**Albanian Institutions inputs in view of the special initiative marking the 30th anniversary of the Declaration on the Protection of All Persons from Enforced Disappearance.**

***Question 1.***

Regarding the contribution of the Declaration in the development of domestic legislation, with the amendments to the Criminal Code in 2013, Albania foresees the enforced disappearance as an autonomous crime in Articles 74 and 109/c of the aforementioned Code. This provision is in line with the definition provided in Article 2 of the Declaration of 1992 and the sentence is in accordance with its extreme degree of dangerousness (Article 7 of the Declaration).

*Article 74*

*Crimes against humanity*

(Amended by law no. 8733, dated 24.1.2001, Article 8)

(Amended by law no. 144/2013, dated 2.5.2013, Article 13)

Murders, enforced disappearances, exterminations, enslavement, internment and deportation, as well as any other form of torture or other human violence, carried out according to a concrete premeditated plan, or systematically, against a group of the civilian population, for political, ideological, racial, ethnic and religious motives are punished for at least fifteen years or life imprisonment.

*Article 109/c*

*Enforced disappearance*

(Amended by law no. 144/2013, dated 2.5.2013, Article 25)

Enforced disappearance, through arrest, imprisonment, abduction or any other form of deprivation of liberty of a person, of public officials or of persons acting with their authorization, support or approval, accompanied by denial of the fact of deprivation of liberty or concealment of fate of the person or place in which he is, denying him the necessary assistance and protection, according to law, constitutes a criminal offence and is punishable by imprisonment of seven to fifteen years.

The superior that:

a) is aware that subordinates placed under its effective authority and control are or will be carrying out enforced disappearances, or does not take into account data and information that clearly show this fact;

b) exercises its responsibility and effective control over the activities to which enforced disappearance is associated; or

c) has not taken all necessary and reasonable measures that are within its competence to prevent or punish the person who authorizes, supports and approves the enforced disappearance, or to send the case to the competent bodies of criminal prosecution; is punishable by imprisonment of three to seven years.

When this offence is committed against children, pregnant women or persons who, for various reasons could not be protected, or is accompanied by severe physical suffering, is committed in collaboration, against several persons or more than once, is punishable by imprisonment of ten up to twenty years.

When this offence has resulted in death to any person, it is punishable by imprisonment for at least thirty years or by life imprisonment.

The unlawful taking of children who are the subject of enforced disappearance, or of children whose father, mother or legal representative has been the subject of enforced disappearance, or of children born during the period of enforced disappearance, constitutes a criminal offense and is punishable by imprisonment of five to ten years.

Regarding the statute of limitations for criminal prosecution of the above two offenses in Albania, according to the provisions of the general part of the Criminal Code, Chapter VIII, Articles 66 and 68 provide for the termination of criminal prosecution, sentences and their non-execution, while Article 67 of the Criminal Code “Non-statute of limitations for criminal prosecution” provides that “war crimes and crimes against humanity are not subject to statute of limitations for criminal prosecution”.

Regarding the statute of limitation of the criminal offense "Disappearance by force" provided by Article 109/c of the Criminal Code, taking into account the continuing character of this crime, as defined in Article 8, paragraph 1, letter "b" of the Declaration, although there is no consolidated judicial practice or the implementation of Article 8 of the Convention in the domestic criminal legislation, in the interpretation of Article 122 of the Constitution of the Republic of Albania, the ratification of the International Convention for the Protection of All Persons from Enforced Disappearance (ICED), gives the latter supremacy over domestic legislation.

***Question 2.***

*Article 122 (Constitution of the Republic of Albania)*

1. Every ratified international agreement is part of the domestic legal system as it is published in the Official Gazette of the Republic of Albania. It is directly applicable, except when it is not self-enforceable and its implementation requires the enactment of a law. Amendments, supplements and repeals of laws adopted by a majority of all members of the Assembly for the purpose of ratification of international agreements are made by the same majority.

2. An international agreement ratified by law takes precedence over the laws of the country that do not comply with it.

3. The norms issued by an international organization have precedence, in case of conflict, over the law of the country, when the agreement ratified by the Republic of Albania for participation in that organization, explicitly provides for the direct implementation of the norms issued by it.

The Declaration on the Protection of All Persons from Enforced Disappearance has no legally binding force in the Republic of Albania as long as this international act is not ratified by the Assembly. However, United Nations declarations are guiding acts that establish principles and standards that are taken into account in the drafting of domestic legal acts and the guarantee of those standards set by the United Nations.

***Question 5.***

Albania is a Party in the International Convention On Protection of All Persons from Enforced Disappearance (ICED), since the adoption of the law no. 9802, dated 13.9.2007 “On the Ratification of the UN International Convention "On the Protection of All Persons from Enforced Disappearance”.

Also in accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms and the United Nations International Convention for the Protection of All Persons from Enforced Disappearance, through law no. 83/2018 “On the ratification of the cooperation agreement between the Council of Ministers of the Republic of Albania and the International Commission on Missing Persons (ICMP)”, the cooperation agreement on the establishment of the ICMP office in Albania has been ratified.

***Question 9.***

To raise public awareness about the content of the statement "For the Protection of All Persons from Enforced Disappearances", Institute of Former Political Persecuted Persons (IPP) has held a series of meetings with the community of former persecuted persons, for the rights of the relatives for the missing people from the communist regime in Albania. The following is a list of activities undertaken by our institution:

* Raising public awareness in the written and visual media about the missing people during the communist regime.
* Collaboration with official state institutions, such as the Ministry of Finance and Economy, the Directory of Compensation and Payments where the target group of relatives of formerly politically persecuted persons have to be present at the IPP offices and complete a request/statement for their missing relatives. We have also gathered a database of information obtained from the relatives of the missing people from the crimes of communism.
* Various field meetings were organized throughout Albania with the families of missing persons from the crimes of communism as well as with NGOS, which act in aid of former political persecuted people. Based on its mission, the IPP contributes in promoting memory projects submitted by NGOs representing former political persecuted persons, ensuring their sustainability and visibility.
* We have held various field meetings throughout the territory of the Republic of Albania, with the families of the missing people from the crimes of communism, as well as with NGOs (non-governmental organization) which act to help the former political prisoners. The aim of this institution is to promote memorials submitted by NGOs, which represent former political persecuted persons while ensuring their sustainability and visibility.
* IPP supports national and local NGOs that carry out projects in memorial celebration.

**Question 10.**

The School of Magistrates carries out the professional training of candidates for magistrates, legal advisers/assistants, chancellors and state attorneys through the Initial Training Program, as well as the professional in-service training of the abovementioned categories through the Continuing Training Program. Both training programs are the two main directions of the activity of the School of Magistrates where every year hundreds of judges and prosecutors are trained.

In terms of the topic in question, it is part of the initial training program and part of the continuous training program and is treated as a separate topic or an intertwined part of other topics in the focus of both programs. More specifically, in the initial training program, enforced and involuntary disappearances are treated within the course Criminal Law, the special part, as part of the abduction treatments.

Enforced and involuntary disappearances are also treated in continuous training seminars as main topics or sub-topics.

***Question 11.***

The issue of missing persons in Albania is complex and requires the commitment and coordination of many institutions in the process of recovery, finding burial sites and identifying all persons who were killed by the communist regime during the period 1944-1991. The Albanian state with Law no. 83/2018 has ratified the Cooperation Agreement between the Council of Ministers and the International Commission on Missing Persons (ICMP) and aims to determine the cooperation between the parties to find missing persons during the communist period.

According to the Agreement, in the process, in addition to the responsible authority, several institutions are included in the support, including the institution of the General Prosecutor's Office. These institutions under the responsibility of the Ministry of Interior as the responsible authority of the Albanian side, according to their competencies and the field of services they provide, in cooperation between them, carry out the process of recovery of mortal remains (bones, etc.) and identification of victims, respecting of the provisions of Articles 12 and 24 of the Declaration.

The Prosecution Office is involved in this process only in cases when there are facts or criminal elements, which constitutes the last stage of the process, which must be preceded by the administrative process.

Currently, two prosecutor's offices of general jurisdiction, the Prosecutor's Offices at the Court of First Instance in Tirana and Fier, have registered and are conducting investigations into two mass graves, namely: the so-called place "Mali me gropa" (Dajti Mountain, Tirana) and in the place called Panahor, Mallakastër, Fier.

The Prosecutor’s Office of Tirana, based on the request of the Institute of the Politically Persecuted Persons, on 11 October 2018, has resumed investigations for criminal proceedings no. 2502/2010, registered for the criminal offense provided by Article 79/dh of the Criminal Code "Murder in other qualifying circumstances", a case which has been suspended. The proceedings were recorded on the basis of a report that 11 plastic bags of human bones, thought to have been shot during the communist regime, had been handed over to the IML.

In order to explore the possibility of identifying the remains of 13 persons stored at the Institute of Forensic Medicine (IML) Tirana, it has been used as a new circumstance by the competent prosecutor's office, which in respect of the agreement of the Council of Ministers with the International Commission on Missing Persons (ICMP), has made available to the latter human remaining (bones), at their request, sending the decision to conduct an expert examination to determine their DNA. The prosecution office is still awaiting the conclusions of these expertise.

Based on the report of the Institute of the Politically Persecuted Persons, the Fier Prosecutor's Office registered the criminal proceeding no. 1833/2018, for the criminal offense provided by Article 79/dh of the Criminal Code "Murder in other qualifying circumstances". During the investigation of this proceeding, we deem the exhumation of a mass grave in Panahor / Mallakastër to be a necessary action.

Currently, the Institute of Forensic Medicine has requested the exhumation and forensic examination of the remaining bones, and cooperation is being organized with other institutions involved in this process, referring to law no. 83/2018, which ratified the Cooperation Agreement between the Council of Ministers and the International Commission on Missing Persons (ICMP).

In the beginning of November 2021, the OSCE Presence in Tirana held in cooperation with the institutions involved in this process, a technical working table on the identification and recovery of the bodies of missing persons during the communist regime. It was assessed that it is necessary to draft a working protocol that defines sampling, analysis, surveillance, filming, DNA profiles, etc. Also to define the roles of the institutions involved in the process of identification and recovery of bodies missing during the communist period, as well as to establish a competent profiled structure that will deal only with this issue, and will consist of two levels: central and local level.