

Monitoring Report Albania in the Stabilisation and Association Process

(1 October 2007 – 15 October 2008)

 **Fondacioni i Shoqërisë së Hapur për Shqipërinë
SOROS**

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This is the second consecutive year that Open Society Foundation for Albania (OSFA) undertakes the initiative to monitor the progress of Albania in its path towards European Integration process, trying to establish it as a regular yearly practice. Monitoring is based on the commitment undertaken by Albania in the Stabilization and Association Process, covering priority issues for the relations with European Union.

The monitoring process aims at having an effect on accomplishing priorities under the European Partnership and on increasing state structures' accountability in way that ensures an open and transparent process for the groups of interest and the public in general. The monitoring process also aims at identifying in an independent way the problems and effective solutions thereof in the framework of commitments under the European integration process.

Open Society Foundation for Albania

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Executive Summary

Democracy and the Rule of Law

The **Parliamentary life** is sometimes characterised by a spirit of consensus that enabled the adoption of the National Pact for Justice, the adoption of a number of important laws and the receipt of the invitation to join NATO. The Assembly adopted some constitutional changes that relate to changes of the election system, the manner of election of the President of the Republic, the determination of a five year term of office for the General Prosecutor, the motion of confidence and motion of no confidence in the Prime Minister as well as the repeal of articles regulating the functioning of the Central Elections Commission. There was no process of consultation with the local or international expertise before these constitutional changes were made, which ultimately affected the transparency and quality of the process.

The **new electoral system**, a proportional regional system, approved with the consensus of the DP and the SP was contested by their ally parties, which argued that this system was inappropriate for Albania as it favours the two main political parties and damages the interests of other parties. Despite promises that the Electoral Code would be adopted first within the month of July, and then within the month of September 2008, a first draft of this document has not been disclosed by the Election Reform Commission and the elections' infrastructure is not in place yet.

The tragedy of Gërdec, investigations on the road Durrës-Kukës, the political ties and the suspicions over the activity of the Serbian Bosnian businessman Damir Fazlic, the justice reform and especially the draft law on the Prosecutor's Office and that on the judicial administration were at the centre of a harsh parliamentary debate, which from time to time did not lack offending language. The parliamentary life marked the first public clash between the parliamentary majority and the President of the Republic, Mr. Bamir Topi, when the Assembly first rejected the consideration of the five decrees of the President appointing five judges to the High Court and then rejected all candidates *en bloc*.

The approach of the **Government** *vis-à-vis* the independent institutions continues to be one of conflict and having control tendencies. Important initiatives related to the functioning of the General Prosecutor's Office, the Internal Control Service, the judicial administration, advocacy, notaries, the administrative court were undertaken in a unilateral way by the Government. The common denominator of this process is the fact that the groups of interest and the international assistance mission were either not involved in the process of discussions of these draft laws or even when they were involved at the beginning they were later on avoided because of the criticism they raised.

The Government adopted the **National Strategy for Development and Integration** (NSDI) in March 2008. This is followed by the preparation and adoption of 22 sector strategies and 13 cross sector strategies. The NSDI deals with the process of European integration as a separate priority, which makes the harmonisation of the European integration priorities with the agenda of economic and social development of Albania difficult.

The **Public Administration Department (DoPA)** continues to have a weak role in protecting and promoting the principles of civil service. Professional career development and especially recruitment and job promotion do not follow objective criteria and merit based criteria, which would ultimately make it possible to achieve an accountable and efficient civil service; they are rather based on politics and nepotism. The appointment of the new chairman and of the new members of the Civil Service Commission (CSC) was followed by political interventions and debates, which affected the independence of this institution. Further work of the

CSC was followed by delays because the Commission as reconstituted with its new members decided to rehear around 150 civil servants, who had been removed from office. While no measure has been taken to identify the individual responsibilities for damages to the state budget as a consequence of failure to apply final court decisions.

The **justice system** in Albania continues to undergo continuous changes, which in certain cases constitute an expression of the good willingness of the institutions, but often reflect a tendency of control by the executive on the judiciary and the prosecutor's office. The lack of a clear vision for addressing the problems has resulted in lack of support of the groups of interest for many of the initiatives undertaken and in the fact that these acts are challenged at the Constitutional Court. A consensual political climate is indispensable for accomplishing sustainable reforms. The process of law drafting in connection with laws in the area of justice and the way this process is managed continue to be problematic. The fragmentarisation of laws and the confusion created because of drafting several laws at the same time has resulted in some of these laws being incomplete and contradictory. Nevertheless, an increased activism of the High Council of Justice, the associations of judges and prosecutors, notaries and advocates is noted; these actors have contributed to the improvement of the quality of legal initiatives in the area of justice.

An improvement in the index of perception of the **corruption** level according to Transparency International was marked in 2008. There is a willingness of the two main political parties in the country (the DP and the SP) to reduce the list of officials who have immunity. The 2007-2013 Anti-corruption Strategy adopted by the Council of Ministers creates a link to the NSDI and identifies the anticorruption perception of Transparency International and the World Bank "Doing Business" Report as measuring indicators. Nevertheless, sections such as the Licensing Regulatory Reform or the Public Service Reform lack the legal and institutional instruments that would make the achievement of objectives possible.

According to the High State Control, the corruptive practices continue to dominate the area of public procurement. Violations of the new law on public procurement have been found in 60% of the cases and the damage caused to the operational

and capital expenses is calculated at Lekë 454 million of which 93% of the damage is created during the implementation of the procurement procedures.

Progress was marked with regard to the **decentralisation** reform. Changes in the fiscal policy included the transfer of responsibilities over local taxes, water pipes and sewers to the local government, the adoption of the law on loans to the local governance, which provides for the financing with a view to improve local services. The transfer of the responsibility over the small business tax has not been accompanied with an increase in the capacities for a better a fiscal administration by the local government. The administration and the managing structures of the companies that deal with water pipes and sewers remain under the central government influence, which puts in question the willingness of the latter. The Ministry of Finance has not issued the subordinate legal acts for the implementation of the law on loans to local governance.

Observance of international law and human rights

The European Court of Human Rights has issued some judgements against Albania finding violations of the articles of the Convention. This court has found against Albania for failure to enforce final decisions, lack of effective remedies and failure to ensure enjoyment of property rights. There are improvements in terms of access to the European Court of Human Rights in Strasbourg. Nevertheless, a proper mechanism that ensures automatic enforcement of judgements of the Strasbourg court is not in place yet.

The **National Mechanism for Prevention of Torture**, functions at the Peoples' Advocate Office, fulfilling the obligations deriving from the Optional Protocol to the Convention Against Torture (OPCAT). Being new, the mechanism needs to establish contacts and cooperation with national and international partners

operating in this area and to have a complete budget and staff in order to be effective in monitoring the police commissariats, the pre-trial detention and prison facilities.

Progress was marked with regard to the legislative aspects of prevention of forms of **discrimination** with the adoption of amendments to the Criminal Code. These amendments provide for including motives related to gender, race, religion, nationality, language, political conviction or religious belonging as serious circumstances for the commission of the criminal act of discrimination.

Limited progress was marked with regard to the legal reform in the **penitentiary system**. The full transfer of the pre-trial detention system under the responsibility of the Ministry of Justice had many difficulties if considering the infrastructure and the conditions in which the pre-trial detention institutions were when they were taken over from police stations. The employment of full-time psychologists in these institutions was considered a positive step. Nevertheless, it is necessary to improve the programmes of rehabilitation for persons deprived of liberty in order to prepare them for integration into the society and to reduce the scale of crime recidivism.

Overcrowding, which seriously affects the rights of persons who have been deprived of their liberty, continues to be of concern in all prisons and pre-trial detention facilities that were observed. The numbers of persons deprived of liberty that have psychic problems continues to be high. These persons are kept in different prisons or pre-trial detention facilities and some of them in the Prisons' Hospital Centre. The application of alternative measures continues to be at low levels. Despite an increasing number of activities aimed at increasing the professionalism of the administration of prisons there is still work to be done in order to achieve a strict implementation of the law and a dignitary treatment for persons deprived of their liberty by the prisons' administration.

No progress was marked in connection with the situation in the area of **freedom of expression and freedom of the press**. The Government's influence on the National Council of Radio Televisions is obvious, using it a pressuring instrument against media that are critical to the Government. The Assembly's legal initiative to put

the regulation of the Public and Private Radio Televisions and the regulation of the digital broadcasting in one law does not guarantee the independence of the National Council of Radio Televisions, neither that of the Albanian Radio Television. This initiative is in conflict with the Action Plan of the European Commission and that of the Council of Europe, which provides for the adoption of a new law for digital broadcasting through a transparent process. The Criminal Code has not been amended yet in order to decriminalise libel in cases involving journalists even though there have been no cases of proceedings against them.

The role of **civil society** continues to be important in Albania. Nevertheless, a donor driven agenda and the limited financial resources hinder the development of human capital in this sector. Amendments to the legal package on the non for profit organisation with a view to identify the non for profit character of the activities of the NPOs, to facilitate the procedures of registration, to achieve functional independence in their activities and to achieve their fiscal autonomy are needed. For the first time in the history of Albanian transition the Government has earmarked a special fund in the state budget for the civil society.

The Law on **Gender Equality in Albania** provided for the first time for the gender election quote. The law provides a minimum of representation for each gender in all legislative, executive and legal bodies as well as in other public institutions including executive bodies. However, the way in which this legal requirement will be applied remains to be seen.

With regard to addressing problems of **children**, the Albanian Government has determined strengthening and improvement of the national adoption services, child protection and guaranteeing of their rights, as well as the creation of a regional psychical and social service for children as matters of priority. Other issues related to the child protection system, juvenile justice, licensing and training of psychical and social services' employees who deal with children issues remain unaddressed. Different categories of children at risk, including poor children, those living in marginalised communities, in remote areas, the Roma and the Egyptian children, those who have been trafficking victims, those who do not have parental care, children living in the streets, those exposed to violence and negligence, and those affected by the blood feud deserve a greater attention by the government.

Agencies that deal with children issues should identify, formulate and agree on a scheme of critical indicators and measurable measures for children's well-being. There are no campaigns to raise awareness and educational programmes on non-violent forms of discipline. Despite the existence of programmes that help children to integrate into schools there is still work to be done in relation to addressing the phenomenon of school abandonment. Juvenile justice continues to be a problem in the country. Training for the actors involved in the process of treatment of children including police officers, prosecutors and judges with respect to the advantages of the application of alternative sentences instead of imprisonment sentences is needed.

The framework of laws and subordinate legal acts in the area of **rights of vulnerable persons** and **persons with disabilities** has undergone positive changes. Nevertheless, persons with limited abilities cannot exercise practically their fundamental rights starting with the right to vote. The changes that were done to social services on the basis of the principle of decentralisation, including their placement under the local government units should go in parallel to the implementation of the National Strategy for Persons with Limited Abilities.

Restitution and compensation of property seized during the communist regime continues to be a matter of concern. The amount of the budget determined by the Government for purposes of property compensation for the period of time 2007-2008 is around \$11 million. While the total costs for the entire process are estimated at around \$3.5 billion. A data base for identifying, assessing, managing and prioritising claims for restitution and compensation of property is still missing. The Property Restitution and Compensation Agency has not distributed the compensation fund for 2008. A fund of \$ 5 million has been provided for in the 2008 budget for this purpose. The land map for the territory of Albania has been prepared by the Committee of Restitution and Compensation of Property but it has not been approved yet. The Government should work on mapping the situation of ownership on immovable properties in the country or on creating a digitalised system that will reflect the situation with the restitution and compensation of immovable property in the country.

The adoption of the NSDI, a part of which is also the Roma minority, the strengthening of Implementation Monitoring Unit of the National Strategy for Roma and the receipt of the invitation to join the Roma Decade, can be considered as important developments in connection with observance of rights of minorities. However, the situation of the Roma Minority in relation to the lack of education and the phenomena of school abandonment continues to be a matter of concern. Minorities' access to the public administration remains at low levels. Whereas, progress was marked in connection with the registration of the Roma children as a consequence of encouraging policies.

Home affairs

The legal basis for determining the security elements and for approving the form of the **Identity Document** model for Albanian citizens was completed. However, there is lack of coordination of the process of production and issuance of identity cards with the process of improving the system at the civil status registry, the process of ensuring standards of personal data protection and that of finalisation of the system of addresses

It is expected that the **National Visa Centre (NVC)** will be created by the end of 2008. Information about the Visa Facilitation Agreement has not been given and monitoring of its implementation has not been made in a systematic way by the Ministry of Foreign Affairs. Whereas, reports of the civil society show that the level of visa rejection for Albanian applicants continues to be high. The Albanian Government has prepared a working document about the standards of the Roadmap for Visa Liberalisation with the EU that should be met by Albania. However, this document has not been discussed in the Assembly of the Republic of Albania and has not been made public. This puts into question the transparency of this process and the ability to monitor the honouring of the commitments undertaken by the Albanian Government.

The harmonisation of the law on **asylum** with the law on foreigners and other legal acts continues to be unaccomplished priority. The administrative capacities in the area of asylum continue to be limited. Staff changes as a consequence of restructuring of the Directorate of Citizenship and Refugees have weakened the performance of this institution and have delayed the process of review of requests for asylum.

With regard to **migration**, an important development was marked with the adoption of the new law on foreigners in July 2008. In order to implement the new law it is necessary to improve the institutional coordination of the bodies responsible for the implementation of the law on foreigners, ensure the necessary infrastructure and undertake information campaigns (especially informing the foreign persons who are currently residing in the country). The level of implementation of the **Readmission Agreement** with the European Community continues to be low. Reductions in the number of employees at the border police resulting from continuous staff cuts remains one of the serious concerns of **border management**. The existing strategies on migration provide for a number of measures for achieving better results in the fight against trafficking and illegal emigration, which require relatively considerable financial and human resources.

The adoption of the Personal Data Protection Law and the appointment of the Commissioner for Personal Data Protection by the Assembly of Albania constitute a step forward in the area of personal **data protection**. Nevertheless, the law has gaps in connection with the status and financial independence of the Personal Data Protection Commissioner, who does not have an institutional structure, human resources, offices or a budget allocate for purposes of starting the normal functioning of its activity.

Albania has signed several international agreements concerning fight against **organised crime**. At the same time, a new strategic framework for fighting organised crime and trafficking has been adopted. Nevertheless, the level of protection of witnesses and collaborators of justice continues to be a matter of concern. There is no data base of victims of trafficking in place yet. Whereas a number of initiatives aimed at rehabilitating the victims of trafficking remain

dependant on the projects financed by donors. The 2008 state budget does not provide for this purpose.

Albania has improved its automobile check technology at the crossing border points in the framework of the fight against trafficking in **drugs**. Nevertheless, there is a partial implementation of the Anti-drugs Action Plan and of the recommendations of the Dublin Mini Group in connection with the cooperation of state structures in the fight against this type of trafficking. The Government has focused only on seizure of light and synthetic drugs so far but it has not taken any concrete action to offer development programmes in the areas where narcotic plants are cultivated. An increased awareness of the phenomenon and a clear determination of the procedures for storing, administering and destroying the amounts of seized drugs are needed.

The adoption of the law on prevention of money laundering and financing of terrorism constitutes a better legal support for intensifying the fight against **money laundering**. With regard to institutional reorganisation progress was marked with the creation of the Task Force against Economic Crime at the Tirana Prosecutor's Office and Sections against Money Laundering at Regional Police Directorates. Delays in reducing the cash-based economy and the gaps of legislation in controlling the initial source of foreign or local investments, at the central or local level, should be noted. The limited number of money laundering cases tried in Albania indicates a limited progress in this area.

The legal framework on the fight against **terrorism** has been improved. The presence of Albanian military troops in international military missions in Iraq and Afghanistan show a firm commitment of the Albanian Government in this area. Nevertheless, a National Anti-terror Strategy, which would set out a clear division of the responsibilities of state authorities in this area, is still missing. Furthermore, legislation improvements are needed in order to provide for a definition of terrorism in compliance with international standards.

Progress was marked with respect to the completion of the subordinate legal acts in connection with the determination of special equipment, colours and signs for **State Police** vehicles, on the approval of the types of weapons and

chemical substances and other means for using force by the State Police. Also, some international agreements on police cooperation with the EU countries and neighbouring countries have been concluded. Nevertheless, the State Police continues to suffer from frequent and unmotivated staff changes and interventions of politics in connection with appointments to key positions. The state budget for training and equipment of structures specialised in fight against crime is not sufficient, which has led to a dependency on foreign donations.

Institutional framework and administrative capacities for managing the European integration process

The institutional framework for coordinating the European integration process has gaps both in its organisational and systemic conception and in its functioning. The Inter-ministerial Committee on Integration has met three times in 2008 in a sporadic way and not on the basis of an agenda of meetings and issues that is adopted in advance. The annual contribution that the Albanian Government send to the European Commission services on the verge of the issuance of Annual Report of the European Commission for Albania was discussed in these meetings. The functions of the Inter-ministerial Committee on Integration overlap with those of the Technical Working Committee for the SAA Implementation, which has met only two times since its creation notwithstanding its obligation to meet at least once a month.

The Ministry of European Integration, which is the main coordinating structure of the process, is bypassed by other structures of the Government in the process of developing and adopting draft laws of particular importance. The functioning of the European Integration Units in the line institutions, and the overlap of its competences over EU aid with those of the Department of Coordination of National Strategies and Foreign Assistance at the Council of Ministers continues to be problematic.

1. Introduction

The 2007 Annual Report of the European Commission for Albania emphasizes among others that: *“monitoring of implementation of SAA obligations is done exclusively by the government”*¹. This quote from the European Commission Report is enough to realize that when the monitoring of the fulfilment by Albania of the obligations arising from the Stabilisation and Association Process is done by local actors it assumes a higher importance for the process itself.

The process of monitoring the commitments arising from the integration process, which is initiated by SOROS Foundation, aims at identifying the implementation of commitments undertaken by Albania in the framework of the Stabilisation and Association Process for the period of time 1 October 2007- 15 October 2008.

Monitoring this period becomes important also in view of the fact that the publication of the Annual Report of the European Commission in November 2007 was accompanied by the adoption of a new European Partnership and of the Enlargement Strategy.

The monitoring report was written by a group of experts. The monitoring and evaluation process takes into consideration the following documents:

- The National Plan for the Implementation of the Stabilisation and Association Agreement (NPISAA)

¹ See Albania 2007 Progress Report, Commission of the European Communities, COM (2007) 663, Brussels, 6.11.2007.

- The Stabilisation and Association Agreement (SAA)
- The European Partnership
- The Annual Report of the European Commission
- The National Strategy for Development and Integration (NSDI)
- The Enlargement Strategy of the European Commission
- Sector Strategies adopted by the Council of Ministers
- Joint Recommendations of the EU-Albania Consultative Task Force (CTF)
- Recommendations of the Joint Committee and sector groups EU-Albania in the framework of the Interim Agreement
- Reports and recommendations of the EU assistance missions, including the (for example EURALIUS, PAMECA).
- Reports and recommendations of other international organisations on the monitored areas (e.g. OSCE, Council of Europe, World Bank, Transparency International, UN Agencies, SIGMA, Freedom House Nations in Transit, State Department, Europol).

The monitoring process was accomplished through a combination of research and concrete observation of commitments undertaken by Albanian institutions. Objectivity and impartiality are the fundamental principles on the basis of which the monitoring for each area and component thereof is done. The report aims at giving professional conclusions with regard to the way the Albanian Government and central institutions have responded to the European integration priorities as well as with regard to the level of implementation of the measures taken in that connection. Thus, our assessment focuses on tangible results in connection with which planning has not been considered as a goal *per se* but rather as a starting point for the completion of an initiative that has been foreseen.

A six month interim monitoring report (covering October 2007-March 2008) was published before this report. Its findings were discussed by local actors, European Commission services and international missions that assist Albania in the European integration process. The monitoring report focuses on priority areas of

the EU-Albania relations, following this methodological division:

- Democracy and rule of law
- Fundamental human rights and freedoms
- Home affairs
- The institutional framework and administrative capacities for managing the European integration process.

As the process of ratification of the SAA reaches its end and the need for strengthening the administrative capacities becomes even clearer for Albania, this monitoring report analyses the administrative capacities that coordinate the European integration process and gives suggestions concerning measures to be taken with a view to improve the situation.

2. Democracy and the Rule of Law

2.1 Parliamentary activity

Parliamentary life has been characterised a from time to time by a spirit of consensus, which although delayed² has enabled the adoption of some important laws including the Law on the Organisation of the Judicial Power. The process of preparation for getting an invitation to join NATO has served as a main indication for the opposition to introduce platforms for reforming the justice system and the electoral system, which were embraced by the ruling majority³.

On 21 April 2008 the Assembly adopted a number of constitutional amendments concerning changes to the electoral system, the manner of election of the President of the Republic, the determination of a five year term of office for the General Prosecutor as well as the motion of confidence and motion of no confidence in the Prime Minister. Two constitutional provisions dealing with the Central Elections Commission were repealed. The Assembly should have adopted at that time transitory provisions concerning the issues that affect the Central Elections Commission (CEC) and the General Prosecutor since the incumbent General

² The consensus can be said to be delayed if we take into consideration that the justice and electoral reforms have not been completed and that these have been the focus of a continuous request of international partners.

³ The Socialist Party Pact, which was followed by similar pacts prepared by the Socialist Movement for Integration and the Democratic Party, was accompanied by the setting up of a parliamentary sub-committee for the justice reform.

Prosecutor was elected before the determination of the five year term of office and the CEC would continue to function as in fact is functioning even after the repeal of the two articles of the Constitution on the basis of which it had been set up. The constitutional changes were followed by amendments to the Rules of Procedure of the Assembly of Albania on 7 July 2008.

The constitutional changes were the result of a consensus reached by the main political parties, the DP and the SP. They were contested by many other parliamentary parties. No wide process of consultation with the local and foreign expertise took place before the adoption of the constitutional changes, which affected negatively the transparency of the process.

The dynamics of the lawmaking activity has been high during the monitoring period. Ninety eight laws and international agreements were adopted by the Assembly of Albania. Among the most important ones, mention can be made of amendments to the Law on Rights and Treatment of Prisoners, the Criminal Code of the Republic of Albania, the Law on Value Added Tax, the Law on Public Procurement, the Law on Excise, the Law on the Academy of Sciences of the Republic of Albania, Law on the Personal Income Tax and the Law on Urban Planning. Also, other important laws were adopted including the Personal Data Protection Law, the Electronic Signature Law, the Law on the Organisation of the Judicial Power in the Republic of Albania, the Law on Control and Supervision of State Border, and the Law on the State Budget for 2008. A number of laws for adhering to international conventions were adopted including the Optional Protocol to the UN Convention on the Rights of the Child on the Sale of the Children, Child Prostitution and Child pornography, and the Optional Protocol to the UN Convention on the Rights of the Child on the involvement of children in armed conflicts. Law no.9815 of 08.10.2007 on the ratification of the Agreement between the Republic of Albania and the European Community on Visa Issuance Facilitation, some additions and amendments to the Criminal Procedure Code and some additions to the Law on the Public and Private Radio Television in the Republic of Albania and others, were also adopted during this time.

Justice reform – especially the drafts of laws on the Prosecutor’s Office, the judicial administration, advocates and notaries – came to the centre of a fierce political parliamentary and media debate, through which the public opinion became familiar with the opposing position of the groups of interest. The Law on the Internal Control Service in the Ministry of Interior (MoI), was adopted only with the votes of the ruling majority. The parliamentary opposition objected to this law relying on the opinion of the Peoples’ Advocate, the Albanian Helsinki Committee and the Albanian Centre for Human Rights, according to which the law infringes upon the fundamental human rights and freedoms.

It can be noted that debates at the Parliamentary Committees in connection with some laws have had positive effects in increasing their quality through creating the necessary spaces for the groups of interest to express their opinions in the law drafting process⁴. It is worth to point out as positive experience the fact that there is an increasing practice of organising hearing sessions with groups of interest by parliamentary committees. However, in several cases of legislative initiatives involving political problems, the hearing sessions have been almost formal since no copies of the draft of law, which were subject to parliamentary considerations, were made available to the representatives of the groups of interest⁵. Nevertheless, it should be emphasized that there is still no institutional mechanism that would make the groups of interest part of the policy making process.

Despite the marked legislative productivity, the constitutional check of the Assembly vis-à-vis the Council of Ministers in connection with the implementation of the SAA obligations continues to be anaemic. The Assembly has not taken any initiative to invite the Government to report in connection with the European Commission Report published on 6 November 2007. On the other hand the

4 The Laws Committee has organised some discussion sessions even during February in connection with the Law on the Organisation of the Judicial Power, in which representatives of the High Council of Justice (HCJ), High Court, and the Ministry of Justice (MoJ) have expressed their opinions. Observations of international organisations have been given through the institutions that they assist as it was the case of the EURALIUS Mission at the MoJ, and the Twinning Project at the HCJ. The national security Committee has held a hearing session in connection with the draft law on the Internal Control Service in the Ministry of Interior.

5 The consideration of the draft law on the verification of the purity of the figure of officials was one of the examples of this case.

Government does not report periodically about the way it has addressed the problems identified in this report or about the state of implementation of the SAA obligations. It seems that the Government continues to keep the ownership in this process⁶.

On October 2007 the OSCE Presence in Albania in conjunction with the European Movement in Albania started to implement a project, which aims at increasing the role of the Assembly in the Stabilisation and Association Process. In the framework of this project, the European Integration Committee has played an active role through organising policy forums in Shkodër, Peshkopi, Lushnjë, Durrës, Burrel, Elbasan, Berat and Vlorë in which deputies of these electoral zones, groups of interest and local government representatives participated. The goal of these forums is to discuss issues that affect the development of various cities as a result of the implementation of the SAA and to foster better relations between the Assembly and the groups of interest in the policy making process. The extent to which the recommendations of the Policy Forums will provide incentives for deputies to undertake initiatives that improve the economic and social situation of various areas in Albania remains to be seen.

This one year monitoring period has been characterised by inflation in terms of setting up investigative committees. They have not resulted effective because in many cases they have been politicised and investigations held were partial and not objective. In some cases the action of these committees went beyond the competences of the Assembly; this observation is confirmed by the relevant decisions of the Constitutional Court. The following investigative committees were set up during the reporting period:

1. The Investigative Committee on illegal eavesdropping of telephones, Decision of the Assembly no.128, of 11.10.2007.
2. The Investigative Committee on examining the request for starting the procedure for discharge from duty of the general prosecutor, Decision of the Assembly no.135, of 25.10.2007.

⁶ See European Commission Report for Albania 2007, which says that “monitoring of implementation of SAA obligations is done exclusively by the government”, COM (2007) 663, Brussels, 6.11.2007.

3. The Investigative Committee on the implementation of law on concessions, giving by concession of different objects owned by the state, conditions for awarding these contracts for the period of time of 2001 and thereafter and the procedures for starting works to build the TEC in Vlora, Decision of the Assembly no.132, of 22.10.2007.
4. The Investigative Committee on the investigation of tender procedures for the Durrës-Morinë Road, Decision no.129, of 22.10.2007 of the Assembly.
5. The Investigative Committee on the investigation of the object and procedures related to the contract of privatisation of Albtelekom for the period of time of 2001 and thereafter, Decision of the Assembly no.130, of 22.10.2007.
6. The Investigative Committee on the investigation of expenses from the state budget available to the ministries, main institutions of dependence and public enterprises through public procurement for the period of time 2001 and thereafter, Decision of the Assembly no.131, of 22.10.2007.

The law on the setting up and functioning of investigative committees has gaps that are used by political forces on their own interests. The fact that whenever committees are set up there are debates about the contents of the law and competences of the committees shows the need for change. In addition, the Rules of Procedure of the Assembly need revision as there are frequently debates concerning the manner of voting in the Assembly.

Fight against corruption and the possibility to open investigations against some high officials has been also part of the parliamentary debate, which is characterized by tension and lack of consensus. The General Prosecutor Mr. Theodhori Sollaku asked the Assembly of Albania to lift the immunity of the former Minister of Public Works and Transportation, currently a Member of Parliament and Minister of Foreign Affairs Mr. Lulzim Basha. The Assembly authorised the start of criminal proceedings against Mr. Lulzim Basha by Decision no. 152, of 27.12.2007.

The representatives of the ruling majority in the Council of Mandates had argued on the one hand that there is not sufficient evidence from the Prosecutor's Office

that would implicate Mr. Basha while on the other concluded that the immunity should be lifted. The opposition did not agree with this conclusion arguing that evidence is sufficient. Indeed there is a discrepancy between the reasons given in the decision, according to which there are no sufficient data for lifting the immunity, and the recommendation to lift the immunity supported by the argument of a demonstrated willingness to limit immunity and transparency. Ten months after Mr. Lulzim Basha's immunity was lifted, the General Prosecutor's Office has not released information concerning the state of investigations in this process.

The Assembly proposed to the President of the Republic the discharge from duty of the General Prosecutor Theodhori Sollaku for the second time during the term of office of the Assembly. The proposal of the Assembly was made on the basis of the one-week work of the investigative committee composed of representatives from the ruling majority. The opposition refused to participate in this committee. The President of the Republic accepted the proposal of the Assembly and after few days proposed to the latter the appointment of Ms. Ina Rama as General Prosecutor. This proposal was adopted by secret vote in the Assembly.

On 15 March 2008, in the village of Gërdec, few kilometres from the capital city, there was a blast in an army ammunitions depot, which had serious human and material damages. The event in Gërdec slowed the activity of the Assembly to a certain extent because of the fierce parliamentary debates that culminated with the Prime Minister's report to the Assembly. In the absence of an investigative committee, the Assembly apparently trusted this task to the investigation institutions. The Minister of Defense Mr. Fatmir Mediu resigned few days after the tragedy and the opposition called for the Prime Minister to resign too.

The parliamentary opposition has requested a number of interpellances on the basis of data of corruption or illegal and actions of the Government and the Prime Minister as well as in connection with the event of Gërdec. The opposition claims that the actual carrying out of these interpellances have been procrastinated and the main responsibility for this lies with the Speaker of the Assembly. The ruling majority objects to this criticism or claims arguing that the opposition aims at politicising the issue and at distorting the facts.

The request of the General Prosecutor Mrs. Ina Rama for lifting the immunity of the Minister of Defense Mr. Fatmir Mediu marked a moment of tension in the parliamentary life. The opposition criticised the procrastination of the consideration of the request of the Prosecutor's Office and the Speaker of the Assembly Mrs. Jozefina Topalli stated that the Prosecutor's Office had hidden intentionally some materials. This prejudicial statement by Mrs. Topalli was followed by statements of representatives of the USA, EU and the OSCE in Albania. While supporting the work of the General Prosecutor they called for an independent and comprehensive investigation of the Gërdec tragedy aimed at bringing culprits before the justice. On the face of such international and public pressure the Assembly decided to lift the immunity of the deputy Fatmir Mediu on June 2008.

The Gërdec tragedy affected negatively the development of a normal parliamentary life, where in certain moments the parliamentary ethics was seriously violated and hate speech was used. The insulting and offending language used by the Prime Minister while addressing a deputy of the Socialist Party, Mr. Taulant Balla, was the most flagrant case. The Parliamentary Bureau decided to punish the socialist deputy Taulant Balla by not allowing him to participate in the plenary session. On the other hand no measure was taken against the Prime Minister.

The parliamentary life marked the first public clash between the parliamentary majority and the President of the Republic Mr. Bamir Topi, who only one year earlier was elected to the office primarily with the votes of the parliamentary majority. In May 2008 the President of the Republic sent to the Assembly five decrees for the appointment of judges to the High Court. Their consideration was delayed in violation of the Rules of Procedures of the Assembly.

Representatives of the ruling majority, under the direction of the Prime Minister and the Speaker of the Assembly, gave statements against the consideration of the candidatures arguing that the President should have consulted with the Assembly before. The representatives of the ruling majority referred to the jurisprudence of the Constitutional Courts in order to support their position. In fact, the Constitutional Court jurisprudence does not state an obligation of the President to consult with the Assembly. After reaction by the international presence in Albania, the Assembly considered the candidatures that the President

had proposed and rejected them *en bloc*. The President of the Republic considered the action of the parliamentary majority as “a political execution”.

After this, the President nominated a working group with specialists of law, which managed the process of selection of candidates. On the basis of the proposal of this group the President proposed to the Assembly six candidates for the High Court. The Assembly later on adopted through secret vote the decrees of the President for the High Court and ended at the same time the paralysis of this institution.

2.2 Government

One of the main challenges that Albania faces in its transition towards consolidation of democracy and market economy is achieving some maturity of a comprehensive policy making process that takes into consideration the aspirations of Albanians for a quick accession to the EU. This could be translated into designing and implementing national and sector strategies for the development and transformation of the country.

There has been no shortage of strategies or plans in Albania. In most of the cases they were developed with the assistance of international consultants and without contributions from local actors. What is lacking is the will and capacity to transform these documents in real work plans. There are many different reasons for this. They are mainly related to the lack of a clear political willingness that goes beyond a four year term of office of the Government, strategic planning flows, lack of administrative capacities and financial resources, and failure to obtain and combine international assistance with local assistance.

On March 2008 the Government adopted the NSDI. The adoption of this Strategy has been followed by the preparation and adoption of 22 sector strategies and 13 cross-sector strategies. The NSDI is the main planning document of the Government and it deals with four priority areas:

1. European integration and NATO membership (key points of the action plan for NATO membership and of the NPISAA);
2. democratisation;
3. the rule of law;
4. social and economic development of the country.

The process of European integration has been dealt with as a specific priority under the NSDI while the other two priorities are also key components of this process, which are at the same time dealt with under the NPISAA. As a result it can be said that the Government considers the NSDI as a comprehensive strategic document whereas the NPISAA as a document that has a specific focus. This situation does not reflect the commitments undertaken under the SAA, which as contractual document with a specific strategic objective affects all areas of the development of the country, including the second and third priority of the NSDI (Social and Economic Development and Democracy and the Rule of Law). In other words these two important documents should have been inclusive of each other, or following the experiences of other countries involved in the European integration process, they could have been incorporated in a single document.

Linking this strategy with the Mid-term Budget Program (MBP) is difficult since the NSDI does not provide in a clear way the costs and performance indicators of the Government. The priorities concerning the European integration process have been included under a separate section of the NSDI and these priorities are defined with more clarity in the NPISAA.

The MBP is thought to be the financial instrument for implementing the NSDI, which is coordinated by the Department of Coordination of the National Strategies and Foreign Assistance (DCNSFA)⁷, and the NPISAA, which is coordinated by the Ministry of European Integration (MEI)⁸. It includes funds determined in the state budget and offered by donors, which are respectively coordinated by these two

7 The DCNSFA coordinates foreign assistance, with the exception of the Community assistance, which is coordinated by the MEI.

8 Council of Ministers Decision no. 580, of 10.09.2004 "On the area of activity of the Ministry of European Integration".

structures. It is important to note that the NSDI has a specific chapter dealing with the priorities of the European integration process separately from the priorities of development of the country. The preparation of the MBP in connection with addressing the European integration priorities is based both on the NSDI and the NPISAA, and as a consequence the fragmentarisation and overlap of the coordinating roles of the DCNSFA and the MEI becomes clear.

In order for the NSDI to really lead the integrated planning process it is necessary that:

- the objectives of this strategy be based on the NPISAA priorities;
- the measures identified in the sector and cross-sector strategies should be part of this strategy and be entirely reflected in the MBP.

In order to have a better coordination of foreign assistance and to avoid potential overlaps during the process of strategic prioritization and planning, it is necessary to have a redefinition of the coordinating roles of the DCNSFA and the MEI while making the Strategic Planning Committee more active as a supervisory structure of this process⁹.

Coordination between these instruments and the Albanian institutions (the DCNSFA and the MEI) is necessary in order to avoid the negative experiences of uncoordinated allocation of financial assistance from different donors to priorities that the latter have determined while leaving uncovered the strategic priorities. In order to avoid financing overlaps the donors have set up a joint structure that has a coordinating role.

The DCNSFA at the Council of Ministers is the special structure that deals with the coordination and prioritization in a better way of the financial instruments of the executive and foreign assistance through managing the Integrated Planning System, for implementing the NSDI.

⁹ The Strategic Planning Committee is chaired by the Prime Minister and is composed of the line Ministers.

The administrative capacities of the DCNSFA have been completed in terms of the number of personnel that has been approved. Nevertheless, the directorate faces the problem of having a limited number of employees when considering the tasks that it needs to fulfil. This directorate has in its staff only four employees responsible for the coordination of more than 30 donors and only four employees for the coordination of the sector and cross-sector strategies, which makes the performance of these functions difficult.

The adoption of the NSDI was the result of a process of consultation with the groups of interest that were identified by the institutions themselves. However, the consultation process did not produce an institutional mechanism that would enable the groups of interest to become a constant part of the policy making process. Another element that is worth emphasizing is the limited interest and participation of civil society representatives or groups of interest as a result of:

- The lack of trust of different actors in sector and cross-sector strategies as to the fact that these strategies are in reality made concrete through legal and implementing measures or supported by the financial instruments provided for in the annual budget of each institution ;
- Extension in time of the drafting process of the strategies because employees of the relevant institutions consider the drafting process as an extra task;
- Considering the objectives of these strategies as rather general, of a long-term nature and having no direct effects on them;

Another important aspect of the activity of the Government is that concerning the legislative process, its relationship with the opposition in connection with the major reforms of the country, and its relationship with the independent institutions, groups of interest, media, civil society and citizens in general. At the beginning of the year the Government accepted the proposals of the Socialist Party in connection with reforming the justice system. These issues were later incorporated in the Joint Pact of Justice, which was adopted by all main political actors. Notwithstanding this fact, with the exception of the Law on the Organisation and Functioning of the Judicial Power that was adopted in a consensual way in

the Assembly, other initiatives in this area were undertaken unilaterally by the Government, which found resistance on the part of the opposition parties and independent institutions.

On September the Government concluded the process of amending the draft of the Prosecutor's Office Law, which was characterized by objections because of failure to consult the General Prosecutor's Office. After pressure from the missions of international assistance in Albania, the MoJ involved the institution of the General Prosecutor's Office in the process of discussions. While the Association of Prosecutors and the General Prosecutor Mrs. Ina Rama expressed their objections to the media arguing that the draft law prepared by the MoJ impaired the independence of this institution.

The same can be said about the preparation of draft law on the Internal Control Service of the State Police by the Government, which did not undergo consultation with the other important institutions such as the State Information Service. Within a record time span the Government adopted a number of important draft laws including those on advocacy, notaries, legal aid, the administrative court, the enforcement service and the judicial administration.

The common denominator of this process is the fact the groups of interest and the international assistance mission were either not involved in the process of discussions of these draft laws or even when they were involved at the beginning they were later on avoided because of the criticism they raised. It is difficult for the Government to exhaust the constitutional procedure of consultation with the groups of interest in connection with these initiatives in a serious way. This affects one way or another policy making process.

The Government chose to communicate to the citizens its achievements of three years through a publicity spot. Media found out about the fact that the spot had been borrowed in an identical manner from the campaign of a presidential elections candidates in Argentina, which involved copyright violation that is an important obligation provided under the SAA. Moreover, the production of this publicity spot by the Government was done in violation of the legislation in effect on public procurement as the company that produced the publicity spot

was contracted directly by the Government. Regardless of the insistence of the media and civil society actors, the Prime Minister did not disclose the name of the company and did argue in favour of observation of the legislation in effect on public procurement.

The Albanian Government was recently involved in another conflict with the General Prosecutor's Office in connection with the money laundering investigations conducted by the latter against Damir Fazlic, businessman of Serbian and Bosnian origin. In the beginning of October 2008, Mr. Fazlic visited Albania for few hours and gave an interview exclusively to one television broadcaster, in which he confirmed his friendly relations with high Albanian politicians. The Police refused to fulfil the request of the Prosecutor's Office to question Mr. Fazlic during his short stay in Tirana arguing that the request was made verbally. The Albanian Government first called for criminal prosecution of the prosecutors who had made the request to question Damir Fazlic and then for international investigation of the case. The Government claims that MoJ inspectors were not permitted by the General Prosecutor's Office to inspect the investigation files against Mr. Fazlic. Whereas the General Prosecutor's Office requested that all the assets of Mr. Fazlic in Albania are frozen until the end of investigations. The Embassy of the USA and the ambassadors of the EU Member States intervened energetically. They called for respect of the investigative work of the General Prosecutor's Office and for the constitutional independence of this institution by the Albanian Government.

2.3 Electoral Reform

On May 2007 a special parliamentary committee for the electoral reform was set up with representatives of the ruling majority and the opposition, but in fact it did not function, with the exception of some formal meetings. On 17 March 2008 its third term of office terminated. On 21 April 2008 the Assembly adopted the constitutional changes, including the passage to a regional proportional system.

The new electoral system adopted with the consensus of the PD and the SP was contested by their ally parties as being not appropriate for Albania because it favoured the two main parties and damaged the interests of other parties.

Besides the constitutional changes, it should be said that the electoral reform has progressed with a very slow rhythm. Despite promises to adopt the Electoral Code within the month of July, and then within the month of September 2008, a first draft of this document has not been made public by the Electoral Reform Committee. The functioning of the Electoral Reform Committee has not been transparent. Despite statements made by representatives of the Electoral Reform Committee concerning the fact that the consideration of the first 40 article of the Code had been concluded on July 2008 none of these articles was consulted with local experts and representatives of the civil society.

On September 2008 the Albanian Helsinki Committee addressed an open letter to the two co-chairs of the Electoral Reform Committee; it expressed concern about the lack of transparency of the Committee and non-participation of experts and representatives of the civil society in this process.

On 6 October 2008 the Electoral Reform Committee invited representatives of the civil society in a hearing session that took place on 7 October 2008. Besides the short notice (less than 24 hours) no material or draft of the electoral code was made available to the representatives of the civil society. The provision on the quota of up to 30% concerning women participation in the lists of candidates for deputies, the issue of enabling immigrants to vote, the preparation of the necessary infrastructure to enable participation in voting of persons with limited abilities can be mentioned as among the main problems discussed by representatives of the civil society.

The Electoral Reform Committee has operated in a consensual way up to now. It is foreseen that there will be objections to some important issues including the modalities of a new electoral system, the composition of the electoral commissions – starting with the CEC and the lower commissions – the process of counting of votes and that of appeals. In any event, the administration and the infrastructure

of the electoral process, more specifically the issuance of identity cards to citizens, the Basic Registry of Voters that is based on the system of addresses, remain problematic.

On 25 March 2008 the tender procedure for the production of identity cards was completed and the company “Sagem” was the winner. This tender was considered not transparent by the opposition, which also suggested that the OSCE Office in Tirana monitor this process. However, in August 2008 the first civil offices in the country completed computerisation and the distribution of electronic certificates started in some offices of the civil status registry.

If the political forces with the objections that they may have and the lack of consensus will not manage to conclude quickly on the changes to the Electoral Code and if there will be lack of transparency and procrastination in the completion of the electoral infrastructure (a duty of the Government) it will be difficult to accomplish the required standards in the elections of 2009. This would be a step back for our country, which aspires a quick integration into the Euro-Atlantic structures.

2.4 Functioning of Public Administration

The performance of the public administration in Albania continues to be poor. One of the reasons for this poor performance of the administration is the lack of political willingness to build an administration in compliance with the principles of civil service. As a result of this the phenomena of political clientelism, nepotism and disregard for civil service legislation together with uncertainty of employees will emerge. The frequent and unmotivated changes in the institutional structure have often been accompanied with vacancies in these positions for a number of months and staff reduction has created shortages in the human resources of some of the ministries. The process of removal from duty and recruitment of the public administration has been accompanied with a continuous violation of the

Civil Service Law. While on the other hand political appointments in the high and mid-level positions of the public administration have been verified¹⁰.

The Public Administration Department (PAD) continues to have a weak role in protecting and promoting the principles of civil service¹¹. Professional career development and especially recruitment and job promotion do not follow objective criteria and merit based criteria, which would ultimately make it possible the achievement of an accountable and efficient civil service.¹²

Pursuant to the Order of the Prime Minister no. 159, of 18.09.2007, the PAD has to monitor on a two month basis the progress with the implementation of the legal framework on the status of civil servant. Based on this monitoring the PAD formulates relevant recommendations for each institution but it does not have the necessary mechanisms for guaranteeing the implementation of these decisions. The fact that in many cases civil servants are recruited on a contractual basis without the PAD's knowledge or approval (a procedure that is forbidden under the legislation in effect), is an indicator of the fact that this institution is bypassed by the executive.

In order to analyse more accurately the implementation of the civil service law the PAD was asked to give information about the case of violations by the line institutions, the degree of implementation of decisions of the Civil Service Commission and of courts. But the PAD does not disclose this information, which raises doubts about the effectiveness of this structure.

Another element that reduces the PAD's role as the guardian of the observance of the legal framework on the status of civil servant by all institutions is its placement as an organisational unit under the MoI; this way the PAD lost its horizontal coordinating and supervisory role.

¹⁰ This issue is persisting since the 2004 and the 2006 Progress Reports; Implementation of the Civil Service Law – a key and short-term priority of the 2007 European Partnership. 3.1 Short –term Priorities/ Key Priorities, page 6.

¹¹ The limited role of the PAD: - issue persisting since the 2006 Annual Report; - Key and short-term priority of the 2007 European Partnership, page 6.

¹² This issue is persisting since the 2004 Progress Report: - short-term priority of the 2007 European Partnership, page 6.

Despite the fact that the panorama of the functioning of the public administration and the political willingness to change it remain problematic, there is no shortage of legal initiatives containing provisions aimed at addressing problems related to the public administration. NPISAA provides legal initiatives and short-term implementing measures (2007-2008)¹³ for improving the functioning of the public administration.

In order to meet the deadlines set in the NPISAA, two legal initiatives that address problems in connection with the performance of the administration and with the setting of objective merit based criteria for professional career development have been drafted¹⁴.

However, considering the fact that one of these initiatives consists of amendments to the Law on the civil servant status, which aim among others at addressing the problems related to increasing the role of the PAD in creating joint management strategies throughout the public administration, the time left for drafting and adopting this law is rather short for achieving this priority.

In order to support the reform in the civil service, the PAD is in the phase of developing the Cross-Sector Strategy for Reform in the Public Administration (CSRPA) in the framework of the NSDI. However, it should be emphasized that Albania has not suffered from the lack of strategies in relation to civil service development, but from lack of political willingness to build a professional administration.

The Civil Service Commission (CSC) plays an important role in safeguarding the principles of the civil service law. While in the last year the CSC had merits in protecting the public administration, during this period the appointment of the new chairman and of the new members of the CSC was followed by political

13 NPISAA 2007 – 2012, *1.Political Criteria, 1.1 Democracy and the Rule of Law, 1.1.1 Functioning of the Public Administration, page16.*

14 Instruction no. 5, of 19.02.2007 “On some amendments to Instruction of the Council of Ministers no. 2, of 7.7.2000 “On the system of evaluation of individual annual achievements of civil servants”; and Instruction no. 6, of 19.12.2007 “On some amendments to Instruction of the Council of Ministers no. 1, of 13.06.2000 “On the structure of the list of the works in civil service, the relevant methodology and the generalising description of the role of the Secretary General in this service”.

interventions and debates, which affected the independence of the members of the commission¹⁵. Further work of the CSC was followed by delays because the commission as reconstituted with its new members decided to rehear around 150 civil servants, who had been removed from office without reasons having been given for such removals.

According to the report of the Commission that was presented in the Assembly for 2007, 380 complaints or 50% less than in 2006 have been filed with the CSC¹⁶. In 2006 the commission found in favour of the applicant employees in almost 64% of cases brought before it. Compared to 2006 this number in 2007 goes to 36%, which is quite close to the percentage of complaints in connection with which the commission found in favour of the employees in 2005¹⁷. According to periodical reports of the CSC, the damage incurred by the state only because of failure to implement the law on the status of the civil servant by the tax administration and the Ministry of Finance (MoF) amounts to approximately Euro 1.3 million.

The failure to implement the law can be seen even in the recruitment process in which the violation of time limits for organising competitions as well as a low participation of candidates can be noted. In most of the cases four candidates have participated; this is the minimum number required for organising a competition. Also, the same candidates compete for various positions, which seriously questions the completion of procedures in an objective and merit based way.

From our assessment of the situation it does not result that measures have been taken to identify administrative or financial liabilities for the damage caused to the state budget in cases when decisions taken to remove from duty employees of public administration were found as not based on law according to the final decisions of the CSC and the Court of Appeal. The Albanian legal

15 The work of the CSC was blocked because of debates and objections to the legality of the way its new chairman was elected by the members of this institution, which was followed by a report for criminal proceedings against the elected chairman.

16 Annual Report of the Civil Service Commission for 2007.

17 Number of complaints for 2005/2006/2007 - filed **337/736/330**; found in favour of civil servants **188/477/118**; found against civil servants: **49/126/159**; unresolved (rejected, suspended or carried in the following year): **105/134/127**. Out of the total number of complaints filed in 2005/2006/2007: complaints found in favour of civil servants: **35%/64.8%/35.7%**

framework provides for extra contractual liability, which should reduce this illegal phenomenon.

In addition to this, it is worth emphasizing that there is no specific item in the state budget for the compensation of civil servants who have been removed from duty and have won their judicial cases. These funds have instead been provided as part of the pays fund of each institution.

2.5 Reform of the Justice System

The reform in the justice system is one of the most important priorities in the framework of the process of Euro-Atlantic integration. This reform aims at restoring citizens' trust in the justice system as well as at ensuring the honesty, integrity, professionalism and impartiality of judicial decision.

The justice system in Albania appears problematic and far from the required standards despite the fact that there have been legal initiatives aimed at addressing these problems. In general, the same problems have been carried over from one year to another and the process of addressing them has been fragmentary and devoid of political consensus. Nevertheless during this year the political forces aware of the need to cooperate in the area of justice, managed to conclude some concrete initiatives as it was the adoption of the Law no. 9877 of 18.02.2008 on the Organisation of the Judicial Power as well as the setting up of the parliamentary sub-committee on the Justice Reform¹⁸ at the Parliamentary Committee of Laws, Public Administration and Human Rights. The sub-committee was conceived as a filter for all legal initiatives in the area of justice before being sent for adoption to the Laws Committee and later to the plenary session of the Assembly.

¹⁸ Decision of the Assembly no. 160 of 25.02.2008. According to this decision this committee is assisted by representatives of justice institutions as well as representatives of international institutions.

However, the sub-committee on Justice Reform has met officially only once during 2008 to discuss the Joint Pact on the Justice Reform¹⁹. Regardless of the fact that the creation of this sub-committee marks a salutary step with respect to the lawmaking process in Albania, the Albanian Government has “ignored” its existence during the process of drafting and adopting the main laws in the area of justice²⁰. All legal initiatives undertaken in the area of justice do not make a reference on the Joint Pact for the Justice Reform.

Besides the initiatives and other action at the political level, an increasing role of the local actors of the justice system, including judges²¹, prosecutors, lawyers and notaries can be noticed. The HCJ, in its capacity as the governing body of the judiciary, undertook an initiative to summarise the opinions of judges concerning the justice reform in the White Book. This book can be considered as a manual that helps the identification of the problems of the system and the finding of solutions and offers solutions to these problems.

Despite the fact that there have been documents and debates aimed at addressing the main issues in the area of justice, a unified practice for developing policy and legislation, which translates these policies into concrete action or regulation is missing in Albania. The process of developing certain important laws for the justice system has reflected fully the lack of such standardisation. The groups of interest, which in the concrete case include the association of judges and prosecutors as well as the civil society claimed continuously that the drafts of laws were not debated and that their opinions have not been reflected in these drafts. It has been noticed often that even when there were consultations with the groups of interest the draft laws on which opinions were requested were different from those that were sent for adoption. The civil society, the associations of judges and prosecutors have been very active in this process and through statements to

19 The National Pact on the justice reform is a summary of the separate pacts on justice that were proposed and developed by the two main political forces the Democratic Party and the Socialist Party.

20 The draft law on the judicial administration is currently being discussed by the Laws Committee and the groups of interest have been invited to give their opinions on this draft. The sub-committee on the justice reform has not met in connection with this initiative.

21 Two associations of judges, respectively the National Association of Judges and the Union of Judges, were created at the beginning of 2008.

the press²² have asked the Government for a more significant involvement in the process of drafting laws.

The recent period of time has been characterized by a legislative inflation. The Government has drafted and adopted within a month several important laws to the justice system including:

- The draft law on the judicial administration;
- The draft law on the private judicial enforcement service, adopted by the Government but not yet before the parliament.
- The draft law on the organisation of the General Prosecutor's Office is still in the process of discussions.²³
- The draft law on the adjudication of administrative disputes and the organisation of administrative justice.
- The draft law on the notaries.
- The draft law on the profession of the advocate.
- The draft law on the private judicial enforcement service.

Despite the fact that a number of the gaps that the system has today are addressed to a certain extent by these legal initiatives, a number of issues remain unaddressed, including:

- Strengthening the independence of the judiciary;
- Transparency in the process of appointments and the judicial career;
- The overlap of competences of the two inspectorates of the MoJ and of the HCJ;
- Training judges in the areas covered by the SAA;

²² Press statement of 25.07.2008 of the National Association of Judges, the Union of Judges, the Association of Prosecutors, the Albanian Helsinki Committee as well as the consecutive statements of the USA diplomats and international experts in the area of justice.

²³ In order to discuss the amendments to the Prosecutor's Office Law a working group has been set up with a joint order of the Minister of Justice and the General Prosecutor and the relevant amendments to the Prosecutor's Office Law have been discussed. See the Joint Order on the setting up of the working group for improving "the law on the organisation and functioning of the Prosecutor's Office in the Republic of Albania", as amended on 6.3.2008, prot no. 1731.

- Strengthening the School of Magistrates and ensuring its financial support;
- Transparency in rendering justice and access to courts;
- Guaranteeing the civil servant status for the judicial administration;
- Improving the enforcement service and increasing the number of enforced rulings;
- Guaranteeing witness protection and implementing the law on witness protection;
- Improving the juvenile justice system²⁴.

2.5.1 Strengthening the independence of the judicial system

The independence of the judicial system as one of the branches of power is closely related to a number of elements that include the guaranteeing of the constitutional status of judges, the professionalism of judges, their appointment and career in all levels of the system, the role of governing bodies of the judiciary and the control of the executive over this branch. Strengthening the independence of the judicial system remains the most sensitive point of the justice system. Notwithstanding none of the strategic documents of the Government gives a clear vision as to how the independence of the judiciary can be strengthened and how this vision can be translated into concrete action.

The NPISAA and the NSDI do not contain any detail as to what the flaws of the Constitution and of the legal framework in effect are²⁵ in connection with the independence of the judiciary. Moreover neither the Plan nor the Strategy offer any clear agenda as to what it is anticipated to happen in the justice system. The constitutional changes that were adopted on 21 April 2008 did not affect the justice reform, with the exception of limiting the term of office of the General Prosecutor.

²⁴ The problems summarised here are based on the SAA obligations, the 2007 European Commission Progress Report for Albania as well as on the European Partnerships of 2006 and 2007. Despite the fact that the 2007 European Partnership repeals the previous one, the latter will be taken into consideration for purposes of this report, which covers the period of time October 2007 - March 2008. The documents referred to are available at www.europa.eu.in

²⁵ See NPISAA (2007), pg. 30.

The new judicial power law does not give effect to any radical change with respect to the independence of the judicial system. However, there are improvements with regard to the appointment and competences of chairs of courts and there is an increase of the percentage of seniority payments. It is interesting to note the fact that six months after this law became effective, it was challenged by the judges' associations in the Constitutional Court. The National Association of Judges of Albania (NAJ) in its motion before the Constitutional Court claims that the manner of appointment of the court chancellor and his role in the appointment and removal of the judicial administration violates the independence of the judicial power.

2.5.2 Appointment and career of judges

As to the process of appointment and career of judges debates have continuously taken place in connection with the transparency of appointment procedures, the issue of whether there should be access to career by those who are not graduates of the School of Magistrates, failure of the President of the Republic to issue decrees for the appointment of judges for a long time, lack of strict legal criteria for promotion of judges, lack of incentives for work seniority of the judges, failure to extend the judges' career system to the High Court.

The judicial power law attempts to address to some extent the issue of appointment of judges and their career. The HCJ is drafting other legal acts that regulate the procedures for appointing judges at two levels of the system.

Since the creation of the School of Magistrates the proposal for the appointment of magistrates by the President of the Republic, is realised in cooperation with the HCJ, based mainly on the individual evaluations of students themselves²⁶ and this process has been considered objective²⁷. The judicial power law specifies that

²⁶ Positions to the best courts, which include those in the main districts, are offered to the students with the best results.

²⁷ The opening of the School of Magistrates has been highly appreciated as it would have an effect on the replacement of judges trained in accelerated courses or with limited knowledge because of the totalitarian system in which they were educated and to which they had served.

only magistrates who are graduates of the School of Magistrates are involved in the judicial system. On the other hand an exceptional clause under the same law provides that only 10 % of the total number of judges can re-enter the profession from those who have previously worked as judges but have left the system.

The law improves the judges' career system and the procedures for their promotion. Passing from the first instance court to the court of appeal will be possible only for those judges who have worked seven years in the first instance court, have had an evaluation "very good" in the last two years and have high professional and ethical skills. In addition, the criteria for appointment to the Court for Serious Crimes and as a court chair are determined. This law introduces for the first time the concept of a list in which the judges will be listed according to the evaluations received on a continuous basis. Ranking judges according to the score that they will receive in their professional evaluations is considered as a contribution towards transparency in the appointment of judges. However, it has not been determined whether this list will be open for the public or will be subject to HCJ control only.

During 2007 the HCJ started to implement the new system of evaluation of judges. On September 2008 the HCJ decided to draft a new regulation in consultation with chairs of the judicial district courts and courts of appeal in connection with the system of evaluation and the criteria for measuring the judicial activity as part of this system.

The new judicial power law, in contrast to the old one, sets a time period of 30 days for the President of the Republic to act in connection with appointment of judges. This is assessed as positive because it has happened often in practice that the process of appointment by presidential decree has taken longer than the normal time limits.

The HCJ for the first time held two open meetings this year in order to select the chairs of the courts of first instance and courts of appeal. These meetings were intended to achieve an open presentation of the candidates for the positions of chairs of courts. But the decision on the selection of the best candidates was done according to the tradition of closed doors. The decisions on the selection of the

candidates were for the first time given in writing and the reasons for the selection were reflected in their contents. This practice can be considered as a positive step towards transparency and in full compliance with the recommendations given by the international assistance²⁸.

2.5.3 Overlap of the competences of the two inspectorates

The existence of the two inspectorates in the HCJ and in the MoJ is another highly debated aspect of the justice reform. Even though such existence is not in conflict with the Constitution²⁹, there is lack of coordination and overlap of competences of the two inspectorates³⁰, a situation that is not addressed by the new judicial power law. Despite the efforts to coordinate the work between the two inspectorates³¹ it is important that the HCJ inspectorate be strengthened rather than have total control over the judicial power. The definition of the roles of the two inspectorates is in the list of the issues that should be changed in the HCJ law.

Discussions over this topic show that there is a resistance by the executive to relinquish the inspectorate of the ministry, while schemes that aim at designing work profiles for the two inspectorates at a certain extent through avoiding the overlapp of competences and without eliminating one of them have been proposed³².

28 The twinning project that has assisted the HCJ has continuously emphasized the need for having motivated decision by the HCJ.

29 See Decision of the Constitutional Court no. 11 of 27.5.2004.

30 See the DPK Report on the review of the functions of the administration of the inspectorate of the High Council of Justice in Albania, September 2005. The first European Partnership of 2004, now repealed (Decision of the EC Council 2004/519/EC, 14 June, 2004) provided for a gradual transfer of competences from the inspectorate of the MoJ to that of the HCJ, as a mid-term priority. This issue is not dealt with in the other documents of the European Partnership with Albania. Whereas, the last report of the European Commission of 2007 identifies the need for a clearer division of competences between the two inspectorates.

31 A Memorandum of Cooperation between the two inspectorates has been in place since almost two years.

32 The twinning project has suggested that the MoJ inspectorate carry out inspections while the HCJ inspectorate cover only the evaluation of judges.

2.5.4 Guaranteeing civil servant status for the judicial administration

Guaranteeing civil servant status for the judicial administration, one of the continuous requests of the EU, implies guaranteeing the position of the judicial administration with respect to their recruitment and pay. Various compositions of the Albanian Government have failed to address this problem throughout the years. The EURALIUS Mission has suggested that the Albanian Government consider the possibility of extending this status also to employees of the enforcement services, directorate of prisons and the staff of the Magistrates School³³.

After almost one year of fragmentary discussions the MoJ has finally prepared the draft law on the judicial administration, which as underlined above has been adopted by the Council of Ministers and is expected to be discussed in the Assembly.

This draft grants the civil servant status to the judicial administration with the exception of the court Chancellor through making a reference to the law on the status of the civil servant. This formulation generates some problems:

- First, it is not clear whether in the sense of this law courts will be classified as part of the public administration or under the independent institutions;
- Second, it does not provide how the procedures for appointment or parallel transfers will be implemented;
- Third, the structures within the court responsible for guaranteeing the implementation of these procedures;
- Fourth, it cannot be understood why the chancellor is not covered by the civil service;

The draft is problematic also because in connection with court administration it attempts to upset the balance between the power of the chancellor and that of the chair of the court to the advantage of the first. The draft makes the chancellor super powerful not only in relation to the court chair but also to the office of the court budget. As long as the proposal that his selection be made by the Minister of Justice is made the risk of interference by the executive in the affairs of the

³³ See Recommendation of the EURALIUS Mission “On the status and treatment of the administrative staff of the justice institutions”, 7 august 2006, www.euralius.org.al

judiciary is obvious. The draft provides that a large number of issues that are related to the structure and functioning of the judicial administration are resolved on a case by case basis through subordinate legal acts of the Minister of Justice. This regulation is considered as another problematic aspect of the draft law.

2.5.5 Reorganisation of courts

The reorganisation of courts through closing eight courts is considered as a measure that will have an effect on increasing efficiency and transparency in rendering justice³⁴. Despite the fact that the priorities and the positive effect in increasing efficiency in rendering justice cannot be contested for the far future, currently this process has created problems that affect both the judges and the administration of these courts. These consequences could have been avoided had the MoJ had a clear preliminary strategy about the reorganisation of the courts. The EURALIUS Mission has suggested a gradual three-step approach for the organisation of courts³⁵.

Reactions from the MoJ and the HCJ came after the issuance of the President's Decree (Decree no. 5350 of 11.06.2007 on the creation of judicial districts, determination of territorial competences and the centre of exercise of their activity). The ways for the systematisation of judges of those courts that were closed were determined by Decision no. 215 of 30.07.07. The judges were invited to compete for the vacancies announced by the HCJ, the MoJ and the HCJ Inspectorate. The number of judges who are currently out of the system is 17.

The Constitution provides in an explicit way that judges in cases of reorganisation may be transferred to other courts of the same or lower level. The High Court in its decision no.20 of 14.11.2007 annulled decision no. 235 of the HCJ concerning two judges who appealed against the HCJ decision as it was in conflict with article 147/6 of the Constitution of the Republic of Albania. Two judges from the closed court were systemised in other courts.

³⁴ See NSDI page 29 and the European Commission Report for Albania, page 21.

³⁵ The EURALIUS Mission recommended a gradual strategy for closing the courts, which was not reflected in the decisions of the Albanian institutions. See recommendation on different models of organisation of district courts, 10 March 2006 available at www.euralius.org.al

2.5.6 Improving the enforcement service

Increasing judgments' enforcement rates remains an ongoing concern for the justice system in Albania. Only. The reform in this sector has focused on legislative changes, which aim at improving the enforcement service in Albania. For this reason amendments to the Civil Procedure Code, which relate exclusively to the enforcement of judgements, have been proposed. These proposals have not been adopted by the Assembly of Albania yet.

The Albanian Government has decided to solve the issues related to the enforcement of judgements and to the enforcement office in Albania through liberalising the enforcement service, or to be more accurate through offering private enforcement service as an alternative to the state enforcement service. The latter remains unchanged and the existing law 8730 of 18.01.2001 will continue to be its regulatory framework.

The draft law provides for a number of rules concerning the way a private bailiff will function, his rights and obligations, licensing procedures, ways for self-organisation through the chamber of private bailiffs and other rules. The MoJ will be the institution responsible for supervising the activity of a private bailiff.

2.5.7 Access to the justice system and transparency of judicial processes

Transparency of judicial processes continues to remain one of the critical issues of the justice system. The judicial power law gives particular importance to transparency of judicial processes and citizens' access to justice institutions. According to this law division of cases is done by lot, according to procedures determined by the H CJ. A working group has been set up in the H CJ in order to prepare the subordinate legal acts concerning the implementation of the judicial power law³⁶, which includes issues related to the transparency of judicial processes.

36 The working group has been set up by Decision of the H CJ of 7.7.2008.

According to the law, unjustified and repeated delays of procedural actions during the exercise of function, when this has entailed or might have brought consequences to the constitutional rights of the parties to a trial, or to the rendering of justice are considered serious violations. It is in this way that the disciplinary proceedings will be brought against judges in cases of delayed judicial processes.

The draft law prepared recently by the Government on the legal aid is considered as part of the process of increasing the citizens' access to the judicial system. The draft law has been adopted by the Council of Ministers and has been filed in the Assembly.

Another initiative aimed at increasing the transparency of the judiciary is the signing of the Memorandum of Understanding relating to the implementation of reform measures in courts and supporting the increase of accountability, transparency and efficacy was signed by the USAID, the HCJ, the MoJ, the National Judicial Conference, and the Office of Administration of Judicial Budget. The main objective of this agreement was improving the activity of courts in general (ten pilot courts) with a focus on increasing accountability, transparency and efficacy of judges in the performance of their duties. After this agreement the pilot courts will adopt their strategies for integrity development and anti-corruption.

The EURALIUS Mission has recommended³⁷ that the Civil Case Management and Information System (CCMIS) be extended to all courts in order to improve the access of the public to cases, decisions, timetables, statistics, the full text of judgements, the program that enables anonymity, specific news and the announcement board in courts. The CCMIS has a positive effect not only on the effectiveness of the judicial cases but also on the transparency; it also helps increase the access of the public to courts since each court will have its own internet page in the future.

Court rooms that enable the public's access for purposes of following judicial processes remain problematic only in few judicial district courts. In other courts that have new buildings, there are court rooms but they are not used in all cases by the judges.

37 Based on the EURALIUS Mission report, July 2007.

2.5.8 The School of Magistrates and training

Based on its strategy the School of Magistrates has continued its efforts towards its strengthening and financial sustainability. The School of Magistrates has state budget as its main financial source. This is not enough to meet the needs of the school concerning the fulfilment of its legal obligations even with respects to commitments undertaken in the framework of the SAA implementation. Initial training is supported 100% by the state budget. Whereas the continuous training program is primarily supported by the donors' funds. The goal for the future is to finance the school 100% from the state budget, without planning financing from donors, who often offer their assistance in different areas of activity of the school.

The School of Magistrates has two main programs; the initial training and the continuous training. The admission exam for the initial training of judges and prosecutors for 2007-2010 was completed successfully in the beginning of the academic year on October 2007. Ten new candidates for prosecutors were admitted this year and no candidates for judges.

The HCJ has presented eight vacant positions for candidates for judges in the admission competition of the School of Magistrates for the academic year 2008-2011. The General Prosecutor's Office has presented six positions for candidates for prosecutors. The initial training consists of a theoretical and a practical knowledge programme, which is fairly extended in the three academic years. During the month of September 2008 the procedures for the competition for the admission of candidates for judges and prosecutors in the School of Magistrates.

The continuous training aims at training judges and prosecutors on various topics and issues based on concrete needs and recommendations. The School of Magistrates, based on its needs and recommendations, has developed the program of the topics of training for the continuous training of judges and prosecutors.

Work is currently being done to create a resource centre on European Law in cooperation with the GTZ and the School of Magistrates. It is thought that this resource centre will become a department of the School of Magistrates in the future.

2.5.9 Witness protection

Witness protection continues to be problematic in Albania³⁸. In order to address the relevant problems frequent meetings of the working group of the International Consortium on witness have been organised. The amendment to the existing witness protection law were discussed in these meetings. The working group is composed of the Directorate of Witness Protection, the Prosecutor's Office and OPDAT representatives.

Taking into consideration the international obligations, a new draft law that aims as creating a more flexible legal regulation and that is capable of addressing the needs and practical cases that may come up has been developed. At the same time it is expected that the draft law will make the Directorate of Witness Protection and Justice Collaborators independent in decision making and budget administration, and will confer to this directorate the right to enter into international agreements for specific protection programs.

The draft law has many novelties in connection with:

- Expanding the circle of crimes for which witness protection is allowed;
- Changing the powers of the Commission regarding its right to accept or not persons in the protection program and leaving the modalities for acting with the person under protection to the determination of the Directorate itself;
- Changing the composition of the Commission;
- Guaranteeing the financial independence of the Directorate.

As to the video-conference system, three such systems have been secured. The FBI has supported financially a video-conference system for the State Police, which will be installed in the Directorate of Witness Protection. Work is in process and installation is being carried out by OPDAT and the General Directorate of Police. In addition, a video-conference system has been installed at the Court for Serious Crimes and at the General Prosecutor's Office.

38

Based on the problems identified in the CTF Recommendations of the 15th meeting for Albania.

2.5.10 Juvenile justice

Despite improvements the area of criminal juvenile justice continues to be a problematic. On October 2007 the establishment of juvenile justice sections in six Prosecutor's Offices of judicial districts was approved. Their organisation, organic structure, functioning and territorial competences were determined.

The President's Decree no. 5559 of 27.12.2007 made it possible for some changes in the territorial competences of the courts compared to those under the previous decree on the creation of special criminal sections for juveniles at the judicial district courts. The EURALIUS Mission has recommended that the selected judges receive initial training on juvenile justice issues and further specialise as they gain experience³⁹. Whereas to their appointment it can be said that it should not undergo rotation similar to the practice in other sections.

The draft law on the probation service is not adopted in the Assembly yet. The adoption of this draft law calls for changes in a number of provisions of the Criminal Code and the Criminal Procedure Code.

2.6 Fight against corruption

The fight against corruption is considered to be one of the fundamental criteria that enables the consolidation of the rule of law and market economy and consequently allows for progress to be made in the process of European integration. However, a clear vision capable of addressing the problems related to corruption is missing in Albania.

The main problems in the framework of the fight against corruption as identified in recent years are:

³⁹ Based on the EURALIUS Mission recommendations "On the appointment of judges in connection with the establishment of sections for criminal cases against minors", 18 July 2007, available at www.euralius.org.al

1. A major involvement of justice institutions in the fight against corruption;
2. Failure to have concrete and objective indicators in the Anti-corruption Strategy adopted by the Government⁴⁰;
3. Shortening the list of officials with immunity⁴¹

The 2007-2013 Anti-corruption Strategy adopted by the Council of Ministers on 3 October 2008 creates a link to the NSDI and identifies as measuring indicators the rating of Transparency International and the World Bank Business Report. However, in sections such as the “Regulatory Licensing Reform” or the “Public Service Reform” lack legal and institutional instruments that would make it possible to meet objectives. The IMF in its 2008 report for Albania recommends that there be a detailed elaboration of the NSDI into concrete and more measurable objectives with respect to the fight against corruption in the education and health care sectors⁴².

The preventive measures that restrict spaces for corruption as provided for in the strategy, including those related to transparency, internal and external control, access to decision making and the monitoring role of civil society, local communities and media, continue to be not implemented because:

- There are no clear monitoring indicators for any of the provided measures;
- The measures are general and do not clearly identify the persons who are responsible for implementing them;
- There is no cooperation among institutions charged with implementing them; even cooperation on information exchange is missing.

As to the joint action by ministries, institutions and other relevant institutions it should be noted that the internal audit units do not play their role⁴³. Both internal

40 Priority under the European Partnership with Albania Brussels 06.11.2007 COM (2007) 665, 3.1. Short-term priorities / Key priorities page 6./Political criteria /Anti-corruption Policy page 7, problems identified in the 2004, 2005 and 2006 Progress Reports.

41 Problems persisting since the 2004 and 2005 Reports, Priorities under the European Partnership with Albania Brussels 06.11.2007 COM (2007) 665, 3.1. Short-term priorities/Political Criteria/ Anti-Corruption Policy page 7

42 Information obtained from “Albania: Poverty Reduction Strategy Paper—Joint Staff Advisory Note” published by the International Monetary Fund 2008.

43 Problems identified in the 2004 and the 2005 Reports and in discussions between the community party and Albania during the XVIIth CTF.

audit units and the Department of Internal Audit and Anti-corruption in the Council of Ministers (DIAA) investigate corruptive practices independently from each other.

None of the 300 inspections done in connection with administrative inspections of corruptive practices none was initiated through the mechanisms of internal control of public institutions. These inspections were done by the DIAA. Investigations of this structure did not focus on cases that were subject to the internal audit in the relevant institutions. Nevertheless, there have been cases when the DIAA in its re-investigations has found corruptive practices, which regardless of the investigation carried out by the internal audit were not found by the latter.

Despite continuous discussions about shortening the list of officials with immunity a formula that is accepted by the main political actors has not been found yet. Discussions and debates on the limitation of the immunity of MPs are based on an opinion of the Venice Commission, which leaves the solution of this issue to the Albanian lawmakers without saying how this will be achieved.

During the reporting period, the law enforcement bodies have started investigations or criminal proceedings against high officials accused of corruption or abuse of office, as it was the case of the Minister of Public Works and Transportation now the Minister of Foreign Affairs, the former Minister of Defence, the Deputy Minister of Public Works and Transportation and other high officials of the General Directorate of Roads, the former General Secretary of the Ministry of Labour, Social Affairs and Equal Opportunities (MLSAEO).

The level of corruption perception in public services continues to be high for 2007. Approximately 71% of Albanians admit of having given bribes for various reasons in particular institutions at least once in the last 12 months. Four out of ten citizens claim to have been asked to give bribes in courts to solve a case or to acquire certain rights. While in other sectors as the health sector, the level of giving bribes is several times higher⁴⁴.

44 Data obtained from the 2007 Corruption Barometer, observation of Transparency International for 2007.

An improvement in the corruption perception index of 2008 can be noticed. Notwithstanding such improvement there is no advancement in the index towards satisfactory levels according to the Transparency International methodology. According to the IMF report there is still a high level of corruption perception in the justice sector, where there are no cases of punishment for violations that have been found⁴⁵.

Representatives of the Transparency International in Albania declared that the tragedy of Gërdec where 26 persons lost their lives is not included in the determination of the level of the index of corruption perception for 2008⁴⁶. This together the procedures followed for building the road Durrës–Kukës, in connection with which the law enforcement bodies have started the investigation procedures against the Minister of Public Works and Transportation, currently Minister of Foreign Affairs and against the Minister of Defence, is a decisive test for the state of the rule of law in Albania.

The Prime Minister has declared that in certain cases starting from 1 January 2009 only the electronic procurement procedures will be applied. Although this initiative constitutes a progressive step it is still accompanied by scepticism because of the fact that Albania's indicators of the use of internet is very low and there are negative precedents with the public procurement practices.

According to the High State Control⁴⁷ corruptive practice continue to dominate the area of public procurement. Violations of the new law on public procurement have been found in 60 % of the cases and the damage caused to the operational and capital expenses is calculated at Lekë 454 million of which 93% of the damage is created during the implementation of the procurement procedures.

45 Information obtained from "Albania: Poverty Reduction Strategy Paper—National Strategy for development and Integration" published by the International Monetary Fund 2008.

46 According to the methodology of "Transparency International 2008 Corruption Perceptions Index", the minimal index that a state should have in order to be considered as moving in the right direction is at least 5, whereas Albania for 2008 has made a progress of only 0.5 points reaching the level of 3.4 points.

47 This report was submitted to the Parliamentary Commission of Economy and Finance of 1.10.2008.

Despite the fact that Albania has improved its indicators concerning reduction of administrative barriers in connection with access to market of new businesses⁴⁸, the case of putting the businessman Kosta Trebicka off the commercial transaction on the packaging of dismantled ammunitions and the inclusion of another company related to high officials, shows that the survival of the business community is difficult because of corruptive practices.

2.7 Decentralisation Reform

The decentralisation reform as emphasized in the National Decentralisation Strategy⁴⁹ aims at addressing two priorities⁵⁰:

1. Completing the normative and institutional framework on the transfer to municipalities of responsibilities over local taxes, water pipes and sewers;
2. Adopting the normative framework on loans to local government in order to facilitate capital investments that are necessary to ensure better local services⁵¹.

Despite the fact that in 2006 management of small business tax was fully transferred from central government to local government, a series of problems have been encountered with the administration of this tax.

During 2007 the level of collection of this tax was relatively better than that of 2006⁵². However, the fact that since 1 January 2008 the Government cut to a half

48 See World Bank Report "Doing Business" 2008, which ranks Albania among the ten first places in terms of facilities for creating new entrepreneurship.

49 Decision of Council of Ministers no. 651 of 29 December 1999.

50 Current information shows that a new strategy aimed at improving the Strategy adopted by Council of Ministers Decision no.651 of 29 December 1999, including also other priorities is under preparation. These priorities included all public services not only utilities such as sewers and water pipes but also urban planning, environmental issues and fiscal decentralization and others.

51 Problems dealt with in the European Commission 2006 and 2007 Progress Reports for Albania.

52 The Municipality of Tirana –321,492,681.20 ALL in 2006 and 1,275,487,375.38 ALL in 2007.

the fiscal burden of this tax, which had an immediate effect over the level of local revenues, continues to be of concern.

In order to make up for the revenues that could not be collected for the local government because of cutting the fiscal burden to a half, the Government determined the amount of unconditional transfer of the local government fund for the fiscal year, which was never completed at the anticipated level of 100% because of concentrating these funds to municipalities of first level.

The Government's policy of delegating the function of collecting national-level taxes under the management of local government was not coordinated and there was no increase in capacities for achieving a better fiscal administration at the local government.

During the process of drafting the Decentralisation Strategy, which included transfer of small business tax under local government management, the Association of Communes and the Association of Municipalities of Albania requested that the process of transfer be transparent and coordinated with the tax administration institutions and local government units. Also, it was requested that manuals with instructions for the specialists of local government units be prepared and training about the law and its implementing mechanisms be ensured.

The transfer of enterprises of water pipes and sewers under local government management in November 2007⁵³ was finally completed in compliance with the 2001 law on transfer of state property⁵⁴. According to the underlying normative act only the shares of these companies will be transferred to local government units, not their real management, because the real owner and manager of these companies for a two-year time will be the Ministry of Economy, Trade and Energy (METE).

The local government units will not be entitled to the owner's rights to really manage these companies for two years as METE will be the responsible body

53 Council of Ministers Decision no. 660, of 12.09.2007 "On the transfer of shares of companies of water-pipe and sewers of the local government units", which became effective on 07.11.2007.

54 42 companies of water-pipe and sewers were transferred under the joint ownership of 29 municipalities and 136 communes.

for convening the assembly of partners of the companies. This ministry will have the authority to determine the composition of the supervisory councils through determining the number of their members and approving the members nominated by the assemblies of shareholders. The local government units have objected to the modalities of transfer of ownership of these companies primarily because of the formula for constituting the supervisory councils and nominating the manager of the company.

The Law on Loans to Local Government was adopted by unanimous vote on February 2008 and the subordinate legal acts for its implementation have been prepared. This initiative was supported by municipalities, which saw in it a new financing opportunity for improving local services. In the process of consultation during the drafting of this law, the municipalities expressed interest in receiving long term loans for realising investments, which enable them to pay off their financing. These loans would enable the municipalities to pay for financing these investments. This process is supported by USAID and the EBRD⁵⁵. The Minister of Finance, which is the competent body authorised by the law to issue the subordinate legal acts for implementing this law⁵⁶ has not acted yet. This has hampered investment financing through loans.

55 USAID supports 10 municipalities in order to facilitate this process and has set up a fund for guaranteeing loans. Local government units may apply to be part of this fund in their loan applications in the banking system at a later period of time. The EBRD supports the Municipality of Tirana in receiving a loan of EURO 20 million.

56 See article 34 of law no. 9869, of 04. 02. 2008 on loans to local governance.

3. Human Rights and the Protection of Minorities

3.1 Observance of international law and human rights

The European Court of Human Rights has issued six judgements against Albania in which it found that there were violations of articles 3, 6(1) and 13 of the Convention and article 1 of the First Additional Protocol to the Convention. Despite the continuous requests to establish mechanisms for automatic enforcement of these judgements no such measures have been taken yet. The draft law on the enforcement of judgements of the European Court of Human Rights is under discussion.

Pursuant to Recommendation (2002)13 of the Committee of Ministers of the Council of Europe, which calls for publication and distribution in member states of the text of the European Convention of Human Rights and jurisprudence of the European Court of Human Rights, there have been no publications except for a special publication on July 2007 of some judgments of the European Court of Human Rights. An increase in the number of cases sent to the Strasbourg Court should be noted. This calls for immediate taking of measures for the implementation of the recommendations given by this Court as well as the alignment of Albanian legislation with the Strasbourg jurisprudence.

3.2 Civil and political rights

Some of the main problems with ensuring civil rights in Albania, which are reflected as priorities in the European Partnership⁵⁷ relate to the ill-treatment of suspects by police forces during arrest or interrogation, failure to adopt criteria for compensation of victims and delays in amending the law on rights and treatment of prisoners, failure of state structures to address cases of ill-treatment through holding perpetrators legally accountable and guaranteeing respect for international conventions in establishing and managing penitentiary institutions.

There are other identified gaps of the legal and infrastructural framework in this area in Albania. They relate mainly to delays in amending the law on rights and treatment of prisoners; failure to implement the Code of Conduct on a continuous basis; lack of training of the prisons' staff in connection with the European Convention of Human Rights; failure of the Supervisory Committee for the Enforcement of Imprisonment Sentences to function properly; slow progress in building new pre-trial detention facilities; failure to observe international practices of making the pre-trial detention regulation into a law and to manage the new pre-trial detention facilities in compliance with the regulation; inadequate human resources and necessary materials; overcrowding of prisons and pre-trial detention institutions; lack of an effective system of internal monitoring and inspection; limited progress in improving rehabilitation activities for prisoners; infrequent use of alternative sentences by Albanian courts; delays in adopting a new law on alternative sentences and lack of specific structures such as the probation service⁵⁸.

NPISAA attempts to solve to a large extent all problems that have been raised, which will be summarised below. In addition, the NSDI reflects the same priorities with a view to guarantee fundamental rights of individuals and to transform

57 See the 2007 European Commission Report for Albania pg. 11-13, COM (2007) 663, Brussels, 6.11.2007.

58 See the 2007 European Commission Report for Albania pg. 12, COM (2007) 663, Brussels, 6.11.2007.

penal institutions into institutions that offer opportunities for education and re-education for those who have been deprived of their liberty. However, the above mentioned documents lack indicators for measuring the successful implementation of legal measures and implementing activities.

NPISAA sets deadlines for completing a number of legal and implementing measures in the infrastructural area. While the NSDI has only one indicator for measuring the implementation of these measures, which is entirely inadequate and to a certain extent not clear as an indicator of measurement⁵⁹. These documents should set realistic deadlines for completing the measures provided therein and should determine with clarity the measureable indicators of success and the structures responsible for their implementation.

Based on the amendments to the Criminal Code in connection with torture, which aim at ensuring systematic monitoring of ill-treatment and prevention of torture, on 10 March 2008 the Peoples' Advocate in cooperation with the Albanian Centre for Rehabilitation of Victims of Torture launched the creation of the National Mechanism for Prevention of Torture, which is a requirement of the Optional Protocol to the Convention Against Torture (OPCAT). The mechanism monitors places of arrest, pre-trial detention and prisons. The Peoples' Advocates Law needs to be changed in order to reflect this mechanism as it was similarly done with the Criminal Code.

Being new, the mechanism will face several challenges, such as establishing contacts and cooperation with national and international partners operating in this area, having the additional budget for this structure adopted and appointing psychical doctors and psychologists in the staff, and following the procedures for the *de jure* acknowledgment of this mechanism by the Albanian state institutions and international institutions. Since the moment of its creation, this mechanism has monitored the pre-trial detention facilities and detention rooms and has identified problems that exist in these premises.

With regard to the fight against discrimination, civil society has undertaken initiatives to draft a special law against discrimination. This initiative started

59 See NSDI pg. 110.

several years ago. At the moment a working group of experts has been set up to finalise this project. During the period that is monitored this draft law was not sent for adoption.

With the adoption of amendments to the Criminal Code, progress was marked with regard to the legislative aspects of prevention of forms of discrimination. These amendments provided for including motives related to gender, race, religion, nationality, language, political conviction or religious belonging as serious circumstances for the commission of the criminal act of discrimination.

The AHC in cooperation with the School of Magistrates and the State Police, with the expertise of the European Commission against Racism and Intolerance (ECRI) completed on February 2008 a training session of 14 State Police officers from different regions as well as a training session of 16 judges, prosecutors and judicial police officers of the districts where there is a high concentration of minorities. The AHC observations show that the level of information of employees of the public administration on the rights of minorities and practical treatment of related cases is inadequate. That is why other training sessions are needed in order to ensure a better knowledge of international law, standards related to rights of minorities and principles of non-discrimination. Also, media should promote more the values of the traditions and cultures of minorities and provide better coverage for the problems of minorities.

Local and international human rights organisation that operate in Albania, which value the importance of participation of minorities in the local and central decision-making, have undertaken action that aims at increasing the participation of the Roma and Egyptian community in the local decision-making. In the framework of the SOROS Foundation program, the AHC in cooperation with the Centre for Economic and Social Studies, has carried out several training sessions for teachers from several districts, police officers from the Fier Region and for local government bodies in Korça in connection with the issue of increasing minorities' access to these institutions and prevention of discrimination. Recommendations of the CoE, EU and ECRI have been part of these training sessions.

Limited progress was marked in the penitentiary system during the reporting period. While amendments to the law on rights and treatment of prisoners have been adopted the amendments to the Criminal Code, to the law on enforcement of criminal decisions with respect to alternative sentences and probation service have not been adopted yet. The MoJ has incorporated the legal provisions concerning the administration of pre-trial detention facilities in the law on the rights and treatment of those sentenced by prison and pre-trial detainees through amendments that became effective on April 2008.

The MoJ, and later on the Laws Committee at the Assembly of Albania, encouraged the process of seeking the opinion of civil society actors⁶⁰ and international organisations during the adoption this law. However, better coordination is needed by the MoJ with regard to amending the entire legislative package in the penitentiary area in order to avoid delays in completing the legal initiatives as well as eventual conflicts with laws or subordinate legal acts.

Despite the fact that the MoJ had planned to adopt the draft regulation on the functioning of the Supervisory Committee for the Enforcement of Imprisonment Sentences, this initiative remains uncompleted.

At the same time it is necessary to establish an effective system of internal inspection in the Albanian prisons' system⁶¹. A positive step in connection with the external monitoring of penitentiary institutions was marked with the establishment of the National Mechanism for Prevention of Torture in accordance with the Optional Protocol to the Convention Against Torture (OPCAT, which was achieved through amendments to the law on the rights and treatment of those sentenced by prison.

Even though a legislative package on juvenile justice was prepared in 2005 and reviewed in 2006, it has not been adopted yet.

60 In connection with the law on the rights and treatment of persons sentenced by prison the Laws Committee considered the proposals of the People's Advocate, the AHC; 60% of the suggestions contained therein were taken into consideration, of which mention can be made of the legal provisions on the treatment of persons in pre-trial detention and on restrictions to their rights.

61 The AHC has suggested to the Minister of Justice concrete models that can be used as references by the Albanian prisons' system in order to make it possible to have an efficient inspection system that is in compliance with international standards.

Full transfer of the pre-trial detention system under the responsibility of the MoJ had many difficulties if considering the infrastructure and the conditions in which the pre-trial detention institutions were when they were taken over from police commissariats. Despite the efforts made, in most of these institutions, which are located at the buildings of police commissariats, their infrastructure is depreciated and the sanitary and hygiene conditions are of serious concern⁶². Lack of medical personnel (doctors and mid-wives) can be seen even after months of the transfer to these institutions. There are serious shortages of medicine supplies in some pre-trial detention institutions.

Appointing full-time psychologist at all institutions of pre-trial detention and prisons is another positive step in terms of giving adequate treatment to persons in pre-trial detention. However, there are no training or rehabilitation programs in place at some of these institutions, while a better job is done by the education Ministry in prisons and pre-trial detention sections at these institutions.

Overcrowding, which seriously affects the rights of persons who have been deprived of their liberty, continues to be of concern in all prisons and pre-trial detention facilities that were observed. The number of persons deprived of liberty that have psychic problems continues to be high. These persons are kept in different prisons or pre-trial detention facilities and in the Prisons' Hospital Centre, which has no capabilities to give treatment to patients. They should be treated in specialised institutions. Thus, the opening of an institution for treatment of people who have committed crimes and suffer mental disorders is urgent. It has been planned that this institution will be functioning in Durrës.

Implementation of alternative sentences remains at low levels. Eight decisions issued by the Court of Tirana, which ordered minors to perform community service, were implemented during the reporting period⁶³. The adoption of legislative

62 For more information on this see the letter of the AHC with Protocol No.12, of 09.01.2008 addressed to the Prime Minister and the General Director of Prisons on some concerns resulting from observations of the AHC about pre-trial detention facilities for the period of time November- December 2007. See also Press Release of 15 November 2007 in connection with the pre-trial detention institution in Vlora.

63 This initiative is taken in the framework of the project Juvenile Justice Reform and it is supported by UNICEF, CoE and SIDA.

changes that will make it possible for the creation of the probation service and use of alternative sentences is urgent. Also, employment of prisoners continues to be not addressed. The draft decision of the Council of Ministers on employment of prisoners has not been adopted yet.

During this period there were training sessions for the educational staff responsible for treatment of minors and women in prisons and pre-trial detention facilities. Also, training sessions for prisons' administration staff on topics related to respect for human rights were organised, mainly by various civil society actors. With respect to professional enhancement of prison staff, a number of the activities that were carried out focused on starting the process of strengthening the sector responsible for training the prison staff, improving the staff selection procedures, improving the professional and managing skills of high officials of prisons and increasing the skills of the local trainers⁶⁴. Also, training sessions have been organised for the police staff in connection with the implementation of the Code of Conduct, of which there is little knowledge within the prisons' administration. However, there is more work to be done with regard to strict implementation of the legal requirements and treatment of persons deprived of their liberty with dignity.

The prisons of Fushë Kruja, Korçë, and the pre-trial detention institution of Vlorë have been put into operation. Whereas work at the pre-trial detention facility in Durrës continues and works on the juvenile institutions in Kavajë have started. In order to implement the 2004 Master Plan, the tender procedures for selection of construction projects of the pre-trial detention facilities in Fier, Berat, Elbasan, Shkodër, Dibër and Gjirokastër have started⁶⁵. Other investments covered by the state budget are being made in pre-trial detention facilities in Saranda, Berat, Kukës and Tropojë. The reconstruction works have been realised in the Prisons' Hospital Centre and in the prisons of Burrel and Rogozhinë.

64 This programme is part of the CARDS 2004 program and is implemented by the AHC, the Correction Agency in Holland in cooperation with the General Directorate of Prisons and is funded by the European Commission in Tirana.

65 These construction projects will be realized and funded in the framework of European Commission programme IPA 2007-2009.

With regard to *access to justice*, Albanian legislation recognises the right to free legal aid. This service continues to be problematic especially with respect to the examination of requests for review of final judgements by the High Court⁶⁶. Following trials at the High Court becomes almost impossible for that category of prisoners who do not have financial means to have a private lawyer. Despite repeated requests, the responsible state institutions have not taken concrete measures for a proper legal regulation of this problem. There is an initiative to draft a law on free legal aid in the criminal and civil law areas⁶⁷, which is expected to be finalised by the end of 2008. This initiative aims at fulfilling a constitutional obligation concerning free legal aid not only in the criminal and civil law areas but also in the administrative law area.

With regard to *freedom of expression and freedom of the press*, it should be noted that the Criminal Code has not been amended yet in order to decriminalise libel in cases involving journalists. No cases of proceedings against journalists have been reported during this period. The printed and electronic media have played an important role in informing the public. Their investigative role in connection with the tragedy of Gërdec on 15 March 2008 was very positive, regardless of the fact that the Prime Minister accused them as manipulators and deceivers. Media, analysts, human rights organisations reacted to these declarations of the Prime Minister in which media was labelled as deceitful and as having failed to speak the truth.

The National Council for Radio Television issued two national licences to Top Channel and Media Vizion on February 2008. Media Vizion was authorised to broadcast as a national satellite operator.

Investigative journalism continues to be undeveloped. There are cases that journalists encounter difficulties in connection with the exercise of their right to receive information because of the lack of transparency by state bodies.

66 Our legislation has a legal vacuum with respect to the ability to have a pro bono lawyer assigned by the state; this is possible only for the first and second instances of adjudication not for adjudication of cases at the High Court.

67 According to information released by the MoJ, the Directorate of Codification at the MoJ in cooperation with Tirana Legal Aid Society is working to draft this legal initiative.

The Government attempts to influence the media which is mainly critical. At the beginning of the month of September 2008, a fine of Lekë 800.000 was imposed on the television broadcaster News 24 by the National Council of Radio and Television (NCRT) for broadcasting a television spot of the Movement G99 that used irony in connection with another television spot of the Prime Minister about the three year achievements of the Government. This action of the NCRT was unlawful and was contested by a large part of the media and civil society.

Civil society has continued to be an important actor in the Albanian society. The legal framework on organisations of civil society was changed on October 2007. The paragraph providing for easier conditions and exemptions for not for profit organisations from tax and custom duties as well as easier conditions that could be offered to physical and legal persons who gave assistance or donations in favour of not for profit organisations were removed from the law. On May 2008 on the initiative of the Open Society Foundation for Albania, some amendments to the legal package on the non for profit organisation were prepared. These amendments aim at strengthening the modalities for identifying the non for profit character of the activities of the NGOs, facilitating the procedures of registration, achieving functional independence in their activities and achieving their fiscal autonomy. There is still no final version of these amendments.

Some organisations are active in monitoring observance of human rights, fulfilment of obligations of SAA Albania, in offering services to social groups in need. However, civil society continues to be dependant on foreign donations and many organisations implement projects that are focused on priorities set by donors. As to the EU funds, it is suggested that simpler procedures be applied, in order for the civil society to benefit from these funds based on its programs and strategic objectives of the SAA.

3.3 Economic and social rights

With regard to *gender equality* and women's rights, NPISAA puts attention to the harmonisation of Albanian legislation with the *acquis communautaire* in the area of equal opportunities. Nevertheless, the lack of concrete mechanisms for implementing the existing laws in an effective way has resulted in strong gender inequality, which has a direct influence on the efficiency of the process of economic development, democratisation and political stability of the country⁶⁸.

The 2008-2010 National Strategy for Gender Equality and Domestic Violence was adopted on December 2007. Actors from the civil society were involved in drafting this strategy. However, its implementation continues to be a challenge for the future. The MLSAEO should ensure coordination of all line ministries, civil society and other actors' efforts, which aim at implementing the National Strategy for Gender Equality and Domestic Violence.

The Law on Gender Equality in Albania, which was adopted by the Assembly on July 2008, set for the first time the election quote in accordance with the standards set by many European countries. This quote has been presented as a gender quote that provides for a minimum of representation for each gender in connection with legislative, executive and legal bodies as well as other public institutions including executive bodies.

The new law considers the political parties as the most important subjects for accomplishing the quota based representation, and as a consequence it makes specific reference to political parties requiring that they determine the ways and the measures for meeting the requirements of this law. However, experience shows that a proper implementation of the quota system is closely related to the willingness of the political parties to implement it.

The implementation of the Law on Prevention of Domestic Violence that went into effect on December 2007 is difficult in many respects as there are no

68 Metani, A. and Omari, S. Towards the EU path; Monitoring equal opportunities for women and men in Albania. Centre of Gender Alliance for Development. 2006. 17.

implementing mechanisms. The MLSAEO should make sure that amendments are incorporated in the Law on Prevention of Domestic Violence and that efforts aimed at increasing knowledge of it and implementing it are coordinated.

Amendments to the Law on Prevention of Domestic Violence, which provide for legal obligations on the Ministry of Education and Science (MoES), were adopted on May 2008. These amendments aim at educating and raising awareness of the new generation concerning the rules of behaviour within the family with a view to educate them on prevention of violent action through educational programs and school textbooks.

The NSDI also reflects key elements of gender equality. However, as said above, the *de facto* implementation of the legal framework and existing gender equality policies in Albania continue to be problematic.

According to official information, the MLSAEO has organised several awareness raising activities aimed at promoting gender equality⁶⁹. Statistical data about women positions in managing bodies of universities in the country, according to scientific degrees and in the municipality council have been collected.

In order to achieve the objective of raising awareness on the phenomenon of violence, legal and administrative protection, and that of ensuring support for individuals affected by domestic violence and protection from abusers, the MLSAEO has organised several activities in Vlora and Elbasan⁷⁰. Also, this ministry has started an awareness raising campaign in the regions of the country, has organised roundtables with representatives of local government, which have as a theme “Gender Equality – Issues to be addressed” with a view to raise awareness on the National Strategy of Equal Opportunities, and coordination of joint actions with the local government⁷¹.

69 Such is the activity organised in cooperation with the International Culture Centre “Pjetër Arbunori” on the occasion of the 8th of March, television spots, posters and meetings with women’s NGOs focusing on issues of promotion of gender equality and domestic violence.

70 The MLSAEO, Directorate of Equal Opportunities Policies. Sector of Equal Opportunities and Domestic Violence, Quarterly Analysis, March 2008. 6

71 Official communication with Irena Benussi, Director of the Directorate of Equal Opportunities, in the framework of the correspondence between this directorate and the ministry on one part and NGOs on the other.

Besides the above mentioned initiatives, the Association Reflections has contributed in cooperation with different state institutions to the realisation of some activities aimed at providing cross-sector services with priority focus on building capacity at the the local level to work with the law on Prevention of Domestic Violence. Also, the Centre of Gender Alliance for Development in cooperation with UNDP are implementing a project that aims at including gender perspectives in educational programs thorough preparing instructions for printing houses in connection with printing school texts and at including gender perspectives in the school curricula at the pre-university level.

NPISAA identifies *children issues* and rights of children as a key element that needs to be addressed in the framework of the SAP. The Albanian Government has identified as issues of priority the strengthening and improvement of the national services of adoptions, protection of children and guaranteeing their rights and the establishment of a regional psychical and social service for children. In that regard it has been determined the adoption of a new structure for the Committee of Adoptions and the creation of regional psychical and social services in Vlorë, Elbasan dhe Shkodër. The regional services now cover several units of local government. Notwithstanding this, other issues including the child protection system, juvenile justice, licensing and training of psychical and social services employees who deal with children issues should also be among the priorities.

Despite the fact that priorities have been limited to child adoption problems, this year the Albanian Government, in cooperation with the civil society, has undertakend important steps to determine other priority issues such as the foster care service, the development of a code of rights of children and of a system for monitoring the rights of children.

The two Protocols to the UN Convention on the Rights of Children were adopted during the reporting period⁷². So was the President's Decree no. 5351, which opened the way to the creation of special criminal law sections for minors in six district courts, in Tirana, Durrës, Gjirokastër, Korçë, Shkodër and Vlorë.

72 Adopted by Law no. 9833, of 22.11.2007 and Law no. 98334 of 10.12.2007.

The system of monitoring the rights of children was extended to Elbasan, Gjirokastra, Fier, Durrës and Pogradec through creating new units for children at the local government level. These units will analyse and monitor the economic and social situation of needy children and their families; will offer protection services and will coordinate activities with local and central government actors.

The MoES program called “A Second Opportunity” continues to offer assistance in the process of integration of children who have dropped out of school. Special programs for children from families living in blood feud situations are being developed in the country. Scholarships have been offered to needy high school students. In order to improve the system of evaluation of students the Central Agency of Evaluation of Students was created⁷³.

Birth registration continues to be a problem. The lowest rate of registration can be verified for the needy people, especially those from the Roma population. A draft law to address this phenomenon has been proposed to the Assembly but it has not been adopted yet.

According to the statistics of the MoJ, children involvement in criminal activities is less if compared to last year⁷⁴. However, juvenile justice is a problem in the country. It is necessary to take measures to prevent and limit use of pre-trial detention. All actors involved in the process of dealing with children including police officers, prosecutors and judges should be trained. Restorative justice continues to be the main policy in the area of juvenile justice⁷⁵.

Children in danger should be at the centre of the Government’s attention. As for example poor children, those living in marginalised communities or in remote areas, Roma children, Egyptian children, trafficked children, those who have no parent care, children living in the streets and those who are exposed to violence, negligence or affected by bloodfeud. Agencies that deal with children issues should identify formulate and agree on a scheme of critical indicators and measurable

73 See Council of Ministers Decision no. 630, of 29.9.2007.

74 The Statistical Yearbook 2007.

75 There are a number of publications on this issue by UNICEF, the European Commission and SIDA during 2007, including “Restorative Justice and Mediation in Settling Criminal Conflicts” or “Set of Recommendations of the Council of Europe on administration of restorative justice”, Tirana 2007.

measures for children's well-being. The state should undertake campaigns to raise awareness and educational programmes on non-violent forms of discipline and do research on how to stop domestic violence against children.

With respect to *socially vulnerable persons (needy persons) and persons with limited abilities*, improving the social protection systems and social exclusion continue to be problematic. The 2008 European Partnership places a higher attention on persons with limited abilities, which is reflected in the fact that for the first time it is provided therein for developing community-based services and aid to dependent persons, including in the field of mental health.

The key issues in this area relate to the need for developing a national strategy against the phenomenon of blood feud; lack of reliable data with respect to how far this phenomenon is spread; the taking of concrete measures for an effective implementation of the National Strategy for Persons with Limited Abilities and increasing state assistance for this category of people; the creation of community centres for the mentally ill persons; the need for a better coordination between the line ministries; increasing assistance for dependant persons and increasing access of persons with limited abilities to employment, education, including integrated education, and adjusting the environmental infrastructure.

There are no accurate data on the number of families affected by the phenomenon of blood feud yet. This prevents a thorough knowledge of the problem and of its expansion in the northern regions of the country. There is still no national strategy aimed at taking concrete measures against such conflicts and no central institution to coordinate state institutions initiatives for preventing and fighting blood feud⁷⁶. Regardless of the changes that the Albanian society underwent and of the important reforms the fact that blood feud conflicts continue to exist demonstrates that the phenomenon is still there.

During the reporting period, a number of subordinate legal acts based on the principle of decentralization of social services and placement thereof under the

⁷⁶ In fact this problem is repeated in previous Progress Reports of the EU for Albania in 2006 and 2007.

local government units have been adopted⁷⁷. An increased focus on the persons with limited abilities can be noticed. A number of subordinate legal acts that were adopted recently were aimed at improving their financial status⁷⁸.

The Sector Strategy for Social Protection for 2008-2013 was adopted on January 2008⁷⁹. Its main goals are improvement of the welfare state of the population; reduction of poverty and social exclusion; improvement of social services through ensuring standards and strengthening the NGOs' potential for action; introduction of the concept of independent life for persons with limited abilities and improving gender equality standards. The Cross-Sector Strategy for Social Involvement for 2007-2013 has also been adopted⁸⁰.

On August 2008, the Council of Ministers adopted a decision amending and making additions to the Council of Ministers' Decision no. 80, of 28.1.2008 on the adoption of the sector strategy for social protection and its action plan. This decision provides for the care strategy for needy children and the related action plan for 2008-2010.

With regard to the rights of persons with limited abilities civil society actors, have suggested concrete recommendations for issues related to the exercise of the right to vote by voters with limited abilities of all categories⁸¹. These recommendations

77 In this framework mention can be made of the Council of Ministers Decision no. 710, of 24.10.2007 on the transfer of the Day Care Centre for Elderly in Kamëz under the Municipality of Kamëz and of the Council of Ministers Decisions on the transfer of the Foster Homes for school-age children of 6-14 in Shkodra and Saranda under the relevant municipalities.

78 The Decision of Council of Ministers "On giving of additional payment to work invalids because of limited ability"; the Decision of Council of Ministers improving the Council of Ministers' Decision no. 564 "On licensing social service providers"; the Council of Ministers Decision amending the Council of Ministers' Decision no. 78, of 7.2.2007 "On the hygiene and sanitary package for paraplegic and tetraplegic invalids". This decision aims at improving the monthly payment for paraplegics and tetraplegics who are considered as in need of the hygiene and sanitary packaged. VKM "Për përmirësimin e VKM nr. 564 "Për licensimin e ofruesve të shërbimeve shoqërore", VKM "Për një ndryshim në VKM datë 78, datë 7.2.2007 "Për paketën higjeno-sanitare për invalidët para dhe tetraplegjikët". Ky vendim synon përmirësimin e pagesës mujore për para dhe traplegjikët që vlerësohet se kanë nevojë për paketë higjeno-sanitare.

79 Council of Ministers Decision no.80, of 28.1.2008.

80 These strategies are components of the NSDI for 2007-2012.

81 An open letter was sent to the Assembly of Albania by the Coalition for the Rights of Persons with Limited Abilities with a view to organise a hearing at the Committee on Social and Health Issues in order to introduce the recommendations mentioned above.

were presented to the Election Reform Commission in a hearing session organised on September 2008 and on 6 October 2008. A group of organisations of persons with limited abilities and the Peoples' Advocate have requested the Minister of Labour, Social Affairs and Equal Opportunities to adopt as soon as possible the legal regulations on the status of persons with limited mental abilities. In order to discuss and to develop this status an inter-ministerial group has been established at the MLSAEO. Another initiative is that concerning the drafting of a law on legal aid, which will offer free legal aid to persons with limited abilities.

The implementation of the National Strategy for Persons with Limited Abilities has progressed slowly. A more serious commitment is needed in terms of taking concrete measures for fixing the human and financial resources in the budget of each responsible institution with a view to ensure the implementation of this strategy in practice. Without denying the importance of the adoption of the National Strategy for Persons with Limited Abilities and the establishment of a General Secretariat at the MLSAEO it should be noted that a complete and comprehensive legal framework is missing. Also, there are problems with involving specialists and experts in treatment of these cases in the line ministries and especially in institutions of the local government.

Despite the fact that the Technical Secretariat was established as a monitoring structure of the Strategy there is no clear division of responsibilities of state institutions. The hierarchical position of this secretariat, under a directorate of the MLSAEO, creates problems and hinders progress because this secretariat has to cooperate, encourage and address the heads of other institutions. This can also be seen in the efforts of the secretariat to create structures at all levels of the local government, which is not under the jurisdiction of the MLSAEO. For this reason it is deemed necessary to increase the authority of the Technical Secretariat and to increase its professional capacities.

The National Strategy needs to be revised in order to be more accurate in terms of objective planning and more realistic with respect to improving its results. In order to guarantee a more effective implementation of the Strategy in practice it is necessary to take concrete measures for strengthening its monitoring structures at the central and local level and to ensure cooperation between them so that the

state structures that have an influence in the implementation of this strategy can function properly.

Despite the fact that there is a progressive increase of the budget for persons with limited abilities this increase is allocated to monthly payments or pensions. On the other hand no funds for direct services of rehabilitation and integration in communities of persons with limited abilities, including establishment and strengthening of day or residential centres, were provided for in the budget. Limited funds have been provided for employment, education or for purposes of adapting premises to the needs of persons with limited abilities.

In connection with mental health it should be noted that the reconstruction of the community centre for mental health in Korça and the process of strengthening the professional capacities of its staff has been completed. Notwithstanding the delay, the opening of such a centre is a positive step. Its goal is to increase access of mentally ill persons to such services and to transform hospitals for this category of people into community centres.

The Mental Health Home in Cërrik⁸² and the Community Centre of Mental Health in Tirana were opened on March 2008. With their multidisciplinary services they meet the demands of the population. This measure is also followed by an increase in the medical staff of the Central Polyclinic with 30 persons as multidisciplinary staff.

The Law on Health and the Law on Health Insurance have not been adopted yet. Discussions on the issue of extending benefits related to invalidity pension to the mentally ill persons have started. If this happens the current practice of giving invalidity status only to persons hospitalised in psychiatric facilities would be corrected.

The process of implementing the Rules of Mental Health adopted on May 2007 progressed slowly and not according to what was anticipated. A better knowledge of the rules by the staff that deals directly with its implementation is needed. There are flaws in terms of organisation of activities of promotion of mental health by the state institutions responsible. Family doctors have inadequate

82 12 chronic patients are placed in this home. The opening of the centre was foreseen to be done by the end of 2006 but the resistance of the community in this district delayed the process.

qualifications with regard to mental health. Also, it is necessary to have direct and objective commitments for increasing the number and improving various services in psychiatric hospitals.

With regard to *property rights*, priorities are related to the initial registration of immovable property and restitution and compensation to ex-owners. A number of legislative amendments that expand ALUIZNI's competences were adopted on July 2008. The opposition objected to this law as being not effective and has filed a request with the Constitutional Court to declare this law unconstitutional. This request has not been considered yet.

The Constitutional Court was also asked to review the constitutionality of the law on legalisations of unauthorised constructions. The Court rejected the request saying that the limitations to property rights were in compliance with the Constitution⁸³. The dissenting opinion said that the law should provide for making the issuance of the legalisation certificate conditional upon fair compensation to ex-owners. In fact this is a requirement of the Constitution, which according to the dissenting opinion should be properly explained in the law.

Restitution and compensation of property seized during the communist regime continues to be an important problem. The amount of the budget determined by the Government for purposes of property compensation for the period of time 2007-2008 is around \$11 million. While the total costs for the entire process are estimated at around \$3.5 billion. According to the 2008 world report "Economic Freedom of the World", which was published by the Fraser Institute (in Albania by the Albanian Center for Economic Research) is ranked at the 92nd place with respect to the legal structure and certainty of property rights⁸⁴.

83 The request was submitted by the National Association of Ex-owners "Property with Justice", which claimed that Law no. 9482, of 03.04.2006 "On legalisation, urbanisation and integration of unauthorised constructions" violates articles 1, 2, 4, 11, 17, 18, 41, 42, 75 (2), 81(2) and 82(1) of the Constitution of the Republic of Albania. The Constitutional Court rejected the request by its decision no. 35 of 10.10.2007. The Constitutional Court said that the Association does not have legitimacy to seize the Constitutional Court because the issue is not in its interest. However, the Constitutional Court emphasized that every limitation of the property rights was done by means of a law as required by the Constitution. Thus, the Court considered that there was no violation of the Constitution. See <http://www.gjk.gov.al/vendimio7.html>

84 See <http://www.freetheworld.com>

The Constitutional Court was asked this year to declare article 17/1⁸⁵ of law no.9235, of 29.7.2004 “On restitution and compensation of property”, as amended⁸⁶ unconstitutional. In its Decision no. 45, of 26.12.2007, the Constitutional Court considered that the applicant did not have an interest of its own in bringing the case. Therefore the Court rejected the request.

A data bank for identifying, assessing, managing and prioritising claims for restitution and compensation of property is still missing. There was a project supported by the OSCE Presence in Albania for some years, but it resulted that this project had developed a database that had errors.

The Property Restitution and Compensation Agency has not distributed the money compensation fund for 2008. A fund of \$ 5 million has been provided for in the 2008 budget for this purpose. The land map for the territory of Albania has been prepared by the Committee of Restitution and Compensation of Property but it has not been approved yet.

The law on land continues to provoke discussions. The Republican Party proposed a draft law proposing to repeal law 7501 (law on land). There is a common position of the ruling majority and the opposition not to support this proposal. There are a number of drafts of laws related to agricultural land, which are currently under discussion at the Assembly. The tendency of adoptions in the Assembly is not clear. However, if law 7501 is repealed the property titles of many citizens will be put at risk.

Property registration continues to be a problematic process. This has serious consequences for conflicts over property and it hampers investments. Corruption continues to be present in institutions of registration of immovable property. There have been a number of arrests of officials of these institutions, which shows the commitment of the Government to fight corruption in these sectors.

85 Article 17/1 of law no. 9235 reads: “The expropriated subjects have the right to deposit new requests in order to acquire the rights provided for by this law by 1 October 2007”.

86 This time the request was incidental as it was made in a judicial process at the Skrapar Judicial District Court. This is the second judgement for 2007; the first was Decision no. 11 of 04.04.2007 in which the Constitutional Court declared Article 9 of the law unconstitutional. See <http://www.gjk.gov.al/vendimio7.html>

The law on registrations was changed last year with a view to facilitate the registration process. This change authorised the chief registry officer to erase from the registry of immovable property the last registration in cases of overlapping registrations. What this means is that the problems that will still be there will not be indicated in the registry; this will only hide the problematic situation that will continue to persist as a conflict.

The Government should be more active in the process of property restitution and compensation. The fact that 14 years after the first law on this issue was adopted the process is still going on and the Government is still dealing with cases of property restitution and compensation is unjustifiable. The Government should work on mapping the situation of ownership on immovable properties in the country or on creating a digitalised system that will reflect the situation with the restitution and compensation of immovable property in the country. This will bring into light all unlawful situations in this process and will make the steps that need to be taken clearer. Even though this means costs for the Government, transparency and lawfulness of the process is very important.

3.4 Rights of minorities, cultural rights and the protection of minorities

Albania's commitments in connection with rights of minorities consist of the implementation of obligations deriving from the Framework Convention on the Rights of National Minorities, especially with respect to the rights of minorities to use their language in their relations with authorities; the use of traditional names and education of minorities in their own language. Other commitments include the implementation of the National Strategy for Roma, securing the necessary funds as part of the Government's strategy for fighting poverty and social exclusion, encouraging registration including registration of dates of birth of members of the Roma community, and obtaining data about minorities in Albania.

Some of the problems that have been identified are: updating statistical data on minorities; increasing the presence of people belonging to national minorities in police forces in the areas where they live; including several of minorities' languages in school programmes, especially the Roma language; the low educational level of the Roma minority and school abandonment; the high level of poverty, discrimination and illiteracy; the failure to include Albania in the Roma Decade and the slow implementation of the Roma Strategy because of the shortage of resources and weaknesses of the strategy.

Besides the minorities that have official recognition in Albania there is also the Egyptian community, which is making efforts to obtain the ethnic and cultural minority status. The Opinion of the Advisory Committee of the Council of Europe suggested reconsideration of the issue of the Egyptian community. But as of now there has been no recognition by the Albanian state. However, there is a special way of treatment of this community through involvement in activities in the area of minorities and communities in need.

On March 2008 the Government adopted the NSDI, which also deals with the Roma minority. Progress has been marked with the institutional positioning of the Unit for Monitoring the implementation of the National Strategy for Roma. This unit was transferred from the Directorate of Social Services at the MLSAEO to the Technical Secretariat at this ministry. Nevertheless, the Secretariat continues to be a relatively weak structure because of the insufficient number of employees compared to its competences. Thus, the number of employees of the Secretariat changed from three to two⁸⁷. On the other side the Secretariat does not have information about the amount of funds earmarked by the line ministries for the implementation of this Strategy⁸⁸.

Albania received an official invitation to become part of the Roma Decade on February 2008, at the meeting of the Managing Committee that was held in

87 Based on the information obtained from the meeting organised by the Ministry of Foreign Affairs, the Office of Legal Representation in International Organisations, in connection with the implementation of the ECRI Recommendations.

88 Report on the Progress of the National Strategy on the improvement of living conditions of the Roma Minority, December 2007.

Budapest. The first report on the implementation of the National Strategy for Roma for 2004-2007 was prepared with the UNDP support. The Technical Secretariat, in the framework of the Roma Decade, is preparing the action plan that will be sent for approval to the Council of Ministers.

An increasing attention in the media about the problems of the Roma minority is noted during this reporting period⁸⁹. It is necessary that media focus more on the promotion of the culture and traditions of the Roma minority. The Law on the Press has not been amended so far, which has put media of minorities at the same conditions as that of the rest of the population. The social and economic position of the Roma minority does not allow it to develop its own media effectively as other minorities.

With regard to minorities' access to public administration, there have been claims by the Roma and the Egyptian communities about discriminatory treatment by the public administration⁹⁰. For this purpose, the organization of awareness raising activities in conjunction with these communities and local government bodies is necessary. The access of the Roma and Egyptian communities to the administration is low except for those cases when interests of individuals are represented in the associations to which they belong. This is related, among others, with the lack of information by these groups as to how they can access bodies of the administration. Local government bodies do not generally have specific policies for minorities.

Despite the fact that there is increased awareness about the rights of minorities the knowledge of public administration in this area is unsatisfactory⁹¹. In that framework, it is necessary that there be training for the public administration in connection with rights of minorities. Training of municipalities' staff and police

89 These conclusions have been reached in the framework of media monitoring. Also, this conclusion has been reached in the opinion survey organised the AHC in the four main municipalities of the country Tirana, Fier, Elbasan and Gjirokastra.

90 These concerns were brought forward in a survey that the AHC did in the municipalities of Tirana, Elbasan, Fier and Gjirokastër during the period of time September- November 2007 and in roundtables organised with local actors in these districts during the period of time February-March 2008.

91 These data have been taken from the report produced in the framework of the AHC survey in Tiranë, Elbasan, Fier and Gjirokastër.

officers in Elbasan, Fier and Korçë is being carried out based on the initiative of civil society actors⁹². These training sessions aim at raising awareness of these bodies in connection with the obligations arising from the national and international legal framework on central or local state institutions with respect to the rights of the Roma and Egyptian communities. In addition, other initiatives are carried out by local and international organizations with a view to strengthen cooperation between local government bodies and representatives of these communities. Some municipalities have started to draft their budget after consultation with interests groups, including minority groups⁹³.

On June 2008 the Assembly of Albania adopted law no.9929 of 9.6.2008 on some amendments and additions to law no.8950 of 10.10.2002 on the civil status, as amended. The June amendments provide for a monetary compensation in cases of registration of children within the time limit required by law. The amendments provided also for monetary compensation in cases of birth that were not declared by the time of adoption of this law and that corresponded to a time after the expiry of the deadlines for registration should such registration occur within 60 days from the adoption of the above mentioned law. These legal provisions constitute good incentives for the registration of the Roma children. Nevertheless, the verifications that have been made show that when civil status registry offices have not received the fund for the monetary compensations in time, which has influenced the positive effects of the law⁹⁴.

The situation of registration is problematic in those districts where there was Roma migration such as Tirana and Durrës and in connection that part of the Roma community that emigrate to Greece⁹⁵. One of the main problems of such migration is the failure to register with the civil status registry, which has had as a consequence the inability of these people to vote.

92 The AHC and the Centre for Social and Economic Studies.

93 The Municipalities of Elbasan and Korçë are implementing this model.

94 This concern has been raised in the meeting organised in connection with the implementation of the ECRI recommendations by the Ministry of Foreign Affairs, the Office of the Legal Representative at International Organizations and focal points in the districts.

95 Study report on the implementation of the recommendations of the ECRI IIIrd Report and SAA obligations, prepared by the expert Rajmonda Duka and presented in the roundtable organised by the AHC on 7 December 2007.

Local government bodies have taken some employment measures for the Roma and Egyptian minorities. However, they are employed mostly for jobs that do not require special qualifications. Civil society organisations⁹⁶ have organised activities to protect rights of minorities in general and those of the Roma minority in particular. However, a better coordination of their programmes and specific projects is needed. Civil society organisations have an important role to play in that regard. Local government bodies can bridge cooperation while having common goals with respect to minorities through implementing projects to their benefit.

The Council of Europe and the Ministry of Foreign Affairs (MoFA) organised a roundtable on 7 December 2007 in connection with the obligations deriving from the signature of the European Charter for Regional and Minority Languages and the impact of implementation of this charter in our country. The MoFA has organised several meetings with civil society actors and state institutions about the implementation of ECRI recommendations. In that connection, a working group has been established. The working group has produced a report with recommendations for measures that should be taken in the fight against racism and tolerance⁹⁷.

As to education, it should be noted that the Roma minority still suffers problems of inadequate education and school abandonment. Identifying Roma teachers, who can teach Roma language at schools, is a problem. Except for the national minorities, whose right to be taught in their language is recognised by law, the Roma and the Egyptian minorities can make this right effective through parent boards who can participate in the determination of the elective subjects that can be selected to be included in the curricula. This change has enabled those schools that have a large number of Roma students to include the Roma language in their curricula as an optional choice.

A large part of the Roma minority continues to live in poor housing and infrastructural conditions. Their houses are in a miserable state and because of

96 Such as the AHC.

97 The MoFA organised four meetings with civil society actors and state institutions in 2007. There were two meetings in 2008.

their failure to register with the civil status registry offices some of them do not receive any social benefits. Local authorities have started to build community houses, a number of which have been assigned to the Roma community.

4. Home affairs

4.1 Visa policy

Visa policy continues to be one of the most debated issues that has always had the attention of the Albanian public. The main problems that have been identified with respect to visa policy are:

- Issuing travel documents that meet international standards;
- Establishing an information system (IT) for visa administration;
- Adopting a law on foreigners that is in line with European standards⁹⁸

The issuance of travel documents that meet international standards requires that “the technical specifications for the new passports, which are expected to be issued, be in compliance with the EU standards for biometric identifiers and that data be capable of being read by special machines”⁹⁹. These measures are closely related to the new civil registry system, which continues to be a key priority that needs to be addressed by the Albanian Government in order to have the parliamentary elections carried out in compliance with the required standards¹⁰⁰.

98 See the European Partnership for 2006 (adopted by the Council of the EU 2006/54/EC; actual status – repealed) pg. 10 and the European Commission Proposal for a new European Partnership [COM(2007) 656] pg. 13.

99 The 15th meeting of the Joint Consultative Task Force (Tirana, 11 December 2006).

100 See European Partnership [COM(2007) 656] pg. 6 – Political Criterion, Democracy and Rule of Law. This issue was one of the main recommendations of the Consultative Task Force (CTF) at its 16th meeting (Brussels, 5 June 2007).

The legal basis for determining the security elements and for approving the form of the identity document model for Albanian citizens was completed this reporting period. After the finalization of the tender procedures for the production and distribution of identity cards the Albanian Government ratified the concessionary contract with the Sagem Securite Group on 28 June 2008¹⁰¹. However, there is lack of coordination among the process of production and issuance of identity cards, the process of improving the system at the civil registry, the process of ensuring standards of personal data protection and that of finalisation of the system of addresses¹⁰².

Despite the fact that the process of informatisation of the civil status registry has progressed generally in accordance with the given time limits, it should be noted that the last stage of this process – online connection of all branches of the civil status registry branches, avoiding duplications in the electronic system and finding a mechanism for resolving duplications that observes the rights of citizens to choose their residence – as well as the coordination problems related to the implementation of the system of addresses may create delays in the process of distribution of the identity cards¹⁰³.

On 28 August 2008 Order no. 1080 of the Minister of Interior Affairs on the adoption of the regulation and the rules of work on the map for giving addresses to the public territory by municipalities/ communes was issued. This order determines the tasks of local government units and their specific services on the completion of the system of addresses. After the issuance of order no. 1080 there have been meetings of officials of the Ministry of Interior with heads of the local government units.

101 Law no. 9972, of 28.07.2008 “On the ratification of the concessionary contract for the production and distribution of identity cards and electronic passports,” among the Ministry of Interior of the Republic of Albania, the Sagem Security Group and Albanian American Enterprise Fund”.

102 This is in contradiction with the EU recommendations that calls for ensuring a better coordination of the process.

103 On 28 August 2008 Order no. 1080 of the Minister of Interior on the adoption of the regulation and the rules of work on the map for giving addresses to the public territory by municipalities/ communes was issued. This order determines the tasks of local government units and their specific services on the completion of the system of addresses. After the issuance of order no. 1080 there have been meetings of officials of the Ministry of Interior with heads of the local government units (deputy minister Poni on 2 September 2008 and Minister Nishani on 4 September 2008).

Nevertheless, it is worth noting that there is still no mechanism that would ensure that all Albanian citizens would be issued identity cards before the next parliamentary elections, especially taking into consideration the large number of Albanian citizens who live abroad. The Deputy Minister of Interior Affairs declared at the special Parliamentary Committee on Electoral Reform on 19 September 2008 that “a normative act that will make the application for an identity card obligatory will be prepared. This obligation applies to all Albanian citizens and in the case of immigrants it is anticipated that it will correspond with their return home for the end of year celebrations”. It is exactly this time limit for the return of the Albanian immigrants that does not correspond with the dynamics of the finalisation of the electronic civil status registry and neither with the preparation of a unified system of addresses.

There has been satisfactory progress with the creation of the National Visa Centre (NVC) and the digitalisation of the network for the visa administration during the reporting period¹⁰⁴. At the end of the process of installation of the software at the NVC a test of the system was done during July 2008, which was successful¹⁰⁵. The official launching of the NVC is expected to happen at the end of 2008.

The Visa Facilitation Agreement signed by the European Community and Albania went into effect on 1 January 2008. This agreement provides for facilitated visa procedures for 18 categories of persons that are considered “factors of exchange” and for keeping the visa application fees for Albanian citizens at the existing level or exempting certain other categories from this obligation. According to the Joint Consular Instructions, the Schengen Member States are under no obligation to accept complaints in cases when they have rejected visa applications.

Taking into consideration the continuous request for having a special mechanism for verifying the complaints of citizens concerning failure of consular offices from the Schengen Member States in Albania to observe their deadlines, the MoFA

104 NPISAA includes the following among its mid-term priorities: the creation of the Integrated System (digitalised) for handling visas; stopping the practice of issuing visas at the border; preparing the Manual of the Recognised Documents where visas are affixed; preparation of the visa form in documents that are not recognised; ensuring that the diplomatic offices and the NVC have capabilities to detect fraudulent documents; enhancing the capacities of the MoFA and diplomatic offices.

105 The test took place in our diplomatic offices in Roma, Zagreb and Athens.

has recently included in its structure a new special sector. This structure – the Public Relations Sector – comes under the Consular Directorate of the MoFA and is expected to administer the citizens' complaints and to offer information in connection with the Visa Facilitation Agreement. During this reporting period the MoFA has not undertaken any information campaign to communicate to its citizens the details, the implementation conditions and the benefits deriving from this agreement¹⁰⁶.

On 3 June 2008 the European Community gave to Albania the Visa Liberalisation Roadmap. This document determines the standards that should be met and the key reforms that should be implemented in areas such as security of travel documents, border management, fight against illegal immigration, organised crime and corruption and the fundamental human rights. At the beginning of 2008, the working group established by the Albanian party under the guidance of the MoFA gave to the European Commission a document in the form of a template, which gives the current situation in connection with the requirements of the EU and reforms that are expected to be taken in order to meet the standards set by the Roadmap. This document has not been adopted by the Council of Ministers and has not been discussed in the Assembly of Albania or sectoral commissions.

During the reporting period Albania and Macedonia signed an agreement for lifting visa requirements for their citizens. After the conclusion of the constitutional procedures for becoming effective, the agreement went into effect on 3 October 2008, after the exchange of official notes between Albania and Macedonia.

The Visa Facilitation Agreement with Norway was signed on 12 September 2008. The Assembly approved the Visa Facilitation Agreement with Denmark¹⁰⁷. In addition, on 13 August 2008, the Council of Ministers adopted in principle the

¹⁰⁶ This obligation will be included among the main tasks of the above mentioned sector at the Consular Directorate. The MoFA has published recently some general information on this agreement at its website (www.mfa.gov.al). This measure is sufficient for purposes of ensuring full information for the categories of persons who benefit from the visa facilitation. This fact is also confirmed by a study of the European Movement Albania (see "Does it really matter? – Visa Facilitation in the Western Balkans" July 2008, which further to this idea suggests the creation of a data base on the 18 categories of persons to whom the agreement refers to.

¹⁰⁷ Law no. 9923, of 29.05.2008 on the ratification of the agreement between the Council of Ministers of the Republic of Albania and the Kingdom of Denmark on facilitation of visa issuance.

Agreement between the Republic of Albania and Iceland on Facilitation of Visa Issuance.

The law on foreigners, which is considered as a short-term priority under the three of the European Partnerships (2004, 2006 and 2007) and under the two EC progress reports (2006 and 2007) was adopted by the Albanian Assembly only on July 2008¹⁰⁸. The law regulates the regime of entry, stay, employment, treatment and exit of foreigners to and from Albania and it applies to foreigners who enter or intend to enter for purposes of stay, transit, employment, study or readmission. This act determines the functions and competences of state authorities and other public or private, Albanian or foreign subjects that have to do with foreigners. The new law on foreigners will become effective on 1 December 2008 while the Council of Ministers should prepare the subordinate legal acts for its implementation within March 2009¹⁰⁹

4.2 Asylum

The main problems in connection with asylum policies relate to:¹¹⁰

- The harmonisation of the domestic legal framework and its efficient implementation;
- The strengthening of the administrative capacities and especially the human resources of the Directorate of Refugees and Citizenship, at the MoI and those of the new asylum centres;
- The harmonisation of measures taken in the framework of asylum policy with strategies in other areas that relate to asylum issues including immigration, readmission and border management.

108 Law no. 9959, of 17.07.2008 "On Foreigners".

109 The Action Plan of the Strategy provides for the creation of an integrated data base for foreigners to be set up by the beginning of 2009.

110 See the 2007 European Commission Report COM(2007) 663 final, pg.45 and the 2006 Report COM (2006) 649 final pg. 40, European Partnership.

The harmonisation of the Law on Asylum with the Law on Foreigners and other legal acts continues to be unaccomplished priority¹¹¹. The new Law on Foreigners was adopted on July 2008; its article 108 states that the subordinated legal acts for its implementation will be adopted four months after the law becomes effective. The Assembly of Albania has not included any amendments to the Law on Asylum in its agenda for the period of time September – October 2008, which suggests that the adoption of subordinate legal acts identified by NPISAA in this area will be delayed.

Currently the screening of foreigners is done by the Border Police while the processing of requests for asylum is managed by the Directorate of Citizenship and Refugees according to Instruction no. 1085, of 12.06.2006 of the Minister of Interior. A better coordination is needed between these structures.

The administrative capacities in the area of asylum continue to be limited. Staff changes as a consequence of restructuring of the Directorate of Citizenship and Refugees have weakened the performance of this institution and have delayed the process of review of requests for asylum¹¹². Despite the fact that there were 27 requests for asylum in 2007¹¹³, again because of the limited administrative capacities, the 51-day legal time limit was not observed. The geographical origin of those seeking asylum in Albania varies; asylum seekers are usually persons from Kosovo, Nigeria, Macedonia, Egypt, Algeria, Uzbekistan and China. The state budget has funds for their accommodation and the UNHCR has continuously given legal, social and infrastructural assistance. The MoI and the UNHCR signed an agreement in 2007 under which the UNHCR committed itself to offer assistance to asylum seekers on the above mentioned issues on an annual basis.

111 It should be noted that NPISAA provides for a budget increasing from 200.000 Lekë in 2007 to 700.000 Lekë this year; this fund will be used to train the personnel that processes requests for asylum. Also, in 2008 it is expected that two projects in the area of asylum, with a total value of Euro 1.853 million will be completed. The first is a project of assistance of the UNHCR for asylum seekers. The second, a CARDS 2004 projects, consists of building a closed centre for hosting persons from third countries who have been readmitted in Albania. Another project is anticipated to be funded by CARDS 2006 funds; this will offer support for managing the asylum and migration system.

112 No progress has been marked on this point; the European Commission Progress Reports of 2006 and 2007 are identical in the problems that they identify. See Albania 2007 Progress Report COM (2007) 663 finale, page 44, and Albania 2006 Progress Report, COM (2006) 649 final, page 39.

113 See the MoI analysis for 2007 (January 2008). Official website of the MoI <http://www.moi.gov.al/images/pdf/analiza2007.pdf>

4.3 Migration

The three European Partnerships with Albania prepared by the EU for 2005, 2006 and last one for 2007 contain almost the same priorities with respect to migration issues, which are closely related to visa liberalisation issues and asylum and border control issues.

Some of the short-term priorities, which entail the most emergent measures in this area, are listed below:

- The obligation to change the Law on Foreigners in order to bring it in line with the EU standards;
- Implementing the Ohrid Agreement commitments in order to ensure border security and management;
- Implementing the strategies prepared in the area of border management according to instructions of the EU;
- Strengthening the human and financial resources in the area of fight against trafficking in human beings and illegal migration;
- Signing the European Convention on the Legal Status of Migratory Workers and alignment of domestic legislation with the obligations deriving from this convention;
- Border management in the ports of Durrës, Vlorë and Mother Theresa Airport, enhancing cooperation among border agencies;
- Involvement of administrative and financial capacities for purposes of implementing legislation in the area of migration, the relevant national strategies and action plans, the Integrated Border Management Strategy and other commitments undertaken by Albania in this area.

With regard to migration the NPISAA provides that besides the Law on Foreigners other subordinate legal acts will be drafted in connection with the voluntary return of Albanian immigrants, their re-integration, issuance of work permits

to foreign citizens, increasing the role of private employment agencies, and cooperation with financial institutions in connection with remittances.

Despite the fact that the adoption of the Law on Foreigners has been a priority since 2004, this priority was addressed only on July 2008. Furthermore, it is expected that this legal act will become effective on 1 December 2008, which entails other delays in taking its implementing measures (see article 108 of the law). The responsible institutions should accelerate their preparations for the effective implementation of the law including training of administrative structures primarily in the potential migratory zones, improving institutional coordination of the bodies responsible for the implementation of the Law on Foreigners, ensuring the necessary infrastructure at all levels, undertaking informing campaigns (especially informing the foreign persons who are currently residing in the country) and others.

In order that investments and institutional efforts aimed at strengthening administrative and financial capacities in the area of emigration policy do not remain within a simple declaratory framework and without measurable results it is necessary to:

- Prioritise the implementing measures mentioned above through adopting a more objective approach in relation to the concentration human and financial resources and in relation to the setting of deadlines;
- Ensure a higher involvement of capacities of the MLSAEO in implementing these measures in coordination with international organisations but without having to rely completely on their budget;

4.4 Readmission

Since 1998 Albania has signed a series of readmission agreements with most of the European countries that have had substantial flows of irregular immigrants from Albania or with countries the citizens of which use Albania as transit to enter the EU area.

Albania has signed readmission agreements or protocols of implementation with Italy, Belgium, Germany, the United Kingdom, Austria, Hungary, Switzerland, Bulgaria, Romania, Croatia, Macedonia and Denmark and Norway¹¹⁴. Albania is in the process of discussing readmission agreements with Slovenia, Slovakia, Moldova, Turkey and Bosnia and Herzegovina.

The main institutions responsible for the implementation of readmission agreements are: the Directorate of Migration and Readmissions at the central level, which coordinates the entire process of implementation of such agreements, and the Police Commissariats at the border crossing points, which receive returned persons and make verifications.

Practice shows that the degree of implementation of these agreements is different for different countries. For example Hungary, Germany, the United Kingdom and Switzerland apply regularly the clauses and obligations deriving from these agreements, by giving notice to the contact point at the Directorate of Border Police and Migration before returning Albanian citizens. Other countries such as Italy or Macedonia return Albanian citizens without observing the notification procedures for notification and receiving the required confirmation from the Albanian authorities. Even more problematic is the absence of a readmission protocol with Greece. The return of illegal immigrants from Greece continues to be done without giving notice to Albanian authorities and not in line with the standards of the Readmission Agreement with the European Community.

The statistics for the first eight months of 2008 (January – August 2008) show that Greece is the country that has returned the majority of Albanian citizens illegally residing abroad (approximately 44.000 of 47.300). It is worth noting that only 338 persons (0.7%) out of this total number of returned Albanian citizens (47.300 citizens) were returned in compliance with the clauses and obligations of the Readmission Agreement (with the EC or other countries)¹¹⁵.

114 During the monitoring period the Albanian Assembly ratified the Readmission Agreement with the Kingdom of Denmark (Law no. 9924, of 29 May 2008), whereas the Readmission Agreement with Norway was signed on 12 September 2008.

115 Interview with MoI representatives, September 2008.

The identification of Albania and the ensuing inclusion of the provision on readmission agreements as an integral part of the SAA, was followed by the signing of the Readmission Agreement between Albania and the European Community on 14 April 2005. This agreement went into effect on 1 May 2006. The weakest point of this agreement is the creation and strengthening of administrative capacities.

Employees at the border crossing points at the base level do not have any special training on readmission. Instead they have been recruited on the basis of general criteria, including age, professional skills and moral integrity criteria; these criteria should be met by all employees of the State Police.

Training is organised frequently for these employees but it has had little results because of their transfer to other positions and duties within the State Police. Failure to ensure stability of the personnel in the positions for which they have been trained results in a permanent need for basic training and inability of personnel to build experience in this field.

The State Police Law adopted on June 2007 provides for the first time in a specific manner for doing a special training course before admission to duty. It also provides for continuity in duty for at least three years for the employees of the Department of Border and Migration. Even though training is a positive step it has a limited coverage; it covers only employees at the centre and not those at lower levels.

The creation of the Readmission Committee on 6 March 2008 as the supervisory authority of the Readmission Agreement is expected to serve in a better way to the implementation not only of this agreement but also of bilateral agreements that will be signed in the future since every future readmission agreement or protocol of implementation thereof should be first notified to this Committee and only after this notification is done the relevant agreement can become effective¹¹⁶.

116

This committee has convened only once during this monitoring period (6 March 2008).

4.5 Integrated Border Management

The Border Police staff reduction resulting from continuous staff cuts is one of the serious concerns of border management. Staff reduction was done without taking into consideration factors relevant to the maintaining of minimum capacities and their qualities, such as persons who have received training and have the necessary qualities. Currently, another factor that may potentially have an effect on the State Police capacities (including those of the Border Police) is the adoption of the new regulation on grades, which makes the function equal to the grade¹¹⁷.

With regard to inter-institutional cooperation of the responsible bodies in this area, the Albanian Government and foreign assistance focused mainly on the Border Police and customs authorities, and less on the the phytosanitary and veterinary services¹¹⁸.

Other issues identified as problematic include:

- The need for further investments in the border crossing points in order to meet the European standards (especially in Durrës and Vlora ports);
- Civilian control of the coast guard;
- Increasing the institutional capacities involved in border management;
- Illegal immigration (continues to be problematic especially with respect to Greece);
- Implementation of obligations deriving from the Ohrid process on security and border management, especially in connection with the preparation of a strategy for integrated border management in accordance with instructions of the EU;
- Increasing financial and human capacities involved in action against trafficking in human beings and illegal emigration;

117 See section 4.11 below - "Police".

118 Bushati D., Gjipali G., Qorri I. "Towards a visa-free regime" (Agenda Institute, December 2007) page. 74. This tendency can be seen also from the problems identified in Reports of the Commission (See the 2006 Progress Report at pg. 31 – 32 and the 2007 Report of the Commission pg. 36 – 37, as well as other parts of the reports dealing with border management).

- Bringing border management at Tirana International Airport, Durrës and Vlora ports in line with international standards;
- Enhancing inter-institutional cooperation at the border among customs authorities and Border Police.

The new National Strategy for Integrated Border Management and the related Action Plan was adopted by the Council of Ministers by Decision no. 668, of 29.09.2007. This document was prepared by an inter-institutional working group under the aegis of the Inter-ministerial Committee and with the assistance of PAMECA Mission II. This strategy offers a consolidated framework of measures, which as a whole should ensure a higher performance in the institutions involved in border control.

The implementation of some of the measures provided in the National Strategy for Integrated Border Management and in the Action Plan has started. These measures include around 15 internal orders on communication and cooperation, information exchange, joint operations, training and others; standard procedures for border control (partially); border checks in specific circumstances; the order on the operative room of the General Department of Borders and Migration (GDBM) and for the usage of the database system; standard procedures for communication and exchange of information (currently communication is established with 8 Regional Departments on Borders and Migration, 3 commissariats in the border crossing points and 15 police stations in the border crossing points and other measures. On the other hand the responsible institutions are in the preparatory stage in connection with other specific measures of the National Strategy for Integrated Border Management such as training of consular staff for identifying falsified documents; developing standard procedures for risk analysis; developing the concept of the bank of data in connection with risk assessment; developing rules on data selection (as for example from the TIMS, ASYCUDA systems) and their distribution; identification of training needs.

The new Strategy for Integrated Border Management and the existing Strategy on Migration provide for a series of measures aimed at achieving better results in the

area of trafficking and illegal immigration, which require relatively considerable financial and human resources. Nevertheless, it is necessary that in parallel to this, the relevant institutions ensure a better management of these resources, especially a more active role and higher contribution from the national sources¹¹⁹.

In the same context, a greater support has been requested from the the PAMECA Mission III. Support has been requested for improving the management of human, financial and technical resources of the State Police, the functioning and use of the information technology¹²⁰, as well as for determining mid-term priorities¹²¹. Despite the foreign assistance and the modest increase in the budget of the institutions (compared to the objectives and the measures of the problems) for purposes of addressing this priority, the irregular emigration and trafficking continues to be a problem in the country¹²².

On December 2007 the Assembly of Albania adopted Law no. 9852 of 26.12.2007 on the adhesion of the Republic of Albania to the Memorandum of Understanding on the state port control and the amendment adapted on 9 May 2002¹²³. While progress was marked with regard to the situation at the airport of Tirana, the implementation of international standards at the Durrës and Vlora remains marks no tangible progress. NPISAA identifies this as a priority that should be addressed within 2009. No concrete steps, except for the findings of the last Report of the Commisison, were verified during the monitoring period. Having regard to the fact that this issue was continuously stressed in the reports of the Commisison, it is necessary that Albanian institutions take appropriate measures to improve the situation.

119 Poor management of human resources continues to be a problematic issue in this area, which makes coordination among agencies at the basic level more difficult (this problem was identified before in the Reports of PAMECA Mission. See Final Report of PAMECA Mission II 2004 – 2007, pg. 27 – 30).

120 Currently the TIMS system is extended to 15 border crossing points and the AFIS system to 10 border crossing points.

121 Speech of the State Police Mr. Ahmet Prençi in the first meeting of the board of the stakeholders of PAMECA Mission III (12 September 2008).

122 Other projects funded by CARDS 2006 – 2006 and IPA 2007 amounting at a total value of approximately EURO 14.5 billion have been anticipated with a view to increase the capacities of the State Police and (Border Police).

123 The law on the state border control (Law no.9861, of 24.01.2008) was also adopted on January 2008.

The Strategy for Integrated Border Management reiterates the necessity to ensure a better inter-institutional cooperation with other agencies responsible for border management, which includes not only Customs and the Border Police but also other services. However, the framework of subordinate legal acts (joint instructions) that will ensure a proper functioning of cooperation at the agency level has not been finalised yet¹²⁴. Out of 25 border crossing points, the phytosanitary service is operational in 14 on a permanent basis and in 11 on a demand basis. Whereas the veterinary service is operational in 17 on a permanent basis and in eight on a demand basis.

Despite the fact that reports of the assistance programmes focus primarily on cooperation between the Border Police and Customs, the attention of Albanian Institutions should not concentrate only on this axis and consequently underestimate the importance of general cooperation among all agencies involved in border management, including phytosanitary and veterinary services.

4.6 Personal Data Protection

The Assembly of Albania adopted on 10 March 2008 the Law on Personal Data Protection¹²⁵. Albania is also a party to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and to its Additional Protocol.

The new Law on Personal Data Protection reflects the *acquis communautaire* and gives effect to essential changes compared to legislation existing before. It uses the same terminology as that used in Directive 95/46 EEC and guarantees the

¹²⁴ Subordinate legal acts (orders, regulations and others) on the cooperation of the Customs Directorate and the joint use of equipment, joint operations and others have been adopted during the monitoring period. Nevertheless, there is still a considerable number of subordinate legal acts that are expected to be adopted in the future.

¹²⁵ Law no. 9887, of 10/03/2008 on the protection of personal data (Official Journal Issue 44 of 2008, page 2001).

rights of persons whose personal data have been processed. It also provides for obligations of the processor of personal data in compliance with the standards set out in the Directive. This law applies to private subjects when they process personal data; this is different from the old law whose scope of application was limited to public authorities only.

This law provides for the setting up of a Supervisory Authority of personal data protection. This function was previously exercised by the Peoples' Advocate. The Commissioner for Personal Data Protection is to be elected by the Assembly on a proposal from the Council of Ministers for a five-year term of office. The Assembly on a proposal of the Council of Ministers nominated Mrs. Flora Cabej to this duty. The law also provides that the Assembly determines the structure and budget of the Commissioner for Personal Data Protection. Such role of the Assembly weakens the full independence of the Commissioner. While the 2008 budget does not provide for funds for making the Commissioner for Personal Data Protection operational.

At the same time it should be noted that the process of preparing identity cards and biometric passports is progressing faster than that of setting up and making operational the Commissioner for Personal Data Protection. The Albanian Government has concluded the legal phase with the adoption of the Council of Ministers Decision no.1070 of 23/07/2008 on the approval of the concessionary contract for the production and distribution of identity cards and electronic passports between the MoI and the SAGEM SECURITY GROUP and the Albanian American Enterprise Fund and with the Law no.9972 of 28.07.2008 on the ratification of the concessionary contract on the production and distribution of identity cards and electronic passports. After this the Albanian Government is ready to start the process of production of identity cards and biometric passports that contain personal data of citizens¹²⁶.

The law does not have a transitory provisions dealing with issues such as who will exercise this function until the necessary technical infrastructure is provided and human and financial resources are secured so that collection and processing

126 Official Journal Issue 118, of 2008, page 5229; Official Journal Issue 128 of 2008, page 5634.

of personal data is done in compliance with personal data protection rules and principles. In this case, the lack of coordination between these activities affects the credibility of the process of producing and issuing new identity cards.

4.7 Organised crime and illegal trafficking

The fight against trafficking and organised crime constitutes a problem of major concern for Albania. This is also mentioned in the SAA, which encourages not only EU-Albania cooperation but also regional cooperation¹²⁷. There are a number of factors of the Albanian reality that make fight against organised crime even more difficult, including lack of cooperation between the prosecutor's office and police, lack of a witness protection legal framework, shortages in staff at the anti-trafficking police units, lack of a database anticipated for tracking victims' cases¹²⁸.

The efforts of the Albanian Government to address these issues go in three main directions: a) a better definition of responsibilities of each structure, their reorganisation and increased cooperation with each other b) increased usage of special investigation techniques and of specialised human capacities and c) collecting and processing data that are useful to prevent criminal activities and illegal trafficking¹²⁹.

During this period Albania adhered to the Optional Protocol to the UN Convention on the Rights of the Child on 22 November 2007 and to the Protocol against Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, supplementing the United Nations Convention against

127 See articles 4, 78, 81 and 85 of the SAA.

128 Even at the CTF of 5 December 2007, reporting by the Albanian side on the relevant chapter included exactly this issue; it was said that its completion was at its last phase and that it would be soon operational. However, there is no information that it has been finished.

129 NPISAA, September 2007, page 344,345.

Transnational Organised Crime on 10 December 2007. On January 2008 the Criminal Code was amended in order to reflect the commitments that derive from this protocol.

On the other hand, no legal initiative to amend legislation on witness and justice collaborators protection has been taken. This element assumes special importance after the mysterious death of a key witness of the Gërdec tragedy after which polemics between institutions such as the Prosecutor's Office and State Police emerged. Similarly, this element is important in view of other cases in which witnesses failed to appear in important criminal proceedings that are taking place in Albania.

One of the important institutional developments in this area is the transformation of the Sector on Crime Information Analysis and the Sector on Witness and Justice Collaborators Protection into a Directorate. In addition a toll free telephone line (0800 12 12) where trafficking cases can be reported has been made operational. However, the database on trafficking victims and a number of other initiatives for their rehabilitation have not been completed yet; they still depend on projects financed by foreign donors.

The state budget for 2008 does not provide for this. But on the other hand the Albanian Government has adopted a new Strategic framework on the Fight against Trafficking in Human Beings, which should be monitored continuously – Council of Ministers Decision no. 1083 of 23.07.2008 on the adoption of the 2008-2010 National Strategy on the Fight against Trafficking in Human Beings and the supplementary document the National Strategy on the fight against child trafficking and protection of children who are victims of trafficking¹³⁰.

With respect to international cooperation against organised crime and illegal trafficking, Albania has ratified the Council of Europe Convention on Action against Trafficking in Human Beings and has adopted Law no.9871, of 11.02.2008 on the ratification of the agreement between the Republic of Albania and the Republic of Italy supplementing the European Convention on Extradition of 13 December 1957, and the European Convention on Legal Assistance on Criminal

130 Official Journal Issue 131 of 2008, page 5775.

Matters of 20 April 1959, which aims at facilitating their implementation¹³¹. Also, on 5 March 2008 the agreement between the Council of Ministers of the Republic of Albania and Poland on cooperation in the fight against organised crime and other crimes was adopted in principle.

A project of Euro 1.0 milion aimed at intensifying fight against terrorism and organised crime is being carried out at the MoI through the CARDS 2005 programme. At the same time there is a twinning project with the Austrian Police “Developing the State Police capacities” concerning collection and analysis of crime related information; this project aims at strengthening the Directorate of Crime Information Analysis. Another twinning project with the English Police aims at improving capacities at the Special Operations’ Sector. On the other hand, however, the Cross Sector Strategy against organised crime, trafficking and terrorism, which was considered as a matter of priority in 2008, has not been adopted yet.

As mentioned above, it is necessary to work faster in connection with amending the Law on Witness Protection as an important part of the fight against organised crime, especially through encouraging and supporting women who have been victims of trafficking and often withdraw their reports against their tutors because of fear and threats to their lives. The National Reference Mechanism for Victims of Trafficking should increase cooperation with other civil society organisations dealing with rehabilitation of victims of trafficking.

With regard to trafficking in stoled vehicles, the Albanian Government adopted thorough Decision no.522 of 23.04.2008 the National Action Plan for Trafficking in Stolen Vehicles. But this document should be harmonised with the activity of a number of other responsible institutions including in particular the MoF, the Customs’ Directorate, the Tax Directorate; the role these institutions in the process should be clearly defined¹³².

While the fight against organised crime constitutes a main obligation in the framework of the Visa Liberalisation Roadmap, which was given to the Albanian

131 Official Journal Issue 26 of 2008, page 1229.

132 Official Journal Issue 72 of 2008, page 3156.

Government on 3 June 2008. This roadmap determines clearly the measures that the Albanian authorities should take in order to ensure free movement without visa for all Albanian citizens. These measures include security of documents, border management, fight against illegal migration and organised crime and corruption and those concerning the area of fundamental freedoms.

4.8 Fight against drugs

The fight against drugs, as part of obligations of Albania in its fight against illegal trafficking¹³³, continues to be a problem because of the fact that Albania is still considered a transit country for drugs trafficking to the Western European countries. The partial implementation of the Anti-drugs Action Plan and of the recommendations of the Dublin Mini Group is related to the lack of cooperation of state structures in the fight against this type of trafficking and continuous lack of qualifications of the administrative capacities of these structures. Increasing awareness on this phenomenon and setting clear legal procedures for managing, handling and disposing the quantities of drugs that were seized continues to be problematic¹³⁴.

In order to address the priorities in the area of fight against drugs, the Albanian Government provided in NPISAA for the creation and operation of the screening office and the determination of appropriate conditions for checking vehicles at the border crossing points in Qafë Thana¹³⁵. No legal initiative or measure provided for in the NPISAA in connection with the screening office were realised during the monitoring period. These would have facilitated the implementation of the Anti-drugs Strategy and the National Action Plan. With the UNODC assistance, a new structure was created at the Qafë Thana customs' office in order to strengthen control in the fight against drugs.

133 European Commission Progress Reports for 2007, 06/11/2007, SEC(2007) 1429 , COM(2007)663 Final, pg. 46.

134 See NPISAA, September 2007, page 347.

135 See NPISAA, September 2007, page 347.

The Government has focused only on seizure of light and synthetic drugs but it has not taken any concrete action to offer development programmes in the areas where narcotics are cultivated¹³⁶. The reports of the US State Department and of the United Nations Office for Drugs and Crimes indicate high levels of production and trafficking in drugs in Albania¹³⁷.

4.9 Prevention of money laundering

Fight against money laundering is considered as one of the main priorities of the Albanian Government in order to fulfill the SAA obligations¹³⁸. Unsatisfactory results are related to the economy being predominantly cash-based¹³⁹, the gaps in the Money Laundering Law, inconsistencies between the Criminal Code provisions and those of the Customs Code, limited capacities of the public administration, failure of institutions involved in the fight against money laundering to cooperate.

The fight against money laundering, according to NPISAA, focuses on several main directions such¹⁴⁰: better implementation of legislation in the area of fight against money laundering and alignment of legislation with the *acquis* with respect to judgements, seizures, localisation, freezing of assets; strengthening the capacities of the Financial Intelligence Unit, the Prosecutor's Office, the Financial Police and Economic Crime Police through ensuring the necessary technological and

136 The Government is facing the public opinion even with respect to the so-called "Lazar Syndrome", which according to media news has been presented as a "selective approach" that the Government has adapted to certain areas that have political affiliation to the Government where narcotics are cultivated. This may damage the credibility of police structures in the framework of the fight against drugs.

137 See the report UNODC 2007 available at http://www.unodc.org/pdf/research/wdro7/WDR_2007.pdf

138 See articles 4 and 82 of the SAA.

139 European Commission Progress Report 2007, 06/11/2007, SEC(2007) 1429, COM(2007)663 Final, page 45

140 NPISAA, September 2007, pg. 349,350

financial resources and improving cooperation between institutions; improving cooperation with homologue units in countries that intend to sign mutual Memorandums of Cooperation.

The Financial Intelligence Unit remains dependant on the MoF for its budget and staff. Also, the Joint Investigative Unit for Economic Crime and Corruption is not functioning properly because of reasons related to staff recruitment. The Agency for the Administration of Seized and Confiscated Assets has a staff and budget determined after the Government adopted Decision no.1106 of 30.07.2008 on the determination of the structure of employees of the Agency for the Administration of Seized and Confiscated Assets. But the implementing legislation concerning effective administration of confiscated assets is not place yet¹⁴¹.

The General Directorate for Money Laundering Prevention at the MoF has not finished the process of signing memorandums of understanding with all members of the Egmont Group in connection with this phenomenon. Inter-institutional cooperation continues to be difficult, especially with the Customs and Tax Office. Casinos and gambling remain uncontrolled. According to the Council of Ministers Decision no.462 of 16.04.2008 on the creation and manner of functioning of the Gambling Supervision Unit, this undertaking should have structure capable of ensuring supervision and it should be strengthened further¹⁴². The number of cases identified as money laundering cases remains low in Albania despite the fact that almost half of the economy of the country is informal.

As part of the implementing measures for the period of time 2007-2008, the *Task Force against Economic Crime* at the Tirana Prosecutor's Office started functioning. On the other hand *Sections against Money Laundering* were set up at Regional Police Directorates but their level of expertise in this field is still inadequate especially at the local level. The *Sector on Fight against Money Laundering and Financial and Economic Crime* at the MoI was reorganised through creating the Directorate of Economic Crime at the Investigation Department of this ministry. Thus, one of the implementing measures provided by NPISAA, was carried out during the period of time 2007-2008.

141 Official Journal Issue 130 of 2008, page 5744.

142 Official Journal Issue 76 of 2008, page 3381.

The General Directorate of Fight Against Money Laundering at the MoF and other institutions that cooperate with this directorate, have benefited from a fund of Euro 1.7 million in the framework of a project that is being implemented through the financial aid instrument, that is CARDS 2004. This Directorate is in the process of getting involved in a twinning project with Germany. This project has a budget of Euro 1.3 million through which the setting up of an IT system will be made possible. At the same time this Directorate has a new intranet system that enables quick information flow and preserves confidentiality. Also, in the framework of CARDS 2006 the General Directorate of Fight Against Money Laundering at the MoF intends to install an analytical software that will enable the Directorate to make special analysis that will ultimately increase its prevention capabilities.

Delays in reducing the cash-based economy and the gaps of legislation in controlling the initial source of foreign or local investments, at the central or local level, should be among the priority problems to be addressed. In this framework the Albanian Parliament has adopted recently Law no.9917 of 19.05.2008 on the prevention of money laundering and terrorism financing, which offers a better legal structure for increasing the fight against money laundering¹⁴³.

It is important to simplify from an institutional point of view a number of structures that make cooperation difficult and that are distributed in various institutions including the Task Force against Economic Crime at the Tirana Prosecutor's Office, (SIS, the MoF, the MoI, the General Prosecutor's Office) the Sector on Fight against Economic Crime and Corruption at the Directorate against Organised Crime at the General Prosecutor's Office, the Directorate on Fight against Money Laundering at the MoF, the Sector against Financial Crime and Money Laundering at Directorate of Organised Crime at the General Directorate of State Police.

143 Official Journal Issue 83 of 2008, page 3645.

4.10 Fight against terrorism

Albania has responded through some concrete commitments to the SAA obligations in connection with the fight against terrorism¹⁴⁴. Despite the willingness of the Government to join those countries that have taken concrete steps with respect to fight against terrorism, Albania continues to lack an Anti-terror Strategy, which would make the division of competences in this area clear. As mentioned earlier, the Cross Sector Strategy against organised crime, trafficking and terrorism, which was determined as a priority for 2008 has not received the final approval of the Government and has been returned for revision¹⁴⁵.

Albania needs to revise its legislation in order to bring it line with international standards on prevention of terrorism, including the definition of terrorism¹⁴⁶. The lack of cooperation among state structures, especially between judicial and police authorities, as well as the lack of a coherent system for coordinating data collection and processing, is identified as another problem that prevents addressing this problem in a complete manner¹⁴⁷.

The Council of Ministers adopted on November 2007 the list of persons declared as financers of terrorism and on December 2007 Albania adhered to the Memorandum of Cooperation on State Control of Ports.

Despite the fact that the *Sector of Fight Against Money Laundering and Terrorism Financing* at the MoI has been set up there is no good coordination among the responsible state structures. On the other hand it should be noted an improvement in completing the legal framework through the Council of Ministers Decision no. 140 of 13.02.2008 on the manner of administration of the immovable property seized in the framework of measures against financing of terrorism and Law no.9917 of

144 See articles 5 and 82 of the SAA.

145 According to the Integrated Plan of the MoI it has been returned for review (<http://www.moi.gov.al/images/pdf/pimb2008.pdf> (the Integrated Plan of the Ministry, page 7).

146 2007 European Commission Progress Report, 06/11/2007, SEC(2007) 1429 , COM(2007)663 Final, pg 48,49.

147 European Partnership with Albania [06/11/2007 COM(2007)] page 14, 15, 22.

19.05.2008 on the prevention of money laundering and terrorism financing. This legal framework will have a contribution in improving cooperation¹⁴⁸.

Nevertheless, the blast at an ammunition dismantling depot in Gërdec on 15 March 2008 has put into question the effectiveness of security institutions, which have a primary role in the fight against terrorism. Also, the National Cooperation Commission on the Fight Against Terrorist Acts, under the management of the Prime Minister has not been set up yet.

4.11 Police

Strengthening the Albanian institutions that are involved in the fight against crime and negative phenomena is an obligation that derives from the SAA¹⁴⁹. A number of problems were identified in the monitoring period. These relate to the cuts in number of police personnel, which had an effect on the capacities of several units as well as on other aspects of ineffective management by police and prosecutor's offices¹⁵⁰.

The Albanian Government has identified in the framework of NPISAA¹⁵¹ the following as priorities for strengthening the capacities of police structures:

- Improving the management at the State Police and full implementation of the State Police Law;
- Strengthening the Internal Control Service and starting procedures against incriminated police officers, creation of a manual of procedures for all police officers¹⁵²;

148 Official Journal Issue 29 of 2008, page 1363; Official Journal Issue 83, of 2008, page 3645.

149 See article 78 of the SAA.

150 2007 European Commission Progress Report, 06/11/2007, SEC(2007) 1429 , COM(2007)663 Final, page 47.

151 NPISAA, September 2007, pg 354,355.

152 The Council of Ministers has passed the new draft law on the Internal Control Service at its meeting of 16.07.2008 (see <http://www.keshilliministrave.al/?fq=brenda&m=news&lid=8864>). This draft is currently being discussed by the Parliamentary Committees but there have been debates in

- Accelerating agreements with EUROPOL and improving community policing¹⁵³.

The Regulation of the Personnel of the State Police was adopted during the reporting period. Also, the corresponding functions for the State Police grades and the rules for their equivalentation were determined. A number of decisions were made, including the Council of Ministers Decision of 01.05.2008 on the determination of special equipment, colors and signs for State Police vehicles, the Council of Ministers Decision no.730 of 28.05.2008 on the approval of the types of weapons and chemical substances (neoparasitology) and other means for using force by the State Police, and the Council of Ministers Decision no.786, of 04.06.2008 on the adoption of the Regulation of Discipline of the State Police¹⁵⁴. However, under the new Law on the State Police and the new Regulation on Grades, making functions equal to grades and the appointment of the General Director of State Police by the Minister of Interior may increase the risk of political control over the State Police¹⁵⁵.

The Directorate of the Data Processing Centre, which is a part of the new structure of the General Directorate of the State Police should have its functions and competences determined through a special order of the Minister, especially in view of the amendments to the Law on Interceptions, under which this directorate will

connection with specific articles about clashes and taking over of competences by other security bodies such the General Prosecutor's Office and the AIS. The draft law aims at moving the Internal Control Service away from political influences but at the same time the draft law provides that recruitment of the Internal Control Service employees is done through competition but the possibility of direct employment from the Minister of Interior without any competition at all is not excluded.

153 During the first meeting of the stakeholders on 09.09.2008 the new EU Mission PAMECA III anticipates that the Border Police will be at the centre of its three year activities and it will spend Euro 5,5 million (see:www.moi.gov.al).

154 Official Journal Issue 72, of 2008, page 3185; Official Journal Issue 95 of 2008, page 4119; Official Journal Issue 100 of 2008, page 4381.

155 There are problems with the implementation of the new grades according to the New Law on the State Police at the Directorate of Regional Police because of the fact that a number of experienced officers after signing their demotion in 2006 -2007 in order to keep their positions, are now facing the fact that other persons nominated during these years are receiving higher grades regardless of their inferior experience. According to the Albanian press (Gazeta Shqip 28.08.2008) complaints on this issue have reached the Peoples' Advocate. This may have a negative effect on the career and professionalism system in police.

have the responsibility for managing, classifying, and using data of an individual nature and for guaranteeing the process¹⁵⁶.

Certification of classified levels “Secret 2” in the information network of the Police (TIMS, MEMX, RIMS) should go hand in hand with continuous training of the police staff, which remains inadequate. As to international police cooperation, during the monitoring period, cooperation agreements were concluded, including Law no.9893 of 27.03.2008 on the ratification of the agreement between the Council of Ministers of the Republic of Albania and the Government of Montenegro on cross border police cooperation, Law no.9955 of 17.07.2008 on the ratification of the agreement between the Council of Ministers of the Republic of Albania and the Republic of France on the cooperation in the area of internal security. However, it is necessary to boost the efforts on signing agreements on fight against cross border crime with other countries, especially neighbouring countries¹⁵⁷.

156 Law no. 9885, of 03/03/2008 on some additions and amendments to Law no. 9157, of 04.12.2003 on interception of telecommunications (Official Journal Issue 44 of 2008, page 1985).

157 Official Journal Issue 46 of 2008, page 2060; Official Journal Issue 123 of 2008, page 5431.

5. Institutional Framework and Administrative Capacities for Managing The European Integration Process

The **Parliamentary life** is sometimes characterised by a spirit of consensus that enabled the institutional Framework And Administrative Capacities For Managing The European Integration Process

The coordination of the European integration process covers the following functions:

- Developing policies in order to fulfil obligations arising from this process;
- Cooperation of institutions and main actors in policy development and implementation;
- Approximation and harmonisation of legislation with the *acquis communautaire* and translation of legislation;
- Setting up and making the administrative structures for implementing the approximated legislation operational;
- Community assistance coordination and management;
- Informing and communicating with the public about the impact of this process.

Several institutions are involved in the management of this process:

- The Inter-ministerial Committee on Integration¹⁵⁸ as high level forum for the representation of the main state institutions. This committee discusses the Strategies for European and EuroAtlantic Integration and follows their implementation through making concrete proposals for intervention to the Council of Ministers.
- The Technical Working Committee for the SAA Implementation, as the highest forum where European integration policy development, coordination and monitoring is discussed¹⁵⁹;
- The MoEI, whose mission is technical direction and coordination of the integration process, through approximation of legislation, integration policy development, coordination of financial assistance and informing the public about this process¹⁶⁰;
- The European Integration Units at the line ministries are internal structures of those ministries, designed to coordinate the European integration process in the area of action of the ministry to which they belong. They serve to bridge communication and coordinate work with the European Integration Units in other line ministries and the MoEI¹⁶¹;
- The European Integration Parliamentary Committee, which focuses its work mainly on European integration issues through monitoring the compatibility of drafts of laws with the *acquis communautaire* and through writing reports on those drafts for other parliamentary committees¹⁶²;

158 See Council of Ministers Decision no. 753 of 1.12.1998.

159 Order of the Prime Minister No. 33, of 2.4.2007.

160 Council of Ministers Decision no. 580, of 10.09.2004 "On the area of activity of the Ministry of European Integration" point 1. From the order in which the elements of the European integration process are listed in this decision, it can be considered that the first important element is approximation of legislation in the framework of the SAA.

161 Council of Ministers Decision no. 179, of 22.2.2006 "On the createion of European Integration Units at the Line Ministries".

162 The Role of the Assembly in the Stabilisation and Association Process is defined in law no. 9252, of 08.07.2004 "On the work of the Assembly in the process of integration of Albania into the European Union".

Coordination among governmental institutions in connection with European integration issues, with regard to coordination, monitoring and planning of commitments undertaken in the framework of the SAA and European Partnership with Albania remain problematic¹⁶³.

Albanian Government periodical reports to the European Commission are prepared by the MoEI on the basis of reports of the line institutions. These reports are not adopted by the Council of Ministers or any other high inter-institutional structure (such as the Inter-ministerial Committee on Integration or the Technical Working Committee for Implementing the SAA) before they are sent to the European Commission¹⁶⁴. The report of the Government, which is divided into two contributions cover two different periods of time, has been discussed at the Council of Ministers' meeting.

These reports are not available to the public as opposed to the Annual Reports of the European Commission for Albania, which are published both by the European Commission services and the MoEI at its official website.

Also, the Assembly does not exercise a supervisory role in this process. The Minister of Integration should report to the Parliamentary Committee of Integration every month; this has happened only once during this reporting period. Moreover, this report is not structured in a way that covers the problems of European integration on a monthly basis, which would enable the Assembly, more specifically the Parliamentary Committee on European Integration to monitor the level of fulfillment of obligations that derive from the SAA and to encourage institutions and other actors in this process to fulfill their obligations properly.

According to Law no. 9252, of 8.7.2004 "On the work of the Assembly in the process of integration of Albania into the European Union" also known as the Zela Law, the Assembly should do each year a comprehensive assessment of the progress in

163 2007 Progress Report for Albania COM (2007)663 – *Government, page 6.*

2007 European Partnership 3.1. Short-term priorities / Key priorities – Political criteria/ Democracy and the Rule of Law /Government pages 5 and 6.

164 Council of Minister's Decision no. 463, of 5.7.2006 as amended, provides that the MoEI monitors NPISAA implementation by other line ministries and reports to the Council of Ministers without providing for the competence/ responsibility of the latter to adopt the report before it is sent to the services of the European Commission.

terms of rapprochement of Albania to the European Union, through holding a plenary session with debate. To that end the Council of Ministers should present an annual report, by the first two months of each year, in connection with EU-Albania relations for the coming year. This report should analyse especially the decisions taken by the European institutions, the activity of which has effects on the cooperation of Albania with the EU, measures taken by the Government as a result of these decisions, as well as policies developed to adopt sector policies and legislation that prepares Albania for EU membership. Contrary to these obligations, the Council of Ministers has not presented any such report during the months of January and February 2008. The same can be said for the previous years, for 2006 and 2007.

5.1 The Inter-ministerial Integration Committee and the Technical Working Committee for the SAA Implementation

The Inter-ministerial Integration Committee (IIC) is the highest structure at the Government level that directs the European Integration process of Albania. This committee is composed of two representatives of each ministry and one representative for each other institution under the Council of Ministers. If we refer to the Council of Ministers Decision no.753 of 1.12.1998, which covers the manner of functioning of the IIC and its competences, this structure should meet in its full composition once per month and in sections (commissions) according to the problems and a calendar determined in advance. Representatives of the Assembly, President's Office, political parties, the private sector, NGOs, the community of scholars, local authorities, media and foreign experts may be invited to attend the meetings of the IIC.

Despite the obligation to meet as explained above, the IIC has not functioned regularly since 2005. After a long time that it had not functioned, the IIC met three times during 2008, on June¹⁶⁵, August¹⁶⁶ and October¹⁶⁷ in order to coordinate the fulfilment of the obligations of the Albanian institutions in the framework of the annual report of the Council of Ministers to the European Commission services. It should be noted that the IIC has become active only on the verge of the final preparation for the Annual Report that the European Commission prepares for Albania.

In addition to the above, the functions of the IIC overlap with those of the Technical Working Committee for the SAA Implementation (TWCSAAI). This has not led to the change of the normative act that establishes the IIC and determines the manner of its organisation and functioning.

The TWCSAAI is co-chaired by the Minister of European Integration and the Minister of Finance. Similarly, to the IIC the TWCSAAI is composed of representatives it is composed of high level representatives of the line ministries and of heads of central institutions under the Council of Ministers and has the duty to coordinate and give orientation to Albanian institutions in order to fulfil the obligations deriving from the European integration process¹⁶⁸.

Besides the fact that there is an overlap of functions and a lack of clear division of competences between these two structures the TWCSAAI, since its constitution on 2 April 2007, has met only twice. The TWCSAAI has not carried out its functions as provided in the Prime Minister's Order at some key moments of the process of which the following can be mentioned:

165 The issue of addressing the recommendations for the Albanian Government related to the problems identified in the Progress Report of 2007 and other issues were discussed at the meeting of 11 June 2008 of the Committee.

166 The assessment of the progress achieved as reported by the line ministries for the period of time September 2007 – July 2008 was at the centre of the meeting of 5 August.

167 The additional contribution that should be sent to the European Commission services on the verge of the Annual Report of the European Commission for Albania was at the centre of the meeting of 1 October 2008. The issue of the next steps to be taken for achieving membership to NATO were discussed and approved in this meeting.

168 The TWCSAAI gives orientation and coordinates all policies related to the implementation of the obligations deriving from the European integration process, directs and coordinates the process of NPISAA updating, evaluates and approves the documents prepared by the Albanian Government, assesses and approves the negotiation position of the Albanian party during negotiations with the Community party in the process of alignment of legislation.

1. analysing the negotiation positions of the Albanian party during the negotiation of the Facilitation Visa Agreement with the Community party;
2. updating NPISAA within the shortest time in response to the European Partnership for Albania for 2007;
3. assessing and finalising the NSDI with regard to its harmonisation with NPISAA; and
4. assessing the legal measures foreseen in the framework of preparing the annual state budget with regard to respect of the principles set out in Interim Agreement.

There has been an information process in the meetings of these two structures with a view to monitor the process. Nevertheless, there has been no decision taken in connection with the identification of responsibilities, quality measuring and addressing solutions in the period between two meetings. Thus, these managing structures have exercised only part of their functions. In addition, in no case has there been institutional involvement of the Prime Minister in relation to monitoring the duties deriving from this process or translating problems into legal, institutional, budgetary measures or into action plans.

5.2 The Ministry of European Integration

The object of the activity of the MoEI is approximation of domestic legislation with that of the EU, development of integration policies, coordination of financial aid and public information about this process¹⁶⁹. Contrary to this important mission the role of MoEI has been weak because of the lack of administrative capacities¹⁷⁰, its organisational structure, which is not conceptualised in line with

169 Council of Ministers Decision no. 580, of 10.09.2004 "On the area of activity of the Ministry of European Integration".

170 See the 2007 European Commission Report for Albania, 2007 {COM(2007) 663} – Government, page 6.

its basic functions as determined in the relevant decision of Council of Ministers, as well as because of difficulties in coordinating the process of fulfillment of the SAA obligations in the absence of a clear involvement of the institution of the Prime Minister in this process.

5.2.1 Approximation of legislation

Unlike its counterpart institutions in the candidate and potential candidate countries, the MoEI does not have a special structure responsible for the process of approximation of legislation with the *acquis communautaire*. But the lack of sufficient staff with legal qualifications is of more concern rather than the lack of a special structure that would facilitate the coordination of approximation of legislation. This situation has not been addressed through providing for capacity strengthening even in NPISAA¹⁷¹.

Currently the MoEI has 11 lawyers out of 18 employees who are responsible for the process of approximation of legislation and verification of its compatibility with the *acquis communautaire*¹⁷². Besides lack of consolidated experience and qualifications in the area of approximation of legislation, the number of personnel is insufficient, which hinders the MoEI in carrying out its functions.

The existing capacities are inadequate even for purposes of directing or giving orientations to 20 inter-ministerial working groups for approximation of legislation, indicated in NIPSAA as a short-term activity (2007-2008)¹⁷³, in connection with which MoEI should offer assistance through its expertise. No working group at the inter-ministerial level has been institutionalised for approximation of legislation during the reporting period.

The limited role of the MoEI in the process of approximation of legislation as well as its failure to be involved in several cases in the process of drafting important

171 NIPSAA 2007 – 2012, 3.27. Orientation, Coordination and Monitoring the European Integration Process, page 504 – 507, Annex 3 Number of employees by year.

172 There are two lawyers out of four employees at the Directorate of Justice and Home Affairs and nine lawyers out of 14 employees at the Directorate of Internal Market.

173 NPISAA 3.1.2 Short-term Implementing Activities pg. 506.

laws for the implementation of the SAA, puts into question the performance of the functions of this institution in connection with the process of approximation of Albanian legislation with that of the EU. For example the MoEI was involved in the drafting process of only few out of a number of laws adopted during the monitoring period; the law on commercial companies and the e-signature law. The MoEI was not involved in the drafting of the Law on Titles and Trade in Titles (securities law) in the Republic of Albania, the Personal Data Protection Law, the Law on Food, the Law on the Profession of Advocates, the Law on the State Advocate, the Law on Private Enforcement Service, the Law on Tax procedures, and the Law on Prevention of Money Laundering and Financing of Terrorism¹⁷⁴.

The cooperation among the MoEI, the Council of Minister, the Assembly and the Centre for Official Publications also remains problematic; this prevents the MoEI to obtain accurate information in connection with changes that may be made to legal drafts during their consideration in the Assembly or publication in the Official Journal.

The analysis of the functions of the MEI structures shows that the Directorate of Internal Market is responsible among others for: (i) maintaining the data base on adoption of the *acquis communautaire* under the TAIEX programme, (ii) updating it with the legal acts that have been approximated to the *acquis* and (iii) preparing the procedures for notifying the degree of compatibility of normative acts to the services of the European Commission.

The interviews held with employees of this directorate and the analysis of its functions from a realistic point of view show that there are no special units or responsible persons in this directorate to perform the above mentioned functions. Reports on approximation of legal acts to the *acquis communautaire* are prepared sporadically and in an unorganised way by each MoEI employee who assesses the degree of compatibility only for drafts of laws that were sent to the MoEI for opinion. Considering that a large number of drafts that are adopted by the Council of Ministers or the Assembly do not go to the MoEI for an opinion notwithstanding of the obligation set out in the Council of Ministers Rules, the result is that not all acts are reported for purposes of the TAIEX System.

¹⁷⁴ Information obtained from the MoEI, line ministries and other institutions involved in the drafting process of these laws.

Nevertheless, reporting of legal texts to TAIEX, is limited only to a giving of information about the title, goal and degree of compatibility with the *acquis communautaire*. The contents of the drafts are not reported in any of the official languages of the EU and there is no reporting of those parts of the *acquis communautaire* that are adopted in Albanian language. Also, the MoEI does not have a database that identifies the level or the percentage of legislation that is approximated to the *acquis communautaire*. The database would then need to be updated through reports of line institutions that will be sent to services of the European Commission.

The failure of the MoEI to exercise its managing and monitoring role in the process of approximation of legislation puts into question the quality of drafts that were approximated from the point of view of implementation of the SAA commitments. The most typical case was the law on some amendments to the tax procedures law, which was reported in the 2007 European Commission Report for Albania as being in conflict with the principles of the *acquis communautaire*. This law was later declared unconstitutional by the Constitutional Court

5.2.2 Coordination of Community assistance

As mentioned above in connection with analysing the MoEI functions, the coordination of Community assistance and the supervision of effective use thereof constitutes one of the main functions of this ministry. This function was entrusted to the Directorate of Institutional Support and Integration Process, which has four sectors: the Sector of Pre-accession Instruments, the Sector of the Reporting Methodology and Translation, and the Sector of Documentation and Communication with the Public. This directorate coordinates work mainly with the line institutions and the Department of Coordination of National Strategies and Foreign Assistance at the Council of Ministers. After decisions have been taken by the Strategic Planning Committee the relevant priorities are discussed with the Delegation of the European Commission in Albania, which with appropriate arguments may modify the methodology and the instruments of the realization of the priority that will ultimately make the revision of the decision by the Committee necessary.

The Regional Cooperation Sector is the structure responsible for the coordination of the EU assistance programs with the local authorities. In order to achieve a better coordination a contact point at the relevant ministry or local authority has been assigned to each programme, which will be financially supported by the technical assistance of the European Commission.

The MoEI has the duty to inform all interested parties on every programme at the moment of the launching of the call for project proposals. The practice of information has been rudimentary in nature so far and concerned with the involvement of associations, municipalities, communes or regions in the process. The MoEI information has left out of participation civil society organisations, which are also beneficiaries of cross broder cooperation programmes.

Despite the fact that the MoEI has organised a series of trainings, which has not covered all the interested regions, its limited human resources make the efficient cooperation with the local government structures impossible.

From a broader perspective, the main problems that were identified in the way of functioning of the system of coordination and monitoring of Community assistance relate to:

- The structural organisation mentioned above, which reflects inadequate focus on the issue of coordination of Community assistance because the Directorate of Institutional Support and Integration Process is responsible for three different areas, whose administration in a centralised way is difficult.
- Fewer daily activities and contacts between the MoEI and the Delegation of the European Commission. In its procedures for programming assistance, the MoEI discusses with the line ministries without the Delegation of the European Commission being present and in many cases it is necessary that the parties discuss the priorities from the beginning when sending them to the relevant structures of the Delegation;
- The direct lines of communications kept by the line institutions with the European Commission Delegation in the framework of implementation of Community funded projects, giving *ex-post* notice to the MoEI about

various problems, except for cases of disagreement with the implementing companies. This bypassing of the MoEI puts this institution in a position that makes the monitoring of effective use of Community assistance as well as planning of priorities for the coming years quite difficult; this transforms the MoEI into a secretariat with limited coordination competences.

5.2.3 Translation of legislation

The process of translation of the *acquis communautaire* into Albanian language and that of translation of Albanian legislation into one of the official languages of the EU is a process that has not started yet as a consequence of failure of Albanian authorities to consider it as a priority and because of frequent changes of the responsible structures.

The Council of Ministers Decision no. 119, of 7.3.2007 “On setting the procedures for translating European Union legislation into Albanian language and translating Albanian legislation into one of the languages of the European Union” determines the translation procedures, which should be followed by the the MoEI in its area of activity¹⁷⁵. This decision provides that translation of Albanian legislation is to be done only when requested by the services of the European Commission.

This decision was followed by an order of the Prime Minister on March 2007 dealing with the creation of the Directorate of Translation of the *Acquis* at the MoEI. This directorate should have nine employees and two sectors: the Sector of Methodology and Control and the Sector of Management of Translation Procedures. Despite the time limits given in the Order of the Prime Minister, the Directorate of Translation of the *Acquis* has not started its operations even though the rcedures for the recruitment of the employees of this directorate have started.

The state budget, on the other hand, provided for a special fund of Lekë 40.000.000 for the translation of EU legislation from English into Albanian. We note that these funds are to be used only for translating EU legislation from English into Albanian

¹⁷⁵ Council of Ministers Decision no. 580, of 10.09.2004 “On the area of activity of the Ministry of European Integration”.

and not for translating Albanian legislation that has been approximated into one of the official languages of the EU. Nevertheless, the findings of this report are that part of these funds has been reallocated from the item of the budget on translation of legislation to another item of MoEI operational costs¹⁷⁶.

5.2.4 Information and communication

Communication in connection with the European integration process is of primary importance to ensure the support of citizens in this process. The MoEI has drafted the 2008 Action Plan for increasing awareness on the process of integration into the EU, which follows and reflects to a large extent the previous strategy of communication of the MoEI. This Action Plan identifies as target groups the wide public, the media, policymakers, the youth, teachers, associations, the business community, scholars, civil servants and NGO representatives.

Information obtained from the MoEI employees indicates that the process of drafting this Action Plan as well as the identification of its target groups was not based fully on any preliminary study of the impact of the previous Communication Strategy.

With the support of the GTZ and the United Kingdom Embassy, the MoEI did a preliminary survey¹⁷⁷ in 2007 on the knowledge of officials of the central and local administration, independent institutions and justice institutions about the SAA, the European integration process and its impact. According to this survey the employees of the public administration, independent institutions and judicial institutions are the least informed groups.

The Action Plan does not reflect in a clear way the recommendations of this survey and does not include the judiciary as a target group for the process of communication; the activity of the judiciary will be closely related to the implementation of the SAA. Rather than a strategic document of communication this plan should have been conceptualised as a strategy of intensive information

176 Information received from interviews with employees of the Ministry of Finance.

177 "Albania and the European Community – the Stabilisation and Association Agreement (SAA) and the aftermath", Tirana 2007 prepared by the MoEI, British Embassy in Tirana and GTZ.

and of institutionalisation of bridges of communication with various interest groups. The process of communication would be impossible under conditions such as the low level of knowledge of the integration process in the central and local public administration, in independent institutions and in the judiciary.

The MoEI has organised a competition for students “Europe and I”, which was finalised on 9 May as well as a number of activities for high school students in connection with the European integration process. Also, a Memorandum of Cooperation was signed between the MoEI and the Rectorate of the University of Tirana, which provides for setting up a Board of Distinguished People and for revising the school curricula with a view to include European Law in the curricula of all departments of the Social Sciences Faculty.

While not providing for concrete time limits for completing each activity, the Action Plan provides for the development of an Annually Planned Agenda of Communication by the Communication Task Force and adoption thereof by the Minister of European Integration. This agenda should provide in an accurate manner the activities and the budget needed for carrying out these activities. Interviews with MoEI employees, who are members of the Communication Task Force, indicate that no such agenda has been adopted for 2008.

A rough estimate of the total costs of the activities of this plan is that varying from Euro 850.000 to 1.121.000; the MoEI budget amounts to Euro 2.350.000 or 1.8 % of the funds provided for in the Action Plan. While, 1.8% of the total funds foreseen for the implementation of the Action Plan are provided for in the state budget of the MoEI, this plan does not identify other possible resources for financing the uncovered costs.

Based on the above mentioned data it may result that this Action Plan is incapable of being implemented for as long as the financial resources needed to cover it fully have not been identified. Failure to implement this plan in 2008 may result in failure of the MoEI to achieve its goal provided by MBP as a standard of the politics for programming institutional support in terms of European integration, which is informing 79% of the population about the EU and Stabilisation and Association Process.

5.3 European Integration Units

Units of Integration at the line institutions are units responsible for coordinating the implementation of commitments undertaken in the framework of the European integration process. At the same they support the MoEI in the framework of coordination of fulfillment of the SAA obligations.

Although these structures should have been set up¹⁷⁸ our finding is that they were fully set up as special organisational structures only at the Ministry of Agriculture, Food and Consumer Protection and the MoI.

In the other remaining line institutions the functions of European integration units are performed as explained below:

- one specialist at the Directorate of International Relations and European Integration, at the MoF;
- one specialist of integration issues at the Legal Directorate at the MLSAEO;
- one specialist of integration issues at the Directorate of Legal Services, Licensing and International Relations and Relation with Europe, at the Ministry of Health;
- two specialists at the Directorate of Project Management and Integration, at the Ministry of Public Works, Transportation and Telecommunications;
- one specialist on integration issues (no special unit) at the Ministry of Education and Science;
- one specialist assigned in the Sector of International Relations and Integration, at the Ministry of Tourism, Culture, Youth and Sports.

The European Integration units were already in place at the time of the adoption of the Council of Ministers Decision requiring the creation of these units within the structures of the line institutions at the MoFA, MoJ, the MoI and at the Ministry of Environment, Forests, Waters Administration.

¹⁷⁸ In fact the 2007 Report of the European Commission for Albania, at page 6, says that: "European integration units were set up in all line ministries to act as contact points for the EU assistance, reporting and monitoring".

Besides gaps in the administrative and hierarchical organisation that make it impossible for these functions to be performed successfully, the number of employees recruited in many line ministries in response to the cases dealt with by them and their needs continues to be insufficient. An integration unit, should in the most simple case have at least three employees; one should have coordination duties, one should have legal qualifications and expertise in alignment of legislation and one should be involved with issues of Community assistance within the institution.

The current organisation of units of integration, being at a low administrative and hierarchical level in the organisational structure of the line ministries and having inexperienced staff, is reflected in their normal and effective functioning. Their functions have been reduced to a mere collection and transmission of information to the MoEI in connection with the preparation of progress reports. They do not perform effectively their other functions, including internal institutional coordination, cooperation with the MoEI and other line ministries with regard to the approximation process, monitoring and reporting at relevant institutions, evaluation of activities of relevant institutions with respect to the European integration process, formulation of recommendations concerning priorities and distribution of human resources and planning institutional support for the integration process.

NPISAA provides in parts of it directly for concrete measures for increasing administrative capacities and human resources in specific areas. However, in no case does NPISAA provide for legislative or implementing measures aimed at addressing problems related to the effective functioning of European integration units as basic structures for coordinating this process.

5.4 The Assembly

There are eight permanent parliamentary committees in the Assembly that follow issues of approximation of Albanian legislation with that of the EU and implementation of institutional measures in the areas that they cover. In order to perform this role, the European Integration Committee should write special reports for the other committees in connection with the compatibility of drafts of laws submitted for approval with the *acquis communautaire*.

The European Integration Committee performs this function only partially as the monitoring of compatibility by this committee is limited only to an assessment of the formal aspects of approximation of legislation¹⁷⁹. The reason for this is the lack of capacities for assessing and analysing the legal provisions that intend to adopt the *acquis communautaire*. The Directorate of Legislation in the Assembly is in a position that is not close to the Parliamentary European Integration Committee, which results in failure of this structure to give the necessary assistance in connection with the process of compatibility of drafts of laws with the *acquis communautaire*. The failure of the Council of Ministers to complete the tables of compatibility of the domestic legislation with the *acquis communautaire* during the process of preparation of legislation only adds to the difficulties.

As a consequence, in the absence of capacities, the Committee takes the certification of compatibility as done by the MoEI for granted, which as analysed above has serious gaps. But the efficient functioning of the European Integration Parliamentary Committee is closely related to the supervisory mechanisms over the Council of Ministers and in particular over the MoEI.

¹⁷⁹ This committee considers primarily whether procedural requirements dealing with presentation of a draft from the Government together with the table of concordance have been met in accordance with the Council of Ministers Decision no. 201, of 29.03.2006 "On some amendments and additions to Council of Ministers Decision no. 584, of 28.08.2003 "On the adoption of the Council of Ministers Rules".

