



REPUBLIKA E SHQIPËRISË

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Report on the area of “Astir”

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1. Introduction

The Ombudsman's Institution focuses on promoting, preventing violations and protecting human rights and freedoms, including the right to good governance, the right to property, and the right to adequate housing. These competences of the institution are stipulated in the Constitution of the Republic of Albania, as well as in Law no. 8454 dated on 04.02.1999 "*On the Ombudsman*", as amended. In exercising its functional competencies and duties, the Ombudsman's Institution has been very active and focused on addressing and fundamentally reviewing some of the key, sensitive and delicate issues for broad communities of individuals, as well as communities of residents are continuously being affected in the areas involved in the construction of the Project (Lots) of Tirana's Big Ring Road.

The right to property is a very important fundamental right in a democratic state. Failure to respect property rights as one of the most basic human rights continues to be a disturbing phenomenon for the Albanian reality. The respect and protection of property rights has been the focus of a considerable number of complaints filed at the Ombudsman's Institution.

The Ombudsman emphasizes that the right to property should be protected and guaranteed not only in the texts of laws and bylaws, but it should be at the core of the work of every state administration institution to ensure the effective implementation of this right.

In this regard, the Ombudsman has become aware and has begun addressing the problems related to the implementation of the project "*Rehabilitation of the road segment "Overpass of the palace with arrows, roundabout "Shqiponja"*" precisely based on the petition submitted by the residents of the segment of the area of Astir, from individual complaints filed at our institution, complaints administered in the field during verifications and inspections undertaken by the institution's experts, as well as in print or visual media reporting. The Ombudsman's Institution's investigation and scrutiny procedures are primarily focused on legalizing self-declared objects by various entities, demolishing existing residential or commercial design buildings, and compensating for the expropriation of entities that own or possess real estate in the area of Astir, in Tirana.

Interventions to demolish the buildings / facilities affected by the construction of the above-mentioned road segment began shortly after unexpected reports in the visual media, after which several dwellings and some public works were demolished, while interventions are expected to continue to demolish a considerable number of dwellings leaving many families homeless, who have been living in this area of Tirana for years.

The Ombudsman's Institution has received 16 individual complaints, and has initiated a case related to this issue. Among the complaints filed are a petition sent on 13.11.2018, signed by 427 inhabitants of the area of Astir, whose dwellings are affected by the implementation of the project, "*Rehabilitation of the road segment "Overpass of the palace with arrows, roundabout "Shqiponja"*", as well as the "Open Letter" addressed to the Mayor of Tirana, of which the drafters have also informed the Ombudsman.

The Ombudsman's Institution, in the exercise of its constitutional mandate, has primarily initiated the review of the problem of demolition of buildings / facilities in the area of Astir, in Tirana, by the National Territorial Protection Inspectorate (NTPI). The initiation of this case mainly started on the basis of information made public in the visual media, shortly after the public declaration of representatives of some of the public administration bodies involved in the process, such as ARA, NTPI, ALUIZNI and the Municipality of Tirana, regarding the demolition of about 317 facilities that were on the project trail to be implemented.

The whole process has been subject to constant on-site monitoring by the Ombudsman of any reports or events related to the activity of public bodies, as well as frequent protests by residents of the area of Astir.

These issues continue to be present in other areas and projects in the city of Tirana.

This report should not be considered as a fragmentary focus of the issue that relates only to the project being implemented for the construction of the Tirana Big Ring Road in the area of Astir, but as a continuation and critical analysis of respect for the legal rights and freedoms of human beings in the process of accomplishing public works by various state institutions or bodies.

The report analyzes the key elements identified around these problems, focusing initially on the decision-making process for the approval of the project being implemented, the activity of ALUIZNI, and follows on with the process followed by ARA, expropriation procedures, cooperation and the role of the Municipality Tirana in this process, as well as the role of the NTPI and TPI of the Municipality of Tirana, or third parties that have committed acts of demolition of houses or public works.

The report drafted by the Ombudsman after ascertaining the concrete issues, comes with some important conclusions and recommendations in order to address them to the institutions involved in this process. *The issues addressed in this report cover the time period from the end of October 2018 to June 2019.*

The following will also explain in detail the claims of the inhabitants of this area, the findings obtained as a result of the administrative investigation by the Ombudsman, on the role of the responsible public administration bodies, the steps taken by them to resolve this issue, the procedure followed for the expropriation of residents, as well as the relevant recommendations in this case.

2. Decision-making for the approval of the project "Rehabilitation of the road segment - overpass of the palace with arrows – roundabout "Shqiponja".

Specifically, since the end of October 2018, the Ombudsman's Institution has started monitoring the situation created in the so-called "Astir" area in Tirana. The contacts with the residents of this area suggest that the project being implemented in the area was designed and approved without a real public consultation and information process, as was claimed by them for numerous interventions in the previous project. According to them, these interventions

were intended to favor certain entities, or individuals, with the aim of developing the area near the high-rise construction project.

What has been evidenced during this period, before we had even begun to scrutinize the whole issue, or even individual complaints submitted by various complainants or groups of complainants, is the fact that there has been no accurate information or official notification on the project being implemented in the area, the decision by which it was finalized, its total cost, as well as the planned cost of expropriation of residents under the legal framework governing the expropriation procedures. **This has been the first failure of the state administration bodies in this complex issue.**

- i- Focusing on the development project approved for the execution of works to be carried out in this area, and as part of our investigation of this matter, we have addressed our letter no. K3 / K45-9 dated on 16.11.2018, to the **National Territorial Planning Agency (NTPA)**, requesting clarification regarding the claims and concerns of residents of the area.

Based on the response given by this Agency with letter No. 1494/1 dated on 22.11.2018, which explains the part of the competence and institutional responsibility for the issues and problems related to the development of the territory, we have addressed the following with a request for information, through our letter No. K3 / K45-14 dated on 18.12.2018 to **the Territorial Development Agency (TDA)**. This letter requested information if submitted to the TDA, in accordance with the obligations set forth in Law 107/2014 "On Planning and Development of the Territory", as amended, the project for the expansion of the Tirana New Ring segment, at the area of Astir and what are the opinions given by the TDA regarding this project if it is submitted for consideration or opinion to the Territorial Development Agency.¹

The institution concerned has also been asked to do everything else related to the matter, by aiming to achieve the final resolution of claims and concerns raised by the community of residents affected by the implementation of this project.

In the letter prot. no. 3116/1, dated on 26.12.2018,² the TDA explains inter alia that, *at its meeting on 20.11.2018, the National Territorial Council adopted Decision No.01, "On the*

¹ The information requested relates specifically to these questions;

a) if submitted to the TDA, in accordance with the powers provided for in Law 107/2014 "On Planning and Development of the Territory", as amended, the project for the extension of the Tirana New Ring segment, in the area of Astir.

b) what are the opinions given by the TDA regarding this project, if it is submitted for consideration or opinion to the Territorial Development Agency;

c) as well as everything else related to this issue, aiming at the quickest and final clarification of the claims and concerns raised by the community of residents that will be affected by the implementation of this project.

² In letter prot. no. 3116/1, dated on 26.12.2018, of the TDA, it is stated that:

approval of the development permit for the subject: "Rehabilitation of the road segment "Overpass of the palace with arrows, roundabout "Shqiponja", Tirana Municipality".

One notable finding in the content of this TDA paper is the fact that institutions such as the Agency for Legalization, Urbanization and Integration of Informal Areas / Buildings (ALUIZNI) in Tirana, the LRERO of Tirana, the Property Treatment Agency, as well as the Municipality of Tirana, the TDA has addressed with information letters, and procedural elements of agreement, set out in the procedures for the adoption of specific draft decisions by the NTC, only one day before Decision No. 1, dated on 20.11.2018 of the NTC, "On the approval of the development permit for the subject: "Rehabilitation of the road segment "Overpass of the palace with arrows, roundabout "Shqiponja", Municipality of Tirana" and long after the initiation of the actions for the realization of this project which was still unapproved.

We note the fact that, in accordance with point 4, Article 10/1, of the Decision of the Council of Ministers "On the Approval of the Territorial Development Regulation", as amended, the time limit for taking the decision is within 20 working days from the submission of the application for development permit, along with the complete documentation accompanying it. In addition, paragraphs 6 and 7 of this Article also set out the procedure to be followed by the responsible local authority or the NTC, where other public authorities have to express their opinion in advance of the permit application. Referring to these legal procedures and deadlines, we point out that despite our requests to the TDA or the ARA, to clarify the procedures and deadlines followed by the ARA, for the approval of the necessary decision making requirements by the NTC, for allowing works on the subject: "Rehabilitation of the road segment "Overpass of the palace with arrows, roundabout "Shqiponja", Municipality of Tirana", we were not provided with all the required information. More specifically, we have not been provided with information as to the date on which the ARA has submitted to the NTC the application for development permit, along with its full documentation. The only information provided on this matter is a paragraph, in Letter No. 3116/1 dated on 26.12.2018, of the Territory Development Agency addressed to the Ombudsman, which explicitly states: "... we explain that the developer, the Albanian Road Authority has applied in the e-Permit

"In the framework of inter-institutional cooperation and pursuant to point 12 of Prime Minister's Order no. 143, dated on 3.11.2015 "On the establishment and functioning of the structures responsible for coordinating the work with the Territorial Development Agency (TDA)", the TDA addressed a letter to the following institutions:

- *Agency for Legalization, Urbanization and Integration of Informal Areas / Buildings (ALUIZNI) Tirana, (Letter no. 2832/4 dated on 19.11.2018), which requires detailed information on all affected assets/ properties from this project, which have been treated, or are in process by ALUIZNI;*
- *Tirana LRERO (letter prot. no. 2832/1, dated on 19.11.2018), which requires detailed information on all assets / properties affected by this project, registered with the Tirana LRERO and legal status, accompanied by cards and indicative maps, relating to the assets in question;*
- *Property Treatment Agency (letter prot. no. 2832/1, dated on 19.11.2018), which requires detailed information on all assets / properties affected by this project that have been treated, or are in process from the PTA and copies of relevant (if any) acts issued by this institution in respect of the assets in question;*
- *Municipality of Tirana (letter no. 2832/2), dated on 19.11.2018, which requires the approval / consent of the Municipality for this project proposal; detailed information on all assets / properties affected by this project that are owned / administered by the Municipality of Tirana and copies of relevant legal documentation available to this institution in relation to the assets in question".*

system, for obtaining the development permit, for the subject: "Rehabilitation of the road segment "Overpass of the palace with arrows, roundabout "Shqiponja", Municipality of Tirana"".

Without prejudice to this fact, and in spite of the very short time (24 hours) available, it is presumed that the NTC has had all the necessary supporting information to take Decision No.1 dated on 20.11.2018.

Approval of the development permit, respectively by *Decision No.1 dated on 20.11.2018, of the National Territory Council,*³ *"On the approval of the development permit for the subject: "Rehabilitation of the road segment "Overpass of the palace with arrows, roundabout "Shqiponja", Tirana Municipality"*, is a very important moment in addressing this problem, as in accordance with the legislation in force, the development permit document is a **prerequisite** and serves as the basis for issuing a construction permit. The latter, namely the construction permit, is the administrative act that enables the developer to proceed with the execution of works, pursuant to the project approved by this construction permit.

This definition is given in point 16, article 3, of the Law No.107 / 2014 "On Planning and Development of the Territory", as amended, stating that: *"Construction permit" is the act of approving the application for construction permit and to allow relevant work". According to this taxation legal provision, no entity in the territory of the Republic of Albania can carry out construction works if it is not equipped in advance with the relevant construction permit.*

On the other hand, referring to point 17, article 3, of the Law no.107 / 2014 "On Planning and Development of the Territory", as amended, we can clearly state that: "Development Permit" is the act defining development conditions for a particular parcel / property, which serves as the basis for obtaining a construction permit".⁴

Clearly from the content of the above-mentioned provisions of the law, but also from the response of the TDA, it results that the NTC has approved by decision no. 01, dated on 20.11.2018, only a development permit for the subject: Rehabilitation of the road segment "Overpass of the palace with arrows, roundabout "Shqiponja", Tirana Municipality", but not a construction permit. This construction permit was missing as an administrative act necessary to permit the relevant works in the area of Astir during the preparation of this special report. Meanwhile, the verification carried out on the website of the TDA regarding the decisions adopted by the NTC⁵ on applications submitted to it for construction permits

³ The National Territorial Council is designated as the authority responsible for deciding on development permits and construction permits for the types of complex development defined in the development regulation and those related to issues, areas, objects of national importance or strategic investments for the interests of the country. (paragraph 1, Article 28 of Law No. 107/2014).

⁴ The legal correlation between the two notions and their respective administrative acts is set out in Article 37 of Law No. 107/2014 "On Planning and Development of the Territory", as amended, stating that: "Development is permitted only under the conditions specified by the documents of planning or, in their absence, approved by the competent authority, which serve as the basis for compiling the documentation accompanying the application for a construction permit."

⁵ This verification was recently carried out on 24.09.2019 on the website; www.azht.gov.al

during 2019, shows that there is still no decision of the NTC for approval of a construction permit, for the subject "Rehabilitation of the road segment "Overpass of the palace with arrows, roundabout "Shqiponja", Tirana Municipality".

In these circumstances, all law enforcement agencies involved in this process have failed to stop the work carried out without permit, or even the preparation of the illegal construction site, by any tenderer subject to the tendering procedures developed by the ARA.

- ii- By analyzing the legislation in force on the planning and development of the territory, it is appropriate to bring to the attention the Law no.107 / 2014 “On the planning and development of the territory”, as amended, which gives a very specific treatment to the consultation process and public meeting, by the authority responsible for drafting the planning document, prior to any decision-making on central planning documents and the overall local plan. Specifically, in relation to this process, Article 24 sets out specific procedural deadlines stipulating that, *“a summary of observations or proposals at a public meeting shall be attached to the draft of the planning document submitted for approval and notified together with the publication in the register as well as one or more traditional information means”*.⁶

Some other definitions of Law No. 107/2014 are important in the context of addressing the issues we are addressing, which explicitly stipulate that:

- *"Illegal construction / work" means those processes and / or construction works carried out in the absence of a construction permit, a preliminary statement on the performance of works or those performed under the terms of a revoked permit" (point 21, Article 3);*
- *"Public notice" is the prior notification of the interested parties and / or the public, carried out in sufficient time, through one or more of the traditional means of information, for the purpose of informing the parties about the time, place and purpose of the public meeting, according to this law "(point 25, article 3);*
- *"Interested party" is any natural, legal, or governmental authority or body whose legal rights or interests, whether individual or joint, are likely to be affected by a planning, development or control of development" (point 26, article 3;*
- *"Draft act" means the draft decisions of the planning authorities and the drafts of planning and development control documents before they have been approved by the appropriate authority" (point 31, Article 3);*
- *"Construction or construction works" is any action or process for the construction of buildings" (point 32, Article 3);*
- *"Public meeting" is an open, organized, convenient and timely notice meeting by the planning authority, which through public notice invites citizens, experts and interested parties to submit their observations, comments or proposals on the draft act of the planning, development or development control document before finalizing the planning, development or development control document provided for by this law by the relevant authority" (point 40, Article 3);*

⁶ See point 4 of Article 24 of Law No. 107/2014 “On Planning and Development of the Territory”, as amended.

- *"Remarks" is the opposing opinion on the solutions provided for in the draft act of planning, development or development control document or an allegation of non-compliance with legal or sub-legal provisions in the planning process" (point 43, article 3).*

This process is of particular importance as it essentially maintains the balance between private and public interests, intertwined in decision-making related to planning, development, or control of territorial development documents.

- iii- As we noted at the beginning, residents' concerns about verbal notices of demolition of their dwellings, or of objects of other use, began at the end of October 2018 and have continued throughout November 2018, as well as in the following months. Specifically, it appears from individual administered complaints that complaints have been filed at the Ombudsman's Institution from 1.11.2018 onwards, but problems at its inception have arisen earlier, according to media reports, at least since April - September 2018.

On the other hand, all these complaints raise concerns about the lack of knowledge by the complainants, residents of the area of Astir, of the elements of the approved project related to the construction works affecting their dwellings during their implementation. It turns out that interventions in private ownership in this area but also in state ownership, have started effectively before 20.11.2018, which, in fact, are related to the approval of the development permit.

Even in individual complaints, or in complaints filed by a group of complainants at the Ombudsman's Institution, for reports that have been made verbally by the ARA's staff, or the relevant Territorial Protection Inspectorates, that the individuals or entities concerned whose dwellings or facilities are included in the project *"Rehabilitation of the road segment - overpass of the palace with arrows – roundabout "Shqiponja", Lot 1, Lot 2"*, are not aware of the relevant project and have not been notified, or participated in any prior process of public discussion and consultation. Such complaints where this concern arises are eg; complaint of citizen E.N (201802201), complaint of citizen N.Xh (201802277), complaint of citizen F.D (201802245), complaint of citizen L.M (201802175), etc.

In our letters to the ARA we have requested, inter alia, explanations and copies of documentation regarding the fact:

- if there has been an approved project for the continuation of works on the New Ring Road of Tirana regarding the expansion of the segment in the area of Astir;
- if this project has passed all the procedural stages of its approval, according to the provisions of Law no.107 / 2014;
- whether this project has been written and published in the National Register of Territorial Planning, in accordance with the requirements and provisions of Article 56 of Law No. 107/2014;

- as well as everything else related to this issue, helping to quickly and conclusively clarify the claims and concerns raised by the community of residents affected by the project's implementation.

Notwithstanding our detailed requirements on this issue and specifically on the relevant decision-making needed to approve the project for the completion of works on the Tirana New Ring Road, in the area of Astir, the response received from the ARA, with Letter no.10425 / 1 dated on 26.11.2018, has the following content:

“... For this investment, the project “Design and Rehabilitation Study of the Road Segment of the Overpass of the Palace with Arrows – Roundabout “Shqiponja” was drafted by the consultant “AVE” Ltd, under the Sponsorship Contract no.3625 / 2 dated on 25.05.2018.

This project was approved by decision of the Technical Council of the Albanian Road Authority no. 56 dated on 4.09.2018 with protocol no. 7491.

The Ministry of Culture by letter prot. no. 532 dated on 13.11.2018 approved the Decision No.462, dated on 13.11.2018, “On the approval of the development project “Rehabilitation of the Road Segment: Overpass of the Palace with Arrows – Roundabout “Shqiponja” Lot 1, Lot 2, Lot 3, Tirana Municipality, request of the Albanian Road Authority.

With the Decision of the Council of Ministers, to the National Territory Council no.01 dated on 20.11.2018, it was approved the Development Permit for the subject “Rehabilitation of the Road Segment, the overpass of the palace with arrows – Roundabout “Shqiponja”, Lot 1, Lot 2, Lot 3, Tirana Municipality, subject to development by the Albanian Road Authority”.

In the meantime, attached to this letter of the ARA, it was sent a copy of the decision of the Technical Council of the Albanian Road Authority no.56, dated on 4.09.2018, a copy of the Road Project Horography; a copy of Decision No.462 dated on 13.11.2018 of the National Restoration Council, Ministry of Culture; a copy of Letter No.532 / 1 dated on 19.11.2018 to the National Restoration Council addressed to the ARA; a copy of the decision no.209 dated on 25.09.2018 of the National Council of Archeology, Ministry of Culture; a copy of Letter No.3718 dated on 12.11.2018 of the National Environment Agency, Ministry of Tourism and Environment.

No information provided by the ARA related to the pre-approval process of the project "Rehabilitation of the road segment, overpass of the "Palace with Arrows"- Roundabout "Shqiponja" (Lot.1, Lot.2, Lot. 3), by decision of the ARA's Technical Council, no. 56 dated on 4.09.2018, we do not find any official documentation proving the expiration of legal procedures requiring public notice, public meetings, or even reflecting remarks, comments or possible proposals, submitted by the interested parties, to the project drafted by the subject “AVE” Ltd, “Design Study Rehabilitation of the Road Segment, the overpass of the Palace with Arrows – Roundabout “Shqiponja”. Our analysis of the written acts issued for this purpose shows that this process should have taken place between 4.09.2018 and onwards, but there is no record and no publication in this period.

This shortage speaks of a non-transparent process and in flagrant violation of the legal provisions regarding the process of drafting the project “Rehabilitation of the road segment, the overpass of the “Palace with Arrows” – Roundabout “Shqiponja” (Lot.1, Lot.2, Lot .3).

There is no response from the ARA as to when their request was made to the NTC, but we assume that the request was sent after the completion of the acts that should be attached to it. One of these acts is the decision of the National Restoration Council, forwarded to the ARA, only 1 (one) day before the decision of the NTC.

It is easy to notice that there is no clarification or copy of the official provisional documentation by the ARA, in response to questions concerning, prior consultation and information of the inhabitants of the area of Astir on the project to be implemented there, if any had a project approved for the continuation of works on the Tirana New Ring Road regarding the expansion of the segment in the area of Astir, as well as other questions raised by us.

- iv- Continuous inspections and monitoring carried out by us in the area of Astir, inter alia, resulted in the construction and demolition of public property in public areas designated for greenery in the area of Astir, prior to the decision of the NTC.

More specifically, in our letter No. K3 / E38-4 dated on 19.11.2018, we addressed to the General Director of ARA, which explicitly states that:

“... There have been some recent developments concerning the occupation and damage of public spaces.

More specifically, for several days, as has been widely publicized by the media, the part of the public park where the "Eagle" was located, in the end area of Lapraka, the intersection of “Durrës” road with the New Ring Road of Tirana. It was at this location that the construction company “Salillari” ltd has already set up a construction site.

We also found that another roundabout in the area of Astir, near the “O'Zone” electronics market, was occupied and damaged at the same time by another construction site, the same construction company, which located there another construction site. In a sign posted on the main road by the ARA, near this second site, the fact that it is exhibited as a work object, "Rehabilitation of the road segment, the overpass Palace with arrows, the roundabout “Shqiponja”, Lot 2 ”, investor “ARA”, designer “Ave Consulting” Ltd, Entrepreneur “Salillari” ltd etc., but it is not given as required by law, the deadline for commencement and completion of works (although there is a 24 months !!!), as well as the development permit on the basis of which the development of these works is permitted.

In these circumstances and for the purpose of further consideration of this problem, it is necessary for us to clarify that:

1. *On what legal basis was it permitted to occupy the above-mentioned public spaces and transform them into construction sites by the company "Salillari" Ltd?*
2. *On what legal basis was the placement of the above-mentioned sign by you as ARA, at the roundabout located in the area of Astir, near the market for electronic equipment "O'Zone", on both sides of the main road?*
3. *What entity has committed the demolition of the "Eagle" occurred at the roundabout known by the same name, and was there any official act permitting the demolition of this public work, including the transformation of the relevant park into a construction site?*

In the response of the ARA, given with the letter no.10492 / 1 dated on 2.12.2018, it is explicitly stated that: *"The Albanian Road Authority has concluded the contract with prot. no.7733 / 5, dated on 2.11.2018, with the subject "Rehabilitation of the road segment – the overpass "palace with arrows" - the roundabout "Shqiponja", Lot 2", with the Company "Salillari" Ltd and Contract no.7732 / 5 dated on 2.11.2018 with the object, "Rehabilitation of the road segment: the overpass "palace with arrows" - the roundabout "Shqiponja", Lot 1", with the Union of Economic Operators "Biba - X" & "DH ALBANIA".*

The information boards have been put up by the work contractor in support of the above-mentioned contracts and the relocation of the "Eagle" has not been carried out by the Albanian Road Authority".

As noted above, construction works can only commence after the subject has been provided with the administrative act of the construction permit. Any act committed prior to the promulgation of this act constitutes an unlawful act for the construction companies, administratively punishable, but also an abuse of office for state administration bodies, both at central and local levels, who not only failed to respond, but accepted and supported these actions.

A preliminary finding has to do with the fact that the ARA has signed contracts for the implementation of the project, *"Rehabilitation of the road segment: the overpass of the palace with arrows – Roundabout "Shqiponja", Lot 2",* with the subject "Salillari" Ltd, for the implementation of the project, *"Rehabilitation of the road segment: overpass of the palace with arrows – the Roundabout "Shqiponja", Lot 1",* with the Union of Economic Operators "Biba - X" & "DH ALBANIA", and for the implementation of the project *"Rehabilitation of the road segment, overpass of the "Palace with arrows" – Roundabout "Shqiponja", Lot 3 ",* with the merger of economic operators "Victoria Invest International & Victoria Invest Ltd", on the same date and more specifically, on 2.11.2018.⁷ The conclusion of these implementation contracts as legal action was made 18 days before the approval of the development permit. It is not clear whether the content of the contracts contains provisions stipulating that the works by the contractor will only commence after the NTC issues a decision to issue a construction permit and approve the relevant project of the public construction work, as we were not provided with full copies of these contracts by the ARA. In any event, it is clear that any such provision would be contrary to law and would place the State authorities and contract the entities responsible. The same applies to the performance of works in fact, notwithstanding the contractual provision as to any such provision would be contrary to an order of law, therefore null and void, and in no event could it produce rights and obligations for the parties.

⁷ Even this contract turns out to be concluded after the issues have been made public in the media.

In the meantime, in our letter No. K3 / E38-5 dated on 19.11.2018, we have addressed in parallel the Chief Inspector of the National Territorial Protection Inspectorate (NTPI), where for the same findings quoted in the above-mentioned letter addressed to ARA, we asked explicitly for these questions:

- "1. Have you noticed the occupation of the above-mentioned public spaces and their transformation into construction sites by the company "Salillari" Ltd?*
- 2. On what legal basis was the location of the above-mentioned signboard by the ARA, in the roundabout located in the area of Astir, near the "O'Zone" electronic equipment market, on both sides of the main road?*
- 3. Which entity committed the demolition of the "Eagle" at the roundabout known by the same name, and was there any official act permitting the demolition of this public work, including the transformation of the respective park into a construction site?*
- 4. What measures have you taken as a body to address these developments ascertained?"*

In the response given by NTPI, with letter no.4483 / 2 dated on 27.11.2018, it is explicitly stated that: *"With letter no. 9765 dated on 5.11.2018, protocolled at our institution with prot. no. 4287 dated on 6.11.2018, the Albanian Road Authority requests support for the clearing of the construction site from illegal constructions, for the realization of the project of the Big Ring Road, the road segment "Overpass of the "Palace with arrows" – the roundabout "Shqiponja". We are currently in the process of verifying the situation on the ground, and regarding the demolition of the "Eagle" at the roundabout, we inform you that NTPI has not held any legal procedure and has not taken any action to remove this monument."*

In the following, for further clarification of this issue we have addressed TPI in the Municipality of Tirana, with our letter No. K3 / E38-10 dated on 4.01.2019, by asking the same questions we had posed to NTPI in the relevant letter. Meanwhile, in the letter prot. no. 1062, dated on 24.01.2019, of this public body to the Ombudsman, it is stated among other things that:

"Territorial Protection Inspectorate of Tirana Municipality has no official knowledge of the approval of this project or development permit in the segment of "Overpass of the palace with arrows – the roundabout "Shqiponja".

The Territorial Protection Inspectorate has not participated in the intervention to demolish the facilities that hinder the development of this project."

- v- For a well-thought-out and effective process of accomplishing a public act, an accompanying feasibility study is also needed. From the examination of individual complaints related to this issue, it results that in the letter no.10426 / 1 dated on 27.11.2018 of the ARA, it is stated among other things that:

"... by the Albanian Road Authority on 20.11.2018, three working groups have been set up in the framework of the expropriations for the road segment "Rehabilitation of the road segment - Overpass of the Palace with Arrows – the Roundabout "Shqiponja", in which all the in-depth verifications will be made on the possessions of all factual assets, both those possessing the property act and those under legalization.

Pursuant to the Law No.88561, dated on 22.12.1999 "On the Expropriation and Temporary Use of Private Property of Public Interest", as well as its implementing By-Laws, the

Albanian Road Authority is in the Preliminary Evaluation Phase (identification of owners, project-based measurements, designation of land to be expropriated, etc.) to address to the Ministry of Infrastructure and Energy, seeking approval of the expropriation request”.

The accompanying feasibility study should have been part of the decision of the Technical Council of the Albanian Road Authority, no. 56, dated on 4.09.2018. This study has in fact been missing, or "at best" may be partial and incomplete, as can be seen from the analysis of all information provided by the relevant public authorities involved in the area of Astir. Furthermore, there is some confusion and contradiction in the official information provided regarding the establishment of working groups, or verification groups, before and after the issuance by the National Territorial Council of Decision No. 01, dated on 20.11.2018, where it is adopted. Development Permit for the Facility, Rehabilitation of the Road Segment “Overpass of the Palace with Arrows –Roundabout “Shqiponja”, Lot 1, Lot 2, Lot 3, Municipality of Tirana, subject to the Albanian Road Authority”.

This conclusion becomes clearer, referring to letter No.42163 dated on 22.11.2018 of the Municipality of Tirana, addressed to the Ombudsman, stating inter alia that:

“On site there were three working groups composed of representatives of the institutions:

- 1. Albanian Road Authority*
- 2. Agency for Legalization, Urbanization and Integration of Informal Construction Areas,*
- 3. National Territory Protection Inspectorate,*
- 4. Real Estate Registration Office,*
- 5. Municipality of Tirana.*

On site socio-economic assessments were carried out by working groups consisting of social workers / psychologists, social administrators, urban planners of the respective administrative units, the head and specialists from the Department of Social Housing. The group aimed at identifying the real situation of the socio-economic conditions and housing conditions of the project affected families. These data have been processed in a single database and forwarded to the ARA to continue coordinating the ongoing processes of this project.

Field evaluation is based on self-declaration of family members and persons who own businesses or income generating activities. The fieldwork was a prerequisite for clarifying the project footprint and the real situation in the field.”

Finally, on the basis of the findings and information made available by the complainants as well as by the relevant public authorities, it is concluded that the interested parties and the citizens as a whole lack information on the above-mentioned project and there has been no public consultation process with the interested parties during the drafting of the project idea, as required by applicable legislation. Until 20.11.2018, there was no official information or announcement on the project to be implemented, prior decision of the ARA’s Technical Council, total project cost, planned cost of expropriation of the relevant entities, which based

on the legal framework governing expropriation procedures must be implemented in favor of residents prior to physical intervention against the premises where they reside or exercise their activity.

The relevant project for the construction of the road segment “Rehabilitation of the road segment “overpass of the Palace with arrows – Roundabout “Shqiponja”, was designed and approved in the absence of transparency, without conducting a necessary and careful study of the properties it touches, as well as the complex consequences that it brings, in many respects.

The demolition of the “Eagle” facility, as well as the occupation of public spaces, ascertained by us, used as construction sites by the relevant private companies, were carried out without a construction permit, enabling the commencement of works for the implementation of the construction project of the road segment "Rehabilitation of the road segment - overpass of the palace with arrows – Roundabout “Shqiponja”. Public and private properties have been damaged in these conditions in violation of the law.

The nature of the responses given by public bodies, such incomplete and contradictory responses, shows a willingness to circumvent the law or commit unlawful acts, but also to avoid accountability or the exercise of legal powers, in the case of NTPI and TPI bodies..

It is found that the actions and omissions of these two state institutions have guaranteed material or non-material benefits to the construction entities that have carried out works on this object and at the same time have flagrantly damaged the legitimate interests of the state and the citizens who as a result of the works carried out without permit and without a **legally approved** project have damaged the road infrastructure and at the same time the properties of people living near the **relevant** road axis.

3. The process followed by ARA.

As part of the administrative investigation of this case, we have requested explanations from ARA, ALUIZNI and the Municipality of Tirana regarding the claims and concerns of residents of the area. Specifically, the Albanian Road Authority asked for explanations regarding:⁸ whether there were official communications and requests from other state institutions within the project and how the Albanian Road Authority was treating the claims and concerns of residents in the area of Astir; whether the residents of the area of Astir had been consulted and informed in advance of the project to be implemented; whether the households that could be affected by this project and the demolition of their dwellings or other objects were identified and what was the number of citizens and assets that could be affected by the implementation of this project; if there had been any changes or deviations from the final project with those variants that were set out and presented in 2017 and what were the legal causes of the changes or revisions undertaken, given the fact that some residents expressed the view that the changes were made selectively, abusively and there are suspicions of corrupt affairs to favor particular entities in the area to avoid interference with their multi-storey buildings, or even those who would later exploit the alterations of the high-construction project; what was the body and act by which the project was approved, what was

⁸ Ombudsman's letter, no. K3 / K45-8 dated on 16.11.2018.

its value and whether the expropriation procedures of these citizens could be followed in advance, as provided by Law No. 8561 dated on 22.12.1999 “*On Expropriation and temporary usage of private property for public interest*”, as amended, and its implementing acts; what was the total value of expropriations and what were the reasons for not initiating these expropriation procedures before forcibly intervening in the residential and service facilities; as well as everything else related to this issue, aiming at the quickest and final clarification of the claims and concerns raised by the community of residents who will be affected by the implementation of this project.

In order to have more detailed information, the Director of ARA⁹ has been asked to provide further information. In response to our request for clarification, the Director of the Albanian Road Authority informed us by letter prot. no. 10425/1, dated on 26.11.2018 that for this investment it was designed the project “*Design Study Rehabilitation of the Road Segment “Overpass of the Palace with Arrows - Roundabout “Shqiponja”*”, drafted by the consultant “AVE” ltd, under the sponsorship contract with no. 3625/2 dated on 25.05.2018. Meanwhile it further emphasizes that this project was approved by Decision no. 56 dated on 04.09.2018, of the Technical Council of the Albanian Road Authority. In this context, the relationship and the initiated relationship between ARA and the entity that drafted the project is unclear, all the more so, ***based on a sponsorship contract, an unknown term and act applied in our country.***

From the content of the letter of the Albanian Road Authority, with prot. no. 10425/1, dated on 26.11.2018, as well as the documentation attached thereto, it is noted that the Municipality of Tirana is the researcher and financer of the project “*Design Study Rehabilitation of the Road Segment “Overpass of the Palace with Arrows – Roundabout “Shqiponja”*”, while ARA is its implementer.

In our judgment, we did not have a specific position of the ARA, following our requests set forth in our second official letter, regarding the project approved for the continuation of works on the New Ring Road of Tirana, regarding the extension of the segment in the area of Astir, its review at all the procedural stages of its adoption, as provided by Law 107/2014 “*On Planning and Development of the Territory*”, as amended, as well as whether this project was written and published in the National Register of Territorial Planning, in accordance with the requirements and provisions of Article 56 of Law 107/2014 “*On Territorial Planning and Development*”, as amended.

Regarding the legal procedures undertaken by the ARA, for the provision of relevant documentation for the execution of works, by the Territorial Development Agency, we were informed through letter prot. no. 2116/1. dated on 26.12.2018, regarding the actions taken by ARA, by emphasizing the fact that the Albanian Road Authority, in the capacity of project developer, applied in the system of “e-permit”, for obtaining the Development Permit for “*Rehabilitation of the Road Segment “Overpass of the Palace with Arrows – Roundabout “Shqiponja”, Tirana Municipality*”. The information submitted by TDA does not state the date of application by the ARA for obtaining the development permit.

Further, it should be noted that in this case a Development Permit was adopted, which referred to in Article 3, point 17, of Law 107/2014 “*On Planning and Development of the Territory*”, as amended “*.... is the act of determining the development conditions for a particular parcel / property, which serves as the basis for obtaining a construction permit.*”

As a result of this position of the Territorial Development Agency, by the Albanian Road Authority, in the capacity of the project implementer of the project “*Rehabilitation of the*

⁹ Ombudsman's letter prot. no. K3 / K45-8, dated on 16.11.2018.

Road Segment “Overpass of the Palace with Arrows – Roundabout “Shqiponja”, Tirana Municipality”, concrete actions have been taken to the detriment of the property of citizens residing in the area of Astir without having a construction permit. In the present case, this project affects a large number of residents, who have owned the buildings used by them for years for residential or service purposes. The lack of a construction permit constitutes a serious and flagrant violation of the basic rights of the citizens, due to the intervention carried out on the premises of the inhabitants of the area of Astir.

The right to property, as a fundamental and very important right in a democratic state, guaranteed and sanctioned by Article 41 of the Constitution of the Republic of Albania and Article 1, Protocol 1, of the European Convention on Human Rights¹⁰, must be effectively implemented by every state administration body. Violations of this right not only infringe on the essential elements of the rule of law, but are also a clear indication of maladministration and / or corruption, both in the classical form expressed by monetary gain and by the gain of function.

Furthermore, the official information¹¹ obtained during the preparation of this report indicates that it was the Albanian Road Authority who requested removal of the trees and removal of the Electricity Distribution Operator's poles in the area of Astir, without obtaining the construction permit yet, a fact that finds serious violations leading to both administrative and criminal liability.

4. Expropriation procedures.

The right to property, as a fundamental human right, is affirmed and guaranteed in Article 41 of the Constitution of the Republic of Albania, which stipulates that: *"The right to private property is guaranteed"*. The guarantees for respect and protection of this right are extended in Article 1 of Protocol No. 1 to the European Convention on Human Rights, which expressly states: *"Every natural or legal person has the right to respect for his possessions"*.

Although a fundamental right guaranteed, property right is not an intangible right. The wording made in Article 41 of the Constitution, which states:

"...3. The law may provide for expropriations or restrictions on the exercise of property rights only in the public interest.

4. Expropriations or those restrictions on the right of property which are equivalent to expropriation shall be allowed only for a fair compensation.

5. Disputes regarding the amount of remuneration may be appealed in court",

¹⁰ Article 1 of Protocol 1 to the ECHR expressly provides that:

“Every natural or legal person has the right to the peaceful enjoyment of his possessions.

No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

¹¹ Letter prot. no. 1071, dated on 14.11.2018 of ARA addressed to the Municipality of Tirana.

acknowledges affirmatively that there is a possibility that the right of ownership may be restricted, but only exclusively and under well-defined conditions.

Restrictions on the right to private property (expropriation or restrictions equivalent to expropriation) are legitimated only in circumstances clearly defined by law. Thus, the State may deprive individuals of their property or possessions only on the ground of satisfaction of a public interest, upon fair compensation, and in respect of the right of appeal, of the individual affected by the measure of remuneration. This is certainly appreciated by national authorities in accordance with the recognition of the direct needs of society. In this respect, the state has a very wide scope of assessment regarding the public interest criterion. However, the decision must be clearly supported on a reasonable basis. Therefore, the purpose of the expropriation for the public interest must be lawful and reasonable. The principle of proportionality must also be respected in the assessment of the public interest. It is clear from the foregoing that interference with the right to property is effected only for the purposes set out in the law, exhaustively, and in accordance with a procedure respecting the fundamental right to a fair legal process.

The right of citizens to be protected against arbitrary acts of expropriation is also provided for in Article 1 of Protocol 1 of the European Convention on Human Rights, which states, inter alia: *“No one shall be deprived of his possessions. except in the public interest and subject to the conditions provided for by law and by the general principles of international law.”*

The lawmaker's right that, because of the existence of the public interest, may limit the scope of private property disposition, in order for such interference with the right to property to be justified, it is imperative that there be proportional relationship between the means used and the goal that is required to be achieved. On this basis, the legal system contains a number of material and procedural guarantees. In these circumstances, it is up to the bodies authorized by Law No. 8561, dated on 22.12.1999 *“On the Expropriation and Temporary Use of Private Property for Public Interest”* to make a case-by-case assessment as to the existence of the problem of public interest that justifies the restriction of property rights, as well as the measures to be taken to remedy the situation through fair compensation of property. The issue of indemnity in itself and its limits are determined by the circumstances of each individual case.

The purpose of Law No. 8561, dated on 22.12.1999 *“On Expropriation and Temporary Use of Private Property for Public Interest”*, as amended, is the expropriation and temporary use of private property for a public interest to the extent necessary for the realization of the purpose of expropriation, but always in any case for a fair compensation.

Property rights are specifically protected and guaranteed by the European Court of Human Rights, which already has a rich jurisprudence in interpreting the norms of the European Convention on Human Rights. Given the particular importance and value of property rights guaranteed and sanctioned in the Convention, as well as in its Additional Protocol 1, the European Court of Human Rights has also interpreted and elaborated on particular aspects of property rights, such as the expropriation for public interest.

The Court reiterates that the acquisition of property can only be justified if it is shown, *inter alia*, to be "*in the public interest*" and "*under the conditions provided by law*". Any interference with property rights must also meet the requirement of proportionality. As the Court has repeatedly stated, a fair balance must be struck between the demands of the general interest of the community and the demand for the protection of the fundamental rights of the individual.¹²

In this connection, the acquisition of unpaid property of a sum proportionate to its value would normally constitute a disproportionate interference, whereas a total lack of compensation may be considered justifiable under Article 1 of Protocol no. 1 only in exceptional circumstances¹³. The Court also noted that "*abnormal delays in the payment of expropriation compensation lead to additional financial losses for the person whose land has been expropriated, thus putting him in a position of uncertainty*"¹⁴. The same applies to abnormal delays in the administrative or judicial procedures that determine such compensation, especially when the people whose land is expropriated are forced to use these procedures to obtain the compensation to which they are entitled.¹⁵

Concerning the expropriation process, in the present case there have been media statements by some representatives of the central and local state institutions involved in the process, who in some cases have been significantly exceeding their powers, even imposing thus the attitude and decision making of ALUIZNI, for self-declared objects for legalization. In these media statements, it was a priori expressed and without an in-depth analysis of the position that objects that do not meet the legalization criteria should be excluded from this process. The state institution for verifying compliance with the legal criteria for exclusion or qualification from the legalization process is ALUIZNI (today the State Cadastre Agency) and not the ARA, or the Municipality of Tirana.

The Ombudsman's Institution has not administered any legal documentation for the time this issue was under review, by confirming the fact that they had already started, or that the expropriation procedures would be applied to the entities that would be affected by the implementation of the project "*Rehabilitation of the Road Segment "Overpass of the Palace with Arrows – Roundabout "Shqiponja", Tirana Municipality*". This has happened despite the fact that in this area there have been and are assets with regular ownership documentation, or even entities that have self-declared their legalization facilities for years at ALUIZNI, in circumstances where the latter has not yet expressed a final decision on the qualification, or exclusion from the process of legalizing these facilities.

One of the key issues identified by the Ombudsman during the investigation and review of individual complaints related to the implementation of the project "*Rehabilitation of the Road Segment "Overpass of the Palace with Arrows – Roundabout "Shqiponja", Tirana*

¹² See case *B. Tagliaferro & Sons limited and Coleiro Brothers Limited vs. Malta*, Applications nos. 75225/13 and 77311/13, decision dated on 1.09.2018.

¹³ See *Former King of Greece and Others vs. Greece [GC]*, no. 25701/94, § 89, ECHR 2000 XII, and *The Holy Monasteries vs. Greece*, December 9th, 1994, § 71, Series A no. 301-A

¹⁴ See *Akkuş vs. Turkey*, 9 July 1997, § 29.

¹⁵ See *Aka v. Turkey*, September 23th, 1998.

Municipality” is also the fact being involved in the expropriation procedures of real estates, legal ones, of designated individuals¹⁶ without their knowledge (i.e. not being officially informed of this fact by the beneficiary authority from the expropriation process) and without following and respecting procedures and deadlines that provide for the applicable legal framework on the expropriation of property for public interest.¹⁷ This fact is further aggravated when these assets involved in the expropriation process are not only not expropriated in order for their owner to obtain the rightful compensation that is legally due, but have also been damaged as a result of unlawful technical interventions and consequences of an extracurricular damage committed by the authorities responsible for controlling the legality of construction, locally, such as TDI, in the Municipality of Tirana.

Regarding the expropriation procedures, it is emphasized the fact that the Council of Ministers, in its meeting dated on 17.04.2019 has adopted, inter alia, the Decision “*On the Expropriation, for Public Interest, of the owners of real estates, private property affected by the realization of the project "Rehabilitation of the road segment "Palace with arrows - roundabout "Shqiponja"*”.¹⁸

As ascertained, the above-mentioned DCM¹⁹ was approved about six months after the commencement of concrete procedures and actions by the state authorities towards the assets and facilities located in the area, where the project, “*Rehabilitation of the Road Segment “Overpass of the Palace with Arrows – roundabout “Shqiponja” Tirana Municipality*”, has been effectively implemented. Initially, the number of assets subject to expropriation was unclear and not transparent. This inaccuracy and lack of transparency with official data was also noticed by us during the process of reviewing specific complaints, as well as the drafting of this special report.

Currently, the Ombudsman notes that according to DCM 231/2019, 209 properties will be subject to the expropriation process, some of which have many co-owners. Thus, the number of citizens affected by these procedures is quite large, compared to the number of assets. It should also be noted that state authorities have already interfered with some real estate, while their owners were not or have not yet been subject to expropriation procedures.

The expropriation shall commence immediately upon publication of this decision in the relevant Official Journal. Estimated value of the expropriation is ALL 1 224 874 430.42 (one billion two hundred twenty-four million eight hundred and seventy-four thousand four hundred and thirty point forty-two) for all "land", "field" and "building", which will be covered by the Bank of Albania's “Expropriation Fund” account. Pursuant to point 8 of this approved DCM, the State Cadastre Agency, within 30 days from the date of adoption of this

¹⁶ This case concerns the complaint of citizen ND, registered in the complaint management system at the Ombudsman’s Institution, “Doculive”, under number 201802429.

¹⁷ See Law no. 8561, dated on 22.12.1999 “*On the Expropriation and Temporary Use of Private Property of Public Interest*”, as amended.

¹⁸ Information obtained by the official website of the Council of Ministers: <https://www.kryeministria.al/newsroom/vendime-te-miratuarane-mbledhjen-e-keshillit-te-ministrave-date-17-prill-2019/>.

¹⁹ See DCM no. 231 dated on 17.04.2019 “*On the Expropriation for Public Interest of the Owners of Real Estate, Private Property Affected by the Realization of the Project “Rehabilitation of the Road Segment “Palace with Arrows – Roundabout “Shqiponja”*”, published in the Official Journal no. 55 dated on 19.04.2019.

decision, in cooperation with the Albanian Road Authority, will begin the procedures for tracing the project on the cadastral map, according to the approved expropriation plan, and to transfer ownership of the expropriated property in favor of the state.

As set forth in the applicable legislation, the Council of Ministers shall decide on expropriation where the expropriation proposal is found to be lawful and factual. The expropriation decision must contain; The purpose and legal cause of the expropriation; expropriated private property assets and their respective owners; the amount of remuneration for the expropriated owners, for the owners of the depreciated assets, for third parties who are compensated for their property rights, as well as the term and manner of their payment; the term of commencement and termination of the expropriation, as well as the body or entity using the expropriated private property; deadline for commencement and completion of works for the project and investment or for the realization of the purpose of the expropriation; the value of the expropriation procedure costs incurred by the expropriation applicant.²⁰

As it turns out, the Council of Ministers has issued DCM no. 231, dated on 17.04.2019 “*On the expropriation for public interest of the owners of real estate, private property affected by the realization of the project “Rehabilitation of the Road Segment “Overpass of the Palace with Arrows – Roundabout “Shqiponja”*”. Based on the above-mentioned legal criteria for the content of these acts, which are issued by the Council of Ministers, in case of expropriation for public interest, it is concluded that DCM no. 231, dated on 17.04.2019, in all 11 points of its content, does not expressly specify the term and manner of payment for expropriated owners, owners of depreciated property, third parties who are compensated for their property rights. Likewise, this DCM does not expressly specify the timing of the beginning and the end of the expropriation, as well as the timing of the commencement and completion of the works for the project and investment, or the realization of the expropriation purpose.

Recalling the fact that, from the experience of dealing with other issues considered by the Ombudsman, with the object of expropriation for public interest, we have found that before the commencement of the expropriation and compensation procedures of the subjects, it starts with public works, thereby constituting and evidencing infringement of owners' property rights.

The Ombudsman, based on the provisions of the Constitution of the Republic of Albania, as well as Law No. 8561, dated on 22.12.1999 “*On the Expropriation and Temporary Use of Private Property for Public Interest*”, as amended, in particular, its Article 3, which states that:

“The expropriation and temporary use of private property shall be carried out in accordance with the conditions and procedures set forth in this law, by guaranteeing the transparency, equality of citizens and protection of their interests and property rights”,

stresses the fact that the manner of guaranteeing and protecting the property rights of expropriated citizens must be developed through a regular legal expropriation procedure, by

²⁰ See Article 21 of Law no. 8561, dated on 22.12.1999 “*On the Expropriation and Temporary Use of Private Property of Public Interest*”, as amended.

having regard to the full liquidation of the expropriation value of the entity, as well as the setting of a closing date of this process within the shortest reasonable time as part of a regular administrative process. Payment of compensation may be subject to delays or payment by installments, but in no case shall people be and may lose the right to enjoy the item without fully obtaining the payment of compensation.

5. Activity of the Agency for Legalization, Urbanization and Integration of Informal Areas / Buildings (ALUIZNI). (Arbeni)

Based on the provisions of Law No. 9482/2006 “*On the Legalization, Urbanization, and Integration of Illegal Constructions*”, as amended, ALUIZNI is the body that decides on the qualification, and hereby on the issuance of the legalization permit for informal construction, or the exclusion from the process of legalizing the self-declared informal constructions by the entities that built them.

The activity of ALUIZNI in Tirana, in the process of reviewing self-declarations made by entities that have built informal constructions, on both sides of the road segment “*Overpass of the Palace with Arrows – Roundabout “Shqiponja”*”, has become the object of our administrative investigation, based on the examination of the problems encountered and individual complaints submitted to the Ombudsman’s Institution.

The Ombudsman’s Institution has requested from the General Directorate of ALUIZNI as well as the Regional Directorate of ALUIZNI, in Tirana - North, through some letters²¹, information and explanations on whether communications have been made, official requests from other state institutions as part of this project and the way how ALUIZNI in Tirana - North is currently addressing claims and concerns of residents in the area of Astir; whether legalization processes have been initiated for the residents' property in the area and the number of self-declared entities and facilities for legalization; about the procedures currently being followed by ALUIZNI in Tirana - North for these assets, by specifying specifically those assets, or objects, that may be part of the project; about the period of time during which ALUIZNI has verified the documentation submitted for legalization, and if deficiencies in the technical-legal documentation have been identified that may be a reason for not providing these citizens with legalization permits; whether decisions have already been taken under the self-declaration procedures for the legalization of these facilities, by specifying in particular the number of exclusion and qualification decisions in the legalization process, as well as everything else related to the matter, the prompt and final clarification of the claims and concerns raised by the community of residents who will be affected by the implementation of this project.

²¹ Letters by which the relevant information was sought are: Prot. No. H23-2, dated on 19.11.2018; Prot. no.H23-5, dated on 04.12.2018; Prot. no.H23-5, dated on 04.12.2018; Prot. no.H23-8, dated on 04.02.2019; Prot. no. K3 / H25-4, dated on 06.12.2018; Prot. no. K3 / K45-4, dated on 09.11.2018; Prot. No. K3 / L37-13, dated on 25.02.2019;

In response to the requested information, the Regional Directorate of ALUIZNI, in Tirana - North, with letter Prot. no. 1174/6/1, dated on 21.11.2018, addressed to the Ombudsman, among other things:

“...By the Albanian Road Authority, through letter Prot. no. 8356, dated on 27.09.2018, we were given the layout of the road segment “Overpass of the Palace with Arrows – Roundabout “Shqiponja”, the decision of the ARA’s technical council to approve the project in the electronic format and we have been asked for information about the buildings affected by this project.

For the above, our Directorate took measures to process the request, and by letter Prot. no.10981 / 1, dated on 08.11.2018, it was sent the list of informal objects affected by the project "Overpass of the Palace with Arrows – Roundabout “Shqiponja”, by citing self-declaring entities, the administrative unit and status in which legalization practices are located.”

According to the list sent to ARA by the Regional Directorate of ALUIZNI, in Tirana - North, with letter Prot. no. 10981/1, dated on 08.11.2018, it turns out that the total number of entities whose construction is affected by the implementation of the project is 73, while the number of decisions taken by the Regional Directorate of ALUIZNI, in Tirana - North, for disqualification of the informal constructions (exclusion from the legalization process), which are affected by the project implementation, and sent to the Ombudsman, is 90. This situation of discrepancy in the figures stated is not justified.

Also, by letter no. 8881/4, dated on 11.12.2018, of the General Directorate of ALUIZNI, addressed to the Ombudsman, it is confirmed the exemption from legalization of 78 informal constructions, which are affected by the implementation of the project "Overpass of the palace with arrows - roundabout “Shqiponja”, unlike the number announced by the Regional Directorate of ALUIZNI, in Tirana - North, in letter Prot. no. 10981/1, dated on 08.11.2018. In addition to the difference in numbers, there is also a substantial change regarding the names reflected in the lists of objects that are excluded from the implementation of the project *“Overpass of the palace with arrows – Roundabout “Shqiponja”* and made available under the letters Prot. no. 10981/1, dated on 08.11.2018, of the Regional Directorate of ALUIZNI, in Tirana - North, and letter Prot. no. 8881/4, dated on 11.12.2018, of the General Directorate of ALUIZNI. Only 22 subject names are common in the above-mentioned letters, while the other 129 names are different.

In these circumstances, based on the information provided by the same public body, the following questions arise: How realistic is the number of informal constructions that will be affected by the implementation of the project *“Overpass of the palace with arrows – Roundabout “Shqiponja”*. To which owner / owner entity do these constructions belong? What is the nominal list on the basis of which further actions, on informal construction, will be carried out by the Albanian Road Authority and other state authorities?

The General Directorate of ALUIZNI, with letter prot. no. 8881/410981/1, dated on 11.12.2018, addressed to the Ombudsman, has also made it possible to make available the nominal lists of entities whose constructions are affected by the implementation of the project *“Overpass of the Palace with Arrows – Roundabout “Shqiponja”*, according to the three construction lots provided. The total number of informal constructions affected by the

implementation of the project, according to the nominal lists for the three lots, is 209, respectively:

- **In the first Lot:** Of the 66 constructions affected by the project implementation, 40 constructions result in ownership documentation, while the other 26 constructions are excluded from the decision-making legalization process of ALUIZNI.
- **In the second Lot:** Of the 68 constructions affected by the project implementation, 10 constructions result in ownership documentation, 3 building plots turn out to be passed to the owner of the informal construction ownership subject, while 55 other constructions in the process of reviewing self-declarations carried out by the holding entities.
- **In the third Lot:** Of the 75 constructions affected by the project implementation, 23 constructions result in ownership documentation, 1 with legalization permits, while 51 others in the process of reviewing self-declarations made by the subject entities.

So, according to the data confirmed in Letter No. 8888/4, dated on 11.12.2018, of the General Directorate of ALUIZNI, the construction situation, which is affected by the implementation of the project "*Overpass of the palace with arrows - roundabout "Shqiponja"*", turns out to be:

- In total, 209 constructions are affected by the project implementation, of which, 74 are equipped with property titles, three lands have passed to entities that possess informal constructions, 26 others are excluded from the legalization process and 106 are in the process of reviewing self-declarations made by the holding entities. In this data, it is worth mentioning the confirmation made in this letter, regarding the exclusion of 78 informal constructions from the legalization process, as well as the fact that the Ombudsman made 90 decisions to exclude informal constructions from the legalization process, confirmed by the State Road Authority, with letter Prot. no. 468/2, dated on 15.04.2019, addressed to the Ombudsman.

In this situation of statistical data officially confirmed by the Albanian Road Authority, the General Directorate of ALUIZNI, or the Regional Directorate of ALUIZNI, in Tirana - North, there are ascertained inaccuracies, inconsistencies **and lack of transparency, whose consequences give rise to various issues in the implementation of the project and consequently lead to serious damage to the property interests of the owners, or owners of real estate.**

According to the provisions of Law No. 9482/2006 "*On the Legalization, Urbanization, and Integration of Illegal Constructions*", as amended, for each self-declaration for the legalization of informal construction submitted by various entities to it, ALUIZNI is obliged to issue a decision whether to legalize informal construction or to exclude it from the legalization process.

Decisions made available to the Ombudsman by the Regional Directorate of ALUIZNI, in Tirana - North, aim at excluding them from the legalization process of informal constructions, which are affected by the implementation of the project "*On the rehabilitation of the road segment "Overpass of the palace with arrows – Roundabout "Shqiponja"*". They have been issued during the time period from 27.11.2018 to 05.12.2018. Specifically it turns

out to be 87 decisions issued on 27.11.2018, 2 decisions issued on 03.12.2018, and 1 decision dated on 05.12.2018.

Referring to these decisions issued by the Regional Directorate of ALUIZNI, in Tirana - North, it results that they excluded the relevant informal constructions from the legalization process by identifying as a legal cause the fact that these informal constructions are in the conditions provided for in Article 35 and Section 39 of Law No. 9482/2006 “On the Legalization, Urbanization, and Integration of Illegal Constructions”, as amended.

What is immediately apparent from the content of the decisions is that the title of their object is "For the qualification of informal construction", despite the fact that the enacting clause has decided to exclude self-declared informal construction for legalization from the legalization process. These decisions in structural conception are of a standard format type, with defined standard rubrics and the same for each decision. The only elements that differ in them are the part of the generalities of the self-declared entity and the location of the informal construction in the relevant administrative units of the Municipality of Tirana.

Pursuant to the provisions of Article 99 of the Administrative Procedure Code, which determine the requirements of the form of a written administrative act, it is found that decisions to exclude informal constructions from the legalization process issued by the Regional Directorate of ALUIZNI, in Tirana - North, have not complied with these requirements, as they have a number of shortcomings. More specifically, these administrative acts that have consequences for the parties once they come into force, lack the full legal basis on which the developed administrative procedure is based. The way of conceptualizing the fragmented sections with completely telegraphic definitions also identifies the lack of reasoning of the decision (administrative act), as there is no explanation of the factual situation on the basis of which these acts were issued. Meanwhile, it has been found that these decisions have other missing or defective elements in terms of law.²²

No decision issued by the Regional Directorate of ALUIZNI, in Tirana - North, on the exclusion of legalization of informal constructions, provides the data of administered acts in the quality of evidence, which prove their existence under the conditions provided for in Article 35, or Article 39 of Law No. 9482/2006 “On the Legalization, Urbanization, and Integration of Illegal Constructions”, as amended.

In these circumstances, the above-mentioned decisions made available to the Ombudsman by the Regional Directorate of ALUIZNI, in Tirana - North, regarding the exclusion from legalization of informal construction, we find that they have elements of unlawfulness in terms of the definition set out in Article 109 / c of the Administrative Procedure Code on the illegality of the administrative act.

Meanwhile, from all 73 subjects indicated in the letter Prot. no. 10981/1, dated on 08.11.2018, of the Regional Directorate of ALUIZNI, in Tirana - North, 22 of them have been granted during 2011 - 2017, with legalization permission for their informal constructions, constructions affected by implementation of the project "*Overpass of the palace with arrows – Roundabout “Shqiponja”*".

²² The Ombudsman is conducting an in-depth investigation of the matter.

Also, from the information administered by the ARA, according to the letter prot. no. 10981/1, dated on 08.11.2018, of the Regional Directorate of ALUIZNI, in Tirana - North, as well as the information administered by the Ombudsman on the issue of exclusion from the process of legalization of informal constructions, which is affected by the implementation of the project *“Overpass of the palace with arrows – roundabout “Shqiponja”*, it turns out that the activity of the state bodies concerned carries irregularities and illegality with consequences for the legal rights of the subjects, whose self-declared constructions have been excluded by the relevant decision of ALUIZNI from the legalization process.

On the basis of the information provided by the Regional Directorate of ALUIZNI, in Tirana - North, according to the letter prot. no. 10981/1, dated on 08.11.2018, ARA has issued Order prot. no. 10459, dated on 20.11.2018, *“On the establishment of the working group on expropriations for public interest”*.

Activity of the Regional Directorate of ALUIZNI, in Tirana - North, in the process of reviewing the self-declarations made by the entities mentioned in letter prot. no. 10981/1 dated on 08.11.2018, addressed to the ARA, or all the other entities, which are not mentioned in this letter, is in violation of the basic human right to conduct a fair legal process.

One of the reasons for the violation of the right to a fair legal process is the non-completion of the administrative process of reviewing all self-declarations within the legal deadline provided for in Article 49 of Law no. 8454, dated on 12.05.1999 *“Administrative Procedure Code of the Republic of Albania”*, as amended. On the other hand, it should be noted that the decision-making of ALUIZNI, despite the time of submission of self-declarations for legalization to this body by the interested parties, has been **completely, unjustifiably and legally** conditioned by the approval of the *Local General Plan of the Municipality of Tirana, (year 2017)*, as well as following the approval of the project *“Overpass of the Palace with Arrows – Roundabout “Shqiponja”*, (2018). It should be noted that there were no approved projects for the area of Astir at the time the interested parties submitted the self-declaration for legalization.

Failure to comply with the legal obligation by the Regional Directorate of ALUIZNI, in Tirana - North, to terminate the administrative proceeding on the examination of self-declarations, within the time limits provided for by the applicable legislation, is justified by the Directorate General of ALUIZNI in Letter prot. no. 881 / 4, dated on 11.12.2018, which states that:

“The causes that lead to the suspension or delay of the process for the area concerned are mainly related to:

Shortcomings and delays of registration and cadastral registration procedures, which create difficulties in defining the legal status of the property. (Cadastral Zone 3866 is out of date and contains inaccuracies and overlaps of assets). The GLP (author - General Local Plan) of the Municipality of Tirana, 2017, foresees high development for the entire territory along the New Ring Road axis, with maximum allowed height of 8-9 floors. This fact, as well as the ratio of property owned assets of over 50% of the properties, constitutes an obstacle to the conclusion of legalizations under Section 35 of Law No. 9482, as amended, and DCM 280/2015, as amended, quoting "Illegal constructions erected on private lands of third

parties, where general local plans provide for construction above 6 floors from the ground floor, are not subject to legalization procedures."

Self-declarations for legalization submitted by the interested entities, owners of informal constructions that are included in the project footprint were carried out during the period 2005-2006, at which time no general local plan and no approved development project in the area was adopted. As it turns out, the General Local Plan of the Municipality of Tirana was approved in 2017, while the development permit was approved for this area at the end of 2018, which means that there is no legal justification for failure to exit by qualifying decision, or exclusion from the legalization process over this long period of time.

The fact that, with letter prot. no. 10981/1, dated on 08.11.2018, the Regional Directorate of ALUIZNI, in Tirana - North, confirms the issuance of legalization permits for 22 constructions, during the years 2011 - 2017, certifies that, **the Regional Directorate of ALUIZNI, in Tirana - North, has selectively legalized informal settlements and the reason why all the informal settlements were in the same legal situation prior to the approval of the GLP for the Municipality of Tirana or Decision No. 01, dated on 20.11.2018, of the National Territorial Council.** If there were obstacles, then this Directorate would not be able to issue any legalization permits for informal construction in the area of Astir, while 22 were issued. Based on the confirmation provided by the General Directorate of ALUIZNI, that there are 74 constructions with proprietary documentation, which are affected by the project implementation, this made us believe that the total number of legalization permits issued in years by this Directorate, is higher than the 22 authentication permissions granted.

Thus, the activity of the Regional Directorate of ALUIZNI, in Tirana - North, in the process of reviewing self-declarations for informal constructions, which are affected by the implementation of the project in question, turns out to be carried out with two standards, although the legal situation of informal constructions that are located in this area has been the same at the time of their self-declaration for legalization. The Regional Directorate of ALUIZNI, in Tirana - North, has approved the issuance of legalization permits for only 22 buildings, while there has been no legitimate reason for failing to review all self-declarations for informal construction affected by implementation of the project adopted by Decision No.01, dated on 20.11.2018, of the National Territorial Council.

All this issue has been ascertained while, in the area of the implementation trail of the project "*Overpass of the palace with arrows - roundabout "Shqiponja"*", the situation of the entities in their ownership turns out to be as follows:

- Entities (individuals) with legal construction, carried out on the basis of relevant construction permits. This situation means that we are dealing with a legal construction, the legal property of the entity that built it, on a surface of a legal land owned by the same entity. In case of infringement of this legal property due to the implementation of the project "*Overpass of the palace with arrows – Roundabout "Shqiponja"*", the rightful owner should be expropriated through a fair expropriation process, both for the legal construction and for the functional land in the area on which this construction is established.
- Entities (individuals) with informal constructions, carried out without a construction permit, but established on a land legally owned by the entity. These entities have had the opportunity to submit their declarations on the legalization of informal construction, within the deadlines provided for in the provisions of Law No. 9482/2006 "*On the*

Legalization, Urbanization, and Integration of Illegal Constructions”, as amended. If they have filed this self-declaration within the legal deadline, then ALUIZNI will only consider the process of legalizing informal construction, as the functional construction site is legally owned by the entity. If the informal construction is legalized by ALUIZNI’s decision, then in case of violating this lawful ownership, due to the implementation of the project *“Overpass of the palace with arrows – roundabout “Shqiponja”*, the rightful owner must be expropriated through a fair expropriation process, both for its already legal construction and for the functional land on which this construction is established.

- Entities (individuals), having decisions of the former Commission for Restitution and Compensation of Property for the restitution of land areas located in the area. This means that if the land is vacant and the interested entities have already registered this transfer of ownership to the local Real Estate Registration Office, then these entities are in full possession of their property. In case of infringement of this legal property due to the implementation of the project *“Overpass of the palace with arrows – Roundabout “Shqiponja”*, the rightful owner / owners should be expropriated through a fair expropriation process, as this project infringes, if just a part of the property and not all is violated. For the rest of the property, meanwhile, the intangible property owner may seek compensation for the devaluation that may result from the expropriation of the rest of the property. If this property turns out to be occupied with illegal constructions that have not undergone the legalization process, then in the event of its infringement due to project implementation, the owner / legal owners should be expropriated. If the illegal constructions have been declared by their owners for legalization at ALUIZNI, and the latter has decided to legalize them together with the functional land, then according to the legislation in force, ALUIZNI will continue with the compensation procedures of these owners, as defined by Law no. 9482/2006 *“On the Legalization, Urbanization, and Integration of Illegal Constructions”*, as amended.
- Entities (individuals) that have submitted self-declaration for legalization of their informal constructions to ALUIZNI, still in the process of review by ALUIZNI and entities that have submitted self-declaration for legalization of their informal constructions to ALUIZNI, for which have been issued a legalization permit. When the entities are still in the process of legalization, then no decision can be taken by any other state body that deals with, or affects, infringes, informal construction and its functional land, if ALUIZNI (today the State Cadastre Agency) has not issued first a final decision on the case, be it a decision to legalize informal construction, or to exclude it from the legalization process. Law No. 9482/2006 *“On the Legalization, Urbanization, and Integration of Illegal Constructions”*, as amended, has specified in its provisions (Articles 35 and 39), cases where informal construction cannot be legalized. If ALUIZNI issues a decision to exclude the legalization of informal construction, then under the legislation in force, it is qualified under the terms of an illegal construction and is subject to demolition without compensation. In the case of a building for which a legalization permit has been issued, then in the event of infringement of this legal ownership due to the implementation of the project *“Overpass of the palace with arrows – roundabout “Shqiponja”*, the rightful owner must be expropriated through a fair process of expropriation.

- Entities (individuals) with informal construction who do not have any documentation and have not submitted self-declaration for legalization. According to the legislation in force, this construction is classified under the conditions of an illegal construction and is subject to demolition without compensation.

In the complaints reviewed by the Ombudsman's Institution, it was found that the Regional Directorate of ALUIZNI, in Tirana - North, in case of transfer of ownership of the construction parcel in favor of the owner of informal construction B.N., according to DCM no. 125, dated on 17.02.2010, or K.H. according to DCM No. 646, dated on 28.07.2010, there was no further proceeding to sign the contract of sale of this parcel and further to the issuance of legalization permit for informal construction.

This procedure has not been completed by the Regional Directorate of ALUIZNI, in Tirana - North, without any legally justified reason, although the complainant has insisted on its development. The General Director of ALUIZNI, by letter prot. no. 8939, dated on 12.11.2018, requested the development of this procedure in the Directorate of ALUIZNI, in Tirana - North.

6. Cooperation of the Municipality of Tirana, in the process.

In the process of reviewing some complaints lodged by some residents whose construction would be likely to be affected by the implementation of the project "Rehabilitation of the road segment *"Overpass of the palace with arrows - roundabout "Shqiponja"*", it was requested by letter prot. no. K3 / K45-3, dated on 09.11.2018, information and explanations to the Municipality of Tirana regarding:

a) whether there have been official communications and requests from other state institutions within the scope of this project and how the claims and concerns of residents in the area of Astir are being addressed by the Municipality of Tirana;

b) whether the residents of the area of Astir have been consulted and informed in advance of the project to be implemented;

c) whether there are identified families that may be affected by this project and the demolition of their dwellings or other objects in their possession and the number of citizens and assets that may be affected by the implementation of this project;

ç) what are the concrete support programs offered by the Municipality of Tirana for families who may be left without a home and if you consider that the rental bonus program for a one-year period, with the right to renew, offers a real guarantee and effective support for these family;

d) what is the body and act by which this project was approved, what is its value and whether the expropriation procedures of these citizens can be followed in advance, as provided by Law No. 8561, dated on 22.12.1999 "*On expropriations and temporary use of private property for public interest*", as amended, and its implementing acts;

dh) what is the total value of the expropriations and what are the reasons for not initiating these expropriation procedures before forcibly intervening in the residential and service facilities;

e) as well as everything else related to this issue, aiming at the quickest and final clarification of the claims and concerns raised by the community of residents that will be affected by the implementation of this project.

In response to the request, the Municipality of Tirana, by letter prot. no.42163 / 1, dated on 22.11.2018, informed the Ombudsman about the situation of the case, noting that:

“General Directorate of Social Services based on letter no. 9375, dated on 25.10.2018, of the Albanian Road Authority, which seeks cooperation in carrying out the socio-economic assessment of the families affected by the implementation of the project, the road segment “Overpass of the palace with arrows – roundabout “Shqiponja”, and conducting the verification on the ground of the existing situation of families, which will be included in the social housing programs, as well as the order of the Mayor No. 40195, dated on 29.10.2018, set up a working group to assess the situation on the field,...

The General Directorate of Social Services... carried out the socio-economic assessment of the affected families of the road segment “Overpass of the palace with arrows – roundabout “Shqiponja”. The project implementation area includes the Administrative Units No. 6, 7, 11 and that of Kashar.

The on-site socio-economic assessments were carried out by working groups composed of social workers / psychologists, social administrators, urban planners of the relevant administrative units, the head and specialists from the Department of Social Housing. The group aimed at identifying the real situation of the socio-economic conditions and housing conditions of the families affected by the project. These data have been processed into a single “database” and forwarded to the ARA to continue coordinating the ongoing processes of this project.

Information gathered from citizens found that living in the project affected area was provided by the income of self-employment in the private sector, by business rents, retirement and immigration income.

- Number of families assessed by forms	141
- Number of businesses assessed by forms	122
- Number of chronic patients	8
- Number of people with disability status	8
- Number of employees	35
- Number of self-employed	7
- Number of pensioners	42
- Number of families living on business income	8
- Number of families living with emigration income	10

- *Families who have refused to provide information on filling out forms claiming to have benefited from the normative dwelling and who are not subject to this project* 30
We are clear that these data are based on the citizens' self-declarations... ”

The information and explanations provided by the Municipality of Tirana, although the most fully presented in the course of this administrative investigation, still did not bring all the information necessary to address the problem in accordance with the law.

The Municipality of Tirana does not provide information on the number of buildings affected by the implementation of the project “Overpass of the Palace with arrows – roundabout “Shqiponja”, nor does it provide the number of families and citizens who risk being left homeless.

The municipality of Tirana does not show the concrete capacities it has for families at risk of being left homeless. Also, this institution does not comment on the real guarantees that could be provided by the social housing programs currently offered by the Municipality of Tirana.

Among other things, although an understandable conclusion as addressed in the other parts of this report, the Municipality of Tirana has not provided information or made available copies of the administrative act for the approval of the project “*Overpass of the Palace with Arrows - Roundabout "Shqiponja"*”. This lack of information is confirmed by other questions addressed by us in Letter Prot. No. 42163/1, dated on 22.11.2018, as cited above.

It is true that the Municipality of Tirana has undertaken a process of its own for the socio-economic evaluation of families affected by the implementation of the project, the road segment “Overpass of the palace with arrows – roundabout “Shqiponja”, but this process is partial and incomplete, referring to the appropriate approach in the potential situation of forced eviction of all families affected by the implementation of this project. The number of media facilities that will be affected, those that have already been demolished or will be demolished, identifies a significant community of residents that must be relocated from the area due to the construction of public works.

As we have stated in our official positions on dealing with forced eviction situations, it is always and in advance necessary to conduct a study of the situation of the families affected by their ownership of the implementation of a public work construction project as to their composition, financial opportunities, potential housing treatment and other social issues related to the standard of living. This approach shall be in accordance with the provisions of Article 11 (2) and Article 6 of the Law on Social Housing and shall comply with all international principles and standards for the treatment of forced deportation cases provided for in important UN acts, the European Convention on Human Rights, and the jurisprudence of the European Court of Human Rights.

On site verification is a valuable element of this process, which should be alternated with information received formally from all other state bodies or institutions that possess valuable and necessary information on the process.

This situation does not only directly affect the right to housing, but in circumstances where it occurs unintentionally and in the absence of consultation with the evicted / displaced community, it violates the right to family life and the right to life.

7. The role of the National Territory Protection Inspectorate (NTPI) and the Territorial Protection Inspectorate (TPI) in the Municipality of Tirana.

In a normal process of carrying out an infrastructure work and applying a construction permit, approved by the decision of the competent authority, for the construction of a public work, it is necessary to enable release and prepare the construction site for the commencement of works.

In the event of possible implementation of the relevant decision of the National Territorial Council, which approves the Development Permit for the Facility, "Rehabilitation of the Road Segment: Overpass of the palace with arrows – Roundabout “Shqiponja”, Lot 1, Lot 2, Lot 3, Tirana Municipality", with the development subject of the Albanian Road Authority”, the expected intervention to enable the clearance of the construction site should be realized through actions taken by the National Territorial Protection Inspectorate, or even the Territorial Protection Inspectorate, in the Municipality of Tirana.

The footprint set by the project approved for implementation by a construction permit is expected to affect properties that, in their current status, may be:

- Legal constructions, built with construction permits and registered in the LRERO, in Tirana, owned by state entities or private entities.
- Legal constructions, built with construction permits not yet registered in the LRERO, in Tirana, owned by state entities or private entities.
- Self-declared informal constructions / objects for legalization at ALUIZNI.
- Undeclared informal constructions / objects for legalization at ALUIZNI.
- Real estate, built up to 10.08.1991, with their functional land, when there is no ownership acquisition by the entity that owns it.

In the logic of the law, an administrative act begins to have legal consequences after the expiry of the necessary legal procedures for its entry into force and upon notification of its contents to the parties to whom it is addressed or affected by this act.²³

Consequently, the implementation of the project, "Rehabilitation of the Road Segment: Overpass of the Palace with arrows – Roundabout “Shqiponja”, Lot 1, Lot 2, Lot 3, Tirana Municipality", could only begin after the NTC issued its decision to approve the Construction Permit for the Building, "Rehabilitation of the Road Segment: Overpass of the Palace with Arrows – Roundabout “Shqiponja”, Lot 1, Lot 2, Lot 3, Tirana Municipality", subject to development by the Albanian Road Authority".

At this point, ARA, as a development entity, could request the NTPI or TPI in the Municipality of Tirana to exercise the legal powers to clear the construction site, which coincides with the implementation of the approved project, from the construction of any existing statuses, whether affected by the implementation of this project.

What has resulted from our consideration of issues in the area of Astir?

²³ Article 104, of the Administrative Procedure Code.

- According to the NTPI letters No.4483 / 2 dated on 27.11.2018 and No.4726 / 1 dated on 14.12.2018, addressed to the Ombudsman, they respectively state that:

"By letter prot. no. 9765, dated on 5.11.2018, protocolled in our institution prot. no. 4287, dated on 6.11.2018, the Albanian Road Authority requests support for the release of the construction site from the illegal buildings, for the realization of the project of the Big Ring Road, the road segment "Overpass of the palace with arrows – roundabout "Shqiponja". We are currently in the process of verifying the situation on the field, and regarding the demolition of the "Eagle" at the roundabout, we inform you that NTPI has not taken legal action and has not taken any action to remove this monument.

... It turns out that NTPI has only verified and audited the field in this area on December 3rd, 2018, and has not yet proceeded with administrative decision-making to implement this project. "(Letter dated on 14.12.2018).

"In connection with this project, we are familiar with the letter prot. no. 9765, dated on 5.11.2018, protocolled to our institution prot. no. 4287, dated on 6.11.2018, whereby the Albanian Road Authority seeks support for the clearance of the construction site from illegal buildings, for the implementation of the project of the Big Ring Road, the road segment "Overpass of the Palace with arrows - roundabout "Shqiponja", while the development permit is not officially deposited at us "(Letter dated on 27.11.2018).

Therefore, it is ascertained that in the official way, initially on 27.11.2018, the ARA has requested from NTPI, support for the clearance of the construction site from illegal buildings, for the realization of the project of the Big Ring Road, the road segment "Overpass of the palace with arrows - Roundabout "Shqiponja", when the building permit has not yet been approved by the NTC. Subsequently, on 14.12.2018, ARA demands the same from NTPI, but without formally forwarding the construction permit on the basis of which the works will be carried out.

According to letter prot. no. 1062, dated on 24.01.2019, of the TPI in the Municipality of Tirana, addressed to the Ombudsman, it is expressly confirmed that:

"Territory Protection Inspectorate of Tirana Municipality has no official knowledge of the approval of this project or the development permit in the segment of "Overpass of the palace with arrows - roundabout "Shqiponja".

The Territory Protection Inspectorate of the Municipality of Tirana does not have any official correspondence with the Albanian Road Authority regarding the request for the clearance of the construction site as part of the development of this project.

The Territory Protection Inspectorate has not participated in the intervention to demolish the facilities that hinder the development of this project."

So, at least until 24.01.2019, the TPI in the Municipality of Tirana claims that it has not participated and consequently there was no procedure for demolition of buildings, located in the footprint of the project to be implemented for the construction of the road segment, "Overpass of the palace with arrows – roundabout "Shqiponja".

The question rightly arises: Did this body exercise its powers when Tirana was involved in protests and when public property was being destroyed, with unsupported interference with approved construction permits, a fact that was evident to it?

- In the Ombudsman's Institution, there are some individual complaints filed by individuals who have had, or are still living in the area of Astir, who have either been demolished already, or for whom demolition notices have been sent.
- Such is the complaint of citizen B.N. (complaint no. 2015802399), who complained about the demolition of his informal building on 4.12.2018, but was unaware of the institutional affiliation of the people who intervened to demolish this building. From the administrative investigation of this case it has resulted, inter alia, that neither NTPI nor TPI in the Municipality of Tirana confirm that they have intervened and are not aware of the demolition of the building, at the disposal of the citizen B.N.

This position was held by NTPI in letter No. 4726 / 1 dated on 14.12.2018 to the Ombudsman, expressly stating that: *"The National Territory Protection Inspectorate has no official information regarding the administrative actions of the Territory Protection Inspectorate, Municipality of Tirana and not even for the demolition of the informal construction of Mr. B.N."*

Whereas, by the TPI in the Municipality of Tirana, it was confirmed to us by letter no.1058 / 1 dated on 28.02.2019, addressed to the Ombudsman, that: *"Territory Protection Inspectorate, the Municipality of Tirana is not aware of the demolition"*.

- In the complaint of the citizen A.Ç (complaint no. 2015802208), which expresses concern about the lack of information and official notification regarding the project of enlargement of the road segment of the Tirana Big Ring Road, in the area of Astir, the concern of the verbal preliminary notification is raised for demolition of facilities within the implementation of the project.

After the repeated request for clarification addressed to NTPI regarding this complaint, it results that with letter prot. no. 4472 / 1, dated on 23.11.2018 of this body, we were given the answer that:

"By letter prot. no. 9765, dated on 5.11.2018, protocolled to our institution prot. no. 4287, dated on 6.11.2018, the Albanian Road Authority requests our support for the clearance of the construction site from the illegal construction for realization of the Big Ring Road, the road segment "Overpass of the palace with arrows – roundabout "Shqiponja".

So far, no legal procedural action has been taken by the National Territory Protection Inspectorate until the expression of ALUIZNI and ARA institutions on the legal status of the buildings affected by the footprint of this project."

Meanwhile, another NTPI letter dated on 3.01.2019, addressed to the Ombudsman, confirms that it has begun the identification of illegally constructed buildings in the field. As this body expresses in this letter; *"After their verification and evidence, as well as following the announcements on the decisions on 'disqualification of objects from the legalization process', brought to us by the institution of ALUIZNI, legal proceedings on behalf of the entities have so far been held and completed."*, (attached letter prot. no. 306, dated on 7.12.2018 of NTPI, Tirana Branch, where information is provided for the record keeping of records for 6 subjects). Attached to this practice there are notices of decisions on object demolition and a fine for these entities.

- In the complaint of citizen H.H (complaint no. 2015802400), the actions of NTPI and TPI employees in the Municipality of Tirana, who according to the complaint, demolished on 4.12.2018, a building in possession of his son, the citizen K.H, are rejected. The complaint expresses concern that the demolition was carried out by inspectors of these authorities without any prior notice being given, and by not allowing the complainant to remove the furniture from the house.

The reply given by TPI to the Municipality of Tirana on this complaint, by letter no. 21059 / 1 dated on 28.02.2019, addressed to the Ombudsman, states inter alia that: *“Territorial Protection Inspectorate, Municipality of Tirana is not aware of the demolition of this facility”*.

Meanwhile, the reply given by letter No.4725 / 1 dated on 14.12.2018, by NPTI, regarding this complaint expressly states that: *“The National Territory Protection Inspectorate has no official information regarding the administrative actions of the Territory Protection Inspectorate, Municipality of Tirana, and not even for the demolition of the informal building of the H. family. Meanwhile the NTPI has not taken any administrative action in this regard. From the dates quoted in your letter, it turns out that NTPI has only verified and audited the field in this area on December 3rd, 2018, and has not currently proceeded with administrative decision-making to implement this project.”*

- The complaint of citizen Sh.M, raises concerns about the verbal information of the complainant and some other residents of the area of Astir, by persons presented as employed in the state, but unidentified, on November 1st and 2nd, 2018, about taking measures to remove them from their dwellings within 10 days.

During the review of this complaint, we are aware of the letter prot. no.1071, dated on 14.11.2018, of the ARA, addressed to the Municipality of Tirana, which expressly states that:

“As part of the start of the project implementation works:

- *Rehabilitation of the road segment, overpass of the “Palace with arrows” - Roundabout “Shqiponja” (Lot.1, Lot.2, Lot.3), we seek the cooperation of your institution to enable the removal and arrangement of trees that are positioned on the axis and sidewalks of the existing road with a view to planting them on the other road axes.*

To realize this collaboration, the Contractors of Lot 3 will be available, with the right machinery and employees.”

It is also found that, in the letter of ARA prot. no.10172, dated on 14.11.2018, addressed to the Municipality of Tirana and Municipal Unit 6, as well as to the Traffic Police Station, it is stated that:

“The Albanian Road Authority has signed contracts for the implementation of works on the “Rehabilitation of the road segment, overpass of the “Palace with arrows” - Roundabout “Shqiponja”.

For the start of works on this object and the normal continuation of them, we require the removal of all vehicles parking along this axis on the left side (areas near the palaces).

Also, for a more efficient management of people's traffic in the areas where the project will take place, it is required to move the bus terminal near the Roundabout "Shqiponja" and remove the banisters on the sidewalks".

Earlier, by letter prot. no. 9765, dated on 5.11.2018, the Albanian Road Authority addressed to NPTI, based on the law no. 8561 dated on 22.12.1999 and for the realization of the project of the Tirana Big Ring Road, the road segment "overpass of the palace with arrows - roundabout "Shqiponja", which expressly states: " ... we seek your support under the authority granted by law to clear the construction site from illegal buildings."

In the response given by TPI to the Municipality of Tirana in response to our request for clarification on this matter, in letter prot. no. 1062, dated on 24.01.2019, this body holds the attitude that:

"Territorial Protection Inspectorate of Tirana Municipality has no official knowledge of the approval of this project or development permit in the segment of "Overpass of the palace with arrows - roundabout "Shqiponja".

The Territorial Protection Inspectorate of the Municipality of Tirana does not have an official correspondence with the Albanian Road Authority regarding the request for the clearance of the construction site as part of the development of this project.

The Territorial Protection Inspectorate has not participated in the intervention to demolish the facilities that hinder the development of this project."

In response to our request for clarification on this case, the NPTI, in its letter prot. no. 149/1 dated on 25.01.2019, has affirmed inter alia that: "... the National Territory Protection Inspectorate turns out to have conducted checks and controls on the ground only on December 3rd, 2018 and so far no administrative acts have been held on the premises owned by the citizens M. (S)".

Insofar as the Ombudsman's Institution has managed to review TPI's activity in the Municipality of Tirana and NTPI, it turns out that each formal request submitted to these bodies for the vacancy of the construction site, prior to the approval of development permit by the NTC is unlawful.

Demolition of some of the private buildings / facilities cited in the above complaints, which are included in the project trail for which the development permit granted by the NTC's Decision No.01, dated on 20.11.2018, has been granted for the subject: "Rehabilitation of the road segment "Overpass of the palace with arrows, roundabout "Shqiponja", Municipality of Tirana", not only constitutes unlawful action and criminal offense, but also evidences the non-intervention of TPI in the Municipality of Tirana and NTPI in such cases. The entity that committed these demolitions of buildings and caused concrete damage to their owners remains unidentified, which requires further prosecution of these cases by the Prosecutor's Office.

Any decision of the TPI bodies in the Municipality of Tirana and NTPI to demolish the buildings / facilities in the absence of a construction permit approved by the relevant NTC's

decision, by justifying the clearance of the construction site constitutes the decision-making in terms of illegality by these bodies.

The alleged, withdrawn position of TPI in the Municipality of Tirana and NTPI, despite ARA's demands, evidenced by the handling of some of our complaints does not justify the omission and lack of attention to the fact of the lack of construction permits, by these bodies, which are specialized bodies to independently check the legality of construction works.

Both of these bodies, NTPI and TPI in the Municipality of Tirana, are charged by Law No. 9780 dated on 16.07.2007 "On the Inspection and Protection of the Territory from Illegal Constructions", as amended, with the responsibility of territorial control and enforcement of legality and technical standards in the area of territorial planning and development.²⁴

More specifically, the TPI in the Municipality of Tirana, as the territorial protection inspectorate in the local unit, has legal obligations; imposing penalties in case of violation of legal provisions in the area of planning and development of the territory, issuing a decision to suspend works/constructions; coming up with a decision to demolish the illegal construction; preparation of criminal reports for criminal offenses found during the exercise of control; making a decision on indemnification for the costs of demolishing the building and restoring the land to its previous state, etc.²⁵

On the other hand, the NTPI has the legal obligation to exercise its responsibilities at the local government level directly and without limitation for construction/works related to matters, areas or objects of national and territorial importance; control of the provisions of Law No. 9780 dated on 16.07.2007 "On Inspection and Protection of the Territory from Illegal Constructions", as amended by the TPI at the local government level; the exercise of its local government responsibilities (when required by the latter, or when the TPI has not inspected the territory and has not expressed itself within the legal deadlines for the legality or non-legality of the construction), for illegal works/constructions in the territory of the local government not included in matters, areas or objects of national importance in the territory; exercising the right to appeal to the court for a building permit, approved in violation of the law.²⁶

Any damage to public property, as happened with the demolition of the "Eagle" facility, at the roundabout known by the same name, the demolition of public gardens for the construction of construction sites contracted by the ARA, not to mention here the removal of the road signage, trees and road traffic hubs, all these publicly owned, have been made to the knowledge of these bodies as a result of correspondence with ARA (letter dated on 14.11.2018). In these circumstances, these bodies had to respond that no action should be taken without the relevant act being issued and not to support the demolition of private entities.

²⁴ See Article 3 of Law No. 9780 dated on 16.07.2007 "On the Inspection and Protection of the Territory from Illegal Constructions", as amended.

²⁵ See Article 5 of Law No. 9780 dated on 16.07.2007 "On Inspection and Protection of the Territory from Illegal Constructions", as amended.

²⁶ See Articles 9 and 9/1 of Law No. 9780 dated on 16.07.2007 "On Inspection and Protection of the Territory from Illegal Constructions", as amended.

On the other hand, even the non-response and procedural inaction by NTPI and TPI in the Municipality of Tirana. To this list, there are added some demolished and damaged private objects, during this time, actions performed by entities that are not authorized by law to perform such activity and thus place them under the terms of criminal responsibility. Neither NTPI nor TPI in the Municipality of Tirana have responded in any of these cases. All of this has happened in circumstances where every unlawful act on public and private property has received constant and detailed coverage in the media and in the daily press. The apparent omission of these bodies places the people responsible for their representation in the circumstances and conditions of criminal responsibility.

It is not denied the responsibility of the employees and directors of these bodies to tell the truth when this has been evident, as it should not have been silent on the requests made to these bodies by the ARA when, under the conditions analyzed above, the ARA required demolition of state-owned and private buildings.

8. Transparency of public bodies involved in this process.

The notion of the right to information or otherwise known as transparency means that everyone has the right to become aware of information of public interest, being presented as a right that not only preserves the values of individuals in a democratic society, but also serves as the premise to further develop them by setting better standards.

Transparency of governance is a fundamental issue of democracy and a prerequisite for the closeness of its citizens to any government. In order to make the Government credible, individuals enjoy the right to information, or otherwise known as, the right to access official documents. But on the other hand, transparency in the decision-making process is beneficial to the governments themselves, as it enhances the confidence of individuals in the government's activity. This kind of relationship stipulates that the right to information is not just an individual right that serves only the individual's narrow interests, but it also serves the governors themselves to create public trust. Information, then, is not just a need for people, it is an indispensable part of good and transparent governance.

Beyond this theoretical conceptual approach, the problems analyzed in this report indicate a lack of transparency in the performance and activity, or even the "inactivity" of the public bodies involved in all procedures related to the project design, approval and implementation process, *"Rehabilitation of the segment road, overpass of the "Palace with arrows" - Roundabout "Shqiponja" (Lot.1, Lot.2, Lot.3) "*.

The lack of transparency is evidenced both in the relationship of the public bodies involved in this process, with the public and in particular with the inhabitants of the "Astir" area, where the project in question would be implemented, as well as with the Ombudsman's institution, within failure to send the information requested by him, or sending partial or incomplete information.

This lack of transparency has emerged since the beginning of the process, as the public authorities involved did not have accurate information or official information on the project that would be implemented in the area known as the area of Astir, the decision by which it

was finalized, its total cost, as well as the planned cost of expropriation of residents under the legal framework governing the expropriation procedures.

It was missing the process of consulting and public meeting by the responsible authority (ARA) for drafting the planning document, obligatory to be developed legally before any decision-making regarding central planning documents and the local general plan. Individuals or entities whose dwellings or facilities are included in the project footprint, "*Rehabilitation of the road segment: Overpass of the palace with arrows – roundabout “Shqiponja”, Lot 1, Lot 2, Lot 3”*", were not aware of the project and were not notified, nor did they participate in a preliminary process of its public discussion and consultation.

This lack of transparency at the stage of approval of the project idea “Rehabilitation of the road segment: Overpass of the palace with arrows – roundabout “Shqiponja”, Lot 1, Lot 2, Lot 3” is also evidenced by the fact that there is no explanation or copy of the official proving documentation by the ARA, in response to the information requested from us, regarding the prior consultation and information of the residents of the area of Astir on the project to be implemented there.

The relevant project for the construction of the road segment “Rehabilitation of the road segment: Overpass of the palace with arrows – Roundabout “Shqiponja”, was designed and approved in the absence of transparency, without conducting a necessary and careful study of the properties it touches, as well as the complex consequences that it brings, in many respects.

In view of the implementation of the project “Rehabilitation of the Road Segment “Overpass of the palace with arrows – Roundabout “Shqiponja”, Tirana Municipality”, there are involved in the procedures of expropriation of legal real estate, certain individuals, without their knowledge (i.e. without being officially notified of this fact by the beneficiary authority from the expropriation process) and without following and respecting the procedures and deadlines provided by the applicable legal framework for the expropriation of property for public interest.

There is a lack of transparency on the part of ALUIZNI in the process of dealing with and reviewing the self-declarations filed by individuals in the area of Astir, or by other entities for their informal buildings located in the area.

Since the beginning of the process, the number of assets that would be subject to the expropriation process, as well as the number of families and citizens who risk becoming homeless, have been unclear and not transparent. This information has not been provided to us by any of the public bodies whose activity is analyzed in this report.

The passive attitude claimed by the TPI in the Municipality of Tirana, or even the NTPI, for all the developments in the area of Astir, where state ownership and private ownership have been violated and damaged, shows at the same time a lack of accountability and transparency on the part of those bodies which have not exercised their legal powers to prohibit unlawful acts committed by any subject.

Failure to comply with the legal obligation and in the absence of necessary transparency, the ARA did not mention, inter alia, the date on which it submitted the application for the approval of the construction permit by the NTC for the implementation of the project,

“Rehabilitation of the road segment “overpass of the palace with arrows – roundabout “Shqiponja”, Lot 1, Lot 2, Lot 3”.

Despite the information sent, the Municipality of Tirana has not indicated the concrete capacities it has for families at risk of being left homeless. Also, this institution has not commented on the real guarantees that could be provided by the social housing programs that are currently offered by the Municipality of Tirana.

The lack of transparency for the whole process followed in this case has also been an issue raised in the public position of the President of the Republic, following the verifications carried out on the project of the road segment “Overpass of the palace with arrows – the roundabout of “Shqiponja” Square”.²⁷

Of concern is the fact stated in the public position of the President of the Republic that some of his requests to some state institutions for information on matters relating to their duties in connection with this project have not been answered, even after 75 days from the time the claim was filed.

Failure to provide the requested information or its partial submission to the Ombudsman’s Institution by the state institutions or bodies to which the Ombudsman has addressed requests for information about their duties in connection with this project, also reconfirms in this view that this project lacked transparency in every aspect of it, contrary to the constitutional and legal order of the Republic of Albania.

If this happens in the institutional relationship of the institution of the President of the Republic and the Ombudsman with state bodies and institutions that have their concrete legal responsibilities for the smooth running of the project design, approval and implementation process, then the situation is much worse and flagrant in making the process transparent, by these state bodies and institutions, to the public and residents of the area of Astir.

In these conditions, the lack of transparency in this process is a structural problem that should not be overlooked or treated as a secondary issue, but should be regarded as a very fundamental issue, as it is directly related to the legality of the process and respect for fundamental human rights.

9. Final conclusions

At the end of this report we proceed with the conclusions of the Ombudsman’s Institution:

1. The situation of the implementation of the project “Rehabilitation of the road segment: Overpass of the palace with arrows – roundabout “Shqiponja”, with the ARA development authority, is problematic and in flagrant violation of the law, since each act issued and each action performed by the public authorities analyzed in this report, occurred in the absence of the relevant decision of the NTC to approve the construction permit for the subject: *“Rehabilitation of the road segment “Overpass of the palace with*

²⁷ The public position of the President of the Republic of Albania has been sent to the Ombudsman by letter no.131 / 1 dated on 4.02.2019 of the Secretary General of the institution of the President of the Republic.

arrows, roundabout "Shqiponja", Municipality of Tirana". The NTC with Decision No.01 dated on 20.11.2018 approved the Development Permit for the subject "Rehabilitation of the road segment: Overpass of the palace with arrows - Roundabout "Shqiponja", but not the decision for approval of the construction permit. Construction permit issued under the terms of a legal and valid administrative act by the competent public body (NTC), is the only act that enables and allows at the same time the beneficiary entity to start the implementation of the project already approved.

2. The process has not started in accordance with the legal provisions in force.
3. Throughout the process of reviewing the problems created, as a result of the start of the actual implementation of the project "*Rehabilitation of the road segment – Overpass of the palace with arrows – roundabout "Shqiponja"*", we have noticed a lack of transparency and the non-realization of the right to information, by the public authorities involved in the process, towards the public in total and in particular the community of residents who will be affected or that were already affected by the demolition of some private buildings, but also by the transformation of some state-owned properties in function of facilitating the operation of private companies contracted for the implementation of the project. This lack of transparency is also evidenced in the information submitted to the Ombudsman by the public bodies involved in the process, information which has been incomplete, inaccurate or even missing. The lack of transparency in this process is also an issue raised in the public position of the President of the Republic, where it is evident that some state institutions have not responded to issues concerning their duties related to this project, despite requests made by the Head of State for this purpose.
4. Even in relation to the legal obligation of public bodies, namely ARA, ALUIZNI, TPI in the Municipality of Tirana, NTPI, or even the Municipality of Tirana, for the information of the Ombudsman regarding official information or copies of public documents, it is noted partial and non-exhaustive information on requests made by us. This constitutes another serious violation of the law by these public bodies and a lack of institutional loyalty in the conduct and official relationship with the Ombudsman's Institution, as a constitutionally mandated institution for the protection and respect of human rights.
5. Following this conclusion, it is noted the inactivity of the state institutions in getting involved in the steps that need to be taken in a coordinated way for the smooth running of the process.
6. On the part of ARA, in violation of the legal obligation, the obligatory process of public consultation and information was not carried out with the inhabitants of the area of Astir, but also with all the interested parties, during the project design and approval phase. Rehabilitation of the road segment – overpass of the palace with arrows - roundabout "Shqiponja".
7. The correct legal approval process for the implementation of the project "*Rehabilitation of the road segment - Overpass of the palace with arrows – roundabout "Shqiponja"*" is of particular importance, as it essentially maintains the balance between the legal rights and interests of private and public entities, intertwined in decision-making related to planning, development or control documents for the development of the territory.

8. Any request of the ARA to other public bodies, TPI in the Municipality of Tirana and NTPI, to clear the construction site; any notice of eviction as well as any interference with private construction for their demolition or even partial damage by any entity; any damage to public property by any entity that has committed and permitted it; any decision to exempt from legalization without concluding the process of adopting the acts necessary to enable the commencement of work on the construction of a public work; any expropriation procedure initiated; as well as any other conclusive action taken in these circumstances, which has infringed the legal rights and freedoms of the inhabitants of the area of Astir, and not only, is unlawful but also criminally punishable.
9. In this context, the Ombudsman finds that the ARA has taken actions openly contrary to the law, consisting in the non-regular performance of duty which has caused economic damage to the state and at the same time economic property damage to individuals affected by the uncontrolled demolition of private commercial dwellings and activities, located on the road axis affected by the construction project of the road segment "Rehabilitation of the road segment – Overpass of the Palace with Arrows – Roundabout "Shqiponja". In this regard, the Ombudsman finds that the representatives of the ARA should recommend to the Prosecutor's Office of Tirana Judicial District to initiate an investigation for the offense of "Abuse of Power", provided for in Article 248 of the Criminal Code. It is noteworthy that the illegal activity, carried out by the state entity ARA, is evidenced by issuing orders that are in contradiction with the law, orders which have serious consequences for both the state and individuals who have been damaged in their property, which were built near the road axis.
10. Given the nature of the answers given by public bodies, such incomplete and contradictory answers, there is a willingness to circumvent the law or commit unlawful acts, but also to avoid giving an account or practicing legal powers. This is especially evident in the case of the NTPI and TPI bodies in the Municipality of Tirana.
11. It is found that the actions and inactions of these two state instances, by inactions, but also in exceptional cases by actions, have been guaranteed with material or immaterial benefits to the relevant construction entities that have carried out works on the site and at the same time the legitimate interests of the state and citizens have been grossly damaged. As a result of works carried out without a construction permit and without an approved project, the relevant entities have damaged the road infrastructure and at the same time even the properties of people living near the road axis.
12. Demolition of the "Eagle" monument, as well as the public gardens, occupation of public spaces, construction of the construction site by the entity "Salillari" without obtaining a construction permit, complete damage to the road infrastructure in the Big Ring Road of Tirana, in the area of Astir, removal of signage, damage to asphalt carpet, opening of a pit at the roundabout where the "Eagle" monument was located and enabling the commencement of works for the implementation of the project for the construction of the road segment "Rehabilitation of the road segment - Overpass of the Palace with Arrows – Roundabout "Shqiponja", without a construction permit, directly imposes legal, criminal responsibility on the NTPI and TPI institutions in the Municipality of Tirana.
13. Demolition of some of the private buildings / facilities cited in the above complaints, which are included in the project footprint for which the development permit granted by the NTC Decision No.01, dated on 20.11.2018, has been granted for the subject: "Rehabilitation of the road segment "Overpass of the palace with arrows, roundabout "Shqiponja", Tirana Municipality", not only constitutes illegal action and criminal offense, but also evidences the non-intervention of TPI in the Municipality of Tirana, as well as NTPI in these cases. The entity that committed these demolitions of buildings and

caused concrete damage to their owners remains unidentified, which requires further prosecution of these cases by the Prosecutor's Office. Any decision of the TPI bodies in the Municipality of Tirana and NTPI to demolish the buildings / facilities, in the conditions when we do not yet have a construction permit approved by the relevant NTC decision, by justifying the clearance of the construction site, constitutes the decision-making in terms of illegality by these bodies and at the same time imposes criminal liability on them.

14. From the totality of evidenced data it is concluded that, by two public bodies, NTPI and TPI in the Municipality of Tirana, with acts and inactions committed in contravention of the law, in the context of failure to properly perform their duties by persons performing public legal functions, relations that regulate administrative activity by the state structure have been severely violated, by causing economic damage to the state and citizens. Actions and inactions committed in this context by NTPI and TPI in the Municipality of Tirana are considered as flagrant violations of the law, and therefore these entities should be prosecuted for the criminal offense of "Abuse of office" provided for by Article 248 of the Criminal Code.
15. The activity of the ALUIZNI body continues to bear the lack of institutional and legal responsibility for failing to comply with the legal deadlines set by the applicable legislation, administrative procedures for reviewing self-declaration for legalization, and issuing a final, case-by-case decision. This fact, as well as the decisions taken to exclude a number of informal constructions located in the footprint of the project *"Rehabilitation of the Road Segment – Overpass of the palace with arrows – Roundabout "Shqiponja"*, in the absence of a decision-making process that allows its implementation, aggravates the position of this body in this matter and increases the cost of the subsequent consequences.
16. There is a double standard treatment of subjects in the same conditions and for issues with the same object, in the activity of ALUIZNI during the process of reviewing the self-declaration of informal constructions, located in the area where there will be implemented the project "Rehabilitation of the road segment "Overpass of the palace with arrows – roundabout "Shqiponja". In this area there are informal constructions that have been legalized for years now based on the decision-making of the same body, namely ALUIZNI.
17. In its entirety, the issues we consider regarding the actual implementation of the project, "Rehabilitation of the road segment "Overpass of the palace with arrows - roundabout "Shqiponja", find confusion in the institutional relationship between the public bodies involved in it, lack of coordination and a lack of consistency in attitudes related to the consequences of project implementation, such as the number of buildings affected, the number of properties to be expropriated, the lack of information and inaction to unlawful interference with private and public property, etc. It seems as though the process has begun in "de facto" terms without being well thought in the "*de jure*" aspect.
18. Legal violations are observed that infringe on the legal rights and freedoms of the individual, thereby continuing to reflect on this unlawfulness and worsening the legal situation of the entities owned in the area where the above-mentioned project is being implemented.
19. Notwithstanding the fact that the ARA is the responsible and developing state authority, there is inactivity on the part of all the state bodies involved in this matter. Consequently

on the part of the Municipality of Tirana, on the steps they had to take in a coordinated manner for the smooth running of the process.

20. This road segment for more than 11 months is out of any relevant infrastructure standard. Despite this there is no one responsible for such a situation, which has directly affected not only the fundamental right to property, but also the quality of life of citizens and their right to have and use public roads built by standards, and suitable for meeting the needs of a normal urban lifestyle.
21. Only recently, the Ombudsman has prepared and submitted to the Assembly, the Special Report “On the problems observed in the activity of some public administration bodies during the implementation of the project “Tirana External Ring Road”, Lot III (Systemization of the Lana River bed and construction of parallel roads, New Maternity segment, Tirana External Ring Road”. As in the report cited above, this special report identifies the same issues, indicating that the non-response and failure to timely reflect on our respective findings and recommendations has led to the continuation of an unlawful activity and in violation of fundamental human rights by public administration bodies involved in the actual implementation of the project, “Rehabilitation of the road segment "Overpass of the palace with arrows – roundabout "Shqiponja”.
22. During the preparation of this report, direct findings made by us, as well as various media reports, have resulted in cases of destruction of public property, in flagrant violation of the law, by certain entities, which have not yet been subject to criminal liability.
23. The whole spirit, propaganda and communication by the representatives of the public bodies involved in this process, analyzed by our report, has not been that of guaranteeing and respecting human rights, but has identified, among other things, the hatred language used against individuals.
24. Problems considered by us regarding the actual implementation of the project, "Rehabilitation of the road segment *"Overpass of the palace with arrows - roundabout "Shqiponja"*", find polarization of the issue, as well as the creation of social conflicts with serious consequences, in the context of respect for basic human rights and for the creation and maintenance of the necessary social peace.
25. Law enforcement is the duty of state bodies, individuals and employees of the state administration, and therefore anyone who violates it must take concrete measures.
26. The Ombudsman in the framework of the best protection of the legal rights and freedoms of the individual, as well as for the good administration in the activity of ARA, ALUIZNI, as TPI in the Municipality of Tirana, NTPI, as well as the Municipality of Tirana, reiterates the view that major projects are very important to implement as they contribute to the further development of the country. But it is necessary to respect and rigorously enforce the existing legal framework, which is very broad and proportionate to the actions taken, in accordance with the principles of the rule of law.

10. Recommendations

In the context of the conclusions drawn and the comprehensive analytical treatment of the situation created by the Ombudsman's Institution, the following concrete recommendations are presented:

- Loyal institutional cooperation of state bodies / institutions in all processes of realization of public works is necessary and constitutes a necessity.
- The taking of legal measures by the competent bodies against the persons who have violated and still violate the law in dealing with these problems is a strong need and necessity emphasized by us. Impunity, or failure to take responsibility for these situations, turns these cases into examples of systematic human rights violations, as state administration employees, who have violated their mandatory legal procedures, have allowed the illegal destruction of public and private property, which have violated the legitimate interests of the citizens, have not been held accountable, either of an administrative, civil or criminal nature.
- The Ombudsman recommends the Prosecutor's Office to initiate investigations into the activities of the ARA, NTPI and TPI in the Municipality of Tirana, for the offense of "Abuse of office", provided for by Article 248 of the Criminal Code, as well as for other criminal offenses that will result during the investigation of this process against state or private entities, by referring to the legal violations found by the administrative investigation.
- The Ombudsman recommends that each of the public institutions and bodies referred to in this Special Report investigate with responsibility all the irregularities and legal violations found and they initiate disciplinary proceedings, or the filing of relevant criminal reports, for responsible persons, after verification and documentation of respective violations. The right of individuals to apply to the Court does not exclude the responsibility of other state bodies and institutions to guarantee to citizens, the protection of their interests and property rights and a proportionate treatment on a case-by-case basis.
- Based on the specifics found during the drafting of this report, but also on the other special reports already presented to the Albanian Parliament that deal with similar issues, we believe that there is a need to amend and improve the legislation regarding the provision of a reasonable indemnification for all entities possessing informal objects affected by the implementation of projects for the construction of public works. This group should include the informal constructions for which the legalization process has begun, or other informal constructions, which are proven to exist in time, prior to the approval and implementation of public work projects. Reasonable indemnity must be conceived in the context of a specific expropriation process in these cases. This conclusion requires the timeliness of the forecasts, as well as the legislative initiative for amendments to Law No. 8561, dated on 22.12.1999 "On the expropriation and temporary use of private property for public interest", as amended and for explanatory amendments, in Law no. 9482, dated on 03.04.2006 "On the legalization, urbanization and integration of illegal constructions", as amended.

Hoping for your understanding,

THE OMBUDSMAN

Erinda BALLANCA