



REPUBLIC OF ALBANIA

PEOPLE'S ADVOCATE

**TRACING, ANALYSIS AND EVINCING FACTORS AFFECTING
INCREASE OF ASYLUM APPLICATIONS BY ALBANIAN
NATIONALS IN MEMBER STATES OF SCHENGEN AREA**

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People's Advocate Institution

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Introduction

For purposes of this report, the term “asylum” refers to a form of protection offered by a state in its territory, based on the principle of *non-refoulement* (not-returning) and internationally or nationally recognized refugee rights. It is granted to a person who is unable to seek protection in his or her country of nationality and/or residence, in particular for fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.¹

The term “asylum-seeker” refers to any person who seeks safety from persecution or serious harm in a country other than his or her own and awaits a decision on the application for refugee status under relevant international and national instruments. In case of a negative decision on his/her asylum application, the person must leave the country and may be expelled, as may any non-national in an irregular or unlawful situation as foreseen by the regulations and laws of the respective country. Exception is made in cases when permission to stay is provided on humanitarian or other related grounds.²

Pursuant to Geneva “Convention Relating to the Refugee Status” of 1951 and its implementing Protocol of 1967, to which 146 states are signatory parties, ratified by Albania on 18 August 1992, a “*refugee is any person, who is outside his or her country of nationality or habitual residence has a well-founded fear of being persecuted because of his or her race, religion, nationality, membership of a particular social group or political opinion; and is unable or unwilling to avail himself or herself of the protection of that country; or if being stateless and outside his/her country of habitual residence, as a result of such events or for fear of persecution, is not willing to return*”.³

The notion “asylum-seeker” is often confounded with that of the “refugee”: the asylum-seeker is an individual who affirms to be a refugee, but whose request is not yet assessed by the respective authorities, and as long as his request is not being dealt with, the asylum-seeker avails of his/her right not to be returned to the country of origin. Once the asylum-seeker is granted the refugee status, or any other status, e.g. the humanitarian protection, the asylum-seeker is considered a refugee or a person that enjoys asylum.

¹ Glossary on Migration, 2nd Edition, IOM - International Organization for Migration, page 11.

² Glossary on Migration, 2nd Edition, IOM - International Organization for Migration, page 12.

³ <http://www.unhcr.org>

In case the national authorities, via determined procedures, judge that the individual does not benefit the refugee status or any other form of international protection, they can return the individual to his/her home country.

According to UNHCR data (UN High Commissioner for Refugees) the global number of the refugees under the UNHCR's mandate, is estimated at 11.1 million.⁴ Precisely following persecution on national, religious, racial, ideological grounds, etc., millions of people have been obliged to leave and abandon their own land.

Article 2 of Protocol no. 4 to the Council of Europe's Convention "On Protection of Human and Fundamental Rights", stipulates on freedom of movement, providing among others, that any person is free to leave any country, including his/her own. The right to leave the country, be it his/her country of nationality or residence, is a necessary prerequisite to enjoy a number of other rights, comprising the right for international protection from torture, inhuman or degrading treatment/sentencing. In defining the restrictions imposed in regard to the right to leave the country, the state party should have present the above Convention and the decisions of the European Court of Human Rights.⁵

After visa liberalisation regime came into force in Albania and a great number of Albanian nationals lodged their applications for asylum in several EU countries and member of Schengen area, the People's Advocate institution, in conformity with its constitutional mandate drawing on protection of rights, freedoms and lawful interests of the Albanian nationals, considers essential a timely addressing of this issue in order not to jeopardise the visa liberalisation regime for Albania, to prevent abusive asylum applications, and above all, the need to focus on issues akin to groups, communities and minorities, most prone to be afflicted by this phenomenon.

The report on "Tracing, Analysis and Evincing of Factors Affecting the Increase of Albanian Nationals' Asylum Applications in Member States of Schengen Area" addresses the problems encountered by member states of Schengen area with the asylum-seekers from Albania, by evincing and analysing data and reasons provided by Albanian citizens when

⁴ UNHCR Report "Mid-Year Trends 2013".

⁵ For more detailed analysis of the right to leave the country, please refer to the Council of Europe Report "Right to leave the country", November 2013.

applying for asylum. The report highlights, in particular, the state of affairs created in the Schengen zone due to the recent increase in number of the asylum-seekers from Albania, but also from the Western Balkans. The report, as well, focuses on issues and recommendations relating to social and ethnic groups, such as Roma minority, victims of blood feuds, the LGBT community, etc., that are the main push factors generating numerous in number of the Albanian asylum-seekers. In drafting this report, data from several reports by EU forums specialised in asylum-seekers issues, like the European Asylum Support Office (EASO), the data provided by the diplomatic representations of Schengen States in Albania, as well as special reports of the People's Advocate Institution. The Report provides a range of recommendations, separated by specific categories, which draw on and address all matters verified when this document was drafted.

1. EU institutions, mechanisms and asylum law.

The complex nature of the asylum has ensued that the international community gets seriously committed for the establishment of juridical and institutional mechanisms to better face this global challenge.

A great number of international organisations are focusing their activity on the right to asylum, on its juridical, social, political and cultural aspects. Among the most important ones at European level, which deal with the issue of the asylum-seekers, are as follows:

- The European Asylum Support Office (EASO)⁶ – EASO is a European Union Agency, established pursuant to Regulation no. 439/2010 of the European Parliament and Council of Europe. This Agency plays a key role in concrete development of the Common European Asylum System (CEAS)⁷. The EASO was established with the aim of enhancing practical cooperation on asylum matters and helping EU Member States to monitor and fulfil their European and international obligations regarding the asylum-seekers. Another key function covered by EASO is to act as a centre of expertise on asylum matters and provide support to Member States who might encounter problems in this field.

⁶ European Asylum Support Office.

⁷ Common European Asylum System.

- Another important agency that deals with emigration and asylum-seekers issues is the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX). This Agency's task is to undertake measures to safeguard and control the external borders of the EU, but it is due to note that also in case of asylum-seekers it is the first contact point between the EU and the asylum-seekers, who, in most cases, use as a crossing point the external borders of the EU. FRONTEX issues reports with detailed statistical data on asylum-seekers.

In pursuit of fulfilment of their obligations related to the asylum issue, the Member States of the European Union have developed a number of regulations and agreements drawing on this issue. The above commonly taken measures have given birth to a Common European Asylum System (CEAS). The latter is an evidence of a holistic asylum policy embraced by the EU, which has at its epicenter the establishment of an accurate and lifelong system addressing the asylum matters. New rules have been developed, establishing high standards and most sustainable cooperation possible among the Member States of the EU, aiming at an equal treatment of cases, at an open and fair system for all the asylum-seekers. Among the key points of the *acquis communautaire* in this respect, the following might be worth mentioning:

- Directive on Qualification⁸, recast – this directive clarifies the criteria to be implemented when granting the international protection. Such a regulation makes possible the issuance of well-founded decisions on asylum-seekers' applications, besides, it enhances integration of the international protection beneficiaries.
- Regulation EURODAC⁹, recast – This directive provides for a full access, based on law, to asylum-seekers related information, e.g. on fingerprints, in order to discover different criminal offences or terrorism cases.
- Directive on conditions for reception of applicants for international protection, recast¹⁰
 - ensures the provision of humane reception conditions for the asylum-seekers in the EU (e.g. adequate shelter), as well as the respect of fundamental rights to the asylum-seekers. Moreover, the Directive ensures that detention be applied only as a last measure possible.

⁸ Directive 2011/95/EU of the European Parliament and Council of Europe.

⁹ Database on fingerprints of the asylum-seekers in the Europe.

¹⁰ Directive 2013/33/EU of the European Parliament and Council of Europe.

- Directive on Asylum Procedures, recast¹¹ - aims at ensuring a ruling, the soonest possible and as fair as possible on the lodged asylum applications. The asylum-seekers with special needs will be given the necessary support to explain their situation, and the unaccompanied minors, alongside with the victims of torture, shall benefit the best protection.
- Dublin Regulation, recast¹² - The Dublin Regulation, recast, became applicable from 1 January 2014. This regulation ensures protection of asylum-seekers during the process of determination of the state to be responsible for examination of their claims, and clarifies the rules drawing on relationships among the states regarding this issue. An early warning network is established, which signals new problems occurring in the reception system of the asylum-seekers in every member state of the EU. It deals, as well, with the handling of root causes that gave rise to problems, main goal being to prevent potential crisis situations in future. Among the most significant changes that the recasting of the Dublin Regulation brought about, was the envisaging a free of charge legal assistance for the asylum applicants; the possibility to repeal the ruling on the asylum-seeker's transfer; a monitoring mechanism signaling and managing potential problems and crisis situations; a strict restriction of detention time of the asylum-seekers, alongside with more legal transparency on inter-states procedures, on matters related to asylum. The whole examination procedure of the asylum claim foreseen by the Dublin Regulation should not last more than 11 months, and not more than 9 months to proceed with the return of the asylum-seeker to his/her country of origin.

2. Visa liberalisation for Schengen area.

On 16th December 2010, the Interior Ministers of 27 Member States of the European Union adopted unanimously the decision to lift visas for citizens of Albania and Bosnia-Herzegovina to travel in all Member States of the European Union, with the exception of United Kingdom and Ireland, by amending the Regulation no. 539/2001 “List of third countries, whose nationals must be in possession of visas when crossing external borders and those that are exempt from this requirement”. Albanian citizens may travel visa free in other countries of the Schengen area, which are not members of the EU, as for example: Iceland,

¹¹ Directive 2013/32/EU of the European Parliament and Council of Europe.

¹² Regulation 604/2013 of the European Parliament and Council of Europe.

Lichtenstein, Norway and Switzerland. Based on this decision, the citizens of Albania will enjoy the right of free movement in the Schengen area, with an intended stay of no more than three months in all, for purposes of tourism, but with no right to live and work in these countries.

The decision was accompanied by a declaration, wherein the visa re-establishment potentiality is mentioned where a member state considers it reasonable, in all cases when abusive practices are verified.

It is noted that the free movement of Albanian nationals in the Schengen area, has also brought about the increase in number of Albanian nationals moving freely in the Schengen area, but it has also given rise to an increased number of applications to stay on in these countries and of applications for asylum, which, in majority cases, are unfounded and are being refused by the respective competent bodies. It is to be underlined that the Border Code of the Schengen Area¹³ sets a range of terms for free movement of persons travelling from third countries towards Schengen area, including Albania, which are the following:

- a) *Possession of a valid travel document, or documents authorising them to cross the border;*
- b) *Possession of a valid visa if required pursuant to Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are in exempt from that requirement, except where they hold a valid residence permit;*
- c) *Justification of the purpose and conditions of the intended stay and possession of sufficient means of subsistence, both for the duration of the intended stay and for the return to their country of origin or transit to a third country in which they are certain to be admitted, or are in a position to acquire such means lawfully;*
- d) *Are not persons for whom a an alert has been issued in the SIS for the purpose of refusing entry;*
- e) *Are not considered to be a threat to public policy, internal security, public health or to the international relations of any of the Member States, in particular where no*

¹³ Regulation 562/2006 of the European Parliament and Council of EU, dated 15.03.2006 “On Rules Determining the Movement of Persons in Schengen Borders”.

*alert has been issued in Member States' national data bases for the purposes of refusing entry on the same grounds.*¹⁴

Regarding asylum, the Borders Code of Schengen Area stipulates that: “A *third country national who does not fulfil all the entry conditions in the Schengen area laid down in Article 5 (1) (above) and who does not belong to the categories of persons referred to in Article 5 (4), shall be refused entry to the territories of the Member States. This shall be without prejudice to the application of special provisions concerning the right to **asylum** and to the international protection, or the issue of long-stay visas.*”¹⁵

On 12 September 2013, the European Parliament supported the initiative of the EU Member States concerning the adoption of a protection clause, which entitles the Member States of the Schengen area to re-activate the visa regime for third countries, which present a potential risk for emigration. The amended regulation (EC) no. 539/2001, “*Third country nationals who should be in possession of a visa when crossing the external borders and nationals to whom this obligation does not apply*” determines that since 9 January 2014, where a EU Member State faces an unexpected increase of irregular emigrants and asylum-seekers, should notify the European Commission. The Commission, after the notification is received, should propose the suspending of visa free travel for the country or countries of origin for an initial period of six months. Unless the situation improves within this period, the free movement with those countries can be suspended for an undetermined time.

3. Asylum-seekers from Western Balkans in the EU.

The number of asylum applications lodged by citizens of the Western Balkans (Albania, Bosnia-Herzegovina, Former Yugoslav Republic of Macedonia, Kosovo, Montenegro and Serbia) have increased sensibly these last years, by far exceeding the number of applications for asylum arriving from other countries. In total, the number of applications for asylum from the Western Balkans in 2012 has reached a figure of 53,000, and 96% of these claims have been rejected at first instance.¹⁶

¹⁴ Article 5, Regulation 562/2006 of the European Parliament and Council of Europe, dated 15.03.2006 “On rules determining the movement of persons in the Schengen area borders”.

¹⁵ Article 13, Regulation 562/2006 of the European Parliament and Council of Europe.

¹⁶ Asylum applicants from the Western Balkans comparative analysis of trends, push-pull factors and responses, EASO, 2013, page 8.

According to EASO data: “*The number of applications is variable over time (while showing a general upward trend) and strongly seasonal (increasingly so in recent years), with the major peaks being seen just before winter. This seasonality is particularly acute in the case of claims from Serbia and FYROM and thus may be correlated to the particular factors affecting the Roma community there, since these constitute the majority of the applicants from these countries*”.¹⁷

Serbia is the country on top of the list as concerns the number of asylum-seekers (38% of claims), followed by Kosovo (29%), Macedonia (14%), Albania (10%) and Montenegro (2%)¹⁸. In general, the majority of asylum-seekers coming from the Western Balkans are Roma from Serbia and Macedonia, as well as Albanians from Albania and Kosovo. The main regions of the origin of asylum-seekers from the Western Balkans are Kosovo, North Albania, South Serbia and North Macedonia.

Even though the asylum applications submitted by nationals of the Western Balkans in the overwhelming majority of cases are rejected, the rejection rates vary according to the country of origin. Thus, the applications for asylum claimed by Albanian nationals have had the highest rate of approval, compared to other countries of the Western Balkans, whereas those lodged by Macedonian nationals have the lowest rate.

4. Albanian asylum-seekers in Schengen area states and the activity of the People’s Advocate.

According to data provided by specialised bodies of the EU, the number of asylum-seekers from Albania in 2011 was 3,060, whereas in 2012 the number amounted to 7,465 claims.¹⁹ It is noted an increase of asylum applications in the EU submitted by Albanian nationals, respectively, in 2011 the claims for asylum lodged by Albanian nationals consisted 1% of the total claims in the EU, whereas in 2012 this figure counted for 2% of all claims submitted in the EU.²⁰

¹⁷ *Ibid*, page 21.

¹⁸ *Ibid*, page 21.

¹⁹ EASO Annual Report 2012.

²⁰ EASO Annual Report 2012, page 95.

By comparison, it comes out that the number of asylum applications submitted by Albanian nationals in the EU in 2009 was 1,965, whereas the number of asylum applications during the year 2010 was 1,820.²¹

During 2013, data shows that 10,599 asylum-seekers from Albania claimed asylum in the EU.²²

The data on asylum applications lodged by Albanian nationals in the European Union over the years, are presented as herebelow²³:

	2009	2010	2011	2012	2013
Number of asylum applications in the EU	1,965	1,820	3,060	7,465	10,599
Differences year-to-year in %		-7.4%	+68.1%	+144%	+42%

Based on the increased number of the asylum claims in the EU countries, and drawing attention on the humanitarian situation of the Albanian nationals seeking asylum, as well as of other Albanians who risk to be subjected to withdrawal of the visa free regime, the institution of the People’s Advocate has established a working group with the objective to trace, analyse and evince factors causing claims of the Albanian asylum seekers in the state parties of Schengen area get increased.

The working group, tasked with the bringing into light of the reasons explaining the increase of the applications for asylum by the Albanian nationals in the states of Schengen area, kept contacts and exchanged information with some of the Embassies of main countries members of Schengen area, which resulted having the highest number of asylum applications submitted by the Albanian nationals.

Compared to other countries of the Western Balkans, during the first months after the visa regime was lifted, the asylum claims from Albanian nationals was not big. Thereafter, an

²¹ UNHCR, “Asylum Levels and Trends in Industrialised Countries”, 2011, page 24; UNHCR, “Asylum Levels and Trends in Industrialised Countries”, 2010, page 19.

²² UNHCR, “Asylum Levels and Trends in Industrialised Countries”, 2013, page 27.

²³ These data and the following ones refer to statistics on EU-27, as well as EU-28 after Croatia became EU member.

increase of asylum applications is verified. In this framework and pursuant to a decision taken on 16 December 2013 by the *Conseil d'Etat* (the highest administrative court in France), Albania is added to the list of safe countries of origin²⁴. The nationals of countries included in this list, who apply for asylum, shall be subject to accelerated procedures, since their requests are considered by the French Office for Protection of Refugees and Stateless Persons (Office Français de Protection des Réfugiés et Apatrides - OFPRA)²⁵ as being “abusive” or “unfounded”, on the presumption that there does not exist any probability of persecution or ill-treatment in these countries.²⁶ Based on data shared by the Embassy of the French Republic in Albania, the number of asylum-seekers until end of July 2013, was 2,331. Whereas, this number increased to 3,483 until September 2013.²⁷

Further on, and based on data shared by the diplomatic representations in Albania, it results that the number of asylum applications lodged in 2013 is divided as follows: Austria: 44 asylum applications; Germany: 315 asylum applications; Spain: 12 asylum applications; Sweden: 464 asylum applications; Switzerland: 54 asylum applications.²⁸

From the analysis of factors that affected the increase of asylum claims by Albanian nationals, it comes out that one of the key motives presented by the Albanian nationals in their claims at the moment of asylum application, are the following:

- Blood feud;
- Domestic violence (against women);
- Discrimination (Roma minority, LGBT);
- Trafficking of human beings;
- Health problems;
- Economic factors; etc.

It is ascertained that besides the increase of asylum claims, there is an increase of unaccompanied minors travelling to these countries (France, Germany) and seeking

²⁴ Decision dated 16 December 2013, *Conseil d'Etat*, Official Gazette of France no. 0301 pf 28 December 2013, page 21652. The concept of safe countries of origin is addressed by law, dated 10 December 2003. More information under: <http://www.ofpra.gouv.fr>

²⁵ Office Français de Protection des Réfugiés et Apatrides.

²⁶ More information under: <http://www.ecre.org> and <http://www.asylumineurope.org>

²⁷ Data refers to information shared by international partners of People's Advocate.

²⁸ Data for 2013 refer to a time-span until June-August 2013.

protection from social services and judiciary of these countries. Minors do not present any special reason to base their claims, but they apply for assistance and benefit protection only on grounds of being minors.

It is worth mentioning that the Immigration Border Police (BMP) has registered in its database all Albanian citizens, who have violated the Schengen rules of stay and whose entry in the Schengen area is prohibited for a certain period of time, with the aim of reducing illegal attempts of border crossings into the Schengen area.

Under these conditions, all problems that are linked to good governance, enforcement of the rule of law and respect of fundamental rights and freedoms in the country, is sanctioned in the Constitution and legislation in force.

An immediate intervention by the Albanian government is required in this regard, in order to avoid the penalizations and suspension of the visa free movement in the Schengen area of the Albanian nationals.

The institution of the People's Advocate is of the opinion that the above issues should be followed in continuity and be presented to the Assembly and other public administration entities in Albania, like the Council of Ministers, Ministry of Interior, Ministry of Justice, Ministry of Social Welfare and Youth, Ministry of Education and Sports, Ministry of Health and Ministry of European Integration.

4.1. Roma minority in Albania.

Data shared by some of the foreign representations in Albania, country members of Schengen area, indicate that some Albanian nationals that have sought asylum in these countries, belong to Roma minority and among the reasons they present for their claims for asylum are mostly discrimination because of their ethnicity. Also, through different information obtained from this minority members, it is verified that many Roma community members have sought asylum on grounds of difficult economic situation they are in.

Among the priorities of the People's Advocate, a constitutional institution, is observation of Roma minority rights. The Special Report "*On Issues and Situations Relating to the Rights of Roma Minority in Albania*", prepared by the People's Advocate in October 2013, notes that

the Roma minority in Albania faces at present a number of difficulties related to lack of shelter facilities, registration in the civil state offices, economic aid, education, living conditions and availability of utilities. The Roma minority members in Albania often fall victims of human trafficking and Roma minors are frequently exploited for begging, or for forced labour in other informal sectors of economy. The Roma minority is the most poor and discriminated community in Albania and this has brought about the migration of Roma outside the country, looking for better life.

The poverty level of Roma families is really high. The poor and very poor Roma families are faced with the highest degrees of social exclusion, having less capacities to make the both ends meet, face their daily needs for subsistence, and have few possibilities to play a role in everyday routines that affect their lives, such as employment and education opportunities. Quite a number of Roma families are excluded from the state assistance scheme, or from benefiting such assistance for as long as it is needed.

The social indicators related to Roma populace are considered to be the poorest, lower than the national average. A sizeable part of Roma community dwells amidst unsafe and unprotected environment, under the average standard of living.²⁹

The data of the socio-economic survey on Roma and Egyptians (USAID 2011), show that 30.9% of Roma age-groups from 18 to 40 years of age, would migrate from Albania.³⁰ This is quite significant indicator, which also implies that a substantial number of this community members are potentially vulnerable to emigration, also by conceivably using the asylum seeking instrument. This state of affairs asks for an as early as possible consideration and addressing of the matter, so that Albania continues to be in a position to fulfil its obligations in the light of the visa liberalisation agreement and other bilateral engagements undertaken with Member States of Schengen area.

The institution of the People's Advocate has developed a series of recommendations, the objective being to improve the situation of this ethno-linguistic minority in Albania. During the period 2012-2013, the recommendations of the People's Advocate have been shared with several public administrative entities at central and local level, related to the following issues:

²⁹ National Strategy "On Improvement of Roma Community Living Conditions".

³⁰ Ilir Gëdeshi, Juna Miluka, USAID, "Study on Assessment of Roma and Egyptian Communities Needs in Albania", Tirana, 29 February 2012.

- Widest inclusion of Roma minority members in programmes for professional training and employment;
- Introduction of changes to legal normatives aiming at determination of the criteria, procedures and the amount of the economic aid, having at their focus the Roma minority;
- Introduction of changes to the current legislation providing for sheltering of inhabitants in the urban zones, having at their focus the Roma minority;
- Taking measures for registration of Roma community members in the registrars of the civil state offices and streamlining procedures of the civil state offices data transfer onto the local administrative units of their habitual residence, or to the new ones;
- Facilitation of registration procedures for Roma children to attend the learning process and of the access to education of these children;
- Amelioration of living conditions in general, and ensuring of domiciles for Roma minority members, as for example in the building of the former military unit at Sharra zone in Tirana;
- Ensuring shelter facilities for Roma minority members by local administrative units;
- Undertaking of positive measures by state institutions to guarantee the factual and effective equality to Roma minority members regarding the access to education system, starting from the pre-schooling and further on, in continuum.
- Finalisation of the legislative initiative on introduction of several amendments under Article 1, law no. 10221, dated 04.02.2010, “On Protection against Discrimination”, by including therein as causes of discrimination: the declared purpose to discriminate; incitement of discrimination, contribution to and encouragement of discrimination.³¹

Implementation of the above recommendations by the respective authorities would sensibly influence the improvement of the living conditions, as well as integration of this ethno-linguistic minority in the Albanian society, would, in consequence, decrease considerably the number of asylum applications in the states of Schengen area by members of this community. The People’s Advocate will follow-up the Roma related problematic issues at close range, and at the same time, it will draw the attention of members of this community, too, in particular the ones that have sought asylum on different grounds, by establishing an inter-institutional dialogue with the participation of Roma organisations, as well.

³¹People’s Advocate, Special Report “On Problematic Issues and Situation of Roma Minority Rights in Albania”, Tirana, October 2013.

4.2. LGBT community in Albania.

Based on established contacts and information shared with the civil society and activists of the LGBT community, one of the major problems encountered in respect to Albanian asylum-seekers from this community in the EU, there resulted to be the discrimination of the LGBT (Lesbians, Gays, Bisexuals, Trans-genders) community, which served as a push factor for some members of this community to seek asylum.

The LGBT community in Albania, under the legislation in force, enjoys equal rights and freedoms with all other members of the society. Notwithstanding, it is still a long way ahead to guarantee that members of this community feel themselves equal with the other part of the population and that their right be fully observed and enforced.

Albania has signed and ratified a number of international instruments that guarantee the observation of human rights, the ones of the LGBT community, inclusive:

- Convention on Prevention and Punishment of the Crime of Genocide, Paris, 9 December 1948.
- International Convention on Elimination of all Forms of Racial Discrimination, New York, 7 March 1966.
- Amendment under Article 8 of the International Convention on Elimination of all Forms of Racial Discrimination, New York, 15 January 1992.
- International Convention on Economic, Social and Cultural Rights, New York, 16 December 1966.
- Optional Protocol to the International Convention on Economic, Social and Cultural Rights, New York, 10 December 2008.
- International Convention on Civil and Political Rights, New York, 16 December 1966.
- Optional Protocol to the International Convention on Civil and Political Rights, New York, 16 December 1966.
- Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes against Humanity, New York, 26 November 1968.
- International Convention on the Suppression and Punishment of the Crime of Apartheid, New York, 30 November 1973.

- Convention on Elimination of all Forms of Discrimination against Women, New York 18 December 1979.³²

The People's Advocate institution has always been and continues to be a powerful leverage in support and protection of the LGBT community's rights in Albania. It has compiled several recommendations that aim at enhancement and guaranteeing the human rights for this community, which are the following:

1. Finalisation of a National Plan of Action in protection of members of LGBT community's rights. The People's Advocate suggests that this plan be as comprehensive as possible of institutions that will draft and implement it, and be inclusive of all activities, measures, indicators and budget figures, being them a significant part of an efficient application of each measure.
2. Amendment to the Labour Code of the Republic of Albania:
 - Inclusion under alinea 2, Article 9, law no. 7961/1995, "Labour Code of the Republic of Albania", the "sexual orientation and gender identity" as causes of discrimination;
 - Inclusion at the end of Article 9, law no. 7961/1995, "The Labour Code of the Republic of Albania", of a new paragraph stipulating on the party to bear the burden of proof for cases when it is claimed that the person in case was discriminated against. The formulation of the paragraph should be in full line with the definitions given under Article 10, Directive 2000/78 EC, meaning that the burden of proof lies with the employer.
3. For the purpose of application of the abovementioned recommendation, the respective responsible authorities, the State Labour Inspectorate, should control its implementation by employers, to guarantee the putting into practice by public and/or private employers of the provision. The recommendation was accepted by the Ministry of Labour, Social Affairs and Equal Opportunities.
4. Inclusion in school curricula and teaching programmes of subjects and information on the LGBT community, aiming at an educational process in a safe learning environment, free of violations, stigma, social exclusion or inhuman treatment that are often correlated with sexual orientation and gender identity.

³² Special Report on People's Advocate activity for the LGBT community's rights, People's Advocate, Tirana, 2012.

5. Trainings to be provided by the Ministry of Education and Science of the academic personnel to ensure protection and discipline in the education institutions due to the sexual inclinations of individuals. The recommendation was greeted and accepted by the Ministry of Education and Science.

It is to be underlined that a key accomplishment was achieved through the amendment of a Criminal Code, wherein the recommendations of the People's Advocate institution have been reflected, as following:

Modification of the Criminal Code of the Republic of Albania, by completing its Article 50, letter "j" stipulating therein as an aggravating circumstance the motive of sexual orientation. Thus, under letter "j", Article 50, law no. 7895, dated 27.01.1995, "The Criminal Code of the Republic of Albania", amended, following the term "gender" the expression "sexual orientation" be added, (moral harassment at work place, moral harassment at home, sexual harassment). The recommendation was accepted by the Ministry of Justice and adopted by the Assembly of Albania.

Other issues involving the LGBT community relate to their healthcare, to the need of implementation of LGBT community associated research projects, their social inclusion, domestic and social violence, same sex marriages, etc.

Albania does not avail data on the situation of the LGBT community members at school, at work or in the social setting. This constitutes another problem, which is being dealt with only in form of free discussions. Not any genuine research study has been carried out, that could examine the state of affairs related to the above issues affecting the LGBT community.

In fact, Albania, exception made for the anti-discrimination law, does not offer any other protection instruments or social policies for the LGBT community, be it in the fields of education, employment, health services/care, administration, judiciary, politics, etc.

The LGBT undergo violent and abusive treatment in Albania. This violence, verbal or physical, occurs and identifies with the non-acceptance of the sexual identity of the LGBT individuals, which, in extremis, is associated with the so-called hate crimes.

Albania does not provide legal protection to LGBT individuals from hate crimes. Moreover, and according to this report, the more visibility this community gets in the society, the more frequent will be the odds that this community experiences aggressive attitudes.

Violation against the LGBT community.

This phenomenon is verified in Albania by the transgender community, which, long since, endures violence exerted by different citizens. To be mentioned, among others, is the domestic violence that LGBT community experiences. There is not any policy in place for collection of data on violence due to sexual orientation, and this remains a serious problem to be properly addressed.

Even though the LGBT persons' right for meeting and free expression is guaranteed by law in most Member States, the facts indicate that the LGBT community might face the negation and rejection of these rights by the society and institutions. In this respect, the LGBT community in Albania lacks any experience, having suffered from invisibility.

Same sex marriage. At a time when the European states have undertaken positive steps towards acknowledgement and guarantee of the right to same sex marriage, in Albania this right is not yet guaranteed, likewise the right to cohabitation or civil partnership.

Albania does not recognise the right to transgender individuals to get married to a person whose name and gender is chosen by themselves.

Healthcare for the LGBT Community.

The studies carried out in this respect indicate that quite a number of medical and hospital personnel continue to treat the homosexuality as a mental disease and exert a differentiated medical care for persons, who openly declare their sexual orientation.

The studies, also, indicate that LGBT persons are much more prone to suffer from health problems, than the other part of the society, precisely because of depression and emotional feelings caused by their social isolation. The medical personnel in Albania necessitate to undergo many trainings in this regard, since the LGBT community has little trust in the existing medical services.

The supporting programme of the People's Advocate, "In Favour of the LGBT Alliance" comprises: advocacy, lobbying with other actors of the civil society, the government and the international community for protection of the LGBT community rights in Albania.

All above issues speak of the necessity to develop and implement monitoring strategies that would help to understand which are the forms and levels of this discrimination in Albania.

The law stipulating on protection from discrimination in force, is a very good start, but remains just a tip of iceberg when considering the bulk of issues existing in the field of protection and warranty of LGBT community human rights in Albania.

The institution of the People's Advocate is well aware that issues addressed by it, constitute only a part of the concerns and problems faced by LGBT community members. In this context, our institution cooperation with the civil society, but also with the responsible state authorities, has been and continues to be most active, the objective being to ensure protection and observation of human rights for the LGBT community members, also to touch upon other closely related matters. The institution of People's Advocate, in conformity with its competencies foreseen by law, will pursue its action in improvement of the situation, in enforcement of measures stipulated on the LGBT community in the EU Recommendation 11 for Albania, drawing on these issues.

4.3. Blood feud phenomenon in Albania.

The right to life is guaranteed by the Constitution of the Republic of Albania (Article 21), by several international acts, like the UN Universal Declaration of Human Rights and Fundamental Freedoms (1948), the European Convention on Protection of Human Rights and Fundamental Freedoms of the Council of Europe (1950), as well as the Criminal Code (Articles 76, 77, 78, 78/a, 79, 79/a, 79/b, 79/c, 81, 82, 83).

Life is a right, a fundamental attribute of the human being and when life is taken, in whatever mode, the man is eliminated as a responsible holder of rights and obligations, at the same time. The individual's life, being an undisputable value, has become object of the constitutional protection. During this period of transition, almost on daily basis, the media report losses of human lives under various circumstances and on different motives, the blood feud being one of many.

The blood feud in Albania has already become a very distressing phenomenon for the society, since it infringes the most fundamental human right, the right to life. At the same time, the phenomenon has caused a serious concern in some of the EU countries, especially during recent years, since the number of Albanian asylum-seekers has increased under the pretext that their life in Albania is endangered because of this phenomenon. Different reports related

to the asylum-seekers' motives reveal that among the main claims for asylum by the Albanian asylum-seekers in the EU, are correlated to the blood feud..³³

The blood feud in our country has brought about other negative and regressive consequences, like the *confinement of people without gender and age distinction*, negating to the confined persons a range of constitutional rights, that of freedom of movement, of education, of healthcare services/benefits, of the right to vote, of freedom of organisation, of free opinion and its open expression, etc.

Reaction of People's Advocate to this phenomenon.

Estimating the right to life is a fundamental and most significant human right, recognizing the risk which threatens this right every day, the People's Advocate, in cooperation with the "Solution of Conflicts and Disagreements" Foundation, organised on 11-12 December 2001 a National Conference, *"The State and the Civil Society in Protection of the Right to Life"*.

Following People's Advocate initiative and encouragement, the Assembly adopted law no. 9389, dated 04.05.2005, "On Establishment and Functions of the Coordinating Council to Combat the Blood Feud". This law draws on how better to organise and coordinate measures and the fight of the state organs, societal institutions, scientific and religious ones, etc., as well as on the development of a long-term strategy on prevention and eradication of the blood feud phenomenon in Albania.

In 2012, the People's Advocate took the initiative to sensitise the state institutions, the civil society, the media and individual persons on the sensitive issue of the blood feud.

When examining this phenomenon, we verified that one of the root-causes that have negatively influenced on its survival is the non-enforcement of law no. 9389, dated 04.05.2005, "On Establishment and Functions of the Coordinating Council to Combat the Blood Feud", notwithstanding its entry into force 8 years ago.

We have also verified that the reason of the non-enforcement of this law was because of three by-laws that were not issued by the Council of Ministers, required for the application of Article 7 of the law.

³³ Asylum applicants from the Western Balkans comparative analysis of trends, push-pull factors and responses, EASO, 2013, page 43.

We are of the opinion that the issuance of these three by-laws by the Council of Ministers is of utmost importance to ensure that obligations deriving under Article 7 of the above law be observed. By our memo, dated 28 July 2012 we recommended that the Council of Ministers: *“Takes immediate action in ensuring the enforcement of Article 7 of law no. 9389, dated 04.05.2005, “On the Establishment and Functions of the Coordinating Council to Combat the Blood Feud” by drafting and issuing the by-laws provided for under Articles 4, 5 and 6 of the law”.*

The Minister of Justice in its memo dated 20.03.2013 informed that our recommendation addressed to the Council of Ministers was welcome, and that further to it a Prime Minister’s order “On creation of an inter-institutional working group to draft by-laws in implementation of Article 7, of law 9389, dated 04.05.2005, “On Establishment and Functions of the Coordinating Council to Combat the Blood Feud”, to be chaired by the Deputy Minister of Interior, was drafted and issued.

Having not any information if the above by-laws had been drafted, the People’s Advocate sent to the Minister of Interior two memos, dated 27.11.2013 and 09.01.2014, respectively, requesting to be informed whether the working group had prepared the by-laws in application of Article 7, law no. 9389, dated 04.05.2005.

The People’s Advocate is of the opinion that calling of the Coordinating Council is not only a legal requirement, but it will also serve as stimulus and strong support for the state organs, directly involved in the fight against blood feud phenomenon and which are held responsible to carry out their legal duties. Based on this reasoning, the People’s Advocate requested from the President of the Republic (once from Mr. Topi, and twice from Mr. Nishani, on 12.03.2013 and 27.11.2013, accordingly) the calling of the Coordinating Council, believing that such an act would empower the fight against the blood feud. In response, the Secretary General of the President of the Republic notified that the President cannot call the Coordinating Council unless the three by-laws are issued.

A task-force is established for following up and investigation of cases when the state structures do not intervene for the prevention or investigation of events associated with the vendetta.

One murder case on blood feud motive has been investigated in Puka town, proving that the killing of two persons and the wounding of four others happened due to the negligence of the police officers.

An Open Convention was organised in Shkodra city with participation of representatives of central and local state administration, NGOs, religious communities, different personalities, media, etc.

At the premises of the People's Advocate there was organised a thematic activity with children suffering the confinement.

A Special Report has been prepared and submitted to the Assembly, relating to the blood feud phenomenon and based upon the institutional experience and data obtained from the state institutions.

On 10 and 11 December 2013, the People's Advocate organised a National Conference with participation of several public institutions and NGOs. One of its sessions was dedicated to the blood feud phenomenon, wherein several ministers participated.

Some conclusions and recommendations of the National Conference (11.12.2013) on blood feud phenomenon.

The blood feud, though located in some areas, has turned out to be a very distressing phenomenon for our society, for it infringes the most fundamental human right, the right to life. It has brought about a number of other negative consequences, among which, the confinement of persons without any gender and age distinction, negation of a series of constitutional and fundamental rights, as those of free movement, education, employment, healthcare benefits, right to vote, freedom of organisation, free opinion and its open expression, etc.

At the same time, the phenomenon has caused serious concerns in some EU countries, especially during recent years, since the number of Albanian asylum-seekers has increased, inclusive of the fictitious ones, under the pretext that their lives in Albania are endangered because of this phenomenon. The blood feud phenomenon has not been duly considered by the state structures, which, unfortunately, have not chosen to acknowledge it exists. This is backed up by the fact that no precise data have ever been provided on the number of killings, confined families and persons. This gap could be also explained by the fact that the blood

feud phenomenon is quite dynamic in character. It is medieval, criminal and not genuinely canonical.

Confined children are destined to become criminals due to their living conditions, to the feeling of hatred they are reared with and lack of schooling.

There is not any investment by the state and judiciary organs to release persons from their confinement.

Several measures taken for introduction of supplements and amendments to the Criminal Code, stipulating on increase of prison terms for blood feud crimes perpetrators (not less than 30 years, or life imprisonment, Article 78/a, Criminal Code) and contemplation of two criminal acts, like *serious threat forcing the in-house confinement* (Article 83/a, Criminal Code) and *incitement to blood feud* (Article 83/b, Criminal Code) envisaging up to three years of imprisonment, are not sufficiently effective to combat this phenomenon.

Though law no. 9389, dated 04.05.2005, “On establishment and Functions of the Coordinating Council to Combat the Blood Feud” has entered into force 8 years ago, it has never been implemented. This situation should come to an end immediately, and the central and local structures assigned to carry out this duty, should start functioning intensively by developing and adopting the national strategy and action plan to combat the blood feud, examine the phenomenon from the economic, social, legislative viewpoints, etc., and to assign tasks and concrete measures to the central and local administration.

The blood feud cannot be eliminated in one year, or in one governmental mandate, but it is crucial to at least start an intensive activity to do away with this phenomenon. The blood feud is combated effectively only if state structures, schools, religious communities, media and civil society work together, in implementation of a joint strategy and plan of action, adopted by the government.

Local power entities, inclusive of police, should evince the precise number of confined families and persons. The Albanian State Police should keep accurate statistics on blood feud killings, on numbers of isolated families and persons. The State Police should take immediate action in prevention of various conflicts that lie down at the origin of vendetta and blood feud crimes and in detention of these crime executors. The prosecution should collaborate much closer with the police so that quick, wide-ranging, thorough and objective investigations be carried out. It is not sufficient just to discover the crime executors, but their collaborators

should be traced as well, likewise the ones that incite, support and organise blood feud crimes. The courts should ensure quick, unprejudiced and impartial hearings, and possibly uninterrupted procedures for this kind of crime. They should confer accurate sentences to each and every one found guilty of the blood feud crime. Any soft verdict, or any unfounded acquittal granted, opens the path to self-judicial, vendetta and blood feud acts. The Ministry of Education and Sports should play greater positive and preventive role, should contribute to improvement of school curricula, targeting a better education and upbringing of the new generation, in the spirit of tolerance, and not violence, of diversity acceptance and against self-judgement, vendetta and blood feud acts. Training of teachers in areas where the blood feud phenomenon is spread, is most imperative. The project “Second Chance” should continue, since through its implementation all confined children have and should benefit, not only in Shkodra region, but in other districts of the country, too.

Confined families endure dire economic situation. The social problems of the confined families ask for a much more substantial engagement of the state, of the Ministry of Social Welfare and Youth, in particular. Its district offices should contact the confined families to facilitate applications for economic aid of families with low income and contribute to their coming out of the poverty threshold. The Health Ministry should ensure healthcare services to each household confined on blood feud motives, in conformity with the basic health kit of the Primary Healthcare that each health centre is held responsible to provide to its patients through services of a generalist.

Continued links should be maintained and cooperation relations be kept with the NGOs which operate and contribute to the solution of this problem, mainly in Shkodra region.

A number of recommendations have been provided to the state organs, several of which are as following:

1. Recommendation to the Director General of the Albanian State Police to collaborate with the local administration and the Regional Education Directorates in order to ensure registration of all killings on blood feud motives, of the confined families and individuals according to gender and age group (males, females, minors).
2. Recommendation to the Ministry of Education and Sports to play a more preventive and positive role for amelioration of teaching programmes, the objective being a better education and upbringing of the new generation in the spirit of tolerance, non-violence,

diversity acceptance, against self-judgment, vendetta and blood feud practices. Training of teachers in areas where the blood feud phenomenon is spread. Continuation of the “Second Chance” project to the benefit of all confined children in all districts of the country

3. Recommendation to the Ministry of Social Welfare and Youth proposing that its regional offices contact the confined families with low income and facilitate their application procedures for economic aid and contribute to their coming out of the poverty threshold.
4. Recommendation to Ministry of Health to ensure healthcare services to each household confined on blood feud motives, in conformity with the basic health kit of the Primary Health Care that each health centre is held responsible to provide to its patients through services of a generalist.

Recently, a positive reaction by the prosecution of Shkodra Judiciary District has been witnessed and we believe that this organ will influence and ensure prevention of blood feud phenomenon in Shkodra region, the confined coming out freely. The chair of Shkodra Judiciary District Prosecution Office has issued an order requesting identification and administration of the confined families’ claims. The Order requests that the local state police structures verify all families and persons that are under confinement on the blood feud motives. The judiciary police officers are ordered to take in all claims, from persons who are under threat of being confined.

We appreciate this legal practice believing, at the same time, that this positive action be spread over to other prosecution offices, more concretely to all those areas which have been affected by the blood feud phenomenon and family/persons confinement, in consequence.

Based on these reasons, we have recommended, through a memo dated 03.03.2014, that the Prosecutor General undertakes necessary measures to extend the positive initiative of Shkodra Judiciary District Prosecution, “On identification and administration of confined families’ claims”, on to the prosecution offices of the Judiciary Districts in areas of the country affected by the confinement phenomenon on blood feud grounds.

4.4. Violence against women.

Violence against women is a complex problem which constitutes more than a mere inter-personal relationship between husband and wife. It is a societal problem, a multi-dimensional one, rooted in historic attitudes versus the woman and wedlock relationships. Victimization of women by their husbands is more so reinforced by the economic circumstances, deeply rooted erroneous mentality and tradition, insufficient awareness on the domestic violence of the people.

The study of the phenomenon presents special difficulties and is further increased having in mind that violence occurs in households “behind closed doors”. The only information source remains, in most occurrences, the victim herself, who, in any case, is not liberated from prejudices and stereotypes existing in the society or communities she is part of. Violence against women is turning out to be a big societal concern, since many men feel intimidated by the concept of women’s freedom. The study of domestic violence becomes more difficult considering a series of myths that hamper the insight into the essence of the problem. Thus, in different social communities and milieus there survive opinions like violence affects only “one special strata or determined social groups”, “violence is a predicament of the poor”, “violated women have a certain personality that stimulates the exertion of violence by the husband”, etc.

Albanian custom and tradition have inherited from the past several forms of discrimination in the family and society, but not of a torture kind or other forms of maltreatment. The blood feud phenomenon, which resurged after the '90 in several zones of the country, in particular, has also affected women, but mostly children. Blood feud has become an obstacle to leading a normal life because various difficulties encumber the confined men and children. Cases when women are shot, are rather rare. “Cannon” code is still practiced in Albania, especially in the North. Unfortunately, there is a resurgence of this code after the '90.

Prevention measures undertaken by non-governmental organisations are associated with the adoption of law relating to the domestic violence, likewise with enhancement of measures to duly investigate and prosecute any occurrence of violation that represent a criminal act. More effective means should be in place to guarantee the preservation and enforcement of women’s’ rights, to upgrade the position of females in the households and Albanian society. Moreover, the state entities should operate to put into reality the tasks they are in charge of, to enforce justice till the end, despite cases when some women victims of this violence give up their charges, on one ground or another. It should always be kept present that domestic

violence is not characteristic of poor families only, or those with low education level, but also involves family members with good living standards or high education. When a female is raped, then the stigma falls only on her, and in some cases (in rural zones, in particular) a forced marriage is arranged with her rapist “to put the honour in place”. Still, in urban zones the state of affairs has changed, but in the most sub-urban zones the woman continues to undergo the pressure of the patriarchal mentality.

Domestic violence touches upon all societal strata and groups, without any distinction of race, ethnicity, age, standard of living, geographic area, religious belief, etc. The global data collected these last ten years show that violence against women is an obstacle to the developmental processes of the human society. The socio-economic costs analysis of the domestic violence constitutes a strategic intervention for awareness raising of the policy-makers on the importance and effectiveness of its prevention. Domestic violence, being a most sensitive issue affecting numerous countries and regions, strategies and action plans are necessitated in line with their respective cultures.

Nowadays, the family has lost its “serenity”, and is jeopardised not only by traditional factors, like death, disease, various catastrophes, poverty, etc., but by the “non-traditional” ones, like mental schisms, all kinds of conflicts, psychological violence, alcohol dependencies, abusive use of drugs, abandonment, diseases sexually transmitted, etc. The family is a societal structure comprising a plethora relationships and roles, and as such, it is profoundly biased by the violence exerted within.

Albania is party to important legal instruments, national and international, to combat discrimination and promote and make real the gender equality. Reports issued in the framework of its integration efforts to the European Union, have demonstrated already that Albania has completed the legal framework relating and in support to gender equality and reduction of violence in the family; it has developed a clear strategy expected to bring about positive results. Enforcement of these legal instruments, as well as further implementation of policy documents remain a challenge and are subject of our recommendations.

Forecasting domestic violence as a penal act, legal initiatives being undertaken in regard to stricter sentencing of violators; ratification of the European Convention, “On preventing and combating violence against women and domestic violence”; law enforcement by police and other professionals of the judiciary; involvement of boys and men in public awareness

campaigns, as an on-going process even during 2014; capacity building and empowerment of structures set-up in support to gender quality and domestic violence issues, should be considered significant achievements. Cooperation with civil society and support provided in the cadre of “One UN” programme, with other donors, OSCE, Council of Europe, etc., are inseparable parts of gender integration and battle against gender discrimination.

A good cooperation is witnessed with line ministries and NGOs, which have rendered an important contribution in implementing the Strategy objectives and measures, in encouragement of wider participation of women in political decision making, in economic empowerment of women, in conducting awareness campaigns in protection of women’s and girls’ rights, in prevention of gender-based domestic violence, in organising round tables and seminars, in drawing the attention of the mass media on the issue through TV programmes, publications, etc.

Achievements in legislation

1. One of the most important legal amendments made in the ambit of domestic violence is the forecasting of domestic violence as a penal act in the Criminal Code of the Republic of Albania, under law no. 23, dated 01.03.2012, “On some supplements and amendments to law no. 7895, dated 27.01.1995, “Criminal Code of the Republic of Albania”, amended, wherein the domestic violence is foreseen as a penal act under Article 130/a, which stipulates on forms of violence, on measures and objects of protection under this Article. The amendments rule on the systematic, psychological and economic abuses, as well.
2. By ratifying the law no. 104/2012, dated 08.11.2012, the Assembly adopted the Convention of the Council of Europe, “On Preventing and Combating violence against Women and Domestic Violence”. Through adoption of this Convention, Albania expresses once again its engagement to cooperate at regional and international level to combat the gender based and domestic violence, likewise to undertake legal, political and executive measures to fight this phenomenon.
3. Council of Ministers’ Decision no. 465, dated 16.7.2012, “On gender integration in the mid-term budget programme”. This decision rules that starting from 2013 all central institutions include in their budget measurable objectives related to gender equality.
4. Council of Ministers’ Decision no. 425, dated 27.06.2012 ratifies “The necessary criteria and documentation for admittance of persons in residential institutions, public

and not public, ensuring social care”. Under Chapter V, criteria are determined for accommodation in residential centres of domestic violence victims ensuring them social care.

5. Council of Ministers’ Decision no. 27, dated 16.01.2012, “On encouragement of employment of special groups of female jobseekers”. The programme aims at encouraging the Albanian principals and managers to employ female jobseekers of the vulnerable groups, who find difficulties to join the labour market. This support consists in budgeting the social insurance dues and four minimal monthly wages per annum to be paid to each employee (in compliance with these programmes).
6. At present, the Council of Ministers’ draft decision is under discussion, which would enable the handing over and withdrawal of the economic aid by the wife. The Ministry of Social Welfare and Youth does not have any state responsibility on property issues.

Conclusions and recommendations:

Recommendation number 11 of the EU determines that Albania:

“Takes concrete steps to reinforce protection of human rights, notably for women, children and Roma, to effectively implement anti-discrimination policies”. In response to the objective to *organise awareness raising campaigns on prevention of gender and domestic violence*, the People’s Advocate will pursue, among others, with its commitment to organise open day events, continuous inspections in centres sheltering women, victims of trafficking. Moreover, the People’s Advocate will continuously assess and monitor how legal and sublegal obligations are enforced by state authorities in their respective fields of action.

1. Cooperation relationships established by People’s Advocate with the non-profit organisations, recently materialised in bilateral cooperation agreements, will mainly focus on referral of cases, joint community activities in respect of women’s rights, in compilation of recommendations, etc. Cooperation agreements on protection of women’s rights, established between the People’s Advocate and civil society organisations, will empower the civil society “to effectively make use of the institution of People’s Advocate in forwarding important messages correlated with the situation of women’s rights, which would ask for legal and administrative interventions, etc.”
2. The number of individuals addressing themselves to courts on claims to have been victims of violence, has increased, likewise the number of protection orders issued. It is to be noted that the number of courts that have issued protection orders for domestic violence victims has expanded not only in big cities, but also in smaller districts. This is

an important indicator that shows the level of domestic violence victims' awareness, responsiveness and trust in the protection system has risen. But, bailiff's offices do not always duly and timely respond to the speed of court procedures, since and apparently they find it difficult to enforce court decisions.

3. Domestic violence is a rather common phenomenon in the Albanian society, consequently, it is the responsibility of the state, community and individuals to take necessary steps to stop it. It is indispensable that government undertakes initiatives to combat this phenomenon so that women's and children's fundamental rights, as part of human rights, be duly observed. Regardless of initiatives and activities of different organisations, it is the measures taken by the state that have more probability to unify and consolidate these efforts, even to further promote them.
4. The indemnification of the woman, subjected to torture or sexual violence, or other form of maltreatment, is quite a tepid process. The civil claim is very rarely considered in a penal process. The main factor behind it, is the mentality, according to which "honour cannot be bought with money", but there are numerous other factors, as well.
5. Besides the activities waged by several non-profit organisations for public awareness and finding concrete ways to improve the situation, other effective means, part of the whole mechanism, should be sought to guarantee protection and observation of women's rights and position of females in the family and Albanian society. The authorities providing justice should consider cases on priority basis, especially when victims of maltreatment or violence are women and girls. Quite often, they are forced to give up their claims for one reason, or another. A number of crimes perpetuated against women in the past, have remained without any crime author.
6. Economic empowerment of women constitutes one of the fundamental prerequisites to enable the attainment of gender equality, reduction of gender based violence.
7. Gender integration should be an integral part of all social, economic and political endeavours in Albania, in order to achieve a sustainable development of the country. Efficient utilization of the existing human potentials will make possible that all social groups benefit these achievements.
8. Establishment at each local administration unit (regional and municipal ones) of referral mechanisms for cases of domestic violence, in enforcement of sublegal acts in force.
9. Establishment and upgrading of mechanisms promoting gender equality at central and local level, in particular the acceleration of nomination process of gender employees at

ministerial level, and of local functionaries responsive of gender issues in the city municipalities.

10. Launching of priority policies relating to participation of women and girls, through economic aid, employment programmes, professional qualification and re-training.
11. Implementation of Assembly's Resolution, dated 02.12.2010, "On combating violence against women and increase of parliamentary dimension in the fight against domestic violence".
12. Setting up of social care and rehabilitation structures for victims of domestic violence with local government funds.
13. Implementation of measures foreseen in the "National Strategy on Gender Equality, against Gender Violence and Domestic Violence, 2011-2015", which anticipate drafting of procedures and creation of possibilities to sub-contract NGO-s providing services related to victims of this kind of violence.
14. Establishment by the state of a transit centre for women, who are not victims of trafficking and neither under protection programme, are physically and psychologically violated, cannot afford shelter or accommodation. Many women and girls of this category present themselves at the offices of the People's Advocate institution to ask assistance for shelter and we refer them to the NGOs, since the state does not have any transit institution for this category.
15. Supplementing law no. 7961, dated 12.07.1995, "Labour Code of the Republic of Albania", (amended) Article 32, by adding, under alinea 4, a legal provision ruling on moral harassment by the employer, who, through repeated acts aims at degradation of work conditions, infringement of human rights and moral dignity of the employed woman, affecting her physical and mental health.
16. Situation in Centres for Victims of Violence: after inspection was carried out at the National Centre for Cure of Domestic Victims, Kamza, Tirana, the following recommendations were prepared:
 - Release from duty of the director of the Centre, by terminating the work contract on immediate basis, based on Article 153 of the Labour Code.
 - Taking measures for reorganisation of the Centre's personnel and inclusion of a lawyer and a psychologist in the organisational structure, judged most necessary and indispensable.
 - Ensuring protection and escorting of women and girls by specialised persons, when they go out of the Centre.

- Continuous personnel training on case management and communication skills required when caring women and children sheltered in this Centre.
- Compilation of an internal regulation, a most necessary step to determine the rights and obligations of the personnel and sheltered women. The regulation should not be in conflict with the Constitution and human fundamental freedoms.
- The Ministry of Social Welfare and Youth should be held liable for issuing the directive on application of standards foreseen in the Council of Ministers' Decision, no. 505, dated 13.07.2011.
- Enrichment of the food basket as per the quotas set, targeting season food products.

17. Situation in the National Reception Centre for Victims of Trafficking, Linza, Tirana: after the inspection carried out in this Centre, the following recommendations were issued:

- Disbursement of sufficient funds for this Centre, repairs and refurbishment works, needed to renovate the existing premises, to assure their restoration and efficient maintenance, in order to provide the living standards, as required and anticipated in the legal provisions in force.
- Reaching an agreement with Tirana Regional Education Directorate to facilitate access to education of people sheltered in this Centre, of people who are at the age of compulsory education, so that they could go back to schooling and continue the respective school curriculum and not lose the academic year. This would make possible that every individual enjoys the right to free of charge education. These measures should be provided to children (aged 3 to 6), who stay in this Centre.
- The rights and duties of this state institution should be determined, so that services offered therein make certain that victims of trafficking enjoy a normal life, as well as the status, the rights and duties that sheltered persons are legible to in line with Article 6, law no. 90/2012, dated 27.09.2012, "On Organisation and Functioning of State Administration".
- Proviso of missing clothing to sheltered persons (sweaters, shoes, pants, etc.) for their humane and dignified treatment.

- Putting into service the children's playground so they enjoy and entertain themselves at least within the premises of the Centre; ensuring computers of the Centre operate properly.

4.5. Unaccompanied minors.

*“...the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding...”*³⁴

Constitution of the Republic of Albania, under its Article 54 defines children as objects legible to enjoy the right of special protection by the state. This definition constitutes a significant basis for appropriate and necessary reforms in protection of these subjects and their rights under any circumstances and when imperative. The Constitution makes a distinction between adults and minors, providing for the right to a better protection of the latter, on grounds of their inability and vulnerability, something that is sanctioned by their definition as being “objects of special protection”. Still, this definition is quite generic, notwithstanding that it constitutes a good basis for minors' protection and a guarantee of their rights, in general. Respect and comprehension of children's dignity, in particular of the category of orphaned children and those exploited for forced labour, is a huge challenge linked inextricably with the affirmation and observation of their rights and fundamental freedoms in a society that aspires every day the establishment and consolidation of democratic values.

Cases of Albanian children found exploited and trafficked in neighbouring countries or beyond, appear in almost daily news and chronicles. Why?

Cases of children leaving Albania unaccompanied by their parents, or abandoned, or left in custody of their relatives, necessitates an immediate attention and management.

It is true that during the transition years the phenomenon of trafficked Albanian children was very worrisome. Rightly so, it concerns all Balkan countries, especially Greece where a greatest part of these children has stranded, pushed or not by their parents, not only for

³⁴ Preamble to the Convention on Children's Rights.

trafficking, but also to get engaged in decent work. This category often fall, intentionally or unintentionally prey to traffickers, who exploit them for begging, prostitution or other illegal activities. We can say that this phenomenon has known a certain decrease, because the Albanian state, too, is taking stricter actions to prevent trafficking, especially to make responsible those persons that are involved in trafficking and those who have been identified as trafficking of human beings organizers. People's Advocate is open to further cooperate with state and non-state organisations in protection and observation of children's rights.

Our society and state have taken important steps in this respect, by guaranteeing special protection of minors by Constitution; by ratifying the UN Convention "On the Rights of the Child" (1992); by ratifying the optional UN Protocol to the Convention on the Rights of the Child, on the Sale of Children, Child Prostitution and Child Pornography"³⁵. Moreover, the state has taken upon itself the responsibility to exert its liabilities for protection and life security of children, as well as elimination of worst forms of child exploitation; adoption of law no. 10347, dated 04.11.2010, "On Protection of the Rights of the Child"; establishment of institutional mechanisms in protection of these rights at central and local level; ratification of an action plan relating to children, 2012-2015 (Council of Ministers' decision, no. 182, dated 13.03.2012); clear definition of principles drawing on protection of children and of their rights in the Family Code; forecasting and expansion of criminal offences range in the Criminal Code aiming at prevention of children's abuse, etc.

Adoption of law no. 10347, dated 04.11.2010, "On Protection of the Rights of the Child", is considered and constitutes a step forward in institutionalisation of child's rights in our country, since it stipulates, among others, on establishment of institutional mechanisms in safeguarding these rights at central and local level. There are a great number of central and local administration stakeholders that have in the focus of their activities this social category, but cooperation between them faces problems of coordination, of clear determination of roles and of information sharing. Also, distribution of financial resources in support to services provision for the youth, is inappropriate and insufficient and does not bring about any sustainable changes to ensure their self-determination.

³⁵ Law nr. 9834, date 22.11.2007.

“The legal framework for economic and social rights has been improved, but implementation is slow, particularly regarding people with disabilities and children at risk of abuse”³⁶. There exists an Agreement between the Council of Ministers of the Republic of Albania and the Government of the Greek Republic on protection and assistance of children, victims of trafficking.³⁷

*“In the area of **children’s rights**, the Criminal Code amendments of 2013 introduced possession of child pornography materials and facilitation of trafficking of children as criminal offences. There are 173 child protection units (CPUs) in municipalities and communes. The number of CPUs needs to be substantially increased in order to meet the child protection needs of the country’s vulnerable children in a meaningful way. The capacity of the state agency for children’s rights protection should be reinforced. The child protection system lacks sufficient budgetary means, staff sustainability and minimum standards of operation, in particular protocols, and legal requirements. The emigration of unaccompanied minors, particularly Roma, from Albania to the EU continued to be a challenge. Regarding child labour, the number of children (mainly Roma) working or begging in the streets and subjected to the worst forms of exploitation and extreme marginalisation remained very high. No effective measures were taken by the state to address child labour and exploitation. A child protection system is needed that provides specialist support services for children at risk of abuse or exploitation focusing on stronger support for families with difficulties and community-based services. Adequate action has not been taken to provide specialised services to sexually abused children”³⁸.*

People’s Advocate has always aimed at providing special contribution to safeguard the children’s rights, be it by addressing individual complaints, or by investigating, on its own initiative, cases made public, or by examining legislation and recommending necessary changes or amendments to it.

In this context, we remind that People’s Advocate has followed on priority basis the case, very complex and international in character, of “disappearance” of some 500 Albanian children from a care institution of children in Greece. Investigation of the Greek

³⁶ EU Progress Report on Albania, page 13, 2013.

³⁷ Ratified by Republic of Albania, law no. 9544, dated 29.05.2006.

³⁸ EU Progress Report on Albania, pages 52 and 53, 2013.

Ombudsman, carried out upon our request, confirmed the fact that a great number of children had left or taken out of the Greek care institution “Agia Varvara” in Athens, they were accommodated in, during the period 1998-2002. Officially, they are now considered “missing”, since in 2002 there was not found any evidence on their whereabouts by the police or other authorities, at a time when they could have fallen in the hands of traffickers, etc. The Office of the Greek Ombudsman sent us a detailed report on “Agia Varvara”. It results that in 1998-2002, in “Agia Varvara” there have been sheltered some 640 children, who, after having been accommodated in this care institution, had left and there are no available indications which direction they had taken, or which hands they are in. Notwithstanding the good intention of the responsible Greek authorities, the measures taken by these authorities and results found by the office of the Greek Ombudsman do not justify them.

In consideration of the issue regarding the Albanian children trafficked in Greece by third parties or by their own families, the governments of both countries signed in 2006 an agreement to regulate issues relating to children victims of trafficking that are in Greece, for whom taking into account the best interests of the child should be voluntarily safely returned in Albania, or integrated in this country of destination. The agreement is ratified by the Assembly of Albania by law no. 9544, dated 29.05.2006.

The child’s right to maintain relationships with both parents on regular basis and meet them in person, is reflected under Article 18 of the Convention, as well as under Article 215 of the Family Code, which stipulate that both parents are jointly responsible for education and development of the child. Unfortunately, there are a number of cases when court decisions are not enforced appropriately, especially where there is no willingness to respect it from one parent.

In fact, there are quite a number of children who live under difficult economic conditions and low income. The social insurance scheme, but also the economic aid provided by the state to poor families, often does not ensure even the minimum subsistence means to these families, and subsequently, neither to their children. This has triggered the illegal practice of employment of children in contrast to law, and led to traumas and complex psychological states of mind.

Notwithstanding the increased attention to safeguard child’s rights, the non-observance of child’s right to privacy has caused that news reporting on criminal offences against minors, do not respect this right. Cases of missing persons and missing children remain a predicament

of the Albanian society. In this regard, quite a number of TV shows deal with cases of missing children and their destiny. It is precisely these stories that end in daily papers columns, which helps to understand how the mechanism used to select themes affecting children, works and resonates in newspapers. Generally speaking, it cannot be concluded that the daily papers, when depicting cases of this category of children, are fully correct, thorough and ethical. Efforts made to truly expose children related issues of concern and confer them a real voice and a well deserved place, are rather limited, reasons behind being different. Even when children's stories appear in newspapers, their depiction often raises essential ethical questions as regards the ways these themes are covered, the ways children are identified, interviewed and circumstances described, which have to be kept in mind by the reporters when dealing with cases of minors. In general, it might be admitted that the reflection of children related events in the media is predominantly of a sensational, insufficient, incorrect character, and without stereotypes for children. Quite often, the media has unclosed the identity of trafficked minors. Respect of the Transmission Code, ratified recently by the Albanian Audio-vision Media Authority and imposition of sanctions to television media operators who violate children's rights, is a challenge and would add to the preventive efforts.

The Ministry of Labour, Social Issues and Equal Opportunities (MLSIEO) jointly with the Interior Ministry, based on Council of Ministers' Decision no. 265, dated 12.04.2012, "On establishment and functioning of the mechanism of work coordination among state authorities, responsible for referral of cases of children at risk, and on ways how to proceed" issued a Joint Order no. 125, dated 23.08.2012, "On protection of children's rights, who are exposed to forms of abuse", according to which every child found in an emergency situation, will be taken under immediate protection by the Albanian State Police, in cooperation with State Intelligence Service structures. In conformity with this Order, all emergency cases of children at risk, identified by the Albanian State Police conjointly with the social workers of the regional Offices of Social Services and the State Intelligence Services, will be referred to the regional, municipal and communal care units for children. Children are expected to stay in public or non-public residential institutions of social care until a final decision is taken by the judiciary³⁹.

³⁹ Article 39 of law no. 10347, dated 4.11.2010 "On Protection of the Rights of the Child" which stipulates that: "Article 39 Child Protection Unit in municipalities/communes 1. Child protection unit in municipalities/communes, as a special unit or as part of structures charged to cover social issues, has the duty: a) to assess and monitor in continuity the situation of families of children at risk, until the child is considered "not at risk"; b) to identify and coordinate in a multi-disciplinary way, the protection, referral and analysis of cases in

Still, as long as we notice children (mostly Roma) begging in the streets of Tirana, it does not look like the situation has improved in enforcement of this Order.

Although numerous actors of central and local government are involved in providing assistance to this social category, the cooperation between them comports problems of coordination, division of competencies and information sharing.⁴⁰

Children's labour, in general, and street children, in particular, as a form of economic exploitation and forced labour exploitation in Albania, consists one of the worst violations of children's rights in Albania. The causes of hard labour the children are forced to, should be sought in their social exclusion, meagre income of the family, and extreme poverty. As long as it is not engaged in combating these root causes, the economic exploitation of children will continue to one the worst infringement of children's rights in Albania.

The US State Department Report, June 2013, underscores the fact that Albania remains country of origin of trafficking, where besides men and women, children are listed as objects of trafficking for sexual exploitation, forced labour, inclusive of forced begging.

There persists the perception of non-enforcement of legal provisions that foresee coercive measures for parents that abandon their children, do not send them to school, or even those who force their children to labour.⁴¹

It is a fact, that the number of domestic violence cases verified and addressed by the state police structures has increased. The official statistics shared by the Ministry of Interior relating specifically to cases of children, impaired because of violence exerted in the

the territory of the municipality/commune; 2. In municipalities/communes there are established multi-disciplinary working groups for protection, referral and analysis of cases of children at risk in the territory of the municipality/commune”.

⁴⁰ Special Report of People's Advocate (2012), “On the rights of orphaned children, inclusive of children accommodated in residential social care institutions, as well as of children exploited for labour”.

⁴¹ Article 40, law “On Protection of the Rights of the Child” stipulates: “1. Violation of rights foreseen under Articles 7, 8, 11, 12, 13, 14, 15, 16, 17, 21 and 26 of the law, when do not constitute criminal offences, they constitute administrative offences and are fined respectively: a) a physical person by 30,000 to 60,000 lekë; b) legal subject by 60,000 to 120,000 lekë; c) physical person within the legal subject, who is responsible of the violation by 30,000 to 80,000 lekë; ç) person exercising a public function by 30,000 to 80,000 lekë.2. The procedure undertaken for examination of administrative offences and imposition of fines, as provided for under alinea 1 of this Article is carried out in line with law no. 10 279, date 20.5.2010 “On Administrative Offences”.

households and are taken under protection by the police, testify a major commitment and engagement of the police structures in this field.⁴²

The age group of children benefiting all residential services is from 0 to 16 years of age, (Council of Ministers' Decision no. 425, dated 27.06.2012). These supporting services for children over 16 years are a few and are offered mainly by NGOs that back-up this age group through in-community integration programmes, stimulation of an independent subsistence.⁴³

According to the US State Department "Trafficking in Persons Report, issued on 19 June 2013"⁴⁴, Albania is primarily a source country for men, women, and children subjected to sex trafficking and forced labour, including the forced begging of children. Albanian women and children continue to be subjected to sex trafficking within the country. Albanian victims are subjected to conditions of forced labour and sex trafficking in Greece, Italy, Macedonia, Kosovo, Serbia, and throughout Western Europe. Authorities reported finding trafficking victims from Greece and Ukraine in Albania during the year. Children were exploited for commercial sex, forced begging, and forced criminality, such as burglary and drug distribution; girls were also subjected to prostitution or forced labour after arranged marriage. The Government of Albania, the Report reads, does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. Despite these efforts, the government failed to demonstrate evidence of increasing efforts to address human trafficking over the reporting period; therefore, Albania is placed on Tier 2 Watch List. The Albanian government is criticised for having removed the national anti-trafficking coordinator, who was highly effective in collaborating with NGOs to develop the national referral mechanism (NRM) and standard operating procedures, and left the position vacant for five months. This left the national coordinator's office without the authority to convene interagency meetings. Assistance to child victims of trafficking was inconsistent".

Recommendations for Albania: "To proactively implement the new standard operating procedures on victim identification to increase the scope of victims identified in Albania; ensure adequate funding for NGOs providing critical victim assistance; ensure a victim-

⁴² According to Interior Ministry's memo no. 7782/4, dated 30.01.2013, the number of evinced cases of domestic violence, dealt with by the Albanian State Police, further to entry into force of law no. 9669, dated 18.12.2006, "On Measures against Exertion of Violence in Family Relationships", comes out to be as following: in 2008 – 822cases; in 2009-1217 cases; in 2010-1998 cases; in 2011-2181 cases and in 2012-1860 cases. Evinced cases related to domestic violence against children, result as following: in 2008-77 cases; in 2009-49 cases, in 2010-120 cases; in 2011-98 cases; in 2012-46 cases.

⁴³ Ibid.

⁴⁴ Dated 20 June 2012.

centered approach to victim identification by not conditioning victim status on victims' roles in criminal investigations; expand the focus of care to ensure more community-based services for victims' reintegration, and empower survivors and help reduce the stigma associated with trafficking; continue to take steps to increase victim-witness protection for victims who may be willing to cooperate with law enforcement; vigorously pursue cases of trafficking occurring within the country; and proactively investigate trafficking-related complicity of government officials"⁴⁵.

Bearing in mind that children who are unregistered in the civil state offices are one of the categories most exposed to abuses or various offences, and also based on difficulties encountered in practice for their registration in these offices, a Directive no. O7, dated 10.01.2012 was ratified, "On adoption of procedures to be followed and minutes to be completed by representatives of state police and municipalities/communes for retrieved children or children unregistered in the civil state offices". The problem of unregistered children is still lingering (mostly among Roma community), though their numbers have dropped. The UNICEF study, "Mapping of Roma Children", carried out jointly with the Centre for Economic and Social Studies, estimates that there are some 359 unregistered Roma children in the country.

In most cases, children have turned out to be generators of high incomes with low cost, being subjected to several forms of exploitation, like sexual exploitation of minors and prostitution. Likewise, minors' exploitation for forced labour remains an open wound. The need to survive of minors and other children pushed towards acceptance of every kind of work, goes contrary to their elementary rights for education and enjoyment of good health. Having the best interest of children in mind, these cases have to be prosecuted with a strong hand and by all legal agencies, like police, prosecution, etc., until concrete examples are given testifying how the Albanian state enforces what it has ratified and sanctioned by legal and sublegal acts.

The legal provisions that provide for sanctions against parents that abandon their children, do not send them to school, and force them to labour are not enforced, yet.

Among the conclusions of the South and East Europe Ombudsmen's network, "Children on the Move"⁴⁶, it is defined that: "Children on the move and at high risk of trafficking are

⁴⁵ US State Department Report 2012 on Albania.

⁴⁶ Zagreb (Croatia), 5 November 2013.

especially vulnerable, regardless if they are accompanied or not by their parents, or if they travel alone seeking better life conditions, escaping violence, abuse, poverty, war situation, natural disasters, or other factors that force them to leave their living place”.

People’s Advocate, through its recommendations, strives to educate the Administration, by raising its awareness on the real role it should play to the benefit of citizens, to make it understand that the true reason of its existence is servicing the people, so that they enjoy their rights. Following this report, concrete recommendations, drafted in respect of the best interests of children, will be addressed to central institutions:

Some recommendations

- State institutions should avail itself of precise figures on Albanian asylum-seekers in different countries of the European Union.
- Particular attention should be paid to persons confined on blood feud grounds, concluding if persons that have committed a crime have been prosecuted and sentenced by the judiciary. Establishment of justice, prosecution of crime perpetrators, protection and regular representation of victims during trials, as well as compensation for the afflicted damages will lead to averting the confinement phenomenon. Availability of precise statistics of confined families’ to be ensured by the state, will create sound grounds and pave the way to face respective problems jointly with representatives of the EU member states and will raise the public awareness on consequences of asylum claims based on fabricated documents.
- Children at risk are the category of children begging on the streets, abandon schooling, this is why these cases should be referred to, assisted and dealt with by child protection units set up in municipalities and communes, which should be established in all local units, in implementation of the respective legal provision.
- Counselling efforts and suing of parents that push their kids onto the streets for begging should be intensified and taken upon by the Sector on Minors and Violence set up in the police directorates. Laws stipulating on children’s labour, violence against children, compulsory education, as well as laws that indirectly stipulate on prosecution of individuals abusing minors, should be enforced and be accompanied by enforcement of laws stipulating on financing of protection services for children, victims of trafficking. It is imperative, too, to build capacities and raise sufficient funds for local administration, to set-up new structures responding to children’s needs, to a continuous

training of the respective staff, and to a better coordination among entities and stakeholders engaged in this field.

- A more qualitative and professional performance is required from the judiciary, especially for cases that have at their centre the best interest of the child. This principle should find proper expression not only in the court verdicts phraseology, but should be given a precedence in their performances. In this regard, respect of child's opinion, guarantee of a better alternative for his/her serene upbringing and well-being, as well as observation of the non-discrimination right, should be thoroughly and clearly examined and reflected in the court decisions.
- Attention to cases of missing children should not be paid only on the respective international day (25 May), but should be held as a priority by all law enforcement and judiciary agencies.
- Discouraging the irregular migration, return of persons, minors inclusive, constitutes a big challenge for destination countries, but also for Albania when applying the pre-determined procedures and observing their human rights and fundamental freedoms, when implementing the jurisprudence of the European Court of Human Rights sanctioning special protection in cases of return, deportation and extradition. The guarantee of the best interest of child should be laid down as a key objective of every state, further to the definitions of the UN Convention "On the Rights of the Child", ratified by all European states⁴⁷.
- Technological and financial capacities of the Border and Migration Police should be upgraded to ensure that irregular border crossings by minors come to an end.
- More awareness raising campaigns should be organised about the existence of Child Protection Units in a number of country's municipalities and communes and of the assistance they are responsible to provide for maltreated and abused children, etc.

It is now required from Albania: establishment of an efficient multi-stakeholder system for children's protection aiming at prevention of violence against children and integration of children victims away from any violence exertion; determination of procedures and mechanisms for identification, reporting, referral, investigation, management and

⁴⁷ Declaration of European Ombudsmen for Children "Children on the Move", adopted in the 17th General Assembly's meeting, Brussels, 27 September 2013.

coordination of cases of children victims of violence, provision to children of concrete information on how they could look for assistance⁴⁸.

The Committee on the Rights of the Child defines: “In cases where children are involved in asylum procedures or administrative or judicial proceedings, they should, in addition to the appointment of a guardian, be provided with legal representation”.⁴⁹

Finally, enacting and guaranteeing of human rights by the State is a warranty to avoid and diverge the irregular movement of citizens towards the EU countries, looking for a better life.

4.6. Healthcare services.

Examination of factors influencing the increase of asylum applications lodged by Albanian nationals, show that one of the motives presented by them in their claims for asylum in the EU member states is that of healthcare infrastructure. Following assessment of documentation related to asylum claims in the EU member states, and according to the EASO, it results that (5–30 %) in Luxembourg (for applicants from Albania, Serbia and Kosovo), Sweden, Belgium and Switzerland (for applicants from Albania and Kosovo) are based on claims of lack of health services, of poor quality and conditions these health services offer in the origin country.

The healthcare services in Albania are described in the above mentioned organisation, as herebelow:

“Healthcare is provided for free through a vast network of primary healthcare centres, clinics and hospitals for outpatient specialised cases in 36 districts of the country. However, there is a lack of specialist treatment and medical supplies outside Tirana, with accident and emergency care being generally limited throughout the country. Corruption in healthcare remains a widespread phenomenon. It facilitates bureaucratic procedures most commonly used in relation to the provision healthcare services”.

A considerable part of Albanian citizens that seek asylum on health grounds in the EU countries, is based on the non-provision of healthcare services and lack of medical treatment with medicines qualified for mental health problems.

⁴⁸ Alinea 44/b, c, Final Recommendations of the “Committee on the Rights of the Child” for Albania’s submitted report 2-4 on implementation of “Convention of the Rights of the Child”, Geneva, October 2012.

⁴⁹ Comment no. 6, UN Committee on CRC “Treatment of Unaccompanied and Separated Children Outside their Country of Origin”-CRC/GC/2005/6, 1 September 2005, page 6.

What most concerns Europe, to be considered also by us, is the fact that prolonged transition in many countries, in Western Balkans in particular, has had negative effects, increasing the number of people suffering from mental syndromes. The percentage of people that are not medically treated has risen from 36% to 45%. According to the World Health Organisation report, 47% of people suffering depression do not benefit any healthcare services for lack of an effective healthcare infrastructure, for lack of proper diagnosis, or other problems mostly associated with their mentality. This has proven to be one of factors increasing the number of Albanian asylum claims in the EU, which ask for an adequate management of healthcare related matters. Addressing these problems by state authorities should be a priority, since the state of affairs verified in this healthcare infrastructure and the level of response expected on the part of the Albanian public administration do not meet the required standards.

Based on data and following verification of state of affairs in the inspected psychiatric hospitals, it results that healthcare infrastructure and medical treatment of sick patients left much to desire and were not very reassuring that their health condition would improve, on the contrary and in many cases, it aggravated their health condition.

Law no. 44/2012 "*On Mental Health*" remains a legal act not implemented by medical personnel, in a number of its provisions. Alongside with trainings to be organised by the Ministry of Health, and directives it should draft in enforcement of this law, it has another fundamental task, that of changing, amending and issuing of new sub-legal acts implementing the law.

In absence of sub-legal acts in the legal cadre, the regulation ruling on treatment of mental patients remains in force. It foresees new norms on hospital beds per square meter, on number of showers and bathrooms per person, on physician/nurse/custodian-patient relationships, etc., on food quality and calories, on new norms for clothing and bed sheets, on new calculation of a patient costs, on need to differentiate expenses for female patients' needs, etc.

After presentation of a range of issues that concern healthcare services in our country, which form the basis of Albanian nationals' asylum claims on grounds of deficient healthcare infrastructure in the EU member states, the People's Advocate finds it appropriate to give some conclusions and recommendations in this part of the Report, in the hope that they would

be of service to Albanian authorities, would trigger their enhanced actions in improvement of their performance and in addressing a series of aspects, and more so, in the hope that their application would help redress and reduce factors pushing the Albanian nationals to claim asylum in the EU on health grounds.

The institution of People's Advocate has reached these conclusions:

1. Medical treatment of mentally sick persons remains problematic and tends to increase the level of infringement of patients' lawful rights and interests.
2. Ministry of Health, Ministry of Justice and other competent state institutions providing mental health assistance, should take into serious consideration cases that concern this category of persons, by enhancing the image of this service.
3. State organs should address with particular interest the legal and sub-legal acts that necessitate changes or adoption, the objective being to improve public health infrastructure and services from many viewpoints.
4. Steps should be undertaken that a new mentality prevails in state administration promoting new approaches versus people in need, sick persons, in particular.
5. Healthcare service should be responsive to and aligned to the standards to be observed for mentally sick people, develop strategic policies attracting new physicians to this service and ensure healthcare facilities, which are indispensable for the medical and support personnel.