal reasons (adoption). "Legal parent of the child" is defined as the person or persons (no more than two, of opposite sexes), i.e., he/she (they), who has been recognized as such in a way determined by law. In this way, due to the best interest of the child, it happens that the relationship with the parent, parentage (being a parent) and parental responsibilities are created or arise from the moment of the birth of the child or the decision of adoption and over time these relations are strengthened. How should parental affiliation be understood in the case of the application of assisted medical reproduction techniques, which bring uncertainty about who are the biological parents and even more so, the legal parents of the child?

The purpose of these assisted medical reproduction techniques is to respond to the request and the right of an individual or a couple, who cannot conceive pregnancy, to have a child. According to the regulations of the law "On reproductive health", one of the techniques used for artificial insemination is the so-called *extramarital insemination*. This term means giving a child to an unmarried couple, or to a single woman. While world practice also recognizes cases of this insemination for gay couples, our legal reality does not recognize and makes no mention of giving a child to a gay couple. This is because marriage and cohabitation recognize the principle of heterosexuality. If an unmarried woman does this treatment alone, the sperm donor is not considered as the father of the child and according to the law this child is called "fatherless". In fact, there is no complete legal regulation in the current legislation regarding these cases.

From a careful look at the provisions of **Law no. 10129 dated 11.05.2009 "On civil status"**, as amended, among others, it can be said that this law has not provided a solution to cases where

the civil registration official refuses to accept the declaration , to compile the child's birth certificate or even register it.

- *Grounds and content of the lawsuit filed by the claimants A.A, E.M, H.M dhe A.M:*
- Official letter no. 2627/1 dated 15.04.2021, "Reply" from the Civil Registration Office, Administrative Unit no. 2, Tirana, is an individual administrative act.

The situation created by the request submitted by citizens A.A and E.M to the Civil Registration Office, Administrative Unit no. 2, Tirana, falls under Article 95 of the Administrative Procedure Code which states that: "The public body declares complete the administrative procedure without a final decision on the case, when the scope for which the procedure started or its purpose becomes impossible".

- Without prejudice to the right of claimants A.A. and E.M. to build a common life, as analysed above, the Family Code and the family legislation in the Republic of Albania do not recognize the right of marriage between two same-sex persons, or even the factual cohabitation that may occur between them.

It can even be said that the lack of provision in the law - even as obstacle to the recognition of marriage or cohabitation under these conditions - can be considered as a complete lack of legal chances to legitimize, even to the least extent, this life reality between two persons of the same sex.

This type of factual cohabitation, considered as such by the claimants but not by the law, served them – according to the claimant's notion - to create a family and a family life between them. The claimants have parallelized the meaning of a de facto relationship - not recognized by family legislation - giving this relationship all the attributes of a de facto cohabitation recognized by law, to seek and claim the rights and legitimize the consequences that the law provides in these cases. According to this concept used by the claimants, their relationship has already created a family and a family life.

- Presuming the creation of family from this factual union in these circumstances, the citizens A.A. and E.M. wanted the birth of children, members of "their family in the strict sense". In other words, even in the sense of the family legislation, the claimants wanted to be the parents of these children and acquire parental responsibility towards them.

As explained above, world practice recognizes cases of insemination for gay couples, but our legal reality does not recognize and makes no mention of giving a child to a gay couple, because the marriage and cohabitation recognize the principle of heterosexuality. If we look carefully, in the case of extramarital insemination as a technique used in this case by the citizen E.M., only her consent would suffice to perform this technique. This is because the law itself in its definitions

uses terminology such as "individual", "spouse", leaving no room for handling such a request from a same-sex couple.

- Both claimants, by requesting the registration as "mothers" at the Civil Status Office, Administrative Unit no. 2, Tirana, beyond the technical action of registering the child, both wanted to legitimize data related to the origin of the children and their family affiliation, including parental relationships.

Our family legislation recognizes only paternity and maternity as basic elements of the child's origin. As we have pointed out above, a child born out of wedlock is considered a child who was born to a woman who, at the time of conception and birth, is not married in the civil registration documents. H.M and A.M are children born out of wedlock. In these circumstances, the request submitted by the claimants was rejected by the employee of the relevant civil registration office.

- Does our legislation in force constitute an obstacle to the registration of H. and A., with the parent(s) recognized as such by the law? We think not.

The impossibility to register "double maternity" does not mean that the law does not allow the administrative action of registration of the children, by recognising and registering their biological mother (E.M.), and not declaring their paternity. And yet, does this conflict with the Constitution and the principle of special protection that children and young mothers should enjoy from the State? We think that although at first glance it seems not, this issue needs to be addressed more broadly and should create new and more comprehensive balances in our society. The rights of new-born children are clearly better protected if they have a family relationship (because of the law) with 2 parents, rather than only one parent, specifically that of the secure blood relationship that is the biological mother. This principle is balanced for children born in wedlock (presuming the paternity), or even those born a certain period after the dissolution of the marriage, presuming as the father, the ex-husband of the mother. These provisions in the Code are aimed at the well-being and best interest of the child, so that the child may have parental care from two parents, as this constitutes added guarantee for their current life but also in the future. While the two claimants were or had to be aware of their rights and obligations or the potential risk of a way of life which cannot be formalized according to the current applicable legislation, the same is not true for the minors A. and H. because they have the right to be legally guaranteed the relationship with the mother's partner as a contributor to their well-being, as long as she requests such a thing.

- Refraining from prejudice, the opportunity or request to enjoy the right to family life by the claimants who want to be simultaneously registered in the civil status as mothers of the two new-born daughters seems to be putting in balance the best interest of the child, i.e., to be registered with the civil registration office, be it recognising their relation only to their biological mother.

The fact that the new-born child is represented in these procedures by the parents, according to the legal meaning given to the parent in this case, cannot give the parent (biological mother) the right to override and give priority to the realization of the goal of cohabitation with another person, even if of the same sex, to the child's best interest (i.e., the child's right to registration immediately after birth, by the parent/parents, or other persons authorized by law, within the legal deadlines). In this sense, the legal rights of parents must be treated in a balanced manner with the legal rights of children and care must be taken in prioritizing the rights of children.

Should the registration of the new-born child necessarily be connected with the obliged recognition of "two mothers" as requested by the claimants?

In the case under scrutiny, regardless of the right and equal opportunities that our society should give to children to have 2 parents, their interests would be better protected by registering them in the form that is possible – opposing only to the non-registration as a family (because of the law) also of the partner of the biological mother.

Our family legislation does not allow the registration of two mothers as parents of a child. In this context, it should be taken into account the fact that the court does not create a new norm, but interprets and applies the relevant applicable legislation to the dispute brought before it. We think that the gender-based approach to family ties should be re-evaluated in our society to include the realities of people who would not like to identify their gender identity in the register in relation to the child. The exclusion of the possibility to be identified without specifying the gender, but only with the word parent is a right that emphasizes the affective reality that the members of a legal family or de facto family create with children and the affection and obligations they assume towards the child. Our society has evolved and as we said above in the evolution of the conception of the child, the parent, parenting and the responsibility for their well-being, with the State taking over the well-being when they do not have parents or when the parents cannot do it well.

In our assessment, we think that the current legislation violates the claimed right to establish maternity relationships. It also violates the right of children H. and A. to have a legal parent alongside their biological mother. Our legislation in the evolution of the rights of the child or even human has accepted in principle the right of a child to grow up in a family and guarantees them the right by presumption to have a legal father, or even an adoptive family or adoptive parents. Children born by insemination from a single mother with a female partner do not benefit from the same guarantees and under this point of view we think that there is a need to have an incidental judgment on this matter, in terms of the right to have the care of legal parent and the equal treatment of children with the specifics of claimants H. and A. compared to any other child born with or without a biological father.

Even referring to the right to family life, its respect as well as a context of discrimination in the treatment of same-sex couples, we are of the opinion that the Strasbourg Court has a dynamic assessment still in process regarding these issues, regarding the respect for Articles 8 and 14 of

the European Convention on Human Rights. Referring to the specificity of the case that we analysed, we are of the opinion that the decision that this court will issue for the case C-490-20, case C-2/21, Rzecznik Praw Obywatelskich, will be a reference *milestone* for courts in our country.

In assessing this case, the court will have to confront the arguments of the claimants who essentially demand the acceptance of new social realities against the arguments of the public interest in a democratic society and strike a fair and proportional balance between them. We think that there is a need for an evolutive interpretation of the rights of the child in order to guarantee them effectively.

4.4 Contribution given by the People's Advocate to the Justice Reform process

As in previous years, the People's Advocate followed with special attention the implementation of the Justice Reform in general and especially the activity of the Justice Appointments Council (hereinafter "JAC").

Pursuant to Article 149/d, paragraph 3 of the Constitution according to which "[...] *The Peoples Advocate participates as observer in the selection by lot and in the meetings and activities of the Justice Appointments Council*" and in conformity with Article 233 of the Law no. 115/2016 "On the governance bodies of the justice system" according to which "[...] 1. *Meetings of the Justice Appointments Council are held in-camera. The 'People's Advocate participates in the meetings and activities of the Council [...]*", our institution had a double role, not only as a constitutional institution dedicated to the protection and guaranteeing the human rights and freedoms, but also as an institution that the Constitution of the Republic of Albania and the Justice Reform legislation vested it with a role and special powers in this process.

Following the above, our institution was present in the drawing of lots for the election of JAC members, based on the obligations provided by Article 221(7) and (11) and Article 284(6) of the Law no. 115/2016 "On the governing bodies of the justice system" according to which "*In the presence of the People's Advocate, the President of the Republic shall select the members of the Council by lot between 1st and 5th of December of each calendar year [...]*" and "*The People's Advocate immediately makes public on the official website of the institution the monitoring report of the lot process*". At the end of this process, which in our opinion was carried out in full accordance with the law, the corresponding monitoring report - on the lot drawing procedure for the election of JAC members for 2022 conducted by the President of the Republic on 03.12.2021 – was drawn up and published.

Based on the above constitutional and legal obligations, our institution participated in all the 25 (twenty-five) JAC meetings held during 2021, seeking to exercise at best the duties defined by the legislator (opinions given by our institution were published summarized in the minutes of the JAC meetings)¹⁷².

¹⁷²http://www.gjykataelarte.gov.al/web/Procesverbale_te_mbledhjeve_8069_1.php

Some of the main issues, identified by our institution during the 2021 JAC activity were: a. Failure to plan the necessary budget for the proper performance of the duties; b. The need for additional human resources of support staff; c. Legal criteria for the selection as a member of the Constitutional Court.

a. *Regarding the budget*, despite the fact that this concern was raised by our institution before, again the same problems were repeated for the 2021 JAC. In our view, starting from the situation in which the Constitutional Court was when the constitutional amendments were drawn up (just few years ago, this Court had so vacancies [in judge] that it could not form the necessary quorum), the question of the budget of this body should have been looked at more carefully. So, although JAC is provided for in the Constitution as a separate institution, it did not receive direct and separate funding from the State budget.

Based on the provision in Article 219(3) of the Law no. 115/2016 "On the governance bodies of the justice system" according to which "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*", this constitutional body does not have a separate budget line – unlike other bodies¹⁷³.

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. 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.

b. *Regarding the need for additional human resources of the support staff*, we recall that pursuant to Article 149/d, paragraph 5 of the Constitution according to which: "5. *The High Court creates the working conditions for the operation of the Justice Appointments Council*" and Article 230(2) of the Law 115/2016 "On the governing bodies of the justice system" which states that "2. *The chairperson of the Council in cooperation with the Chairperson of the High Court, shall assign, from among the ranks of administrative staff of the High Court, a reasonable number of administrative employees to facilitate the fulfilment of Council's tasks*", the JAC is provided support staff at the beginning of each year (mainly advisers and secretary). Our institution has found that this support staff has a double dependence, not only in theory, but also in practice. So, in addition to the tasks they perform during that calendar year at the JAC, this support staff simultaneously perform tasks at the High Court.

¹⁷³ We recall that the other bodies established through the constitutional amendments in 2016, such as the High Prosecutorial Council, are directly supported by the State budget. According to Article 188 of the Law 115/2016, "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*".

Given the big number of vacancies that the Constitutional Court had, the JAC support staff was overloaded with work; this resulted in the violation of deadlines in many cases (e.g., sending materials beyond the deadlines set out in the JAC Regulation, late preparation of minutes, etc.).

In addition to the difficulties for the timely completion of tasks by the JAC support staff, seen in terms of employee rights, this double work of theirs (i.e., simultaneously at the High Court and at JAC) or additional workload should be remunerated, but this is not yet specified in the normative acts that regulate the JAC activity. In the last three years (2019 - 2021), JAC support staff was awarded an extra salary on two occasions¹⁷⁴, whereas the JAC members including substitute members received bonuses for all three years¹⁷⁵.

We must note that the People's Advocate was not involved in any of these three additional funds. Despite the fact that monitoring the JAC activity represents a significant burden for our institution, no staff or budget increase was foreseen for our institution for these new tasks.

However, in order to have long-term solutions, we recommended in the Special Report "*On the activity of the Justice Appointments Council during 2019*" addressed to the Assembly to plan funds to hire additional human resources to cope with the workload and allocate extra funds for the existing staff. If the option of hiring staff on temporary contracts is chosen (but this requires amending the law because the High Court advisors seconded to JAC undergo a certain selection procedure and must attend the relevant training at the School of Magistrates)¹⁷⁶, we have recommended in the same report also the required legal amendments.

- We take the opportunity to recall another finding made by our Institution, but which still remains unresolved. Thus, *regardless of the workload borne by JAC members*, the existing legislation does not provide facilities to judges and prosecutors who are elected as JAC members. **The People's Advocate holds that the right of JAC members to receive facilitations in the Courts or Prosecution Offices where they deliver the functional duties during the calendar year - when they simultaneously perform the member's function, should be regulated by relevant normative acts of JAC.**
- Another problem found by our institution is the use by JAC of a case management system in fulfilment of the legal obligation defined in Article 230(3) of Law no. 115/2016 to increase its operational efficiency. We draw attention to the fact that this has been an issue in the JAC activity for many years now, but still not addressed. In other words, although the manual lot

¹⁷⁴ 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, specifically: item 600 "Salaries": amount 12,200,000 ALL and item 603 "Operational costs": amount 1,800,000 ALL.

¹⁷⁵ Bonuses to JAC members in 2021 were awarded through a special DCM in March 2022.

¹⁷⁶ Law 115/ 2016, Article 274 - **Competition, Initial and Continuous Training of Legal Advisors of Courts and Prosecution Offices:** "The applicants for candidates for legal advisors of courts and prosecution offices, who fulfil the criteria set out by law, are subject to the same exam as the applicants for judges and prosecutors".

duly drawn guaranteed, in our view, the random selection of rapporteurs to the vacancies, this fact *per se* does not guarantee the purpose for which this reform was launched – i.e., to foster public trust. Obviously, the perception of the public and even the legislator is that the inviolability of the selection of rapporteur is guaranteed through an electronic lot.

In the analysis of the *legal provisions* and the *situation in practice* of the lot-drawing procedure at JAC for the appointment of rapporteur, according to Article 228 of the Law 115/2016, "1. *In order to conduct preliminary verification of fulfilment of the legal requirements and evaluation of professional and moral criteria of candidates, as well as their ranking, the Justice Appointments Council shall assign by lot a rapporteur for the vacancies in each institution..* 2. *The lottery for the appointment of the relator is organized through the Supreme Court case management system.* 3. *Exceptionally, if the electronic system does not work, the draw can be carried out manually. The Council adopts more detailed rules to enable the lottery procedure for appointing the relator to adhere to the principles of transparency, traceability and monitoring of the process...*".

The chairpersons of the JAC explained during the meetings in 2019, 2020 and 2021 that it is impossible to draw the lot for the appointment of rapporteurs electronically, as required by law.

So, based on an exceptional provision included by the legislator that allows the manual lot, we note that the lots were manual in 2019, 2020 and 2021, and the lots for the appointment of rapporteurs continue to be drawn manually.

Regardless of the circumstances that may have created this situation (insufficient knowledge of the issues such as logistics and technology used by the High Court, the financial possibilities of the State budget, etc.), as long as there are no funds allocated for the implementation of this legal obligation approved and entered into force many years ago to ensure electronic lots for the case management at the High Court, we believe that a situation where the exception becomes the general rule does not foster public trust in the new justice institutions. The People's Advocate recommends these solutions to this contradictory situation: (i) *Allocate the necessary funds for the fulfilment of legal obligations;* (i) *Amend the applicable legislation.*

c. Another issue ascertained by our Institution during the JAC activity is the *legal selection criteria for the Constitutional Court members.*

For this concern, the People's Advocate found that the lack of serious candidacies or withdrawal along the process is attributable to perhaps the very strict deadlines for the current situation in our country for the potential candidates who want to run for Constitutional Court members. Thus, these very tight deadlines for lawyers who have not been part of the asset declaration system but have extensive experience in law, posed difficulties in declaration and made them withdraw.

- In the context of the Justice Reform, our institution also monitored the hearings held by the Independent Qualification Commission and the Special Appeal Chamber during 2021.
- Similarly, we attended the proceedings at the Administrative Court of Appeal during 2020 for the candidates who competed for the Constitutional Court, but were stopped by the JAC.

4.5 Independent monitoring of the rights of emigrants and joint operations with FRONTEX in the return of irregular citizens from EU countries

➤ *Monitoring the rights of foreign migrants*

During 2021, the People's Advocate in its role of the National Mechanism for the Prevention of Torture (NPM) continued to effectively implement the Co-operation Agreement signed with the UNHCR under the joint project "*Refugees and Asylum-Seekers in the South-Eastern Europe*" focused on the border control and protection of refugees in Albania, - in the south (Gjirokastra, Saranda, Përmet) and south-east (Korça, Devoll, Bilisht).

In co-operation with the UNHCR Field Office in Gjirokastra and Korça and the UNHCR focal points in other border areas, in partnership with the organization "Caritas" in Gjirokastra and Korça as well as other organizations engaged in migration, and in coordination with the Regional Border Directorates at a local level and the central Border and Migration authorities in Gjirokastra and Korça, our external experts worked on the systematic monitoring of borders, periodic reporting of their findings, and treatment and resolution of problems encountered in providing protection to irregular foreigners entering Albania from the Greek border.

The FRONTEX¹⁷⁷ report estimates that *about 55 310 migrants* were detected from January to November 2021 on the illegal border-crossings to the EU through the so-called "the Western Balkan route". The flow of irregular migrants from the Middle East and Northern Africa crossing Albania-Greece border increased in 2021 despite of the Covid-19 pandemic. After arriving irregularly in Greece, either by sea or land, the migratory groups entered Albania mainly from the green land border belt in Gjirokastra, Saranda, Korça and Erseka. According to data provided by the Border Police of Korça, there were identified *14 936 irregular migrants*, out of which 7478 were crossing it for the first time and 7458 were repeatedly doing so. Whereas in Gjirokastra, there were identified *2026 irregular migrants*, out of which 1589 were detected for the first time in the Albanian territory and 437 were repeatedly detected.

The highest number of migrants were from Syria, Afghanistan and Iraq. Asylum was referred only to 14 irregular migrants for Korça and to a group of 30 migrants, involved in a smuggling

¹⁷⁷ <https://frontex.europa.eu/media-centre/news/news-release/eu-external-borders-in-2021-arrivals-above-pre-pandemic-levels-CxVMNN>.

incident at the sea in Vlora, for Gjirokastra. The rest were returned to the Greek territory by “voluntary return order”.

Likewise, in 2021, experts worked on providing public information; guaranteeing pre-screening interview standards; developing relations with cross-border communities to raise awareness of supporting refugees through hospitality; promoting and monitoring territory and asylum access to asylum seekers and refugees identified at the Albanian borders. Their role in monitoring the Albanian-Greek border, monitoring the pre-screening procedures, and advocating on different issues related to the protection of rights of irregular migrants who enter Albania from Greece is very important in ensuring compliance with the standards for irregular migrants.

Cross-border communities and the police-officers themselves had a friendly attitude to migrants so that there were no incidents or violence. Our experts note that the Regional Border Directorates had granted them full access to contact the groups of migrants, interview them as necessary and collect data to guarantee the standards of their treatment.

In 2021, referrals to asylum dropped significantly as a result of the pandemic situation, capacities reduced in the Asylum Center, and efforts made by the Albanian authorities to inhibiting this tendency of irregular migrants by using Albania as a transit station towards the Western European countries.

Co-operation and exchange of information between the border police and FRONTEX, including other stakeholders, is quite important in the management of cases, particularly those on vulnerable persons, people with emergent medical condition and children. The progress made with the increase of the accommodation capacities and service facility to migrants in Grehot, GOS Kakavia, the Social Center of Gjirokastra Municipality, Caritas House in Gjirokastra, the Kapshtica Temporary Accommodation Center needs to be complemented by the increase of human resources so that service requirements to migrants are met.

Migrants are regularly informed through brochures in several languages distributed by the UNHCR, Caritas, the People's Advocate, FRONTEX, though they need to be supplemented dynamically in elements. Experts have considered the need to improve the quality of the pre-screening interview in avoiding questions that lead to voluntary return and providing more space to needs (if any) for international protection on a case-by-case basis.

Issues identified in Gjirokastra and Korça Borders

Taking into consideration that the new laws “On Foreigners” and “On Asylum” have been already adopted, the approval of a DCM at the earliest convenience would pave the way to the approval of other bylaws, such as instructions and orders issued by the relevant ministries responsible for their implementation.

Specifically, the Law “on Foreigners” explicitly provides that: “*The Council of Ministries is charged to issue bylaws on the definition of the criteria, procedures, and documentation for electronic visa application pursuant to article 24, paragraph 1, within 3 months from the entry into force of this law*”. Similarly, the law “On Asylum” explicitly states that “*The Council of Ministries is charged to issue bylaws pursuant to article 10, paragraph 1; article 34, paragraph 5; article 44, paragraph 2; article 56, paragraph 2; article 78, paragraph 3, within 6 (six) months from the entry into force of this law*”.

In 2021, the Albanian cross border police increased the number of voluntary returns towards Greece based on the pandemic situation and the Albanian legislation on such contexts. However, the police circumvented the pushback of irregular migrants at night time hours. Gjirokastra recorded 10 cases of pushbacks which were not reported by the border police.

The quality of pre-screening interviews - There are several factors that affect the quality of the pre-screening interviews on irregular migrants which relate to the human resources capacities at the border, the lack of women officers, the limited number of interpreters for languages which the irregular migrants speak, the lack of social services from the respective municipalities.

The GOS Kakavia provides informative papers in the form of brochures and phone directories, however, such paper documents need to be also available at the special premises in the Border and Migration Directorate in Greq, Gjirokastra. In addition to border police officers, interpreters hired by the Caritas assist the migrants during their pre-screening procedure. Even so, interviews conducted with border police officers brought out the issue there are no certified interpreters for some specific languages like Dari, Fars, etc., which hinders communication to these native speakers during the pre-screening procedure. In such cases, they say, communication is done in English as much as possible or any other language similar to their language. So, the relevant institutions should compile a list of certified interpreters/translators and psychologists.

In addition, thanks to the UNHCR program 2021, a doctor and a psychologist were temporarily deployed in the Kakavia border to provide assistance to irregular migrants. For several months, they both supported dozens of cases. In the frame of the same pilot project and objective, a doctor, a psychologist, and a cultural mediator have been also deployed in Kapshtica, Korça.

During the monitoring period, there were also identified many cases where the asylum applications were not considered.

Persons with specific needs, including emergent medical conditions, were immediately provided assistance by the emergency services of the civil hospital which responded promptly to the Regional Border Directorates when seeking for their help. Swab tests were mandatorily taken even when temporary

Given the pandemic, no epidemiology team from Korça or Gjirokastra was deployed at the border to perform the Covid-19 swab tests to all irregular foreigners locked down in the Albanian

territory and only suspected cases were tested. Swab tests were also mandatorily taken by temporary migrants, especially women and children, who were treated for a few days at the Social Center of the Municipality of Gjirokastra. In some cases, border police authorities were directly intervened to temporarily treat migrants with specific needs or vulnerable persons in the Social Center of the Gjirokastra Municipality.

Recommendations

- ✓ Expedite work to facilitate the adoption of bylaws at the earliest convenience since their deadlines set by the laws have expired. The earliest adoption of a DCM would pave the way to other bylaws, such as instructions and orders issued by the relevant ministries responsible for their implementation. The completion of the legal and sublegal framework carried out as soon as possible would increase the responsibility and efficiency of the state entities established on this purpose, i.e. to examine and approve, as early as possible, the applications made by asylum-seekers or foreigners with permanent or temporary residence in Albania.
- ✓ Improve protection to migrants entering the Albanian territory through a better recognition of their rights.
- ✓ Increase capacities of the Albanian Government to guarantee the implementation of migrants' rights, including a better functional asylum-seeking system based on the legislation in place.

Summary tables for January – December 2021

Indicators	Region	Progress	Target
Monitoring the procedures of pre-screening interviews for migrants	Gjirokastra and Korça	1200 persons per year	1420 persons per year
Monitoring visits	Gjirokastra and Korça	480 visits	498 visits
Recommendations to the General Border and Migration Directorate	Commissioner	4	4
Analytical reports on migratory inflows	Gjirokastra and Korça	4	8

➤ *Joint operations with FRONTEX to repatriate irregular citizens from the EU countries*

The National Mechanism for the Prevention of Torture (NPM), under the agreement signed between the PA and FRONTEX, since 2014, has been part of the monitoring group on the repatriation process of the Albanian nationals from the EU countries and Schengen states *by independently monitoring the operations for the nationals' repatriation from the EU to their countries of origin*. As such, this entity plays a legal and constitutional role in fulfilling the Directive 2008/115/EC187 of the European Parliament on common standards between the EU countries and the third countries.

In view of a long-term experience in monitoring this operation, the standards and procedures followed by the EU Member States and FRONTEX have evolved positively in terms of respect to the rights of citizens repatriated to Albania by forced repatriation decision.

Through the NPM, the PA in co-operation with the Border and Migration Police Directorate and FRONTEX is part of the monitoring group on *the operations of voluntary and forced repatriation* of the Albanian nationals from the EU countries, specifically from France. The NPM continued to be part of the group and to constantly monitor the operations for the voluntary and forced repatriation of the Albanian nationals from the EU countries and the Schengen zone States. In 2021, 16 repatriation operations took place.

The NPM National Observer for the return of citizens in irregular situation assisted the French Police's review of documents on each citizen and their submission to the representatives of the Border and Migration Police. On our part, we checked carefully if the expatriates were provided with the final decision on their repatriation in Albania and if they accessed the decision through signing on it.

The NPM representative conducted departure and on-board interviews with the expatriates to discuss the conditions of their treatment at the centre, their access to the repatriation decision, and information about the forced escorting procedures during their boarding and flight to their home country. During the interview, the citizens raised concerns about the quality of food served during their stay at the centre, as well as their inability to appeal the decision on forced repatriation or deportation from EU countries.

In the meetings held with the FRONTEX and Border and Migration Police Directorate, the NPM representatives suggested that measures should be taken to guarantee return in a humane way through full respect to the fundamental rights of the Albanian migrants pursuant to the EU standards and the Albanian law.

As a result of constant contacts and suggestions provided in the role of the NPM National Observers, the FRONTEX prioritized our proposals on the deployment of an Albanian language interpreter and a doctor together with the FRONTEX joint monitoring group and support to Albanian citizens before their departure to the homeland.

Despite of the progress achieved in this regard, it remains problematic that the Albanian citizens do not have much information about the enforced repatriation decision-taking and its execution where, often, families were immediately removed from homes in their body clothes only. At the same time, during the interviews, they raised the concern that they are not given time available to appeal the repatriation or deportation decisions from the respective EU countries.

CHAPTER 5

Cooperation

5.1 Cooperation with public administration bodies and the level of implementation of PA recommendations

There can be no good governance unless the public administration respects human rights. The People's Advocate is increasingly becoming an indispensable institution for the protection of citizens' rights and the promotion of accountability by government bodies.

The presence in the media, in various public events and forums alongside the civil society in support of the less protected social strata or groups, have fostered the need to have the People's Advocate stand and institutional opinion in defence of the freedoms and rights that are violated or put into question.

The communication and cooperation of the People's Advocate with the central and local public administration bodies has generally been correct and useful for the citizens, but this cooperation has had its problems from time to time. A positive indicator and result of this cooperation has been the handling and resolution of complaints/requests in favour of the complainants in a significant number of cases handled during 2021.

But in addition to this good cooperation, there have also been cases of negligence or lack of responses to our requests from central and local public administration institutions, non-implementation of recommendations addressed by us, sometimes due to the impossibility of fulfilling requests for issues/complaints associated with financial obligations and sometimes the lacking engagement of public administration bodies.

The European Commission's Report for Albania 2020 states that *the implementation rate of the Ombudsman's recommendations decreased slightly from 62% to 55%, and the Parliament should strengthen efforts in support of the activities of the Ombudsman and other independent institutions with a supervisory role. Also, this report points out that the efficient implementation of the Ombudsman's recommendations by public authorities has not improved enough to increase institutional public accountability.*

The People's Advocate has monitored and monitors the level of implementation of the recommendations addressed to the public administration bodies through the preparation of updated information which becomes part of periodic or annual reports. It is important to highlight the fact that the work of the institution is often hindered by *non-cooperative attitudes of various State institutions which send truncated, unclear information or delay the return of answers, thereby extending the deadlines of our administrative investigations and thus eroding citizens' trust in our institution for efficient activity.*

Considering the role of the institution as very important, we have deepened the work to increase the quality and arguments of recommendations, as well as the return of answers to citizens for cases where no violations are found or the issue is resolved without a recommendation. Unfortunately, we did not have the same response from the institutions in the case of the rejection of the recommendations made by the Ombudsman.

➤ *Level of implementation of recommendations*

During 2021, the People's Advocate has addressed a total of 267 *recommendations*¹⁷⁸ to central and local public administration bodies. From the total number of recommendations, the level of their implementation until February 2022 results as follows:

<i>Recommendations accepted and fully implemented</i>	17%
<i>Recommendations accepted and partially implemented</i>	34%
<i>Recommendations not implemented</i>	19%
<i>Recommendations rejected</i>	9%
<i>Recommendation without response</i>	22%

This report does not include those "in process/underway", because *procedural deadlines for response expired* for all recommendations addressed until 31.12.2021, the procedural deadlines for the return of an answer from the institutions have passed. However, there is no answer to a large part of the recommendations addressed in December 2021, as shown below.

In the total of 46 or 17% of the *recommendations accepted and fully implemented*, those recommendations were included 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.

In the total of 89 or 34% of the *recommendations accepted and partially implemented*, 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 50 or 19% of *unimplemented recommendations* includes those that despite the response from the institutions by accepting the recommendations in principle, these were not partially or fully implemented.

As noted, the percentage of unanswered recommendations shows an increasing trend, compared to the previous two years (17% in 2020 and 5% in 2019). On the other hand, the total number of

¹⁷⁸ Full table with the recommendations sent in 2021 by PA is in the following link:

<https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandimet%20e%20vitit%202021%20te%20s%20ekretuara%20-%20me%20statuset%20.pdf>

recommendations addressed during 2021 has *increased by about 4% compared to 2020 and by about 24% compared to 2019.*

From the total of 57 unanswered recommendations, 10 of them belong to the first half of 2021, 16 to the July-November period, and 31 to December 2021.

For the period January - December 2021, the People's Advocate addressed a total of 28 requests for the implementation of the recommendation addressed to the Public Administration institutions. However, as noted, these requests proved ineffective, because the number of unanswered recommendations remains high.

The total of 23 or 9% of the rejected recommendations includes those recommendations for which the public administration institutions responded that they reject their implementation.

The total of 57 or 22% of *unanswered recommendations* includes those that received no response within and after the procedural administrative deadlines.

The recommendations addressed 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 267 recommendations addressed during 2021 comprised a total of 1,256 *sub-recommendations*. Of these, only 29% were fully implemented, but 71% of them remain unimplemented. Among the unimplemented sub-recommendations, for 16% of them the institution received no answer, 4.5% were rejected and 50.5% are under implementation.. This data refers to the implementation of the 267 recommendations that included two or more sub-recommendations for which there was a response or partial implementation – so these were accepted and partially implemented

✚ *Report on requests for clarifications addressed by the People's Advocate to institutions that remained unanswered*

During 2021, the People's Advocate addressed 2,221 *requests for clarifications* to the public administration bodies, of which 148 or around 6.7% received no response. Below is the reporting indicator for unanswered requests according to the set of indicators used for the periodic reporting the Cross-Sector Public Administration Strategy.

$R_{RIC} = \frac{\text{Number of Requests for Clarifications without a response}}{\text{Total number of requests}} \times 100\%$

$$R_{RIC} = \frac{148 \text{ requests for clarification unanswered}}{2221 \text{ requests for clarifications in total}} * 100 = 6.7 \%$$

For the calculation of this indicator, we only referred to the cases where there was no response from the institutions, regardless of our repeated requests for explanations

As noted, the number of unanswered requests for clarifications marked a slight decrease. In 2019, these unanswered requests accounted for about 8% of the total, in 2019 there was a slight increase to about 9.6%, and in 2021 they declined by around 3%.

Despite the progress in the reduced unanswered requests, the same problem highlighted in previous reports persisted in 2021: we often had to send repeated requests just to obtain a response, and sometimes responses were beyond the legal or a reasonable deadline.

Specifically, during 2021, the People's Advocate sent 857 *repeated requests for clarifications*. In other words, at least 857 requests out of 2,221 in total (about 39% 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. For this problem, we request the intervention of the Assembly in order to have an effective exercise of the mandate given by the Constitution.

➤ *Cooperation in giving opinions/comments on draft legislation*

The People's Advocate contributed both in the external consultation and the legislative process during 2021, by giving concrete opinions and suggestions on several legislative acts in the field of police, prisons, judicial system, children's rights, asylum, border, etc. The most important inputs were given for these pieces of legislation:

- ✓ Draft law "On the internal control services and complaints in the criminal judgements execution system"
- ✓ Draft law "On the national registry on sexual crime offenders";
- ✓ Draft law "On collective lawsuits";
- ✓ Draft law "On the Police Oversight Agency";
- ✓ Draft law "On the status 'child under the care of the Republic";
- ✓ Draft law "On some amendments and additions to Law no. 9062, dated 8.5.2003 "Family Code", as amended;
- ✓ Draft law "On foreigners";
- ✓ Draft law "On asylum";
- ✓ Draft law "On some additions and amendments to Law no. 9695, dated 19.3.2007 "On adoption procedures and the Albanian Adoption Committee", as amended;
- ✓ Draft Decision "On detailed rules on the organization and functioning of penitentiary institutions";
- ✓ Draft Decision "On the approval of the General Regulation of Prisons";
- ✓ Draft Decision "On special rules for the employment of prisoners, working conditions and duration, and labour remuneration";
- ✓ Draft Decision "On the approval of the National Agenda for Children's Rights, 2021-2026".

- ✓ Draft Memorandum of Understanding "On the complaints mechanism for actions by the European Border and Coast Guard Agency in Albania";
- ✓ Draft Manual on Monitoring Gatherings.

Also, representatives from the People's Advocate have participated actively and gave concrete contributions in the hearings at the Assembly, such as the constitutional amendments and the budget law amongst others.

➤ *Cooperation in the framework of EU integration*

The European Union relies and develops on a real commitment to the protection and promotion of human rights, democracy and the rule of law. The guarantee of fundamental rights is one of the basic principles of the European Union system. Human rights, especially with the creation of European Union citizenship, have become an internal part of it. The individual is in the centre, same as in the continental principles of Europe, sanctioned in the preamble of the EU Charter of Human Rights.

Chapter 23 (Judiciary and human rights) is a key chapter in the pre-accession efforts and is of particular importance during the accession negotiations, where precise limitations and important milestones are defined jointly with the European Union. This chapter covers three important areas: *the judicial system, anti-corruption policies and fundamental rights*. The candidate country must ensure *respect for human rights and fundamental rights of EU citizens*, as guaranteed by EU legislation. This field contains a number of conventions, protocols and declarations that the candidate country must integrate in its legal system, ensuring in any case, their effective implementation.

The People's Advocate, as one of the key actors in the national human rights protection system has engaged to the fullest by cooperating with all State structures tasked with the follow-up and implementation of obligations, by providing significant contributions that play an important role in respecting human rights and strengthening the rule of law.

It is worth mentioning the continuous engagement and contribution provided in Chapter 23, since the People's Advocate is one of the members of the working group for this chapter, but also in *Chapter 19 (Social Policies and Employment)* and *Chapter 24 (Justice, Freedom and Security)*. During the reporting period, People's Advocate also offered its support in the drafting and coordination of the Action Plan for the implementation and monitoring of the fulfilment of the EC recommendations identified for Albania in the *political criteria* and *Chapter 23*, and prepared the first input of the Albanian government for the EC Report for Albania 2021 (March 2021)

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 at the Assembly, with the aim of promoting and guaranteeing

comprehensive cooperation between political forces, public institutions and civil society, as well as increasing transparency in decision-making on EU integration issues.

During 2021, the People's Advocate participated and contributed to joint meetings held with the EU, particularly:

- Participation and input at the 13th meeting of the **EU-Albania Stabilisation and Association Subcommittee (JFS)** on 9-10 December 2021. The input focused on:
 - ✓ *Anti-discrimination and protection of vulnerable groups, children's rights, persons with disabilities; LGBTIQ community;*
 - ✓ *Inclusion of Roma and Egyptian communities: conclusions and follow-up of the last Roma workshop;*
 - ✓ *Gender equality: focus on the implementation of the 2021-2030 Gender Equality Strategy and adequate funding; the distribution of human resources to the gender equality mechanism and responsible gender budgeting at the local level;*
 - ✓ *Right to life, prevention of torture and ill-treatment and the prison system (focusing on the implementation of the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment);*
 - ✓ *Effective implementation of the People' Advocate recommendations by public authorities.*

- Participation and input at the 12th meeting of the **Stabilization and Association Committee (SAC)** on 15 February 2022. The input focused on:
 - ✓ *Social protection and inclusion of Roma and Egyptian communities;*
 - ✓ *Gender equality and children's rights.*

5.2 International cooperation

The People's Advocate attaches special importance to the establishment and strengthening of relations with counterpart institutions, organizations and other international human rights networks. In this sense, our institution has significantly improved regional and international cooperation at the bilateral and multilateral level in the field of human rights protection.¹⁷⁹

Due to the situation created by the pandemic, as in the previous year, the People's Advocate participated in many online activities. The 2021 calendar of international activities saw an increase presence of our representatives in various events such as trainings, webinars, work meetings or conferences organized by counterpart offices and international organizations on the protection of human rights.

¹⁷⁹ See detailed information on the international activity of the People's Advocate in the link:

<https://www.avokatipopullit.gov.al/media/manager/website/reports/Bashk%C3%ABpunimi%20nderkombetar%20per%20vtitin%202021.pdf>

It is worth emphasizing the unanimous election of the People's Advocate Ms. Erinda Ballanca as Member of the *Administrative of Ombudsmen and Mediators of La Francophonie (AOMF)* at the General Assembly meeting on 25 November 2021. This organization brings together the independent institutions of Ombudsmen and Mediators of about 50 Francophone countries from the continents of Europe, Africa, America and Oceania.

Also, on 3 December 2021, the People's Advocate Ms. Erinda Ballanca was re-elected member of the steering board of two important international human rights organizations: The European Network of National Human Rights Institutions (ENNHRI) and the Global Alliance of National Human Rights Institutions (GANHRI) for a 3-year term, following her first term in 2018. Meanwhile, the People's Advocate Ms. Erinda Ballanca continues to be the second vice-president of the Association of Ombudsmen of the Mediterranean (AOM).

As a member of the European Network of National Human Rights Institutions (ENNHRI), the People's Advocate has prepared the report related to institutional perspectives on important developments in the country. This report will be published during 2022. It is focused on several main areas such as: the independence and effectiveness of national human rights institutions; the space of civil society and human rights defenders; the system of check and balance in the rule of law; functioning of the justice system; media freedom, pluralism and safety of journalists; corruption; measures against COVID-19 and the medium and long-term implications in the framework of the rule of law and human rights, in addition to social and economic rights. An important innovation in the reporting cycle for 2021 was that, in addition to the reporting of relevant developments, recommendations were formulated to address the identified challenges and shortcomings.

The People's Advocate has continued communication, interaction and close cooperation with the Council of Europe and other organizations that protect the rights of groups in need such as persons with disabilities, minorities, LGBTI, women, children, etc. The institution is also engaged with the European Committee for the Prevention of Inhuman or Degrading Treatment or Punishment of Torture (CPT), the European Commission against Racism and Intolerance (ECRI), the European Union Agency for Fundamental Rights (FRA) and other bodies.

The People's Advocate has also cooperated and interacted with various mechanisms in the UN system, including the Office of the High Commissioner for Human Rights (OHCHR), the Human Rights Council (HRC) and the bodies of other human rights treaties, aiming to strengthen its role in the implementation of the global human rights agenda and the equal guarantee of international standards.

The People's Advocate has had continuous contacts with the EU Delegation in Tirana and representatives of international organizations and institutions operating in Albania, such as the OSCE Presence in Albania, the Office of the Council of Europe in Tirana, the Office of the UN

Permanent Coordinator and UN agencies such as UNDP, UNHCR, UNICEF, UN Women, UNFPA and others.

In the spirit of this cooperation, the People's Advocate with the support of the United Nations Office in Tirana delivered a 2-day training on 14-15 December 2021 on the topic *Capacity building of the staff of the People's Advocate, INSTAT and the Kosovo Ombudsman, in relation to Agenda 2030 and Human Rights*".

In the framework of this cooperation, the Office of the United Nations in Albania and the People's Advocate organized in December 2021 the Annual Conference of the People's Advocate on the theme *Rights of Future Generations and Climate Change*. Meanwhile, cooperation with the UNICEF office in Albania has continued throughout 2021 under the project *"Institutional Empowerment of the People's Advocate Institution - support for the Section for the Protection and Promotion of Children's Rights"*.

5.3 Cooperation in the framework of projects

The People's Advocate continued to implement the *Cooperation Agreement with UNHCR* on monitoring migrant crossing points and strengthening and respecting their rights. The two external experts of the People's Advocate engaged in systematic monitoring at the border crossing points in *Gjirokastër and Kapshticë*, looking at the screening procedures for the irregular migrants, preparing periodic reports with findings on their treatment and recommendations to tackle the identified problems. By end-December 2021, the Cooperation Agreement was renewed for 2022 and it will cover more activities as the donor made available more funds than the previous year.

The People's Advocate continued to implement the EU-funded Justice Programme *"B-Competent Strengthening the Competences of penitentiary staff in Europe"*.¹⁸⁰ The "B-Competent" project, successfully completed on 15.12.2021, aimed to analyse training gaps in prison services by providing a multi-disciplinary skills package for civilian prison staff in 6 countries (Italy, France, Spain, Albania, Montenegro and Greece). This objective was achieved through the creation and development of an innovative cross-border training-of-trainers programme, combined with the dissemination of best practices, awareness raising and practical multilingual tools.

Under this project, the People's Advocate participated in activities such as: *analysis of the lack of training and identification of best practices; creation and development of an e-learning course; publication of multilingual brochures with educational games for civilian prison staff and animated video with case scenarios and practical cases; 6 cross-border ToT workshops in Italy, Albania, Spain, Montenegro, Greece and France, etc.*

¹⁸⁰ Find more information on this project in the link: <https://www.bcompetent.eu/>

It is worth mentioning the *Open Day* by the National Mechanism for the Prevention of Torture (NPM) on 28.06.2021 with the theme "*Respecting the rights of foreign nationals serving the sentence in the Republic of Albania*". The activity aimed at the effective and coherent implementation of EU *acquis* and standards in the treatment of foreign prisoners, through a common conversation and sharing experiences on awareness-raising actions and practical tools.

On 19 July 2021, the People's Advocate in the role of the Mechanism for the Prevention of Torture organized in Tirana the national conference on "*Respecting the rights of foreign prisoners - Improving the competencies of penitentiary staff. Experiences in Albania, Europe and globally*". This conference was organized for the effective and coherent implementation of EU *acquis* and standards for the treatment of foreign prisoners, through an open dialogue, sharing of experiences and addressing the main issues.

Under this same project, a delegation of the People's Advocate (including an external expert) chaired by the Commissioner of the NPM Section Ms. Ermonela Xhafa paid an official visit in Athens, Greece on 1-4 November 2021. The purpose of this visit was to accommodate our interest in looking at the conditions, treatment, needs and complaints of the Albanian citizens in penitentiary institutions, in order to create opportunities for improving their current situation.

Meetings with the Albanian prisoners highlighted some issues like rejection of their requests to continue serving the sentence in Albania, the unaffordability of having defence lawyers (although they were offered lawyers mainly by the Greek ministry), and the unaffordability of communication with their families or other personal services, etc. At the end of this visit, a report was prepared by the external expert.¹⁸¹

The People's Advocate continued to implement the *Cooperation Agreement with UNICEF* which ended on 30 November 2021. In contrast to 2020, increased attention was paid to the impact of measures to prevent the spread of Covid-19 on children's rights. In this regard, our institution conducted 6 (six) inspections in police stations and the penitentiary institution for juveniles – in the context of the legislation on the administration of juvenile criminal justice. The purpose was to check the implementation of recommendations and anti-Covid measures. Under the same agreement, one of the objectives of the Action Plan was social protection. So, our institution conducted 14 inspections in several municipalities to check the activity of competent State institutions part of the integrated child protection system in the implementation of the legislation on the rights and protection of children. Participating in these inspections were representatives of public local authorities responsible for social protection and delivery of dedicated social services to children.

In the framework of the Memorandum of Understanding 2021-2022 between the *People's Advocate* and *Save the Children*, the Section for the Protection and Promotion of Children's Rights is one of the

¹⁸¹ See the report in the link: <https://www.avokatipopullit.gov.al/media/manager/website/reports/REPORT-english.pdf>

beneficiaries of this project in terms of enhancing the knowledge and capacities of the PA/Section on climate change, by promoting the children's participation and consultation in the institutional planning processes.

During 2021, the People's Advocate was selected by the European Union Agency for Fundamental Rights (FRA) to contribute on the situation in Albania in the FRA's annual report on the respect for human rights. The FRA is a European Union institution that provides assistance and expertise on issues related to fundamental human rights and freedoms. This Agency publishes annual reports on human rights issues in the EU member countries, including the countries that have observer status with this Agency, such as Albania – which became part of this report for the first time.

Besides the independent research, the People's Advocate collaborated with about 102 public administration institutions to collect data and information for the 2021 report, concerning efforts to align the domestic legislation to the EU *acquis* in some specific areas such as:

- equality and non-discrimination;
- racism, xenophobia and related intolerance;
- equality and inclusion of Roma;
- asylum, visa, migration, borders and integration;
- information society, privacy and data protection;
- rights of the child;
- access to justice, including the rights of crime victims;
- developments in the implementation of the Convention on the Rights of Persons with Disabilities.

For each of these areas, our institution reported on developments in legislation and policies, and reports or findings from various studies. Besides reporting, for each of the above areas (except for the area on asylum, visa, migration, borders and integration), a promising practice was identified related to policies, actions or measures implemented by public institutions. The selected practices are sustainable and have a concrete and measurable impact. For specific areas such as equality and non-discrimination, the information society and the protection of personal data, the latest case-law was also reported.

Implementation of this project began in September 2021 and is expected to be completed in 2022, with the publication of the final report by the FRA.

The People's Advocate has already become part of the *EC Justice Programme*, a 2-year project named *SERENY* whose implementation kicked off in November 2021. The *SERENY* project entitled "*Strengthening approaches on the prevention of radicalization of young people in prisons and in the Probation Service*" aims to strengthen approaches to the prevention of radicalization of young people (18-29 years) in prisons and the probation service at the European level, according to

international standards and the resolution of the Parliament European of 5 October 2017 on prison systems and conditions (2015/2062(INI)). This project will focus on the penitentiary and probation service staff, and other actors involved (policy-makers and People's Advocate) to ensure that radicalization among young people in custody is effectively addressed to professionals and decision-makers.

During 2021, the People's Advocate was selected as a beneficiary institution of a *Twining Project* with a budget of 300,000 Euro, in the framework of the IPA 2020. The project "*Support to the People's Advocate and the promotion of human rights in Albania*" has as its main object to contribute to the democratization of society, the promotion of the principles of the rule of law, human rights and good governance, by enhancing the efficient control on the legality of the activity of public administration bodies, building the capacities of the People's Advocate in the areas of human rights, protection and promotion of fundamental freedoms, in accordance with EU legislation and international obligations. In the context of procedures under twinning projects, the People's Advocate was selected by the Austrian Ombudsman as a partner for the implementation of this project; the agreement is expected to be signed by mid-2022.

5.4 Public appearances of People's Advocate in fulfilling its promoting mandate

(Online media, mainstream media, TV interviews, increased audience and care on official social media and official website, sections and subsections, smartphone app)

In the framework of its mandate to promote human rights, the People's Advocate employs an open and comprehensive policy for information and visibility of its activities.

The People's Advocate activity is promoted in a multifaceted and synchronized way, through several channels: publication of events and activities in the news section of the institution's official website, the smartphone app "People's Advocate", social networks of the institution, or interested media or media addressed by the institution itself.

The official website of the People' Advocate www.avokatipopullit.gov.al is kept updated with information considered important for the coverage and visibility of our activities.

In the section "Media Centre", we constantly publish news, developments, statistics and updates on our work.

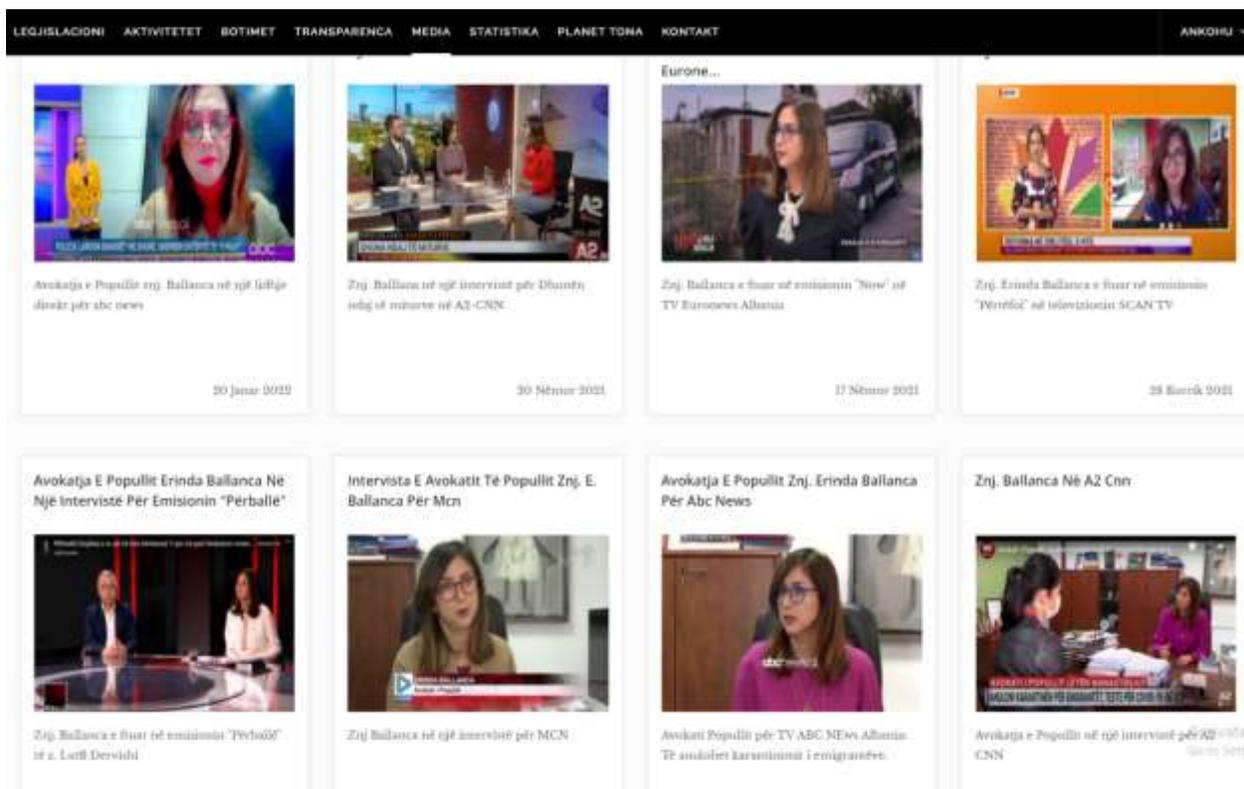
Throughout 2021, more than **145** news and information posts were published on this page. Also, the multimedia section provides videos of interviews by the executives to national and local media, and features of special interest to the institution.

The People's Advocate delivered **69** public stand on a wide range of issues that include reactions to violence against women, immigrants, persons of the LGBTI community, reactions to encourage

the compliance with the rights of journalists, gatherings, housing, health service, living minimum, etc.

During the reporting period, the People's Advocate participated in **57** online or face-to-face conferences on human rights, in which the Head of our institution addressed a speech, message or position.

The Head of the institution, Ms. Erinda Ballanca has been invited and delivered over **36** interviews on main TV channels such as Top Channel (27 January, 19 April), Euronews Albania (20 April, 17 November), Voice of America (16 April), RTSH (6 July), A2 CNN (20 and 22 April, 20 November 20), etc.

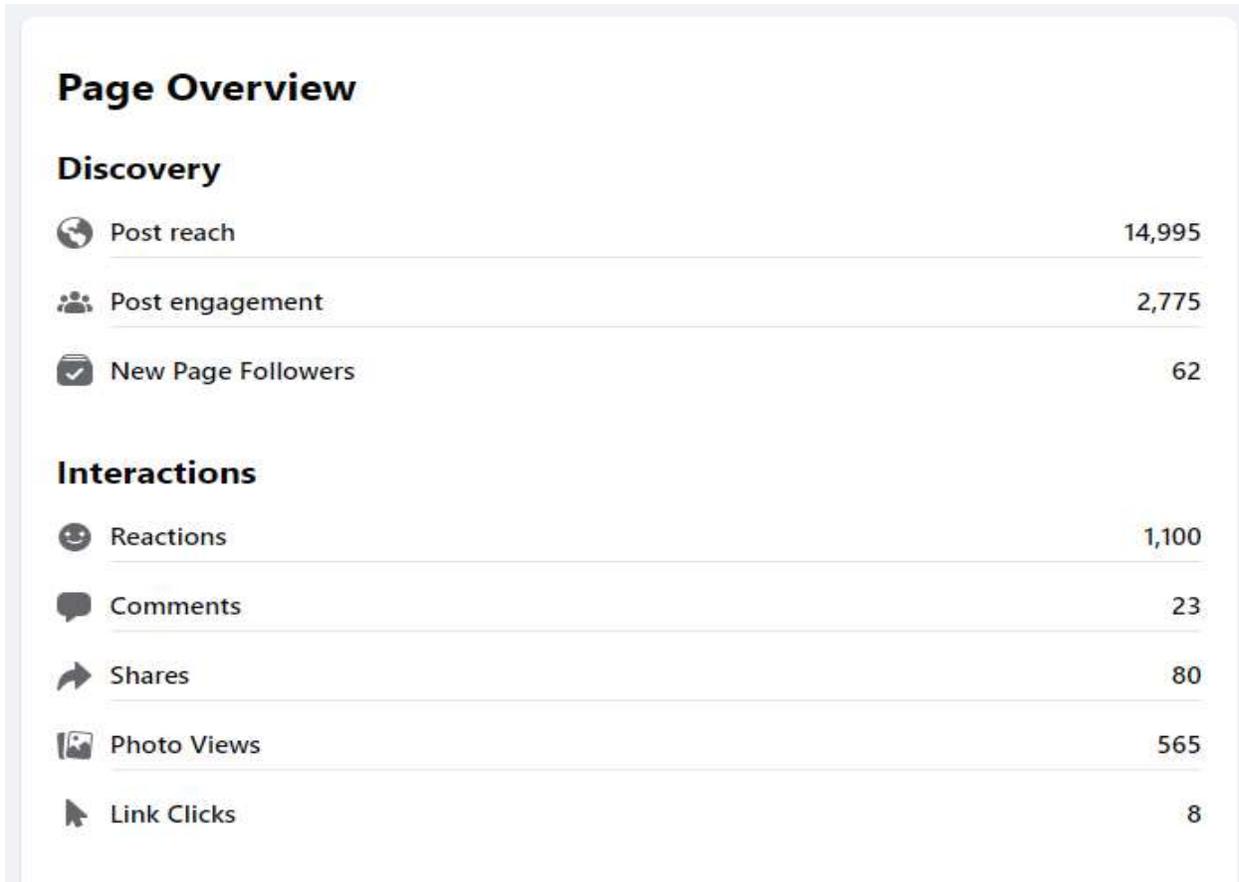


Our Facebook page has extended its span and impact throughout 2021. It should be noted that the page has increased its audience tenfold from **800-1000** followers in 2017 to nearly **9,000** by the end of 2021, an increase of an average of **1,800** followers per year.

Increasing audience of the People's Advocate Facebook page took place organically, without any sponsorship and with zero expenses in financial and human resources.

Also, each section has an additional sub-page on Facebook and each has developed its own specific audience through the coverage of our activities.

The Facebook page had on average 20-30 posts, with a total monthly reach of nearly **15,000** and with nearly **2,770** audience engagements and over **1,100** reactions to published posts.



The screenshot displays the 'Page Overview' section of a Facebook page. It is divided into two main categories: 'Discovery' and 'Interactions'. Under 'Discovery', there are three metrics: 'Post reach' (14,995), 'Post engagement' (2,775), and 'New Page Followers' (62). Under 'Interactions', there are five metrics: 'Reactions' (1,100), 'Comments' (23), 'Shares' (80), 'Photo Views' (565), and 'Link Clicks' (8). Each metric is accompanied by a small icon representing the action.

Page Overview	
Discovery	
 Post reach	14,995
 Post engagement	2,775
 New Page Followers	62
Interactions	
 Reactions	1,100
 Comments	23
 Shares	80
 Photo Views	565
 Link Clicks	8

The arrival of the Ombudsman's message to the public through multiple means, where social networks occupy an important place, is of special importance, therefore our team has paid special attention to the promotional work in this direction.

In total, including the number of followers and engagements of 5 other subpages of the Ombudsman's Facebook sections, the total number of engaged followers approaches 20,000.

Our institution has paid particular importance to the promotion activities to ensure the maximum reach of the People's Advocate public messages through multiple means with social networks playing an important role.

The total number of followers is around **20,000**, including the **5** subpages on the Facebook subpages.

CHAPTER 6

Support services

6.1 Administrative and Human Resources Management

It is widely accepted that the management of human resources plays an essential role in the development of a country and, in particular, in the implementation of important strategic activities by the public administration. Human Resource Management is an important part of the management process function. The selection, training and evaluation of the institution's units and structures is an important and strategic tool that helps create a sustainable competitive advantage of the institution and adds value to it. This means, first of all, the continuous improvement of the civil service system, by fostering the principle of merit-based recruitment, increasing mobility and career development within the civil service, and improving the training system.

In this context, administration employees or civil servants are considered as part of a well-prepared and professional corpus who have been recruited to serve the public interest and be responsible for actions taken in the interest of citizens.

The People's Advocate, as a national human rights protection institution, has devoted and devotes essential importance to the human resource management and strengthening and continuous training, in order to exercise its constitutional mandate on the protection and respect of human rights.

This, also due to the fact that the People's Advocate must be supported in its activity by human and financial resources to enable it to reach the objectives and goals in full accordance with the Paris Principles and Venice Principles, which emphasize the need and a comprehensive approach to strengthen the capacities of national human rights institutions in dealing with cases of human rights violations.

It is these principles that allow a national institution for the protection and respect of human rights to adapt the structure to its priorities, even set up *ad hoc* structures having an organizational autonomy in terms of structure and manner of operation.

In order to improve the definition of the areas of responsibility and specific rights that are covered by the relevant sections of the institution, the People's Advocate approved Order no. 154, dated 18.10.2021 "On the definition of the area of responsibility and specific rights to be covered by the assistant commissioners of the sections at the People's Advocate Institution" which includes some new areas which should be in the attention of the institution as part of its broad mandate. This includes issues and rights related to: *artificial intelligence, rights of future generations, protection of human rights defenders, right to marriage, family, etc.*

Pursuant to Article 33/1, paragraph 4 of the Law no. 8454, dated 04.02.1999 "On the People's Advocate", our institution launched the competition for 2 (two) vacancies for Commissioner in December 2021, specifically: the *Commissioner for the Section for the Protection and Promotion of Children's Rights*; *Commissioner for the Section of the National Mechanism for the Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment*. Following the evaluation of the eligibility and legal criteria (including the interview), the *Ad Hoc* Commission, the Head of People's Advocate Ms. Erinda Ballanca forwarded to the Assembly the list of candidates for the above positions, on 04.02.2022.¹⁸².

We note that during 2021, our institution announced several vacancies at the People's Advocate (due to resignations, departure to other position in the public administration or suspended status for various reasons) in line with the legislation on recruitment in the civil service. Let us not forget that this legislation is designed to support the career advancement of employees and encourages transfers within the civil service, and this imposes the obligation to respect the lengthy procedural deadlines set therein.

In the framework of the presentation of the budget requests for 2022 to the Ministry of Finance and Economy, the People's Advocate requested the approval of funds for 3 (three) employees as assistant commissioners, providing the relevant arguments. These requests relied on our limited human resources because no additional human resources had been approved since 2016 – despite our continuous requests.

The discussions at the parliamentary Committee on Public Administration and Human Rights Committee on budget issues (November 2021) concluded that it was impossible to provide funds for 3 (three) new employees. At this hearing, our representatives argued that it is entirely possible and necessary to approve at least one assistant commissioner. This request found the understanding of the Committee members and the representatives of the Ministry of Finance and Economy present at the hearing.

The adopted Law no. 115/2021, "On the 2022 budget" established that the total staff of our institution is 57 (fifty-seven) in 2022 from 56 (fifty-six) in 2021. This was reflected also in the organizational set-up of our institution.

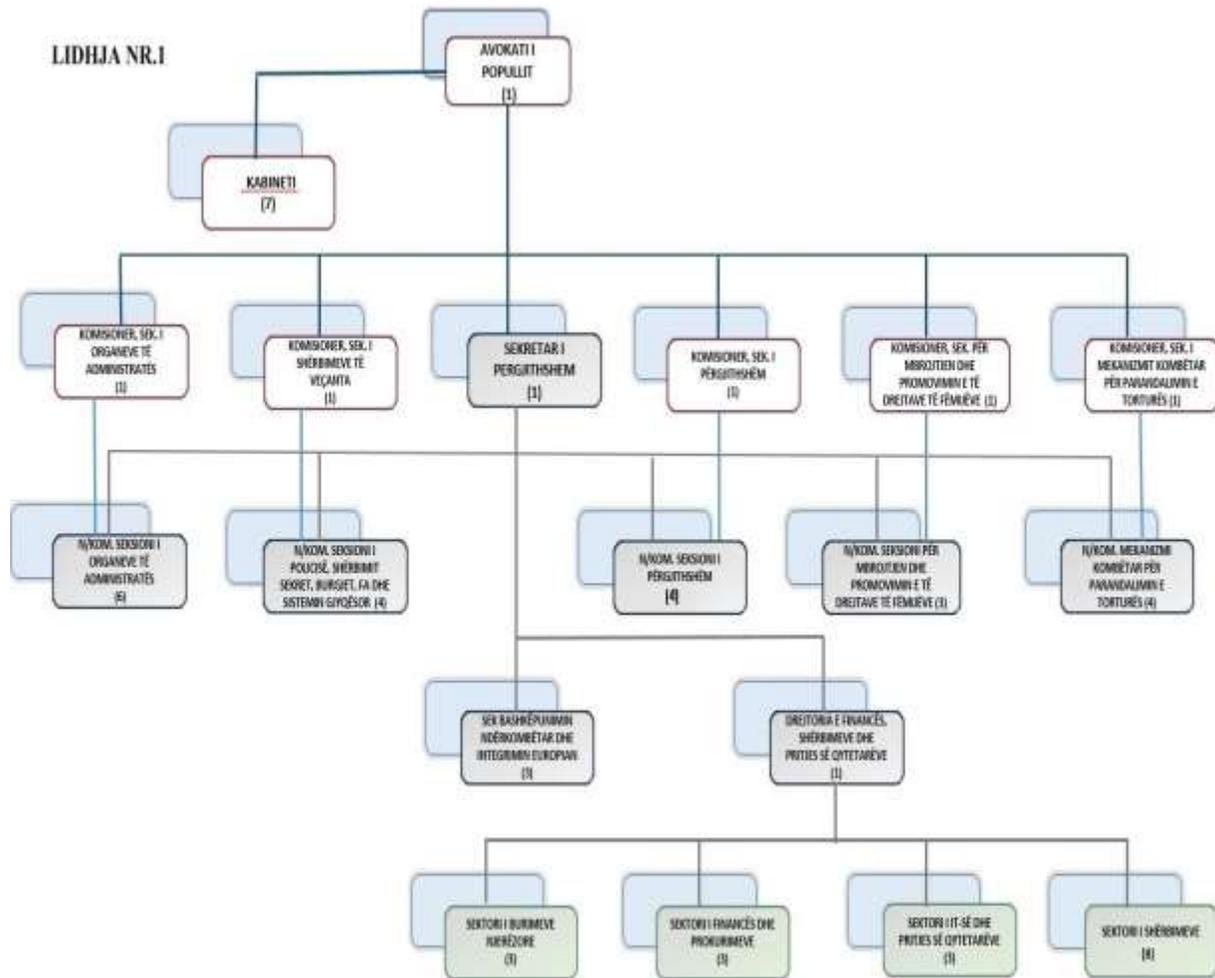
As previously informed, in cooperation with the local government, the People's Advocate opened regional offices in the cities of Shkodra, Vlora, Berat, Saranda, Kukes, Pogradec and Dropull. These offices are fully operational and facilitate the communication of the citizens with our institution. An indicator that shows the effectiveness of the regional offices and the increased public trust in them, is the number of complaints filed by citizens with these regional offices, and their follow-up and proper addressing by our Institution.

¹⁸² Official letter no. 57 dated 04.04.2022.

Based on the agreement signed with UNHCR on monitoring the operations involving emigrants at the border crossing points, 2 (two) full-time external experts supports the work of the NPM Section. On the other hand, the agreement with UNICEF enabled the continuation of the work of 2 other external experts who support the Section for the Protection and Promotion of Children's Rights.

For 2021, the organization set-up approved by the Internal Order no. 42, dated 18.02.2020 "On some amendments to Order no. 252, dated 22.11.2018 'On the approval of the structure, organization and categorization of the work positions at the People's Advocate institution" as amended, is presented as follows:

Organigramme



Structure

Function	Number of staff (56)	Category/Class
People's Advocate (1)		
People's Advocate	1	Law no. 8454, dated 04.02.1999, as amended
Cabinet (7)		
Chief of Cabinet	1	DCM no. 187, dated 08.03.2017, as amended
Advisor	5	I-b
Secretary	1	DCM no. 187, dated 08.03.2017, as amended
Secretary-General (1)		
Secretary-General	1	I-a
Section for the central and local administration bodies and third parties acting on their behalf (7)		
Commissioner	1	Law no. 8454, dated 4.2.1999, as amended
Assistant Commissioner	3 3	II-a II-b
Section for police, secret service, prisons, Armed Forces and judicial power (5)		
Commissioner	1	Law no. 8454, dated 4.2.1999, as amended
Assistant Commissioner	2 2	II-a b II-
General Section (5)		
Commissioner	1	Law no. 8454, dated 4.2.1999, as amended
Assistant Commissioner	3 1	II-a II-b
Section for the protection and promotion of children's rights (4)		
Commissioner	1	Law no. 8454, dated 4.2.1999, as amended
Assistant Commissioner	2 1	II-a b II-
Mechanism for prevention of torture, cruel, inhumane or degrading treatment or punishment (5)		
Commissioner	1	Law no. 8454, dated 4.2.1999, as amended

Assistant Commissioner	2	II-a
	2	II-b
Directorate of Finance, Services and Reception of Citizens (18)		
Director	1	II-b
Human Resources Unit (3)		
Head of Unit	1	III-a
HR specialist	1	III-b
Protocol/Archive specialist	1	III-b
Services Unit (8)		
Head of Unit	1	III-a
Archivist	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
Finance and Procurement Unit (3)		
Head of Unit	1	III-a
Finance specialist	1	III-b
Procurement specialist	1	III-b
IT and Citizens Reception Unit (3)		
Head of Unit	1	III-a
Specialist for services to citizens	2	III-b
Unit for International Cooperation and European Integration (3)		
Head of Unit	1	III-a
Specialist	2	III-b

6.2 Overview of income and expenses

2021 budget execution

In support of the Law no. 137/2020, dated 16.11.2020, "On the State Budget for 2021", 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. 4, dated 25.01.2021 "On the Implementation of the 2021 Budget", as amended, the performance of budget products for the People's Advocate, according to the approved budget program for 2021, 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) 2021-2023 process and aims to achieve the outputs and objectives determined and approved in the MTBP (2021-2023).

02020 Factual expenses Report according to items

By Law no. 137/2020, dated 16.11.2020, "On the State Budget of 2021", 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	86,000,000		86,000,000	82,349,911
601	Social and health insurance	12,500,000		12,500,000	12,201,295
602	Goods and services	15,400,000		15,400,000	14,613,532
605	Foreign current transfers	1,600,000	10,000	1,610,000	1,607,936
606	Transf. for household budgets	500,000	140,000	640,000	292,461
231	Investments	3,000,000		3,000,000	2,974,920
	TOTAL	119,000,000	150,000	119,150,000	114,040,055

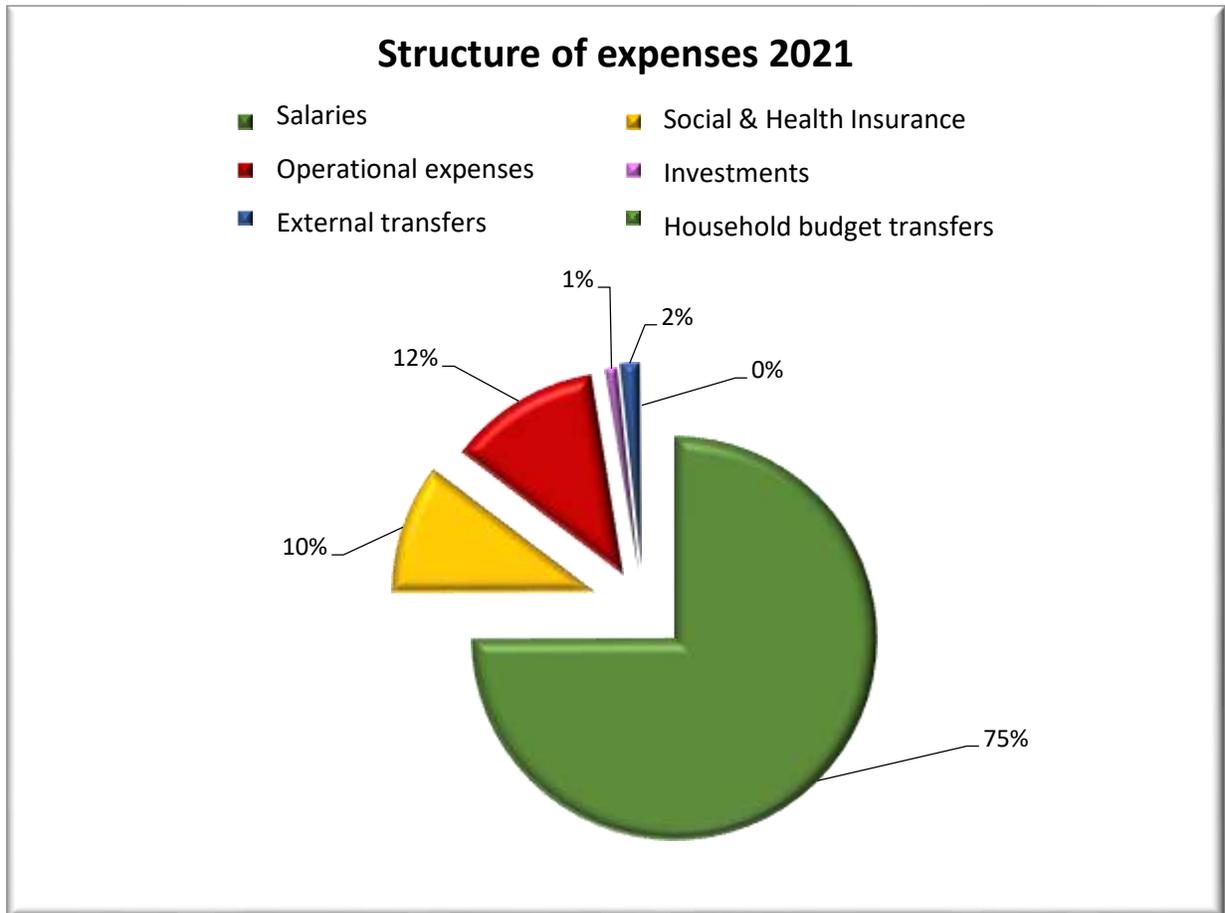
2021 Annual Expenses Report

Table no. 2

No.	Denomination	Changed Plan	Factual	Difference	Realization in %
1	Salaries	86,000,000	82,349,911	3,650,089	95.76
2	Social and health insurance	12,500,000	12,201,295	298,705	97.61

3	Goods and services	15,400,000	14,613,532	786,468	94.89
4	Foreign current transfers	1,610,000	1,607,936	2,064	99.87
5	Transf. for household budgets	640,000	292,461	347,539	45.69
6	Investments	3,000,000	2,974,920	25,080	99.16
	Total	119,150,000	114,040,055	5,109,945	95.71

As mentioned below, the difference of non-realizations (4.29%) of the 2021 budget is mostly related to the *salaries and social security* which come due to the non-completion of the organic structures, taking into account the procedures required and the time limits to be respected for the recruitment of staff under the civil service law. Also, even in item 602 (goods and services) we have a difference in non-realization due to the pandemic situation which made it impossible to deliver many planned activities or conduct activities without allocated financial costs (online activities), including international activities.



1-Staff Expenses

The realization of the salary fund reflects the structure and organic, internal and external movements. This fund allocated for 2021 to cover staff salary expenses was 86,000,000 ALL, while the realization is 82,349,911 ALL or 95.76% of the budget; also, social and health insurance was planned to 12,500,000 ALL, while the realization is 12,201,295 ALL or 97.61%.

Both items together, staff salaries and social and health insurance (600+601) for 2021 have been realized to the extent of 95.99% of the budget. During 2021, the average number of employees was 54.25 employees out of 56 employees, which was the limit approved by the aforementioned law. The non-realization of this expenditure item is due to the non-filling of the organic structures as a result of the vacancies created at the end of 2020 and during 2021 from the movement of employees. The number of employees approved by law for 2021 has not been filled in all its component structures during these periods.

There were vacancies in the first four months:

- *1 Assistant Commissioner in the Section for central administration bodies, local government and third parties acting on their behalf for 3-4 months;*

- 1 Head of Services Unit for two months;
- 1 Finance and Procurement Unit specialist for one month;
- 1 specialist at International Cooperation and European Integration Unit, for three months.

During the last four months, these vacancies arised:

- 1 Advisor for the months;
- 1 Assistant Commissioner in the Section for central administration bodies, local government and third parties acting on their behalf for three months;
- 1 specialist at International Cooperation and European Integration Unit, for one month.

No.	Year	Approved					
		600-601	602-606	231	Number of staff		Total
		Salaries & insurance	Operational expenses	Investments	Assistant Commissioner	Sum	
1	2014	75,500	16,000	4,000	21	50	95,500
2	2015	75,500	16,000	4,000	21	51	95,500
3	2016	84,500	17,000	4,000	21	55	105,500
4	2017	84,500	18,000	4,000	21	56	106,500
5	2018	94,500	17,500	4,000	21	56	116,000
6	2019	104,500	18,600	2,000	21	56	125,100
7	2020	98,500	17,000	1,000	21	56	116,500
8	2021	98,500	17,500	3,000	21	56	119,000
9	2022	102,500	22,700	4,000	22	57	129,200

2.- Expenses for Goods and Other Services

Budget allocated for expenditure on goods and services (item 602) for the period January - December 2021 was 15,400,000 ALL while the realization is 14,613,532 ALL or 94.89%.

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, meals inside and outside the country, expenses for construction maintenance, expenses for maintenance of equipment and technical equipment, expenses for receiving and escorting foreigners, as well as expenses for taxes paid.

Budget for foreign current transfers (item 605) for 2021 1,600,000 ALL, as amended by letter no. 3137/1 dated 17.02.2021, "Transfer of funds for the year 2021" in 1,610,000 ALL while the realization is 1,607,936 ALL or 99.87% of the amended budget.

In 2021, 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	Currency	Quota over years						
			Amount						
			2015	2016	2017	2018	2019	2020	2021
1.	<i>Association of Mediterranean Ombudsman (AOM)</i>	Euro	750	750	750	750	1,000	1,000	1,000
2.	<i>Association des Ombudsmans et Mediateurs de la Francophonie (AOMF)</i>	Euro	650	650	750	900	900	900	900
3.	<i>European Network of National Human Rights Institutions (ENNHRI)</i>	Euro	3,000	3,000	3,000	4,000	4,000	4,000	4,000
4.	<i>European Network of Ombudspersons for Children (ENOC).</i>	Euro	0	1,100	1,100	1,100	1,100	1,100	1,100
5.	<i>European Ombudsman Institute (EOI)</i>	Euro	350	350	350	350	350	350	350
6.	<i>Global Alliance of National Human Rights Institutions (GANHRI)</i>	CHF	5,000	5,000	5,000	5,000	5,000	5,000	5,000
7.	<i>International Ombudsman Institute (IOI)</i>	Euro	750	750	750	750	750	750	750

The fund for budget transfers for families and individuals (item 606) for the period January - December 2021, was 500,000 ALL, as amended with documents no. 3137/1, dated 17.02.2021, "Transfer of funds for the year 2021", as well as "The details of the special fund for the year 2021

are sent" no. 1381/31, dated 17.02.2021 in 640,000 ALL, while the realization is 292,461 ALL or 45.69% of the amended budget.

3.- Investment expenses

State budget funds allocated are 3,000,000 ALL and realization is 2,975,000 ALL.

in thousand ALL

Project	Project Code	Plan	Factual	%
Purchase of computer equipment	M660001	2,372	2,372	100
Purchase of air conditioners	M660001	108	108	100
Purchase of office furniture	M660001	520	495	95.17

Purchase of computer equipment

This item was realized in the amount *2,372,160 ALL or 100%*.

Purchase of air conditioners

This item was realized in the amount *108,000 ALL or 100%*.

Purchase of office furniture

This item was realized in the amount *494,760 ALL, or 95.17%*.

CHAPTER 7

Figures and facts about complaints and their handling

A special place in the annual report of the activity of the People's Advocate is taken by the reflection of summary statistics, which gives a more concise overview of the institution's one-year work. Albanian citizens, foreign travellers, stateless persons, civil society organizations have been given the opportunity to address cases/complaints of violation of fundamental rights and freedoms in any possible form that facilitates their access to the institution, specifically: by physical addressing our central office in Tirana, near 7 regional offices located in the cities of Berat, Dropulli, Kukes, Pogradec, Saranda, Shkodra and Vlora, as well as through other means of communication such as e-mail, mobile phone application, official website of the institution, postal service, social networks, telephone, etc.

Thus, in 2021, the People's Advocate handled a total of **5837** cases/requests. Specifically:

- 1,170 cases found to be complaints "within the jurisdiction and competence" of the PA;
- 460 cases reviewed ex officio by PA based on indications from the media, social networks, investigative shows, etc. ;
- 4188 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;
- 19 cases were found to be outside the competence of the AP institution.

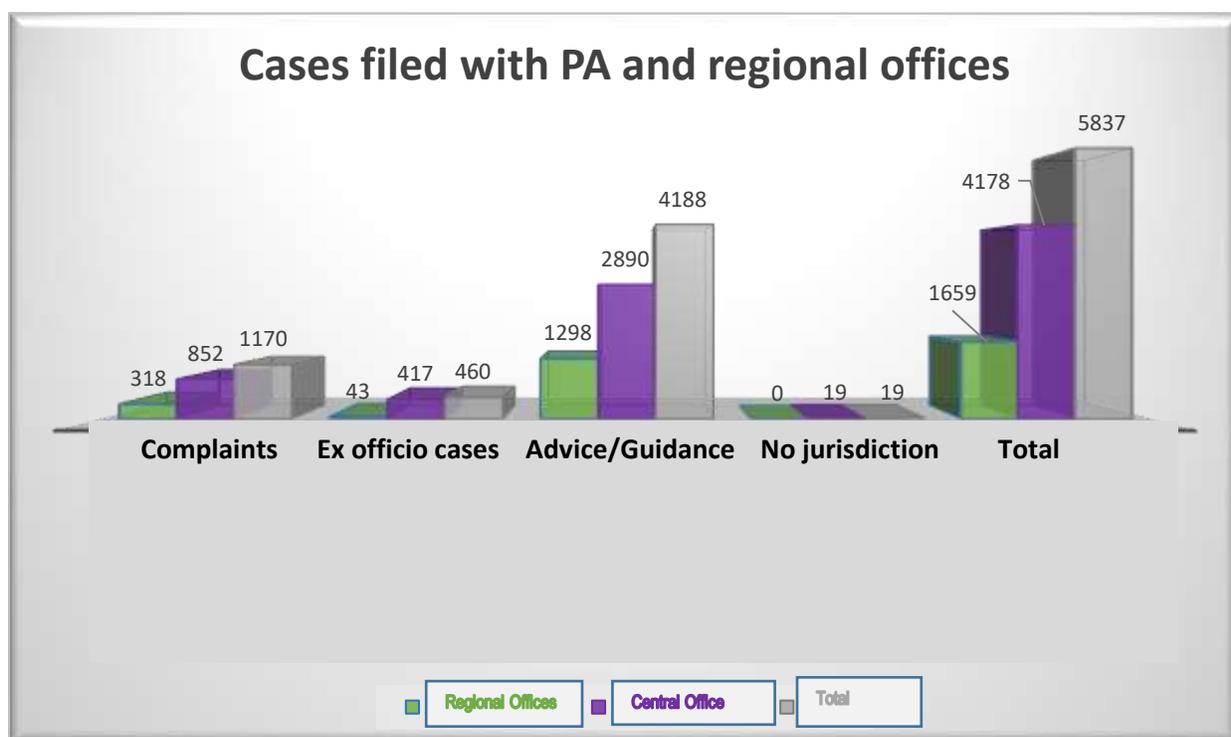


Figure 3. Cases filed and handled by PA and its 7 Regional Offices.

Compared to previous years, the People's Advocate reached the highest number of cases ever.

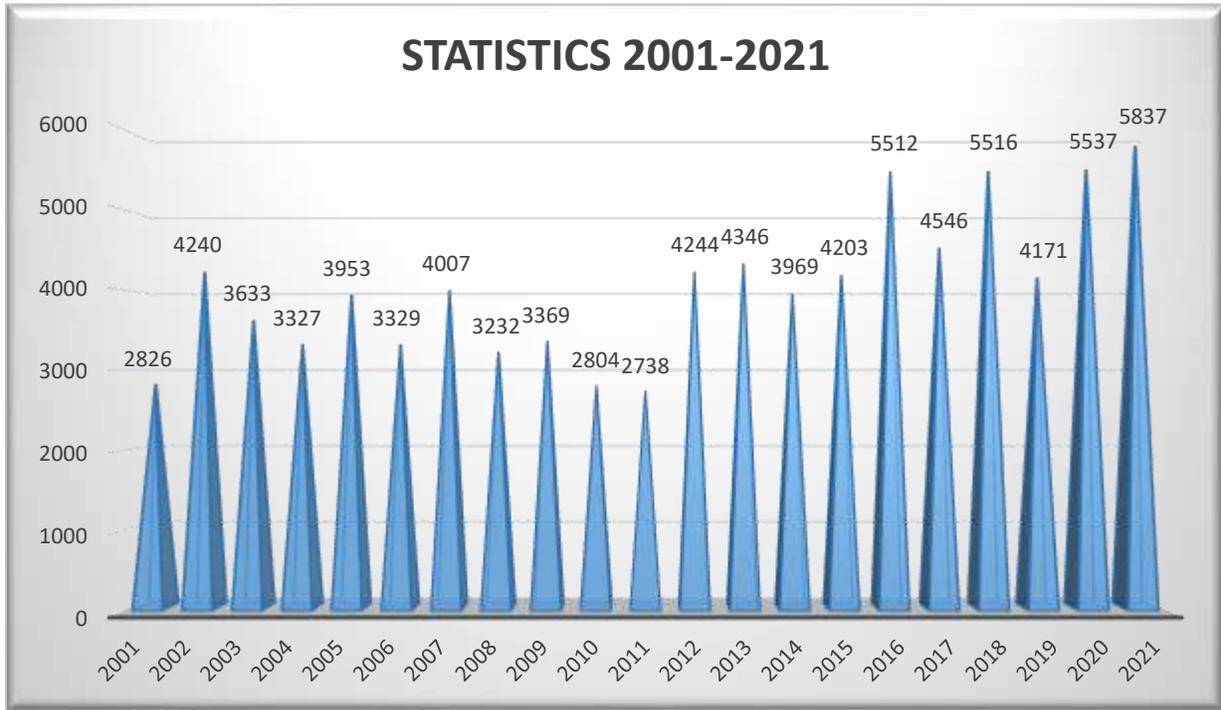


Figure 4. Cases reviewed by the People's Advocate over the years.

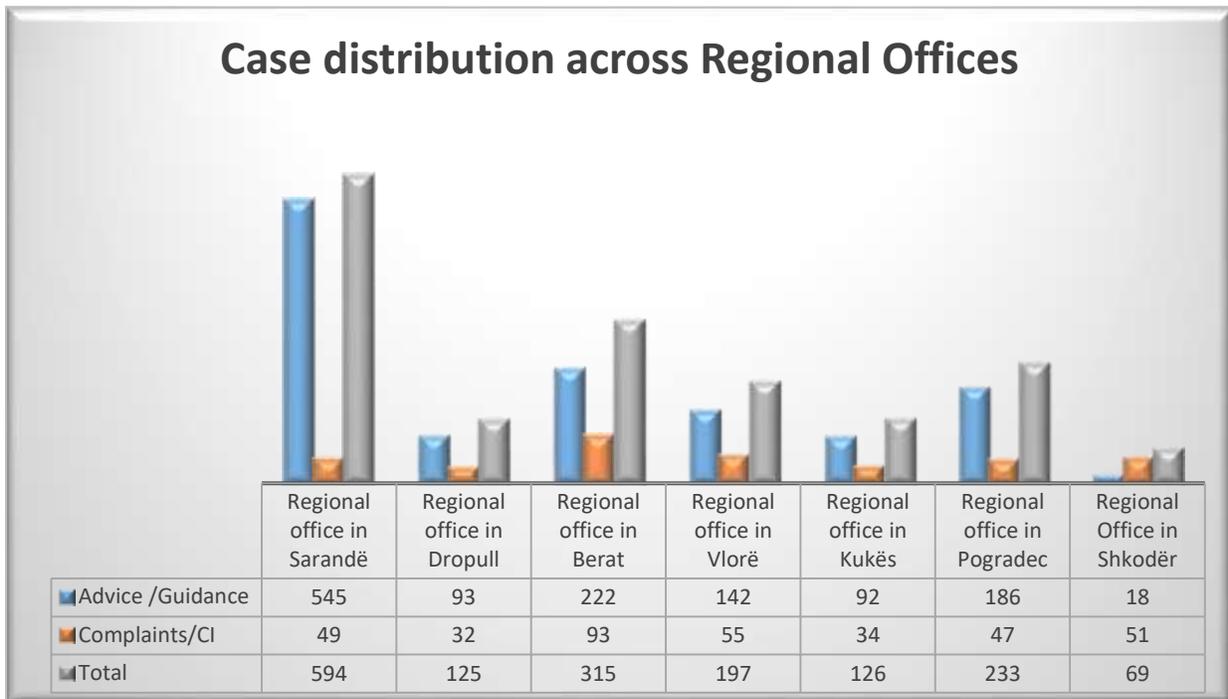


Figure 5. Distribution of complaints/advice and ex officio cases in the 7 regional offices for 2021.

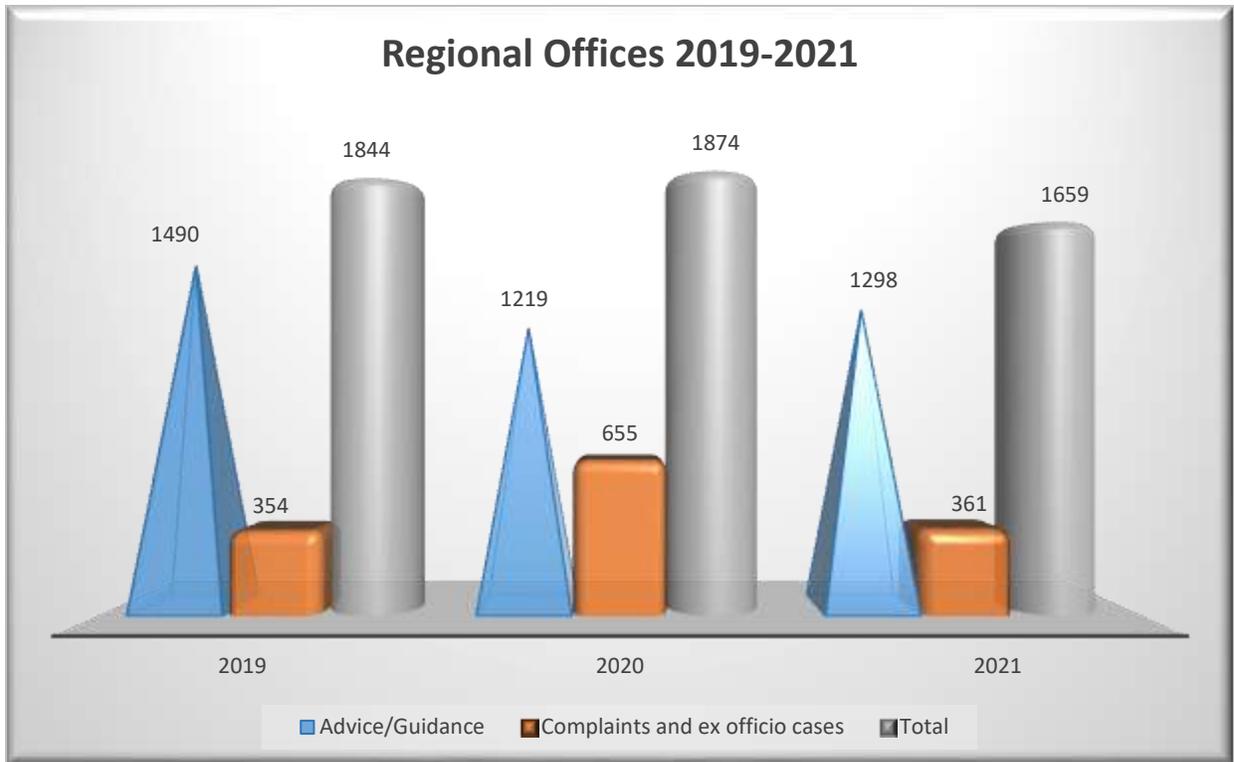


Figure 6. Statistics of regional offices in 2019-2021.

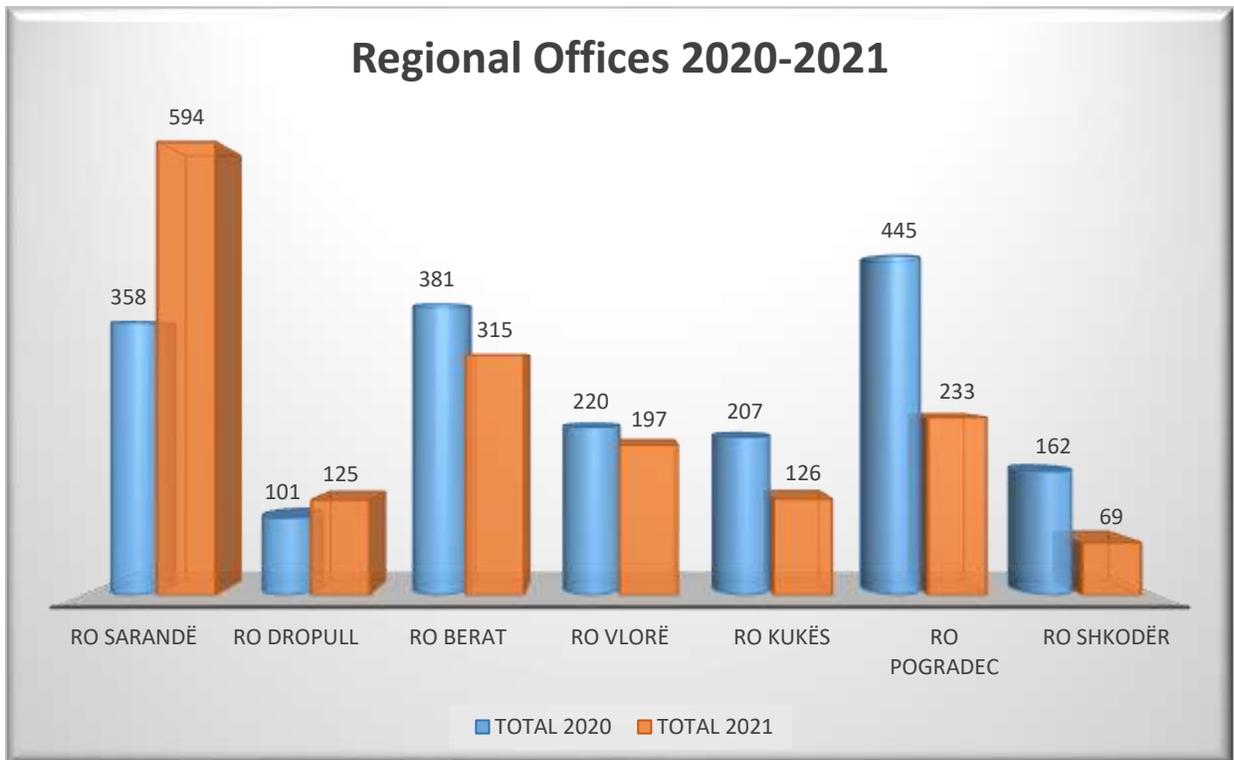


Figure 7. Cases filed with regional offices in 2020-2021.

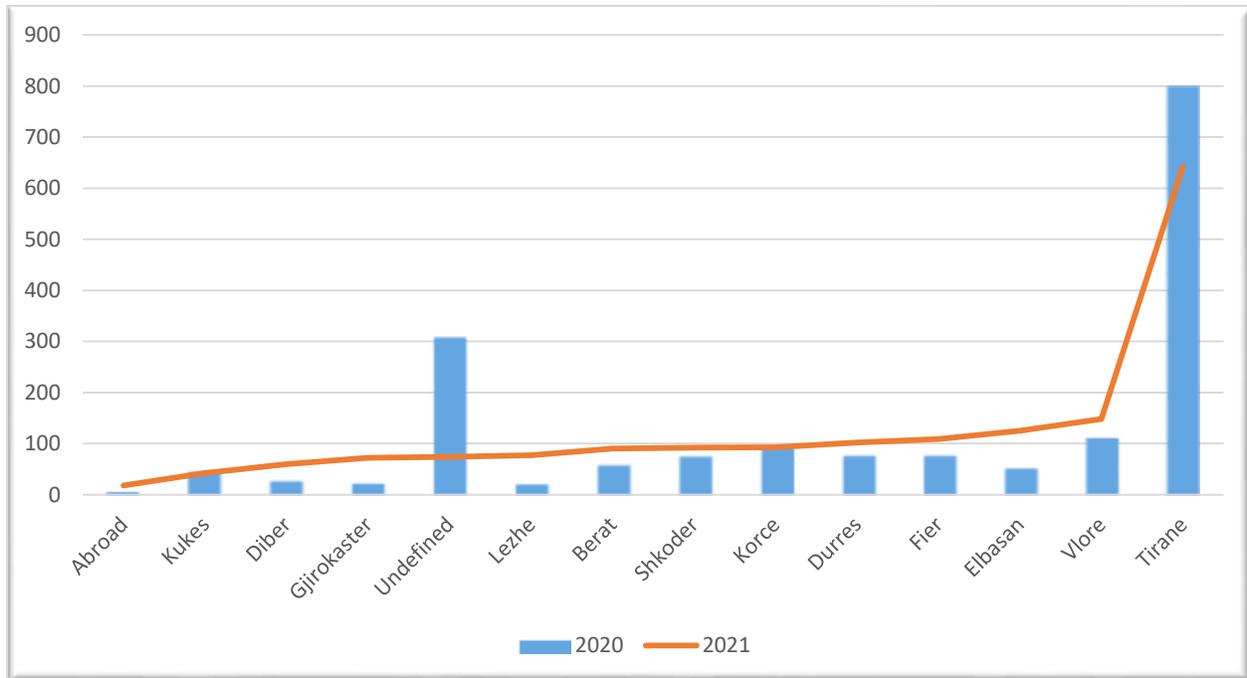


Figure 10. Distribution of cases reviewed by PA in 2020 and 2021, by city.

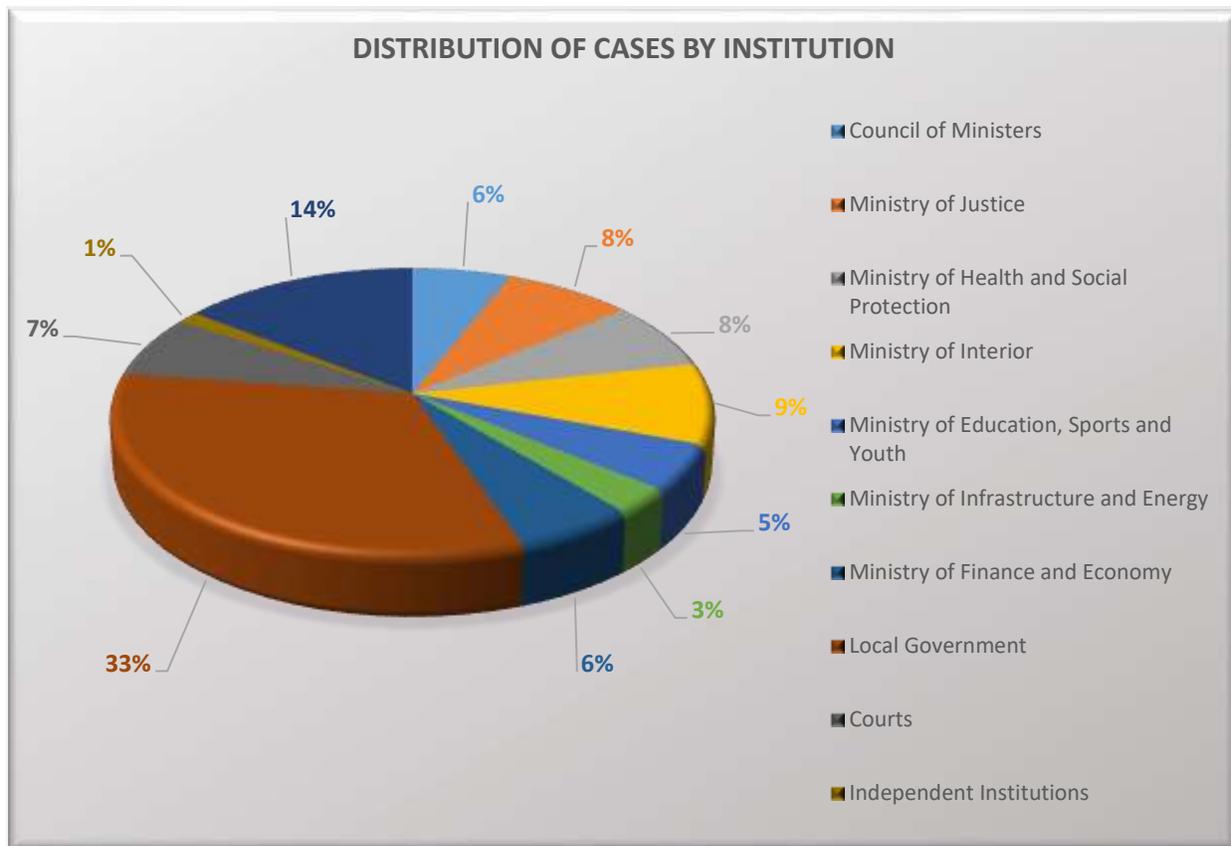


Figure 11. Distribution of cases according to institutions responsible for violations.



Figure 12. Cases registered and handled by PA according to field of law and gender.

In 2021, the People's Advocate completed the administrative investigation for 1933 cases, including 40% cases filed in 2021 and 60% of the cases carried over for years.

Here are the results for these cases:

- In 8% of cases, the administrative investigation was completed where the violations were addressed through recommendations;
- 43% of cases ended in favour of complainants, addressing the violations found during the administrative investigation without the need for intervention with a recommendation;
- 26% of cases during the administrative investigation resulted as unfounded complaints;
- In 8% of cases, the investigation was suspended as a result of the complainants giving up;
- 6% of the cases were found to be outside the PA jurisdiction;
- 9% of the cases were found to be out of PA jurisdiction.

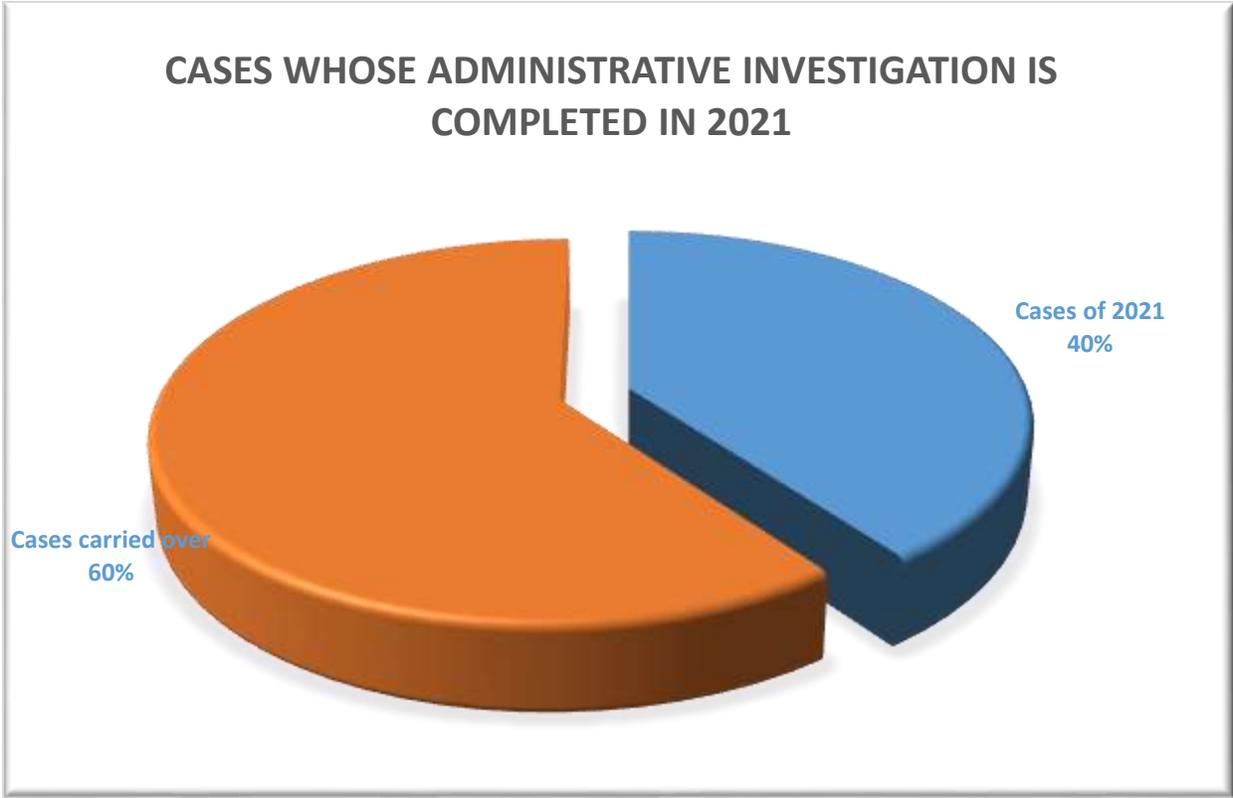


Figure 13. Cases for which the administrative investigation is completed.

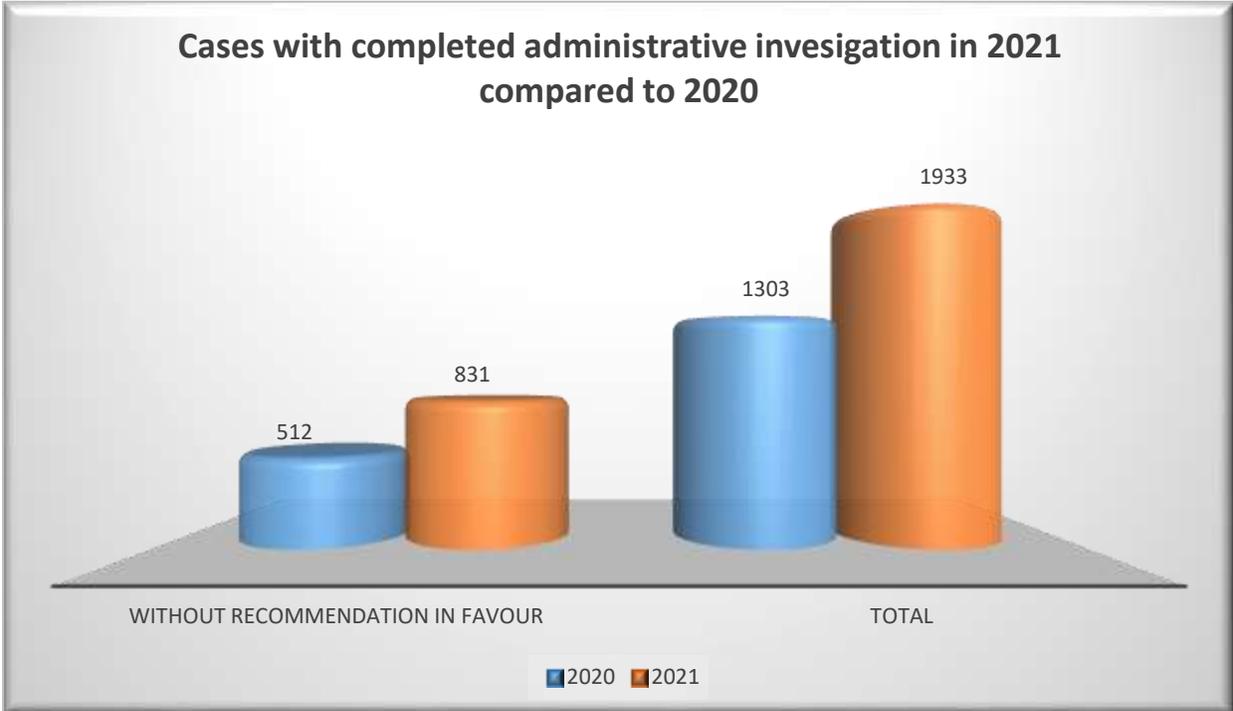


Figure 14. Number of cases resolved without recommendation in 2020 and 2021.

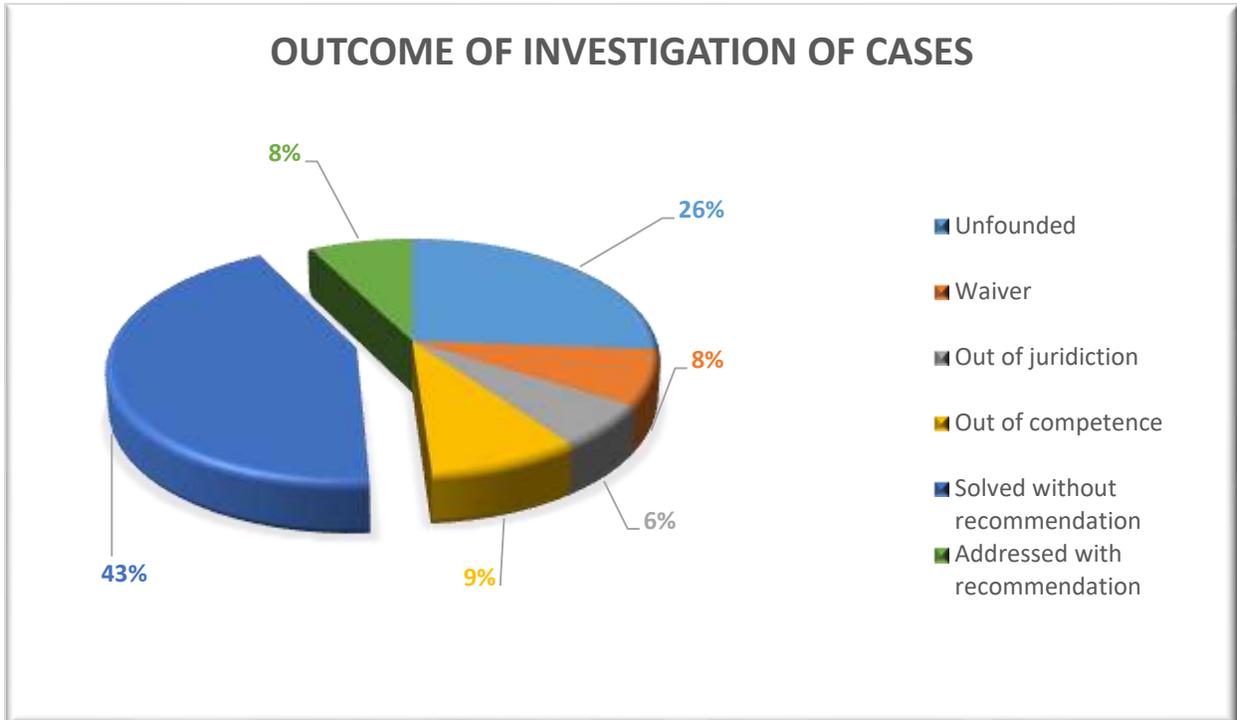


Figure 15. Outcome of the administrative investigation of cases.

In 2021, from the daily monitoring of media services in the Republic of Albania to identify cases of violation of the right, the People's Advocate has handled 460 cases ex officio.

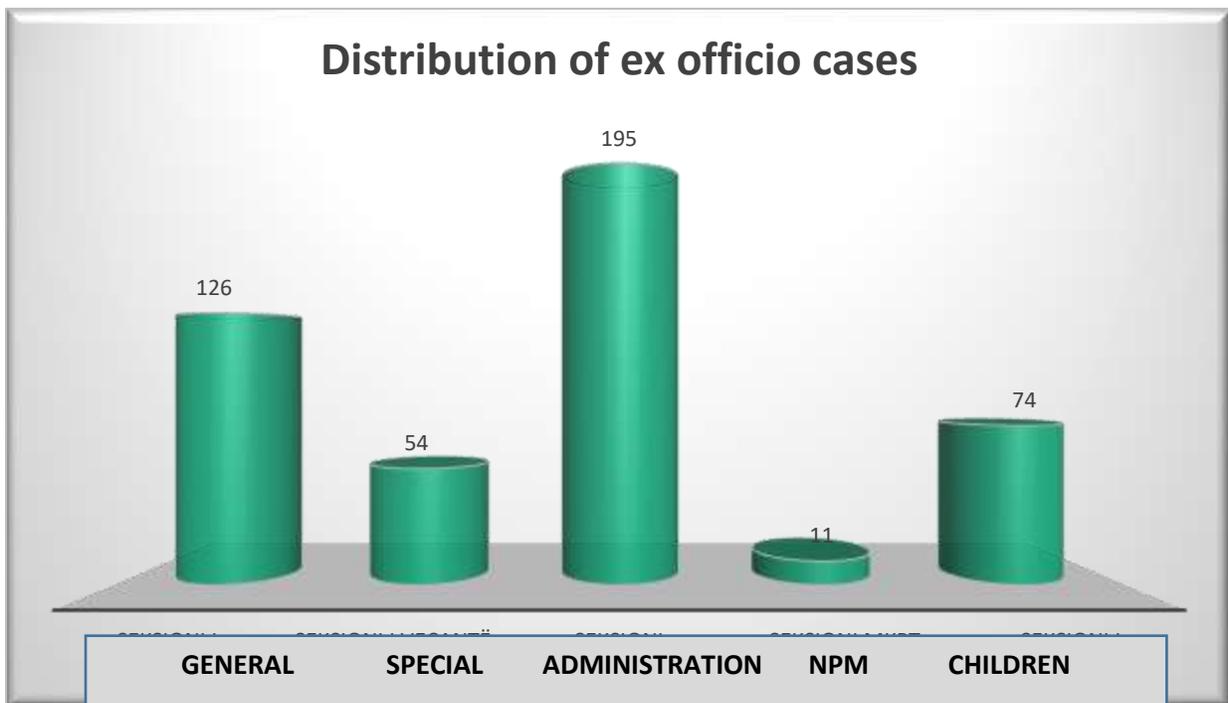


Figure 16. Ex officio cases handled by AP Sections.

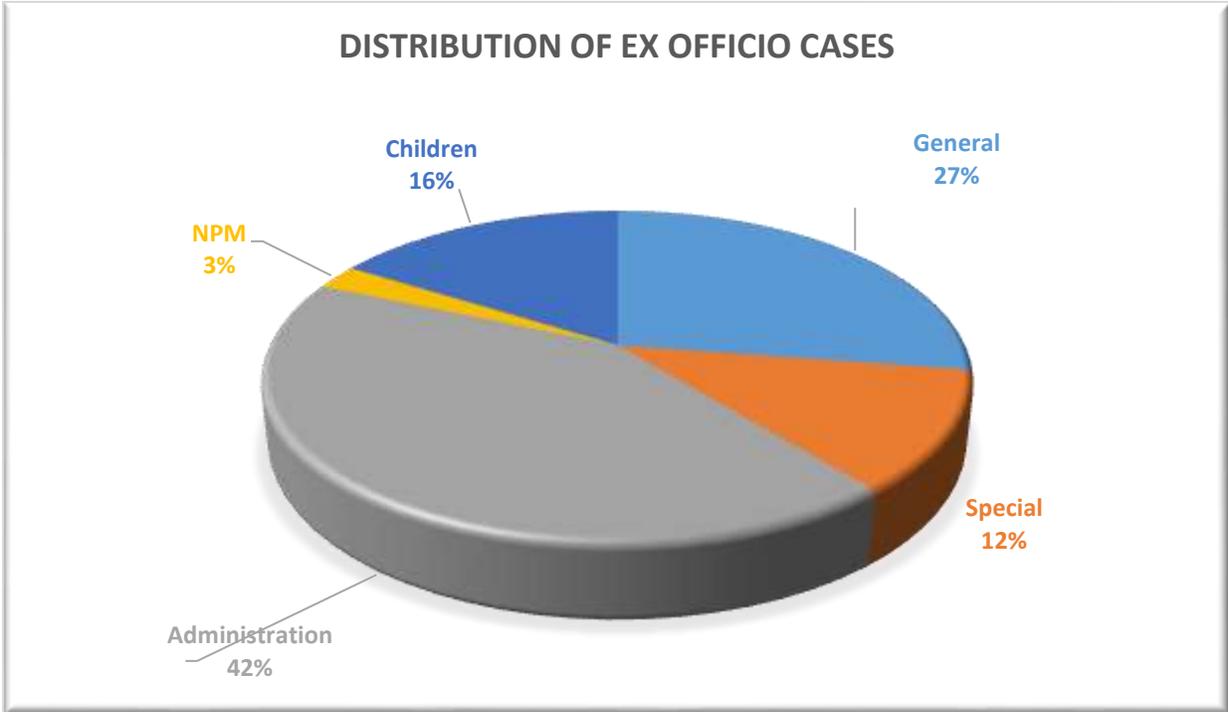


Figure 17. Cases reviewed ex officio expressed in % by PA section.

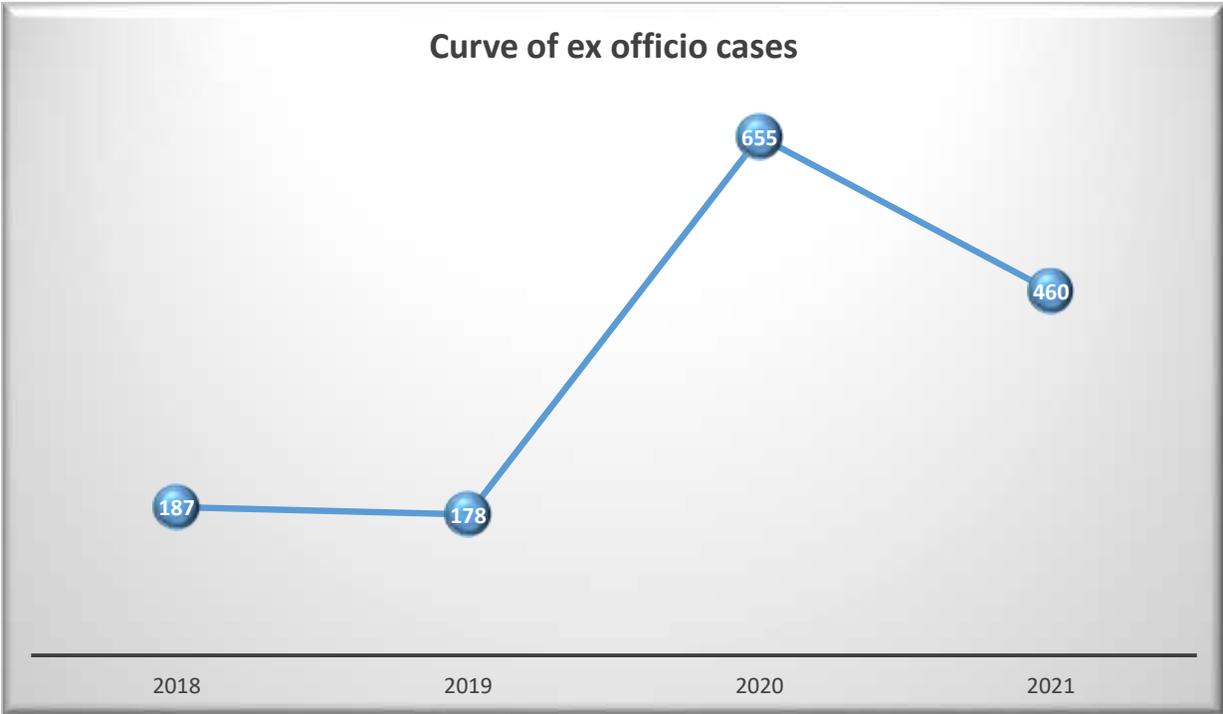


Figure 18. Changing curve of ex officio cases reviewed over the years.

In 2021, People's Advocate addressed a total of 267 recommendations to Public Administration bodies, including central and local ones.

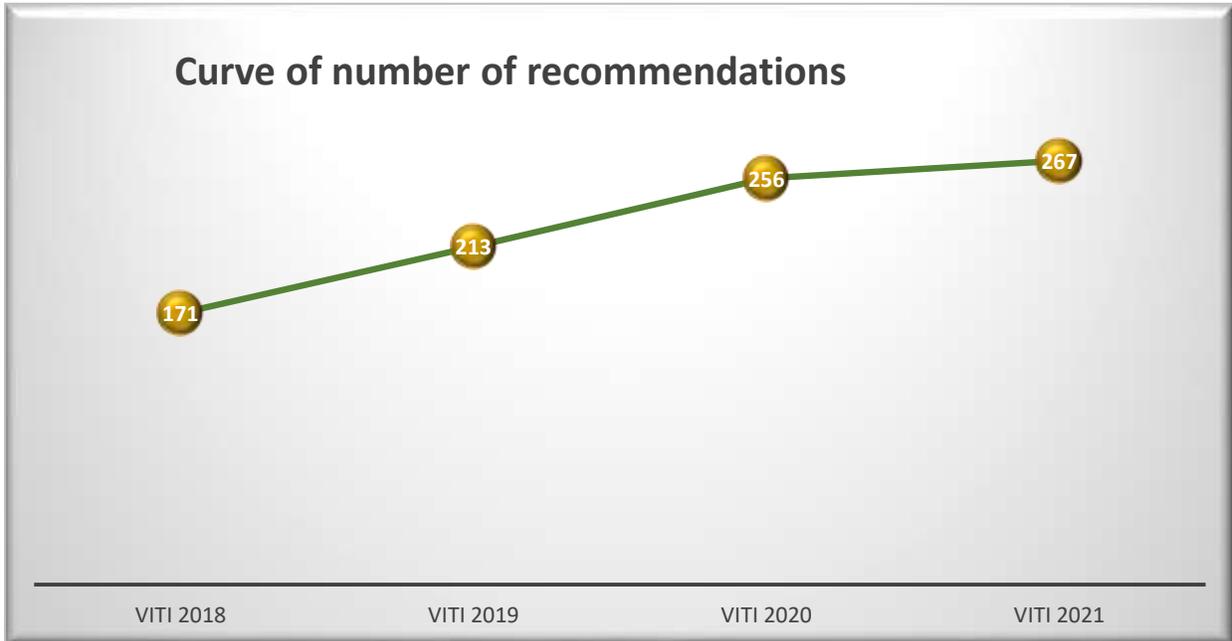


Figure 19. Curve of recommendations addressed during 2018-2021.

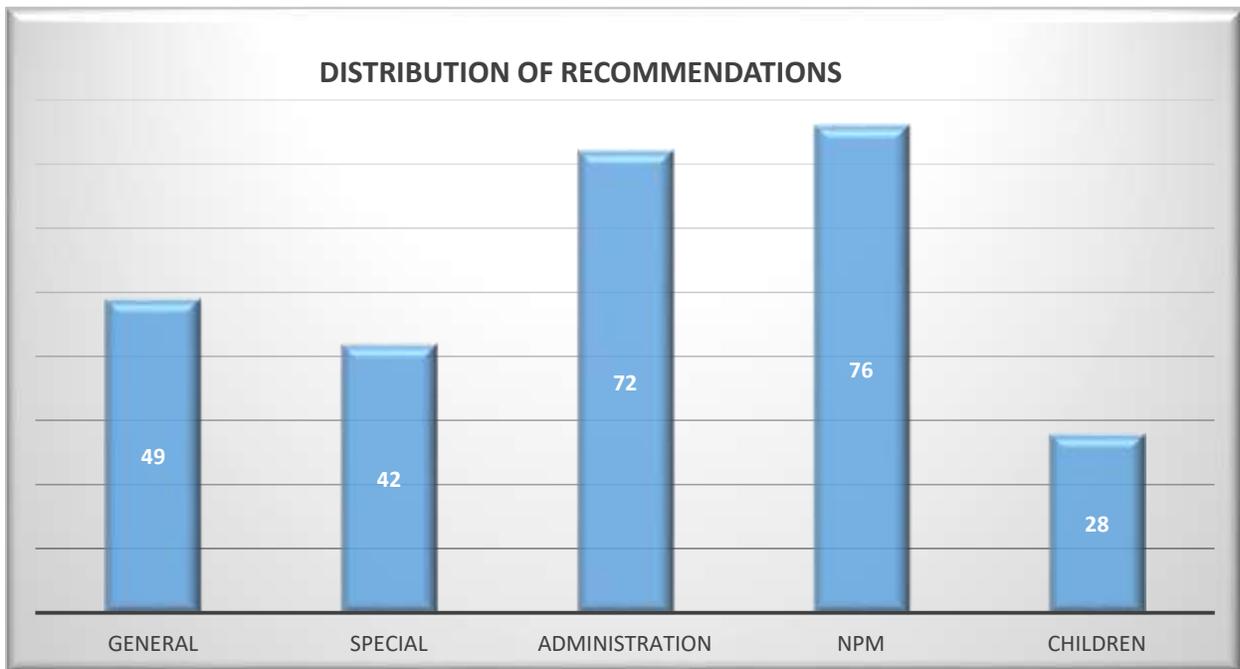


Figure 20. Recommendations addressed by the 5 PA Sections.

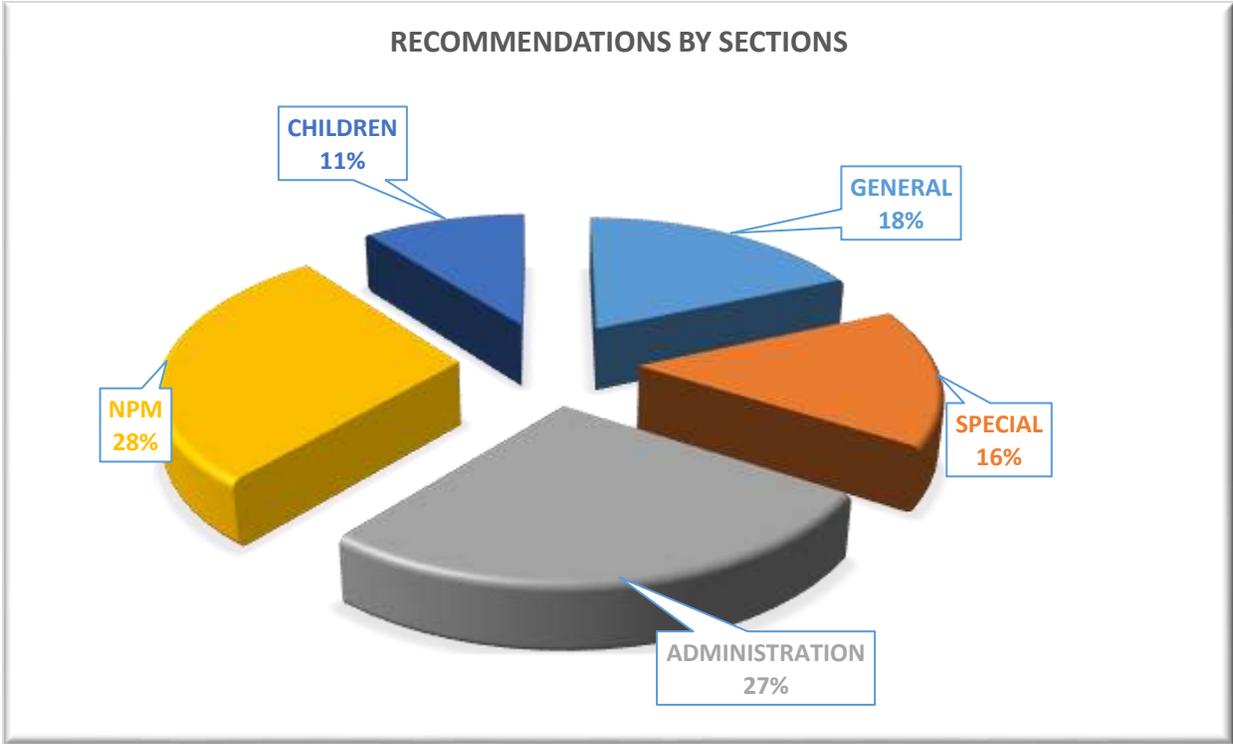


Figure 21. Recommendations addressed by the Sections in percentage.

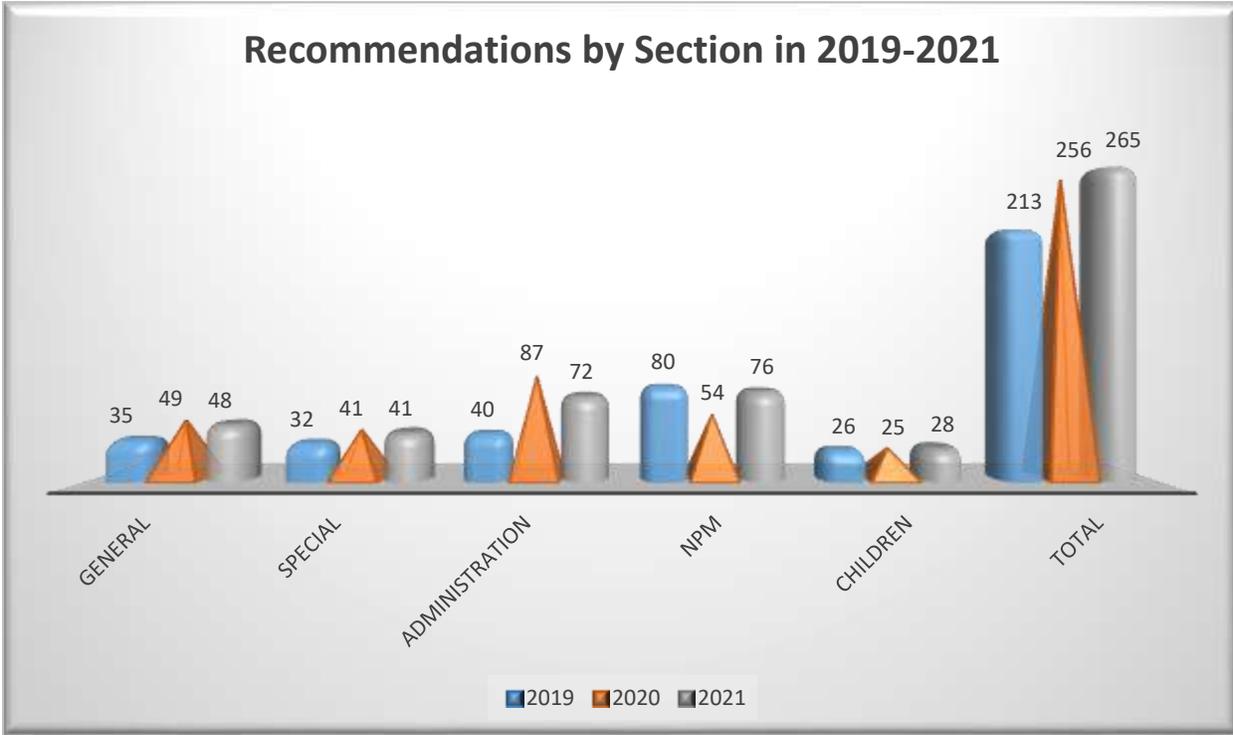


Figure 22. Recommendations addressed by the Sections during 2019-2021.

Thus, out of 267 recommendations implemented in 2021, the institution has addressed a total of 1256 sub-recommendations, an increase of 51.5% compared to 2020.

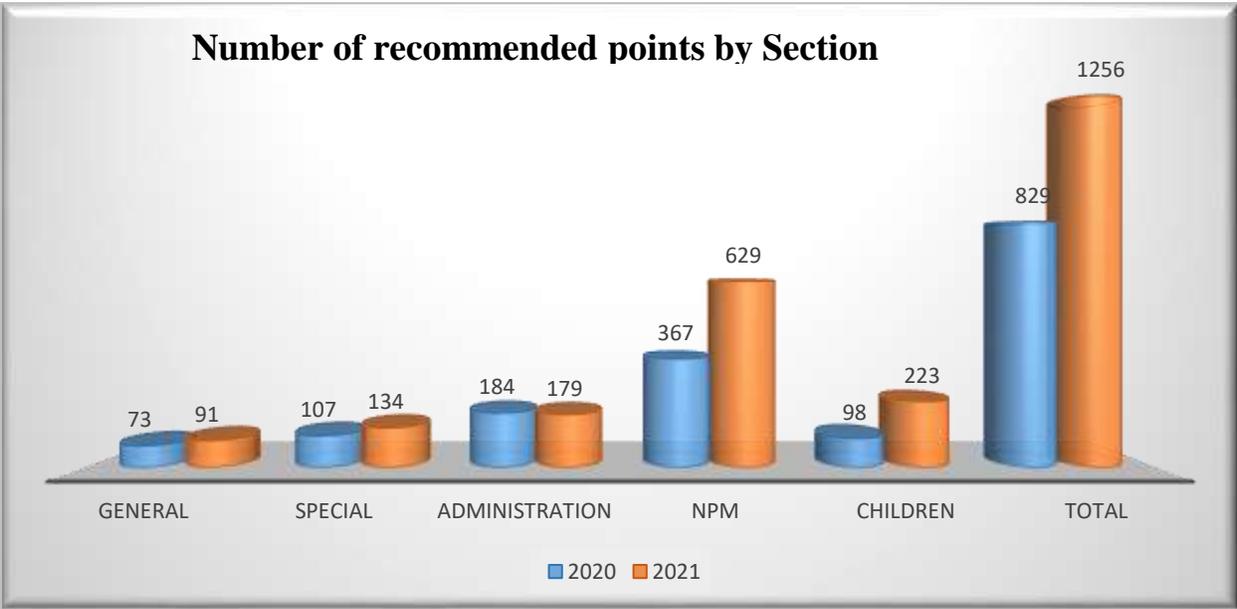


Figure 23. Number of recommendations by Section compared to 2020.

Out of 1256 recommendations, only 29% have been fully implemented by the relevant institutions, while 71% are not implemented. Of those not yet implemented, 16% are yet without a response from the respective institution, 4.5% are rejected and 50.5% are in the implementation process.

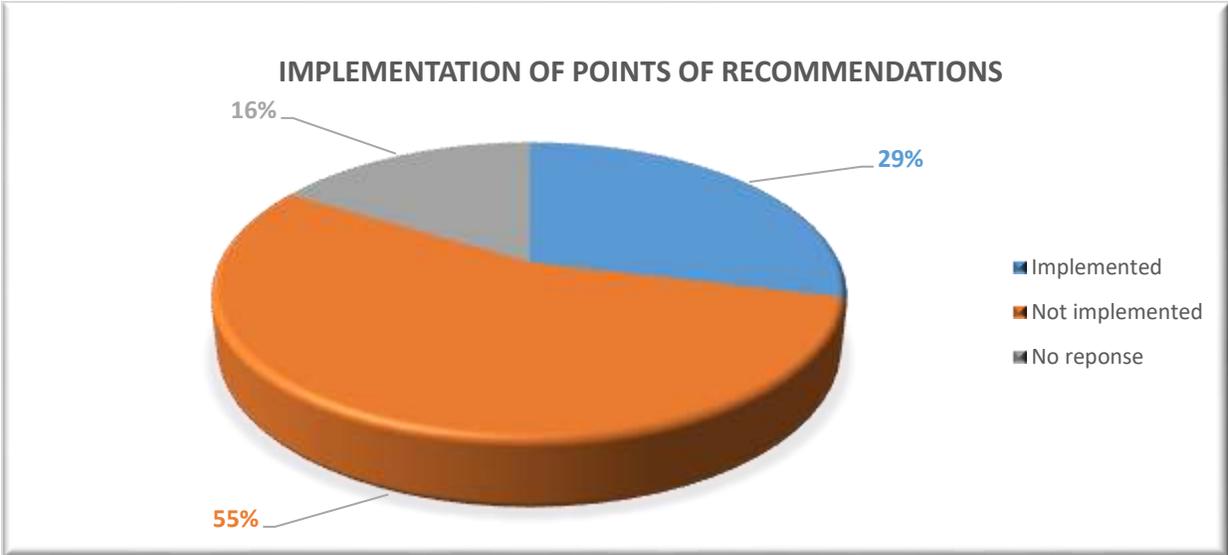


Figure 24. Implementation of the recommendations made by PA during 2021.

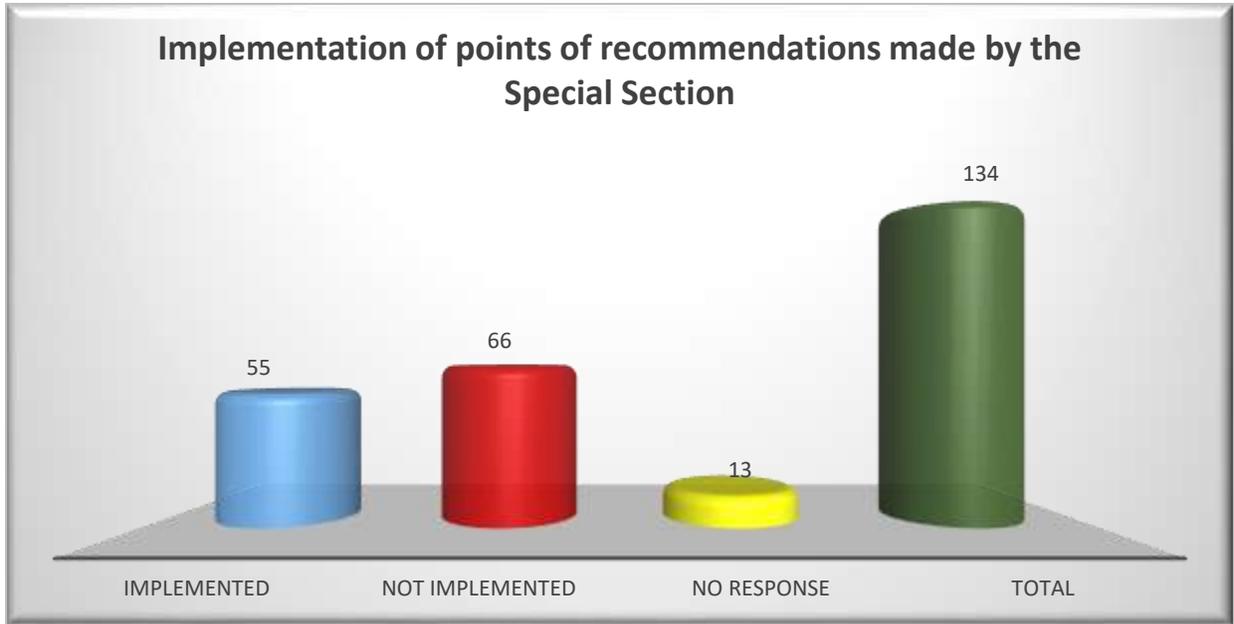


Figure 25. Status of the recommendations made by the Special Section during 2021.

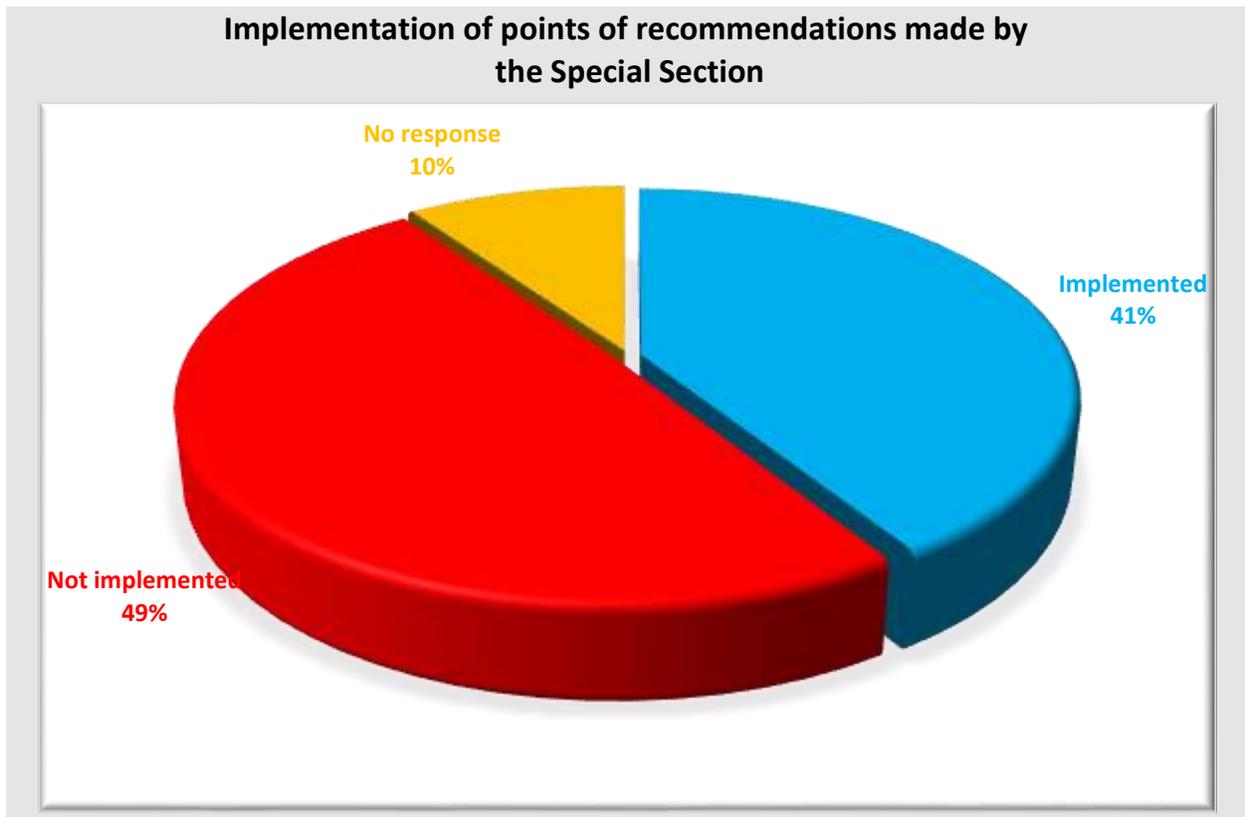


Figure 26. Status of recommendations (in %) made by the Special Section during 2021.

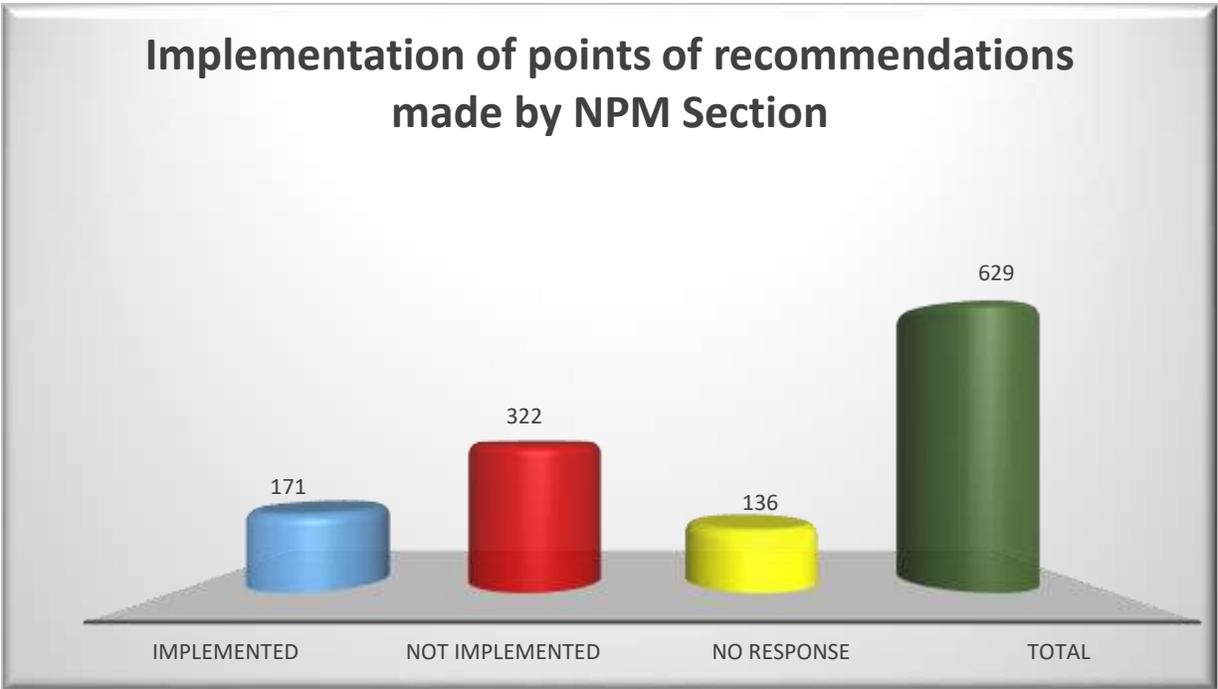


Figure 27. Status of the recommendations made by NPM Section during 2021.

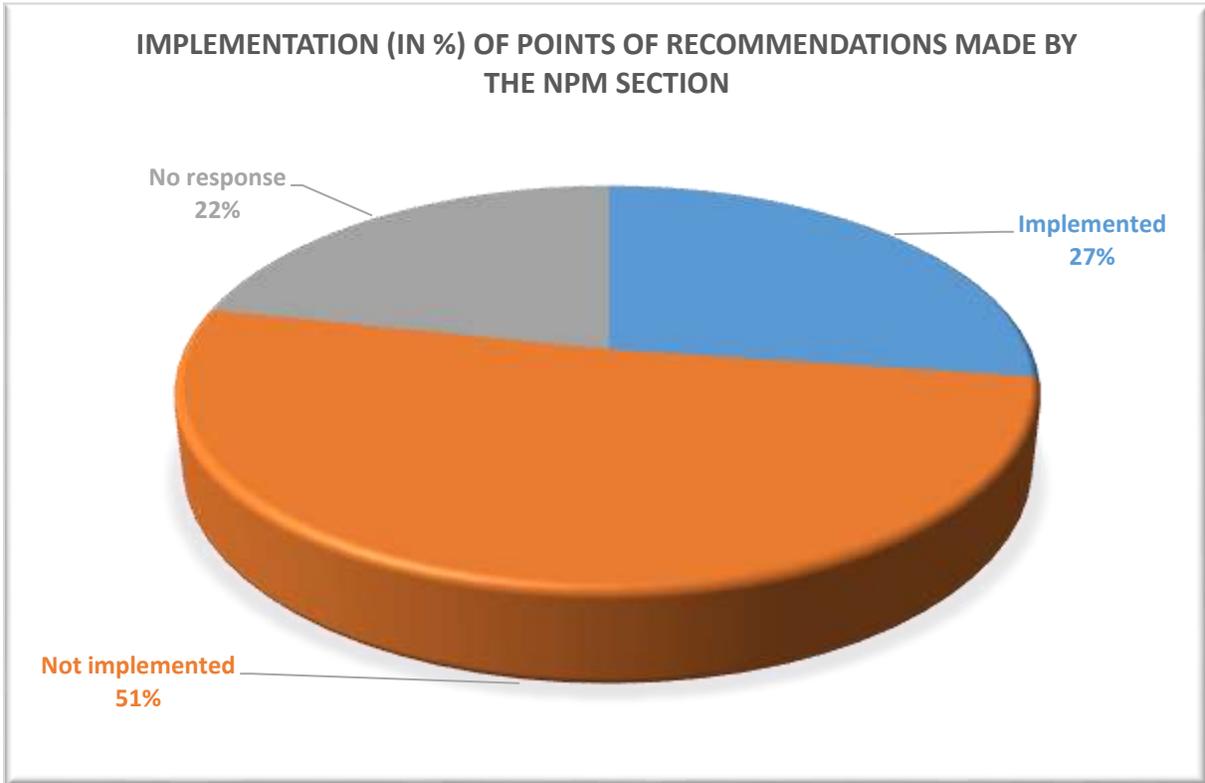


Figure 28. Percentage of the status of recommendations made by the NPM Section during 2021.

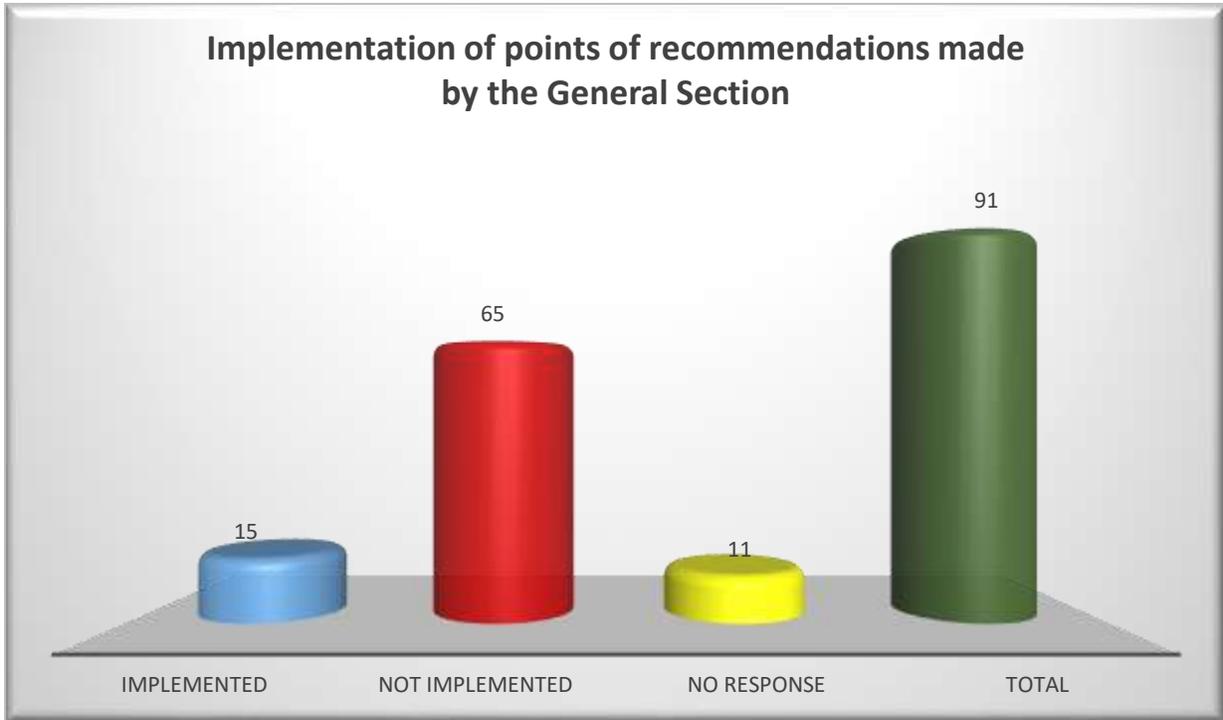


Figure 29. Status of the recommendations by the General Section during 2021.

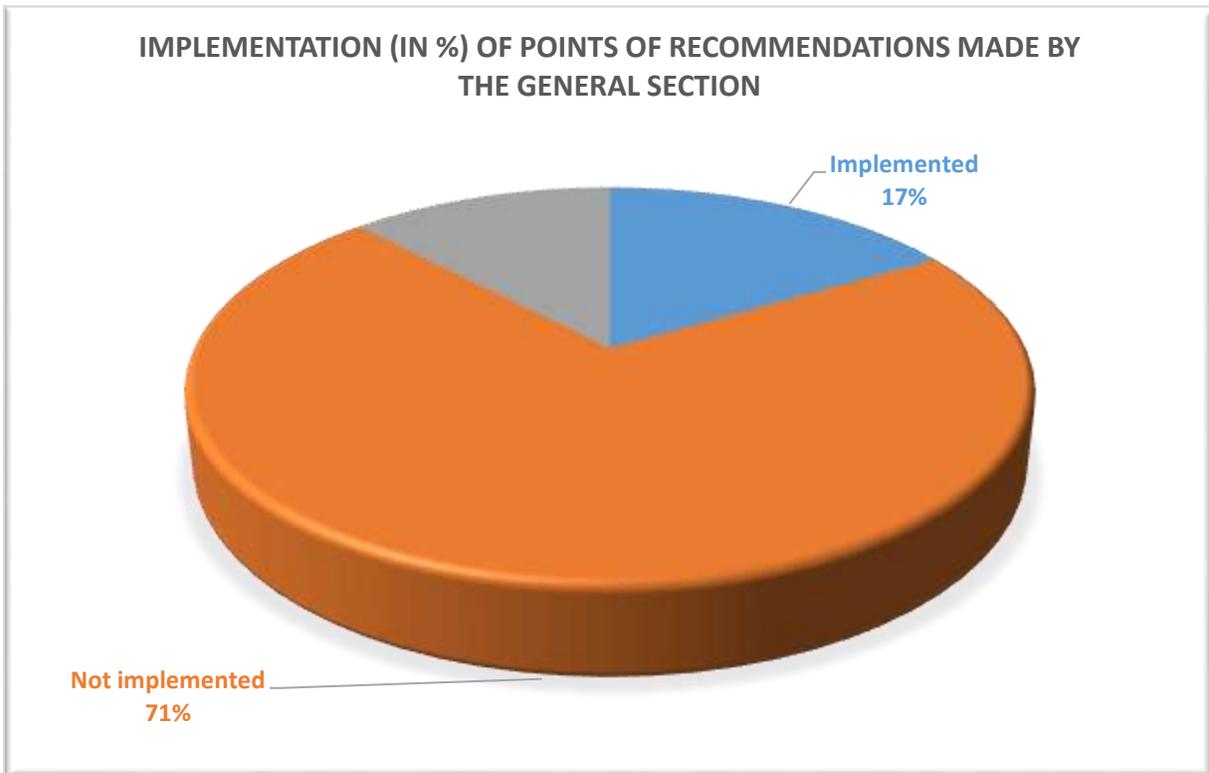


Figure 30. Status of recommendations (in %) by the General Section during 2021.

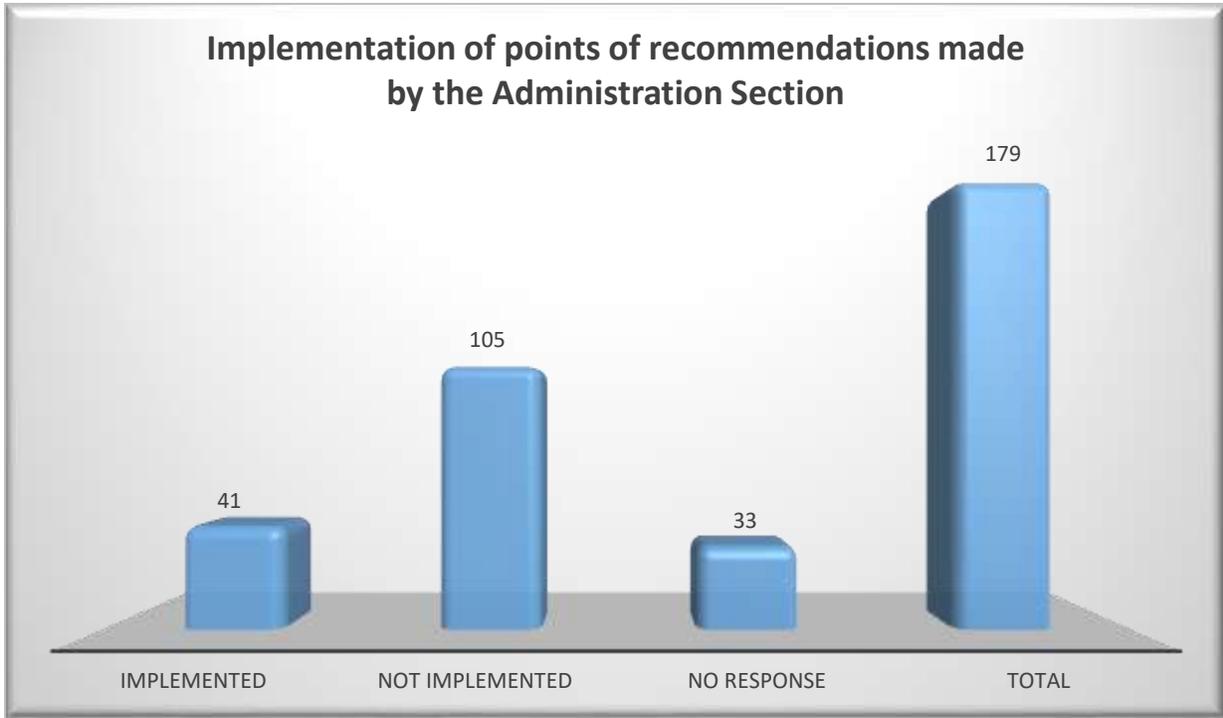


Figure 31. Status of the recommendations by the Administration Section during 2021.

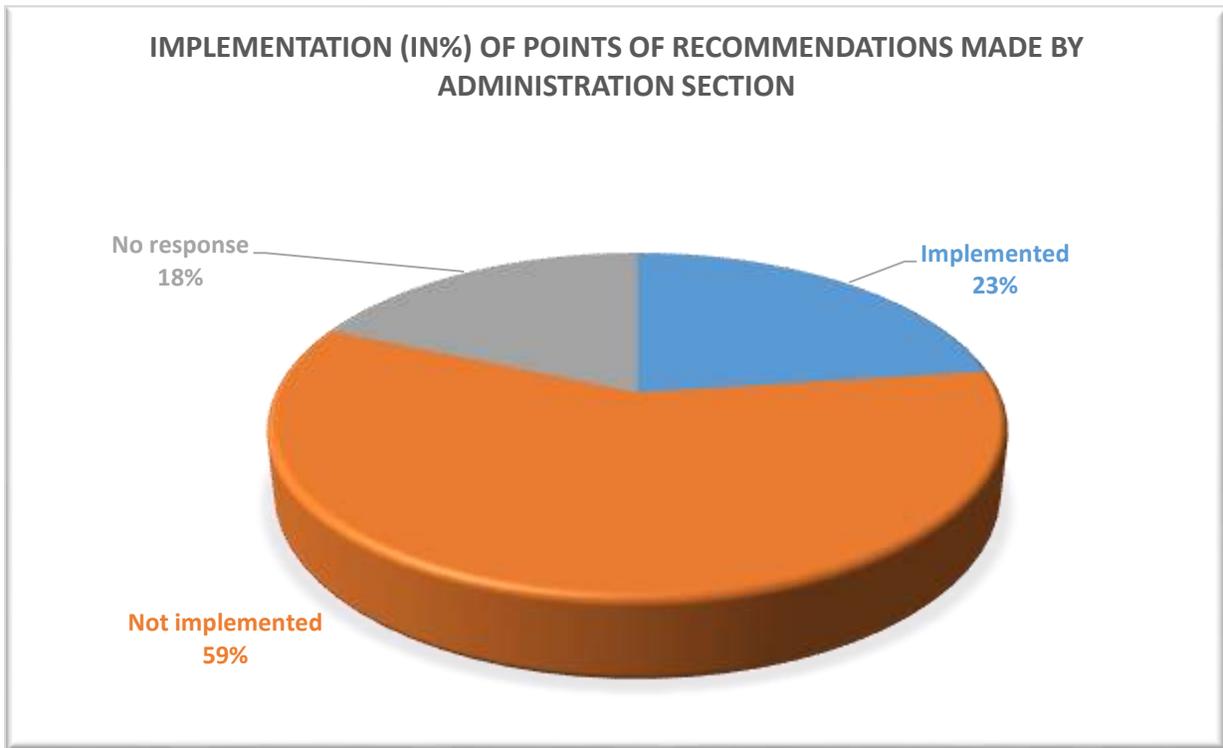


Figure 32. Status of the recommendations by the Administration Section during 2021.

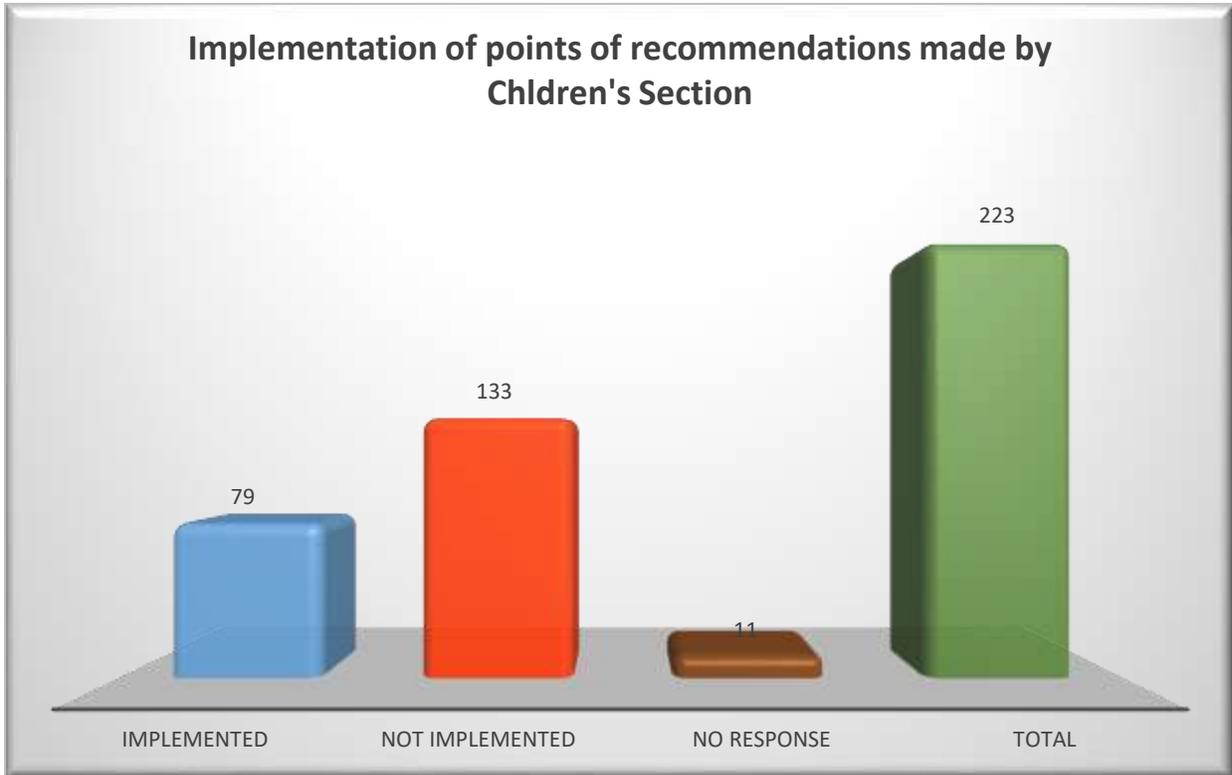


Figure 33. Status of recommendations made by Children's Section during 2021.

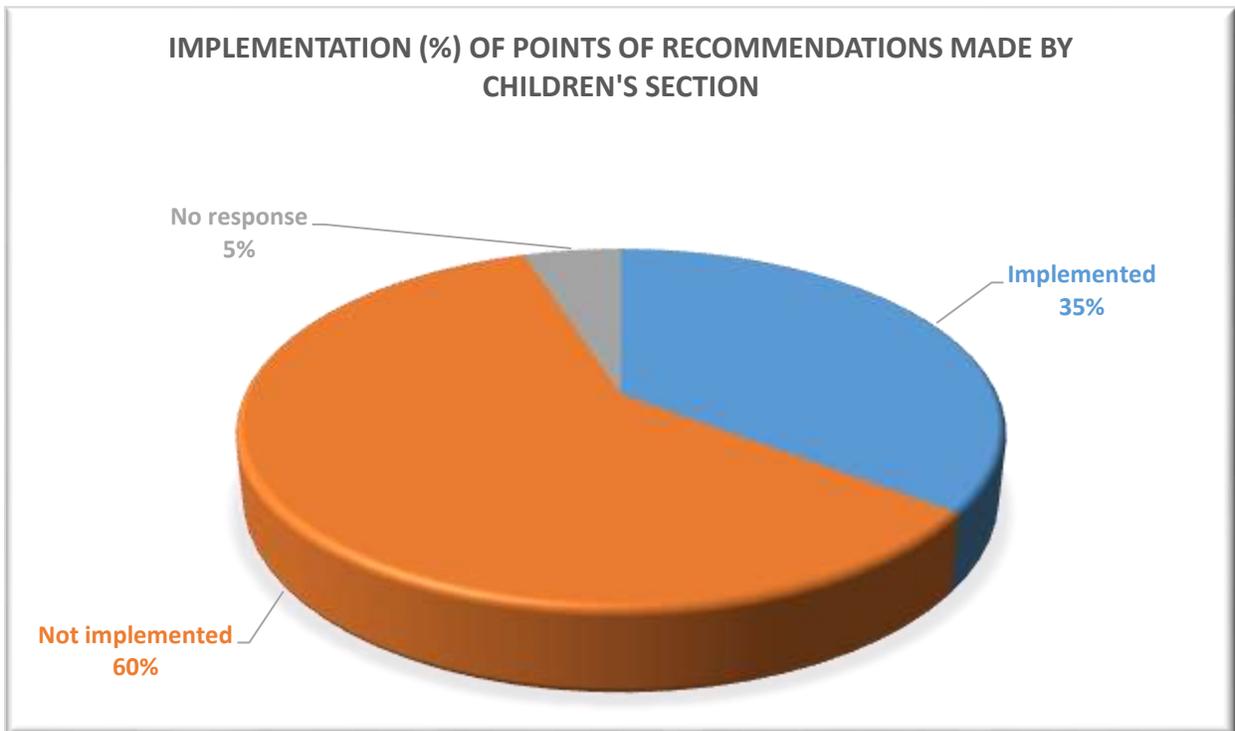


Figure 34. Status of recommendations (in %) by the Children's Section during 2021.

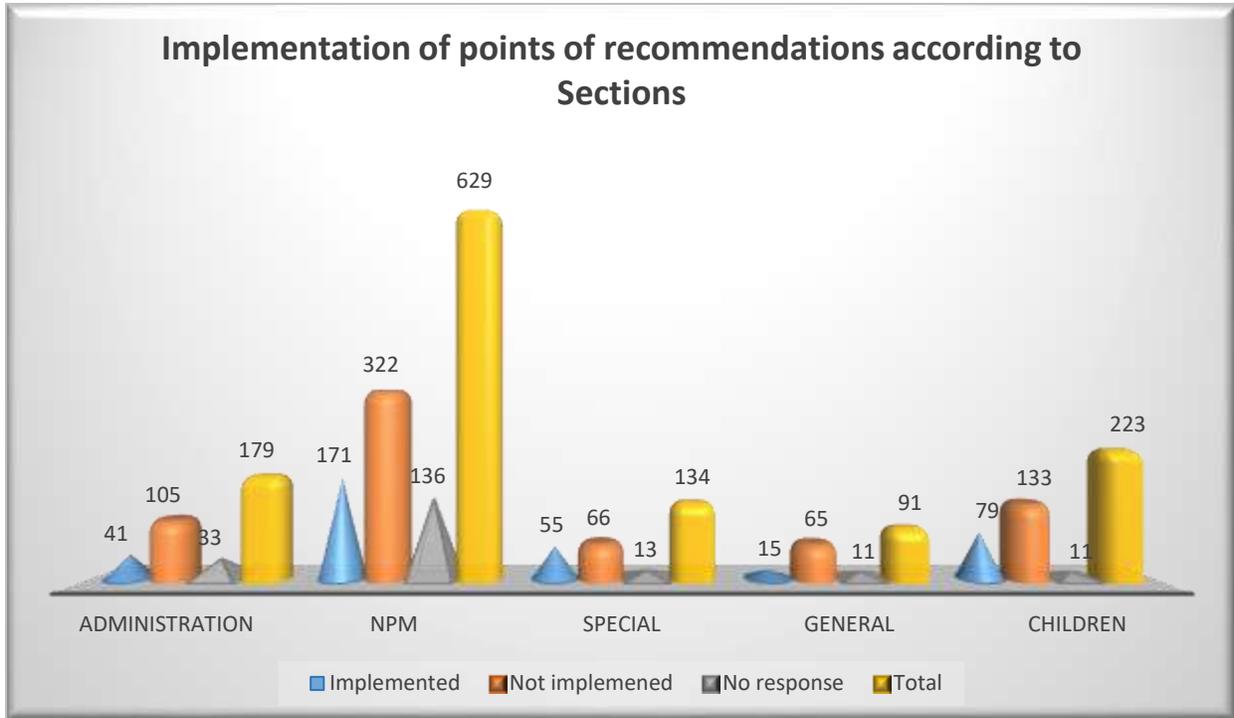


Figure 35. Implementation of the points recommended by the 5 PA Sections during 2021.

The 267 implemented recommendations were addressed and redirected to 559 institutions, and 121 other institutions were informed.

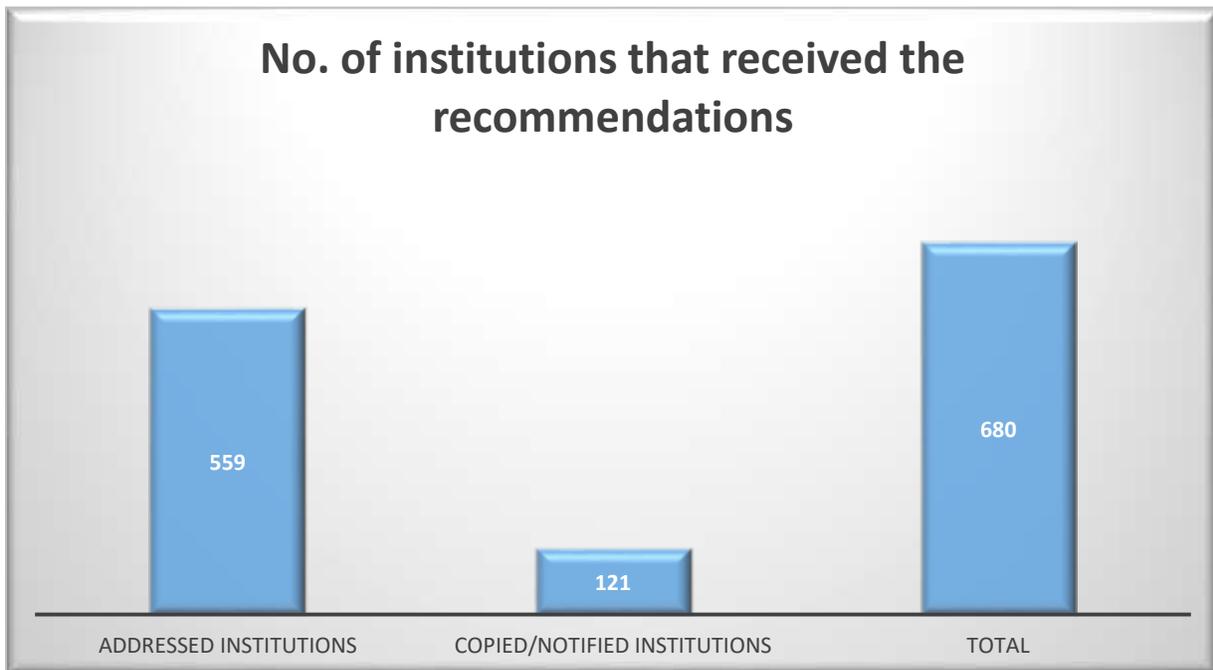


Figure 36. Number of institutions to which the recommendations were addressed and notified.

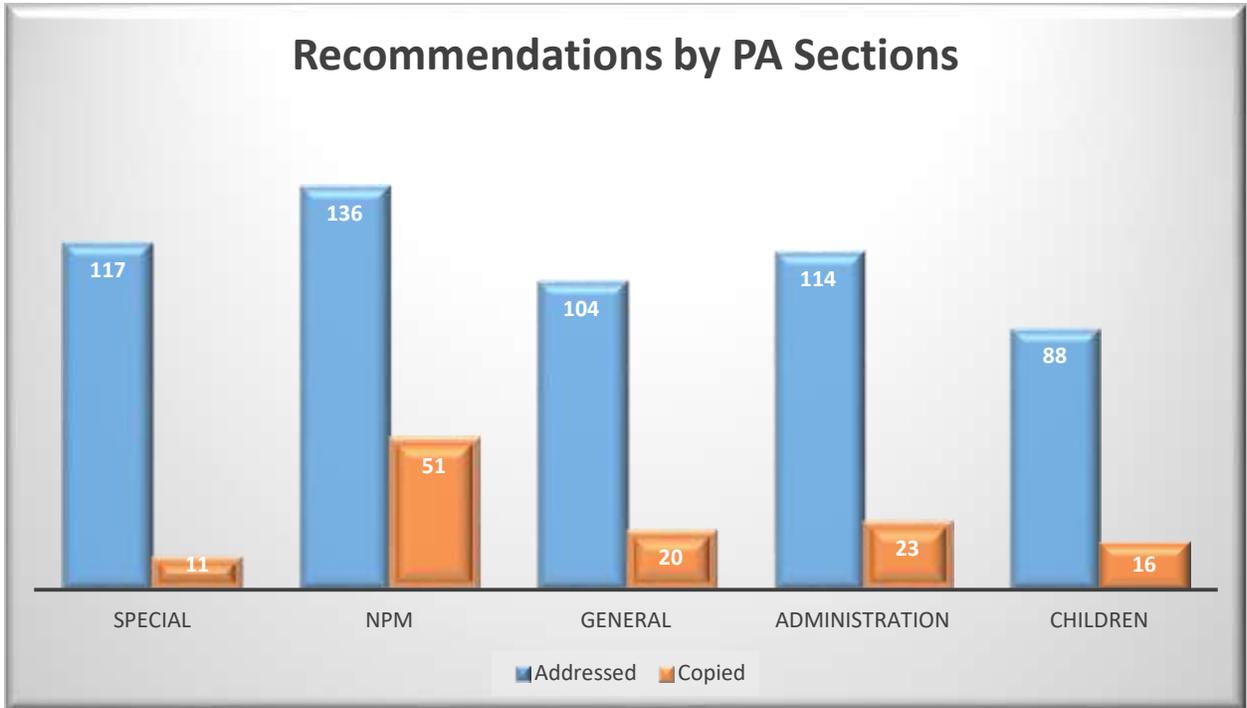


Figure 37. Number of institutions addressed and informed by Section.

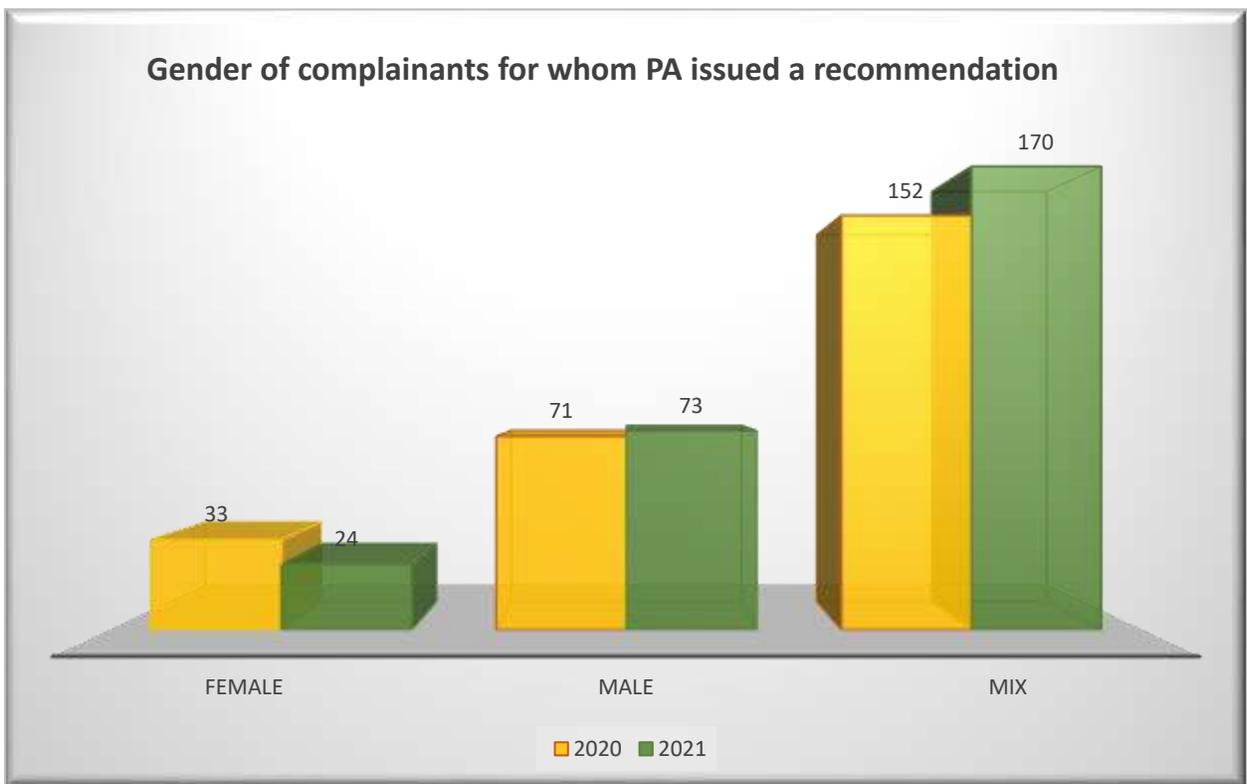


Figure 38. Recommendations by gender of complainant compared to 2020.

The distribution of the People's Advocate recommendations by the Sustainable Development Goals (SDG) for 2021 is presented as follows:

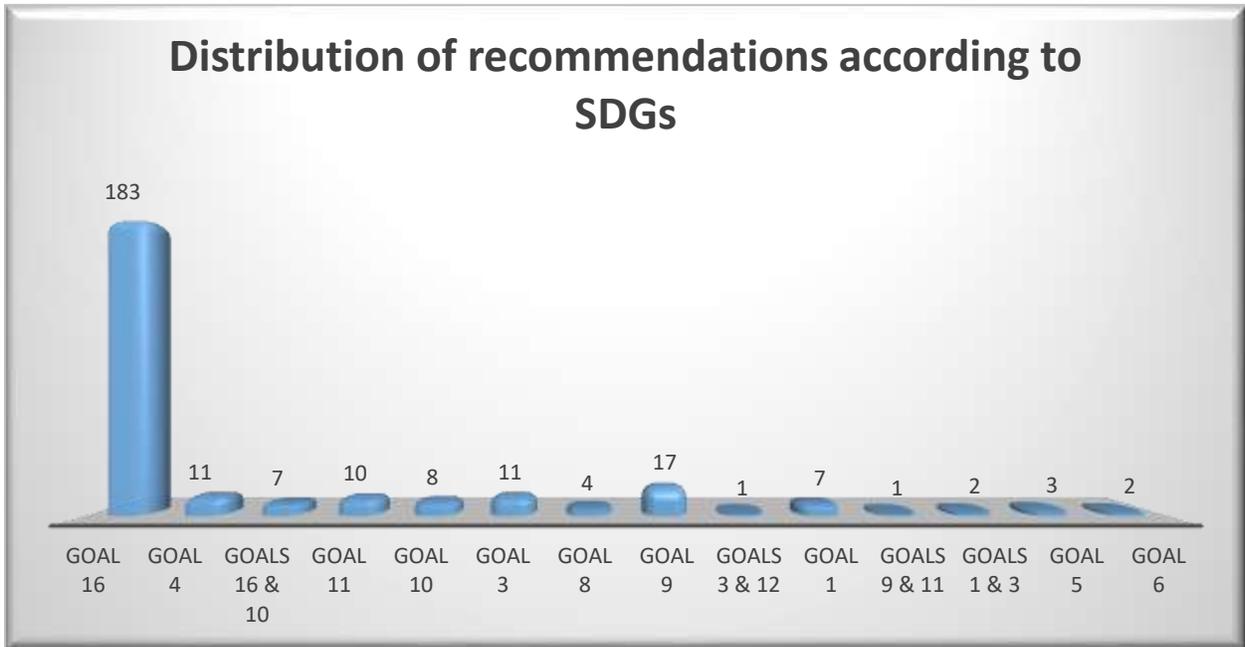


Figure 39. Recommendations by the Sustainable Development Goals.

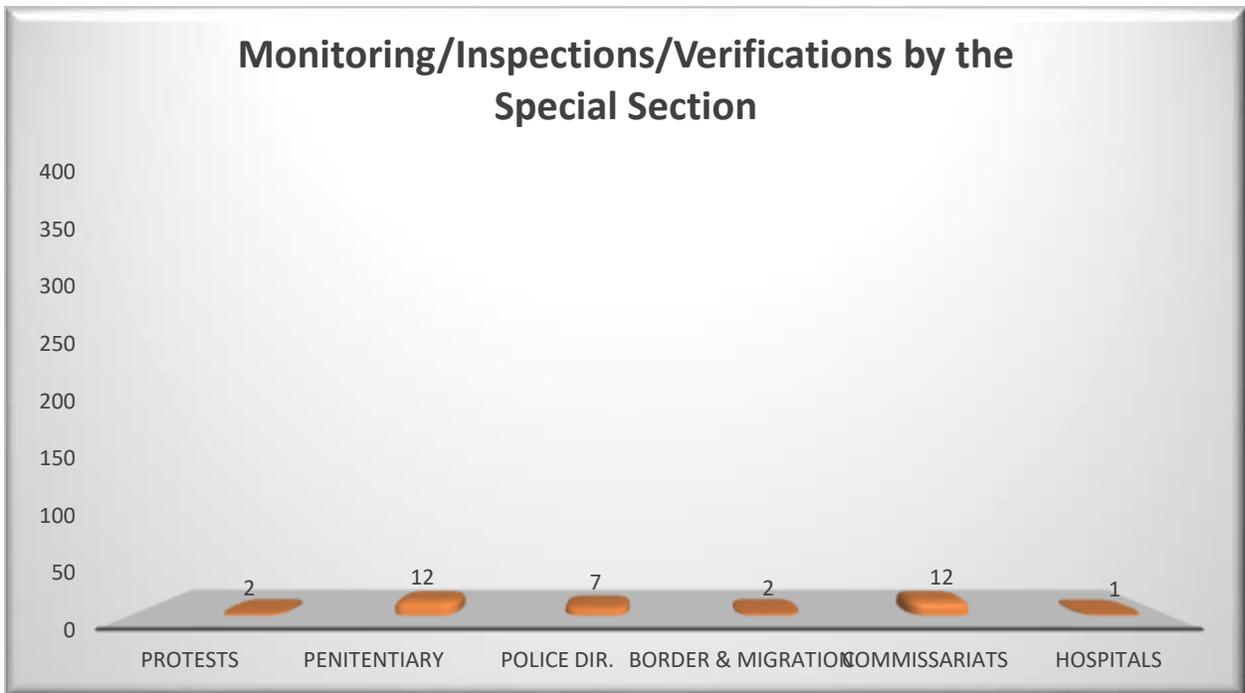


Figure 40. Monitoring/inspections/verifications by the Special Section during 2021.

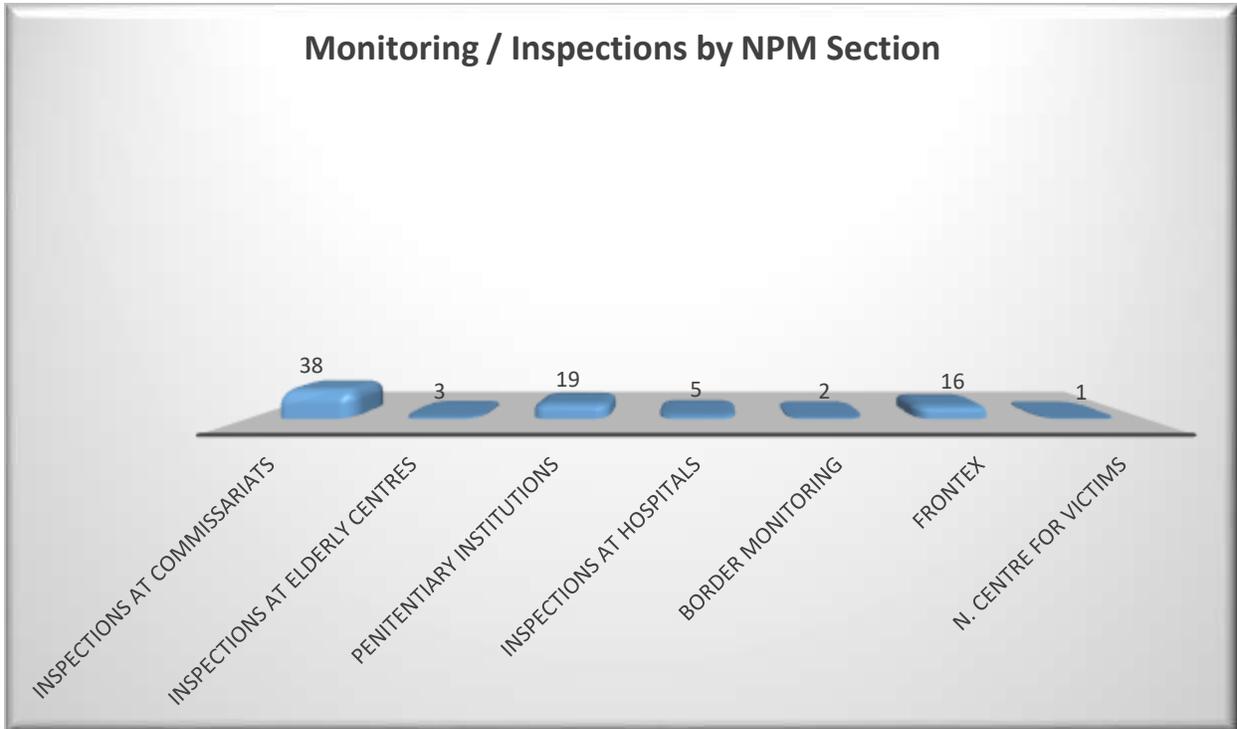


Figure 41. Monitoring/inspections/verifications by the NPM Section during 2021.

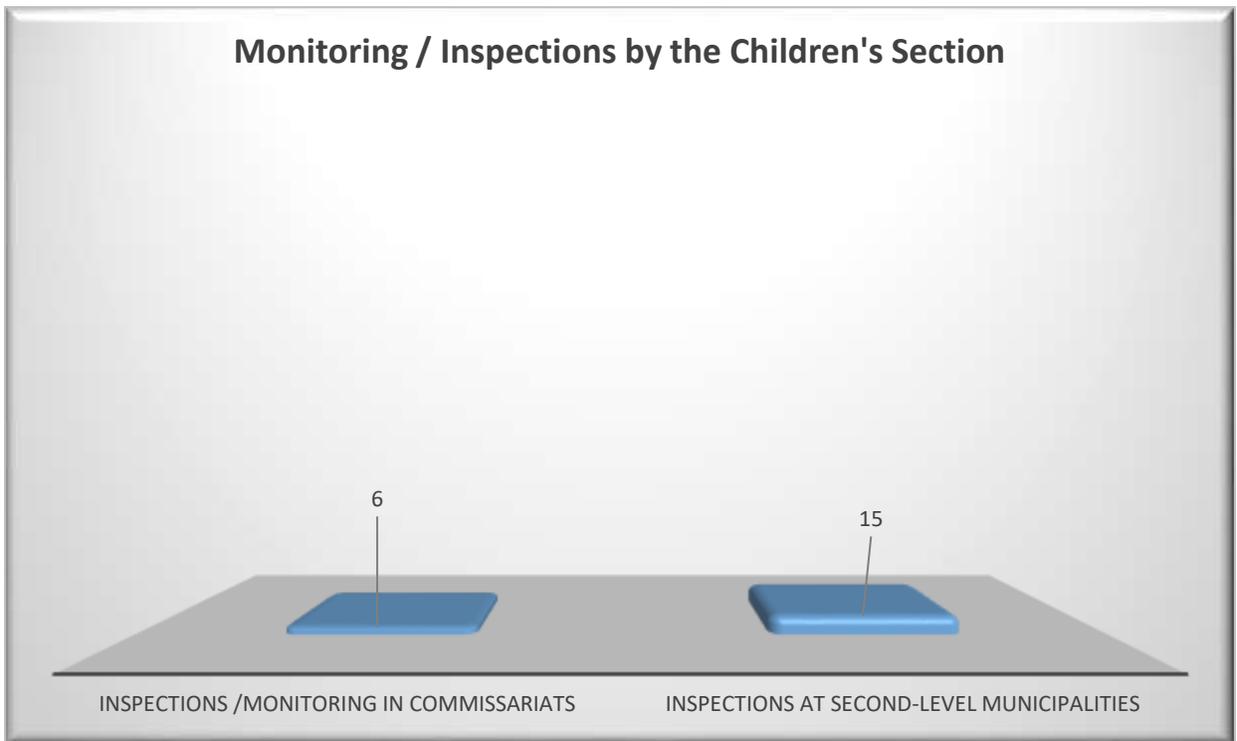


Figure 42. Monitoring/inspections/verifications carried out by Children's Section during 2021.

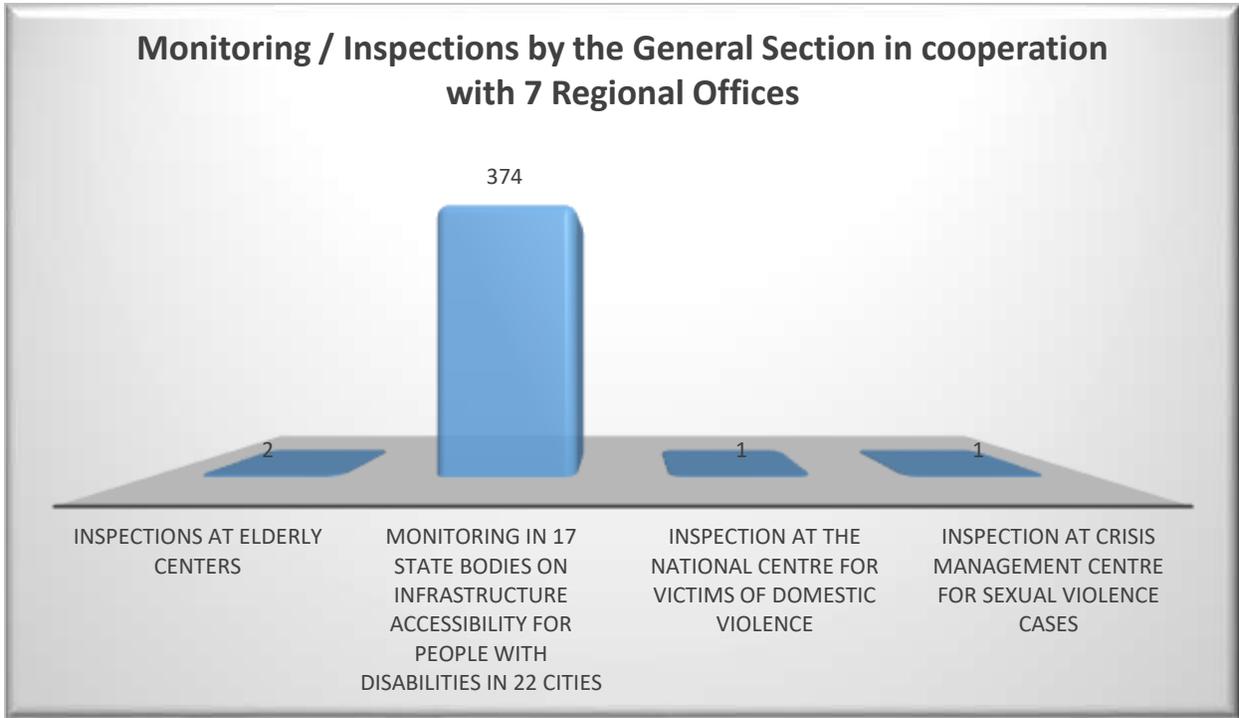


Figure 43. Monitoring/inspections carried out by the General Section during 2021.

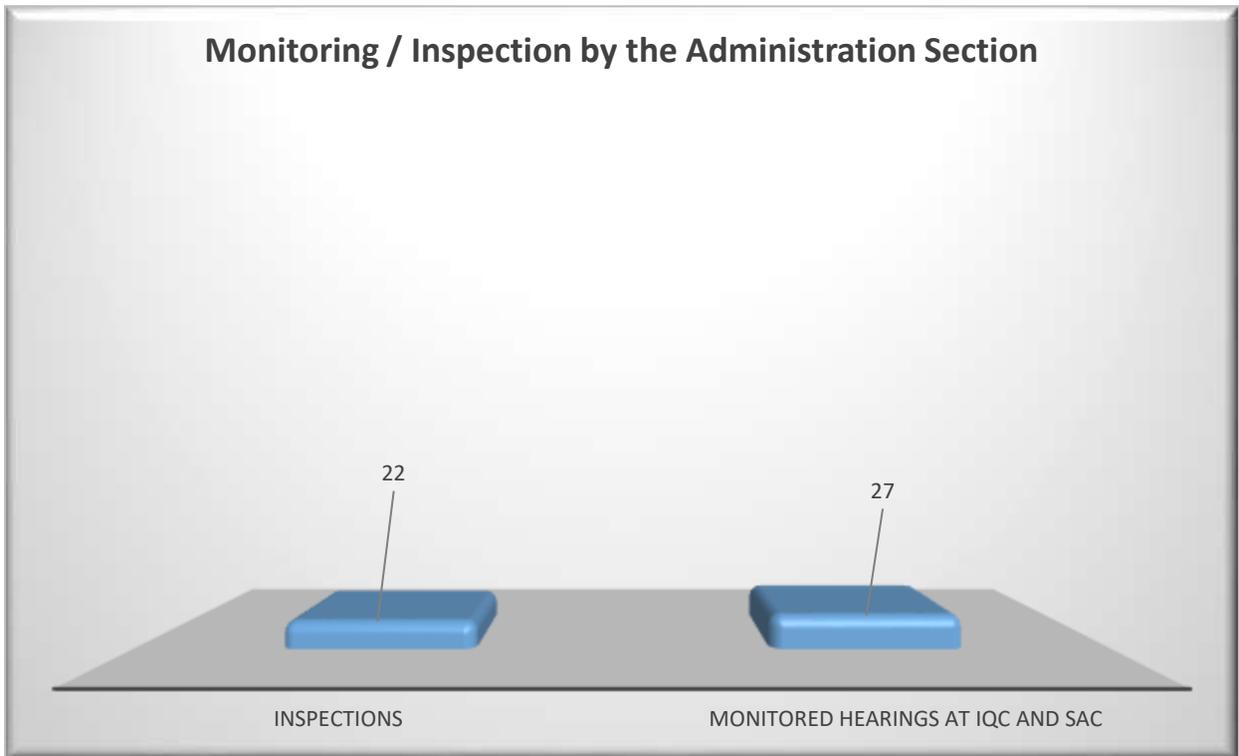


Figure 44. Monitoring/inspections carried out by the Administration Section during 2021.

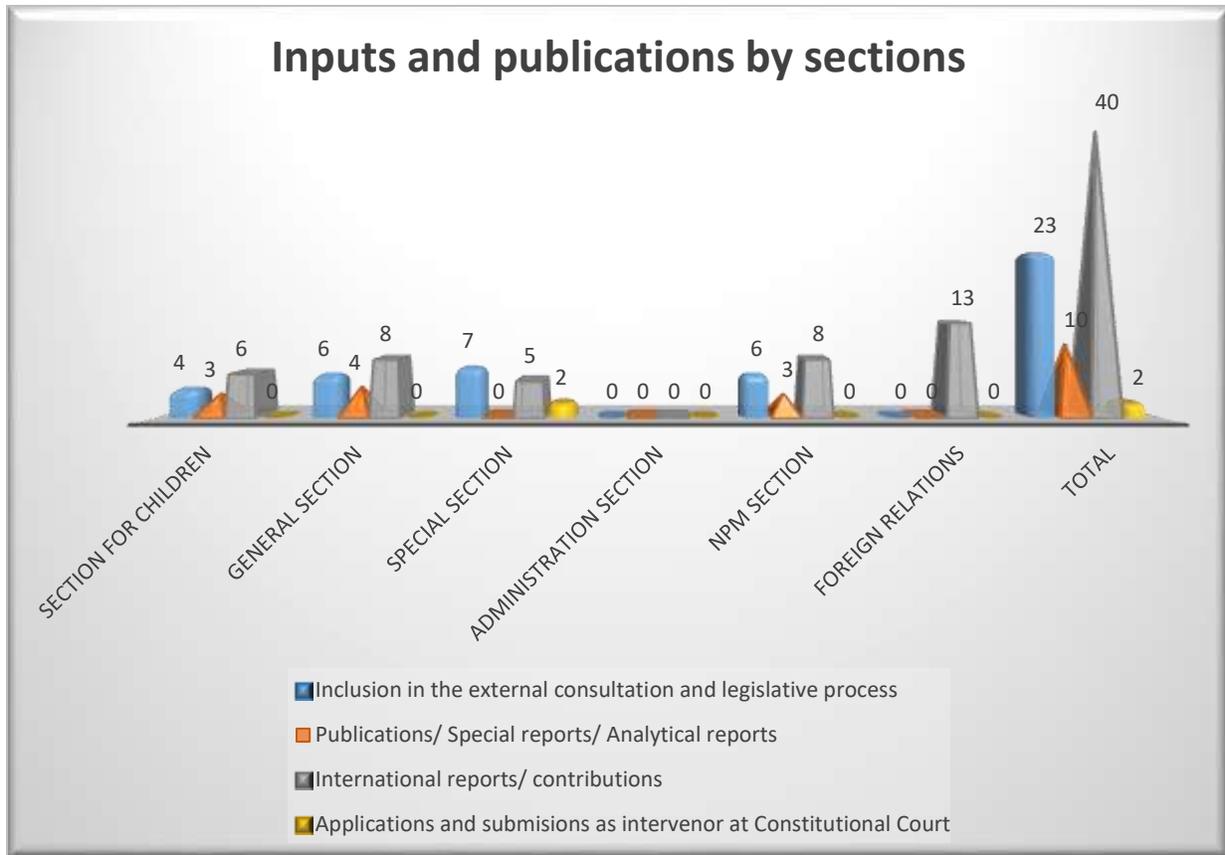


Figure 45. PA Contributions and publications during 2021.

During the year 2021, a total of 52 requests for information were registered with the People's Advocate, according to law no. 119/2014 "On the right to information".

All requests have been received and answered according to their subject, ensuring the protection of personal data according to the legislation in force. The average response time for information requests is 6 calendar days.

From the total number of requests for information registered during 2021, 32 were addressed by citizens, 4 of them by law offices, 10 by civil society organizations, and 6 by the media. Out of the total of 52 requests, 32 were requests for a copy of documentation, 16 of them requests for information, and 4 requests for information and documentation.

The progress of the number of requests for information registered and handled by the People's Advocate over the years, since 2016, is presented as follows:

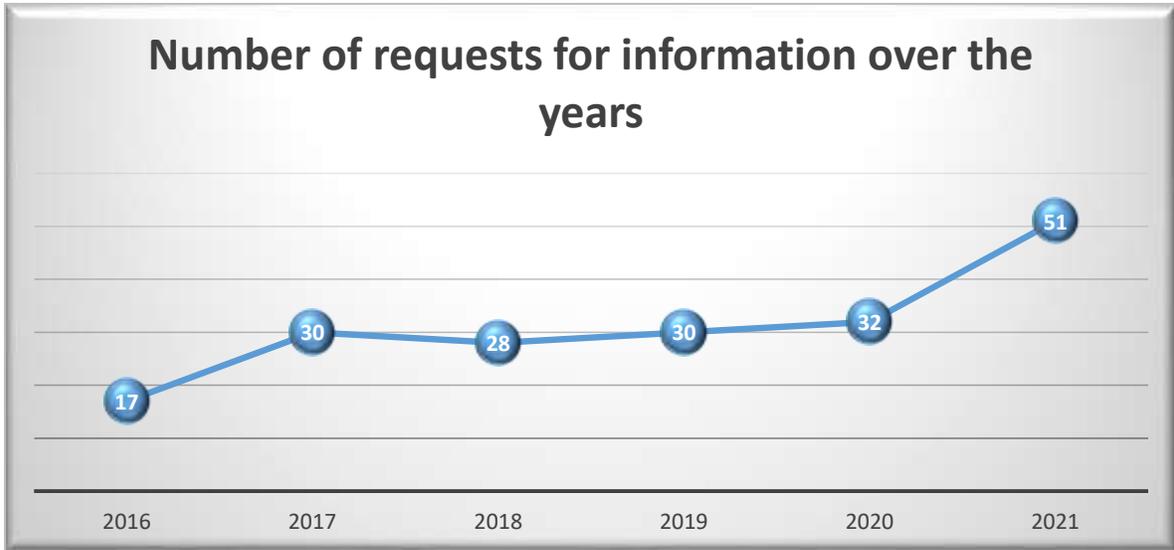


Figure 46. Requests for information over the years.