
ADVANCE UNEDITED VERSION

Committee on Enforced Disappearances

List of issues in relation to the report submitted by Albania under article 29, paragraph 1, of the Convention*

I. General information

1. Please provide information about the report preparation process, in particular whether it benefited from broad based meaningful consultations including with the families of victims' organizations, human rights defenders working on the issue of enforced disappearance and NGOs. In relation to paragraph 6 of the State party's report, please clarify what the actual involvement and contribution of civil society organizations was in the preparation of the State party report.

2. In relation to paragraph 28 of the State party's report, please indicate what internal mechanisms are in place to ensure the direct applicability of the Convention, including those provisions of the Convention that are not automatically self-executable. In relation to paragraph 124, please provide examples of case law, if any, in which the provisions of the Convention have been invoked before or applied by courts or other relevant authorities since the accession of the State party to the Convention. What measures is the State party taking to ensure the full applicability of the provisions of the Convention in its domestic legal order?

II. Definition and criminalization of enforced disappearance (arts. 1-7)

3. In relation to paragraphs 45 (a) and (b) of the State party's report, please provide information on the legal and administrative measures that guarantee the non-derogability of the prohibition of enforced disappearance so as to ensure that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as justification for enforced disappearance. Please provide information on the limits prescribed by the Constitution within which guaranteed human rights and freedoms can be restricted, under which specific circumstances and for how long. Please provide details of any legislation or practices concerning terrorism, emergency situations, national security or other grounds that the State party may have adopted that would have an impact on the effective implementation of this prohibition (arts. 1 and 16).

* Adopted by the Committee at its 13th session..

4. In relation to paragraphs, 46, 52 and 57 of the State party report, please provide additional clarification on the definition of enforced disappearance as a crime against humanity in conformity with applicable international law, namely when it is committed as a part of a widespread or systematic attack against a civilian population (art. 5).

5. Please provide information on how the State prohibits and prosecutes the conduct defined in article 3 of the Convention when it is committed by persons or groups acting without the authorization, support or acquiescence of the State. In particular, in relation to paragraphs 53, 54 and 55 of the State party's report, please provide information on how "offences which contain elements of enforced disappearance such as kidnapping, holding a person hostage and illegal deprivation of liberty" (para. 53), prescribe the prohibition and prosecution of conduct carried out by agent of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State. Please provide examples of case law, if any, as well as of any measures taken to investigate acts of enforced disappearance committed by persons or groups of persons acting without the authorization, support or acquiescence of the State, including prosecutions carried out, sentences handed down and any reparation measures provided to victims (art. 3).

6. In relation to paragraphs 37 and 56 of the State party's report indicating that no cases of enforced disappearance have been investigated or prosecuted in Albania, please provide information on complaints of enforced disappearance, if any, lodged with the Court of First Instance for Serious Crimes, the results of the investigation and remedies provided therein. In case of absence of complaints, please provide information on measures taken to analyze the reasons for this and an assessment regarding whether the situation requires specific measures, including: facilitating the lodging of complaints; measures to prevent and combat acts of enforced disappearances. In relation to paragraphs 13 and 56 of the State party's report with regard to individual criminal responsibility for enforced disappearance as a crime against humanity, please provide examples, if any, of relevant case law, the number of investigations and prosecutions carried out by the Office of the Public Prosecution and the Judicial Police, sentences handed down and any reparation measures provided to victims (arts. 4, 5 and 24).

7. In relation to paragraph 60 of the State party's report, please provide information about the applicable law governing the types of conduct described in article 6, paragraph 1 (a), of the Convention, when enforced disappearances do not constitute a crime against humanity, including ordering, soliciting, inducing the commission of, attempting to commit, being an accomplice to or participating in an enforced disappearance, or any other types of conduct which by virtue of their nature are similar to those mentioned. Please indicate whether a subordinate can lawfully oppose an order to commit acts of enforced disappearance and describe the legal recourse available to the subordinate against any disciplinary measures resulting from his or her refusal to carry out a criminal act ordered by a superior. Please provide information on such cases that may have occurred. And whether there is jurisprudence with regard to the prohibition of invoking superior orders, including orders from military authorities, as a justification of enforced disappearance. If such jurisprudence exists, please provide information on their practical implementation, including cases of disciplinary proceedings. In relation to paragraphs 63 and 64 of the State party report, please provide information on whether the position of public authorities with respect to the notion of "due obedience" as a criminal law defense has any impact of the effective implementation of this prohibition (art. 6).

III. Judicial procedure and cooperation in criminal matters (arts. 8-15)

8. In relation to paragraphs 71 and 72 of the State party's report, please provide further clarification on whether the commencement of the enforced disappearance is not taken as a

reference to apply the statute of limitations.. Please indicate whether during the time limit indicated in the national legislation, the State guarantees that no statute of limitations applies for criminal, civil or administrative actions brought by victims seeking the right to an effective remedy. Please include concrete examples if they exist. Please also provide information on when article 109(c) of the Criminal Code could be applied in cases of enforced disappearance that occurred before entry into force of this legal provision, but for which the fate or whereabouts of the victim is still unknown at the present time (art.8).

9. In relation to paragraph 74 of the State party's report, please indicate whether measures are taken to establish jurisdiction in cases contemplated under (a), (b) and (c) of article 9 (1) of the Convention, as well as examples of cases where (b) and (c) were applied. Please indicate measures taken to establish jurisdiction in cases where the alleged offender is present in the territory of the reporting State and the latter does not extradite him/her, as well as examples of cases where (i) extradition was granted and (ii) extradition was denied. Please provide information on cases involving the offence of enforced disappearance in which mutual assistance was requested by or from the reporting State, including the result of the request (art. 9).

10. In relation to paragraph 31 and 32 of the State party's report, please specify whether, pursuant to domestic law, military authorities would be competent to investigate and prosecute persons accused of enforced disappearance and if so whether there are any procedural mechanisms in place to exclude a civil or military law enforcement or security forces from the investigation into an enforced disappearance when one or more of its officials have been accused of committing or having been involved in the commission of the offence. Please clarify which jurisdiction has the competence to trial the crime of enforced disappearance when committed by the military (art. 12).

11. Please provide information about the existence of legal or other measures to immediately carry out a preliminary inquiry or investigation to establish the facts in accordance with article 10(2) of the Convention. In relation to paragraph 125 of the State party's report, please also clarify the extent to which reciprocity is requested in the provision of international legal assistance in cases of enforced disappearance that does not constitute a crime against humanity. Please also indicate whether any limitations or conditions set out in national legislation could be applied in relation to requests for judicial assistance or cooperation in the terms set out in articles 14 and 15 of the Convention. Please also provide information on steps taken to cooperate with neighbouring countries which have initiated their own investigation (art. 10, 13, 14 and 15).

12. Please indicate whether the Office of the General Prosecutor and the Judicial Police in charge of investigation and prosecution of cases of alleged enforced disappearance are specifically trained to initiate investigations on cases of alleged enforced disappearance. In that respect, please also indicate whether the above-mentioned authorities or any other responsible for investigating cases of alleged enforced disappearance: (a) have the necessary powers and resources to conduct investigations into the offence of enforced disappearance independently of the agent who committed it; (b) are subject to any limitations which may restrict their access to places of detention where there are ground to believe that a disappeared person may be present (arts. 12 and 18).

13. With reference to paragraph 109 of the State party's report, please indicate whether domestic law provides for the suspension from their duties of State officials suspected of having committed or having been involved in the commission of an enforced disappearance, during the investigation. In relation to paragraph 119 of the State party's report, please indicate whether, in addition to the protection of witnesses and a person close to them, mechanisms are in place for the protection of complainants, relatives of the disappeared person, their representatives and other persons participating in the investigation of an enforced disappearance, or any person with a legitimate interest requesting

information in terms of article 18, paragraph 1 of the Convention about any kind of ill-treatment, intimidation or sanction. In relation to paragraph 113 of the State party's report, please indicate whether the competent authorities investigate cases of enforced disappearance *ex officio*, that is, even in the absence of a formal complaint. What remedies are available to the complainant in case the competent authorities refuse to investigate his/her case (arts. 12 and 18).

IV. Measures to prevent enforced disappearances (arts. 16-23)

14. In relation to paragraph 41 of the State party's report, please provide information on the progress towards creating the Disappeared Persons Section within the Institute of Integration Former Politically Persecuted, including immediate steps undertaken so far with regards to data and evidence management systems, including granting it access to classified information currently under the custody of the State Intelligence Services; protection and preservation of identified sites, sample collections, as well as DNA testing and matching. Please indicate whether sufficient human and financial resources are envisaged for this Institute to fulfil its mandate, including to carry out all exhumations and identification of mortal remains that fall under its jurisdiction and whether additional forensic pathologists have been appointed. In relation to paragraph 143 of the State party's report, please provide updated information on the status of the envisaged agreement of collaboration with the International Commission on Missing Persons (ICMP), and the necessary measures undertaken to launch this initiative as soon as possible, aimed at supporting the search of the people believed to have gone missing during the communist regime. Please also provide information on the progress of establishing an Authority to shed light on *Sigurimi Files* (also known as Communist-era secret police), steps taken to preserve all existing records and documentation and attain justice for victims and their families (arts 19 and 24).

15. In relation to paragraphs 126 (c), 130(b) and 137 of the State party's report, describing grounds under which the extradition may not be granted, please indicate whether the Criminal Code and the Law No. 10193 from 3.12.2009 "On jurisdictional relations with foreign authorities in criminal matters" provides for the prohibition of expulsion, return, surrender or extradition of a person to a State where there are substantial grounds for believing that he/she might be subject to enforced disappearance or to other forms of serious harm to life and personal integrity. Furthermore, in relation to the Law "On Asylum" (Law No. 121/2014) defining "*non-refoulement*" as obligation to prohibiting expulsion or *refoulement* of a foreigner or stateless person (paragraph 147), please indicate whether the law explicitly mentions the risk of being subjected to enforced disappearance as a ground for *non-refoulement*. Please provide information on:

(a) The mechanisms and criteria applied in the framework of expulsion, return, surrender or extradition procedures to evaluate and verify the risk that a person may be subjected to enforced disappearance;

(b) Whether it is possible to appeal a decision on expulsion, return, surrender or extradition and, if so, please indicate before which authorities, what are the applicable procedures and whether they have suspensive effect;

(c) Whether legislation and practices concerning terrorism, emergency situations, national security or other grounds that may have been adopted have had any impact on the effective implementation of the prohibition to expel, return, surrender or extradite a person.

16. In relation to paragraph 146 of the State party's report, please provide information on the procedural safeguards concerning decisions on detention of foreigners in "Closed center", and indicate in particular, if a maximum length of administrative detention has been introduced. Please provide information on the availability of legal aid and information

on remedies to appeal decisions ordering their detention. Please indicate whether individuals whose citizenship has been revoked and who are consequently detained in the deportation centre enjoy the same fundamental safeguards as others and can effectively challenge the decisions to detain and deport them. Please provide information on the kind of training received by officers dealing with the expulsion, return or extradition of foreigners (arts. 16 and 23).

17. In relation to paragraphs 55 and 148 of the State party's report, please explain the difference between unlawful deprivation of liberty, which is a criminal offence in the domestic legislation punishable by fine or imprisonment up to one year, and the statement in paragraph 148 of the State's party report according to which Albanian legislation does not contain any provision with regard to secret detention or unofficial detention. Please provide information on the existence of protocols to guarantee that prompt notification and access to lawyers, medical personnel and family members are ensured in practice, and not only in law, from the outset of the deprivation of liberty and at the moment of release. Please also provide information on whether any conditions and/or restrictions apply to the measures provided for in article 17 (2) (d) of the Convention. In relation to paragraphs 162, 164 and 166 of the State party's report, please indicate the number of proceedings brought before a court by persons to determine the lawfulness of their detention, as provided for in article 17 (2) (f), of the Convention as well as the number of acquittals and remedies provided therein (arts. 17 and 21).

18. In relation to paragraph 169 of the State party's report, please provide information on the measures taken to ensure that all records of persons deprived of liberty are properly and immediately compiled and kept up to date. In addition, please indicate whether there have been any complaints concerning the failure by officials to record a deprivation of liberty and, if so, please provide information about the proceedings initiated and, if relevant, the sanctions imposed, and on the measures taken to ensure that such omissions are not repeated, including the provision of training for the personnel in question. Please indicate if any steps are taken to create registers of detention, which include all the elements contained in article 17, paragraph 3 of the Convention (arts 17, 22 and 23).

19. In relation to paragraphs 178, 180, 185, 187 of the State party's report, please provide information on any domestic law that provides for restriction of access to information about persons deprived of their liberty, and the nature and duration of such restrictions. Please provide information on the means of appeal against a refusal to disclose information about persons deprived of their liberty and information on existing guarantees to a prompt and effective judicial remedy to obtain information without delay. In addition, please provide information on existing legislation to ensure protection from any ill-treatment, intimidation or sanction of persons who request access to information and those involved in the investigation of an enforced disappearance, and the existence of mechanisms to that effect (arts. 18 and 20).

20. Please provide information about legislative or other measures taken to prevent, and to impose sanctions on failure to guarantee that any person deprived of his/her liberty or any other person with a legitimate interest is entitled to take proceedings before a court to determine: the lawfulness of the deprivation of liberty; failure to record the deprivation of liberty of a person; and refusal to provide information on the deprivation of liberty or the provision of inaccurate information, even though the legal requirements for providing such information have been met. Please provide further information on mechanisms in place to prevent the unlawful deprivation of liberty, the failure to record the deprivation of liberty and the refusal to provide information on the deprivation of liberty or the provision of inaccurate information: what criminal, administrative and disciplinary sanctions are foreseen for the above-mentioned conduct (art. 22).

21. Please indicate whether the State party provides specific training on the Convention, as provided for in article 23 thereof, to civil and military law enforcement personnel, medical personnel, public servants and any other persons who may be involved in the custody or treatment of any person deprived of liberty, in particular to members of the police, the judiciary and migrant authorities. And related to that, please provide information on what measures are being taken to raise awareness of the Convention among judges, lawyers and prosecutors to ensure that its provisions are taken into account before and by national courts (art. 23).

V. Measures for reparation and protection of children against enforced disappearance (arts. 24 and 25)

22. With reference to paragraph 194 of the State party's report, please explain how the notion of "injured party" in national law would satisfy the wider definition of victim as any individual who has suffered harm as the direct result of an enforced disappearance in line with article 24(1) of the Convention. Please indicate whether the State party envisages incorporating into domestic law a definition of victim that is in accordance with the treaty provision. Please provide information on steps taken to ensure the right of victims of enforced disappearance to know the truth and participate in the proceedings, in accordance with article 24 (2) of the Convention (art. 24).

23. In relation to paragraph 195 of the State party's report, please provide detailed information on the relevant procedures and timeframe in place for seeking and obtaining compensation, including who would be responsible for providing it. Please also indicate whether, besides compensation, domestic law provides for other forms of reparation for persons who have suffered harm as the direct result of an enforced disappearance, including restitution, rehabilitation, satisfaction and guarantees of non-repetition, in line with article 24 (5), of the Convention. Please clarify whether there is a time limitation in submitting a claim for reparation. Please also indicate whether this law addresses the legal situation of disappeared persons whose fate has not been clarified and that of their relatives, in fields such as social welfare, financial matters, family law and property rights, including a procedure to obtain a declaration of absence by reason of enforced disappearance, so that victims do not have to declare the disappeared person dead or presumed dead. Please also indicate if the provision of social allowances is conditional on obtaining a declaration of death of victims of enforced disappearance (art. 24).

24. In relation to paragraph 203 of the State party's report, please provide information on the relevant measures taken to search for and identify child victims of enforced disappearance, including through DNA database, as per the procedures in place to return them to their families of origin. Please indicate which procedures are in place to guarantee the right of disappeared children to have their true identity re-established. Please provide information on the procedures in place to review and, if necessary, annul any adoption or placement of children that originated in an enforced disappearance, including conditions for an adoption to be valid. Please also provide information on whether there is a specific time frame for an adoption to be reviewed and/or annulled and the persons entitled to start a procedure of this nature. If such procedures have not yet been set up, please indicate whether there are any initiatives to bring national legislation into line with articles 25(4) of the Convention (art. 25).
