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# ANTI-TRAFFICKING IN PERSONS RESOURCE MANUAL

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# ANTI-TRAFFICKING IN PERSONS RESOURCE MANUAL

A WOMEN'S LEGAL RIGHTS INITIATIVE PUBLICATION  
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The Women's Legal Rights Initiative (WLR) produced and published this Anti-Trafficking in Persons Resource Manual in furtherance of WLR's mission to develop and conduct educational programs for members of the Albanian judiciary. This resource manual is the result of the collective efforts of Albanian criminal law specialists, Mr. Arben Rakipi and Mr. Bashkim Caka, and of Mr. Mark Lasser, a U.S. attorney, and was edited by Ms. Emira Shkurti, WLR Legal Advisor, and Ms. Mary Theisen, WLR Deputy Chief of Party. This manual represents only the opinions of its authors; it does not represent any official statement of the USAID or its mission to Albania, the WLR project or of the Albanian School of Magistrates, nor is it intended to serve as legal authority.

This resource manual was translated from Albanian to English by Ms. Ejona Kushi.

# INTRODUCTION

Trafficking in persons (TIP) is a phenomenon that has characterized Albania's transition period. Before the fall of the communist regime in early 1990s, it was unknown to the justice system and to judges in particular.

Huge profit is being made in Albania as a result of this criminal activity, which is conducted mainly in maritime and border towns unaffected by the government's intervention. Various economic, political, and social factors have worked together to create suitable circumstances for traffickers to initiate and conduct, to a concerning degree, trafficking of women for prostitution and trafficking in children. The scale of this type of crime is now a concern for state organizations, Albanian public opinion and international organizations. Albania is considered a "source country for trafficking of women and children" by specialized international organizations monitoring this phenomenon.

The activity of law enforcement and justice institutions in fighting against traffickers has been estimated as insufficient, not efficient, and lacking the influence to reduce this activity. The number of persons sentenced for trafficking in persons has been relatively small. The U.S. Department of State report on trafficking in persons, released in June, 2006, stated that:

*Albania is primarily a source country for women and children trafficked for the purposes of sexual exploitation and forced labor. Victims are trafficked to Greece and Italy, with many of these victims trafficked onward to the United Kingdom, France, Belgium, Norway, Germany, and the Netherlands. Internal trafficking within Albania and re-trafficking of Albanian victims to other countries remained a problem in 2005. Reports of Roma and Egyptian children trafficked for forced labor or begging continued.*

*The Government of Albania does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. The government continued to produce*

*successful prosecutions and convictions of traffickers, appointed a new fulltime national anti-trafficking coordinator with staff, began to implement its witness protection law for trafficking victims, and signed a bilateral anti-child-trafficking agreement with Greece. While the government demonstrated strong law enforcement efforts, overall implementation of the government's protection and prevention programs remained weak. The government should fully implement its witness protection program, encourage a greater number of victims to testify against their traffickers and make efforts to guarantee victims' safety. Comprehensive reintegration and rehabilitation services are critical to prevent the re-trafficking of Albanian citizens. The government as a whole should assume a greater leadership role in the country's anti-trafficking efforts, actively implement its National Action Plan, and vigorously investigate and prosecute trafficking-related corruption at all levels of law enforcement.<sup>1</sup>*

In response to this challenge, the Albanian Criminal Code was amended in 2004 to clearly define criminal offenses related to trafficking; these changes are consistent with requirements of the United Nations Convention against Transnational Organized Crime and its supplemental Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children ("Protocol"), ratified by the Republic of Albania. These were accompanied by additional amendments to the Criminal Procedure Code to enhance the rights of victims of trafficking and avoid their confrontation with traffickers during the courtroom procedures. New witness protection measures were enacted, as well, for the benefit of those most vulnerable to the traffickers, whose cooperation is needed by law enforcement.

This Anti-Trafficking in Persons Resource Manual is designed to assist the Albanian judiciary in the implementation of this new legislation. It includes commentaries on the law, community resources available to victims and witnesses, checklists and forms for case management, and discussion of special issues related to trial proceedings, evidence admission, and testimony of experts. In addition, the manual includes a thorough commentary of international standards and interpretation of various provisions of Albania's new laws to combat organized crime.

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<sup>1</sup> *Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report*, Office to Monitor and Combat Trafficking in Persons, United States Department of State, released June 5, 2006, <http://www.state.gov/g/tip/rls/tiprpt/2005/>.

This manual is intended as a resource for use by judges not only of the Serious Crimes Court, which has exclusive jurisdiction over anti-trafficking cases, but also by the broader Albanian judiciary, prosecutors, court personnel, and for other legal professionals.

Arben Rakipi  
Bashkim Caka  
Mark Lasser  
Tirana  
September 2006

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# ANTI-TRAFFICKING IN PERSONS RESOURCE MANUAL

## I. INTRODUCTION

In 2004, legislation was enacted in Albania to criminalize trafficking in persons, expand methods and means of protecting victims of trafficking, and improve the tools that law enforcement may use in investigating trafficking cases. The reforms were enacted as part of a larger effort to codify into Albanian law the U.N. Convention against Transnational Organized Crime.

While many of the reforms directly impact the daily work of police and prosecutors, they also have implications for members of the judicial branch in their adjudication of trafficking cases.

The topics covered in this manual were chosen in response to informal interviews with judges who have handled trafficking cases, NGO representatives, prosecutors, attorneys, members of the donor community, and by review of judicial decisions. By no means was this research thorough. However, it has shown that some cases that appear objectively, based on the evidence, to involve trafficking are being treated by the criminal justice system as either prostitution or smuggling cases, which are fundamentally different. The opposite is also true: prostitution and smuggling cases are being treated as trafficking cases. In addition, there appear to be difficulties in acquiring reliable evidence from abroad in trafficking cases, which present a significant problem because many cases involve trafficking of women and girls to Italy and of children to Greece. Also, many judges have insufficient understanding of, or have trouble interpreting, the required elements to convict a person for trafficking in persons.

With this context, it was decided to include an in-depth examination of the elements of crime in trafficking in persons and methods of obtaining evidence in foreign jurisdictions. In addition, given the novelty of the witness protection program in Albania, it was decided to cover this issue as well. While the decision to enroll a victim/witness in the protection program is largely left to the prosecution, judges under Albanian law have a right to recommend placement of a witness in the program.

## II. ALBANIAN LAW ON TRAFFICKING IN PERSONS

### A. JURISDICTION OF THE SERIOUS CRIMES COURT

Pursuant to Criminal Procedure Code (CPC), Article 75(a), the Serious Crimes Court has jurisdiction over the offenses of “Trafficking in Persons,” Article 110(a) of the Criminal Code (CC); “Trafficking in Women,” CC Art. 114(b); and “Trafficking in Children,” CC Art. 128(b).

### B. ELEMENTS OF THE CRIME “TRAFFICKING IN PERSONS”

Article 110(a) of the Criminal Code, “Trafficking in Persons,” as amended by Law No. 9188, dated February 12, 2004<sup>2</sup>:

*Recruitment, transportation, transfer, harboring or reception of persons by means of threats or use of force or other forms of coercion, of abduction, of deception, of the abuse of power or taking advantage of social, physical or psychological conditions or of the giving or receiving of payments or benefits in order to achieve the consent of a person having control over another person, with the purpose of exploitation of prostitution of others or other forms of sexual exploitation, forced services or labor, slavery or practices similar to slavery, putting to use or transplanting organs, as well as other forms of exploitation, are punished with imprisonment from 5 to 15 years and with a fine from 2 to 5 million lek.*

*Organization, management, and financing of the trafficking in human beings are punishable by imprisonment of 7 to 15 years and by a fine of 4 to 6 million lek.*

*When this offence is committed in collaboration or more than once, or is accompanied by mistreatment and making the victim commit various actions through the use of physical or psychological force, or brings serious consequences to health, is punished with imprisonment of no less than 15 years and with a fine of 6 to 8 million lek.*

*When the offence has brought about the death of the victim as a consequence, it is punished with imprisonment of no less than 20 years or with life imprisonment, as well as with a fine of from 7 to 10 million lek.*

*When the criminal offence is committed through use of a government position or public service, the punishment of imprisonment and the fines are increased by one fourth of the punishment given.*

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<sup>2</sup> Article 110(a) is modeled on Article 3 of the U.N Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, 2000 (Anti-Trafficking Protocol) (Supplementing the UN Convention against Transnational Organized Crime). See Appendix B.

To establish the criminal offense of trafficking, the prosecution must prove each of the following three elements, as outlined in the first paragraph of Article 110/a:

- Recruitment, transportation, transfer, harboring or reception of persons
- Threat or the use of force or other forms of coercion, of abduction, of deception, of the abuse of power or taking advantage of social, physical or psychological condition [of the victim] or of the giving or receiving of payments or benefits in order to achieve the consent of a person having control over another person, and
- Exploitation of prostitution of others or other forms of sexual exploitation, forced services or labor, slavery or practices similar to slavery, putting to use or transplanting organs, as well as other forms of exploitation

The concept of trafficking in persons implies a strong role of criminal organizations. Organized crime groups typically exploit market opportunities for sexual services and cheap labor and the vulnerable situation of women and children.

**First element** – “*Recruitment, transport, transfer, harboring or reception of persons*”

1. **Recruitment.** Generally, victims are lured by promises of marriage, a better life abroad, or employment. For example, women respond to job advertisements for babysitters, models, hairdressers, dancers, or waitresses, or are encouraged or recruited by friends or family. Recruitment may also involve violence, psychological violence (threats to health of victim or relatives), kidnapping, or rape.

2. **Transport** refers to carrying or moving persons from one location to another via vehicles, walking, or boats (land, air, or sea); See *Decision No. 21 of the SCC* (September 2004) (transfer of victim from Vlora to Italy via speedboat). Often, traffickers arrange travel papers and use false or stolen passports. Identity documents may be taken away on arrival, and persons may be confronted with a large debt owed to traffickers, which must be repaid through prostitution or forced labor.

3. **Transfer** refers to movement of persons from one location to another.

4. **Harboring** refers to preventing others from seeing a person.

5. **Reception** refers to receiving a person in a dwelling or other premises.

Other persons who provide or offer transportation with the purpose of trafficking in persons will be considered equally responsible.

**Second element** – “[B]y means of threats or use of force or other forms of coercion, of abduction, of deception, of the abuse of power or taking advantage of social, physical or psychological conditions or of the giving or receiving of payments or benefits in order to achieve the consent of a person having control over another person”

1. **Threats/use of force.** Typically, defendants directly threaten victims of trafficking and cause fear and anguish, which forces victims to obey orders. The most frequent threats are to a person’s life or health, but may also include threats to harm the victim’s family members or relatives. Violence may be used to force women into prostitution. There have been several reports of women kept in isolation or beaten or raped in order to force them into submission.

Use of force accompanies threats at times. Force used against victims of trafficking results in complete obedience and submission to the traffickers.

Additional forms of coercion/threats may be: a) pressure on victims through threats to family members or relatives; b) threats to disclose facts about the victim’s private life unknown to their families or the public; c) taking away identification documents; d) isolation.

2. **Abduction.** Taking a person illegally and by force, covertly or overtly, without his or her consent. This is widely used against persons trafficked for specific purposes, such as prostitution, child labor, or begging.

3. **Deception.** Attracting persons into trafficking channels through deception or false promises for a better life – such as a legal job opportunity, marriage, or education. See *Decision No. 21 of the SCC* (September 2004) (false promise of marriage). The element of fraud is usually accompanied by threats or physical violence, often immediately after the victim has reached the destination.

4. **Abuse of power or taking advantage of social, physical, or psychological conditions.**

*Taking advantage of the social conditions* means recruiting victims of trafficking because of their poverty or unemployment.

*Taking advantage of the physical or psychological conditions* means exploiting physical or mental disabilities of victims who cannot adequately object to involvement in trafficking. Typically, victims may be exploited for transplant of organs, begging, or other menial tasks.

5. **Giving or receiving of payments or benefits in order to achieve the consent of a person having control over another person.** This element exists when the parents or guardians of the trafficked victim and trafficker exchange monetary or non-monetary compensation to give the trafficker permission to traffic the victim.

**Third element** - “[W]ith the purpose of exploitation of prostitution of others or other forms of sexual exploitation, forced services or labor, slavery or practices similar to slavery, putting to use or transplanting organs, as well as other forms of exploitation”

**1. Exploitation of prostitution of others or other forms of sexual exploitation.**

“Exploitation of prostitution” occurs where women are forced to work as prostitutes and the traffickers retain the income. See *Decision No. 21 of the SCC* (victim forced to work as prostitute and give all money to defendant) (September 2004); See *Decision No. 38 of the SCC* (June 2005). Other forms of sexual exploitation include attracting children into pedophilia networks or pornography.

**2. Forced services or labor.** “Forced services or labor” may include forced lawful work, such as work in a nightclub or to engage in striptease, for the benefit of the traffickers.

**3. Slavery or practices similar to slavery.** An example of slavery is when a victim cannot leave his or her employer, either because he or she has been abducted or has been held captive. Another situation is when a victim’s parent or guardian has accepted a payment in advance from a trafficker or employer, putting the victim into “debt bondage” for either a specific or nonspecified period of time.<sup>3</sup>

**4. Putting to use or transplanting organs.** Cases of trafficking children with the sole intention of using them for transplants is considered “*putting to use,*” i.e., traffickers conduct trafficking with this intention, regardless of whether the transplant takes place or not. In cases where the “*transplanting of organs*” takes place, it is not relevant whether the traffickers conducted the trafficking of victims specifically for this purpose and with this intention in mind. However, this provision is applicable as soon as trafficking is committed, and there is no need to wait for serious consequences to the life or health of the trafficking victims.

**5. Other forms of exploitation.** This term offers the possibility to include any other type of exploitation against a person, such as arranged marriages. While arguably more relevant for the specific article in the Criminal Code related to Child Trafficking, international documents recognize the criminalization of trafficking of children for the purposes of using them as soldiers in regional military conflicts or putting them at the service of criminal organizations to settle accounts with adversaries. “Other forms of exploitation” would also include trafficking of children for illegal adoptions.

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<sup>3</sup> See *Kids as Commodities? Child trafficking and what to do about it*, by Mike Dottridge (Terre des Hommes, May 2004) (available on Web site of Terre des Hommes, <http://www.tdh.ch/cms>).

## Aggravating Circumstances

Paragraphs two through five of Article 110(a) enumerate those circumstances in which the offense of trafficking is considered aggravated and authorize harsher penalties for those convicted.

The **second paragraph** of Article 110(a) increases the range of penalties for persons whose involvement in trafficking consists of “organization, management, and financing.”

1. **Organization** means offering the idea for trafficking in persons, drafting plans, creating the conditions, providing the means, identifying origin or destination places, providing the victims of trafficking, finding accomplices, dividing roles, distributing or spending income from this criminal activity. Typically, several people play an “organizing” role.

2. **Management** does not necessarily refer to the organizer, but to one or more persons who implement the plan. Managers may also perform other tasks related to organization, such as providing the means or identifying the border crossing points.

3. **Financing** refers to paying money or providing services or materials that enable and fuel trafficking in persons. Financing may consist of temporarily lending resources to victims, while expecting trafficking to take place; offering traffickers items or housing; lending money to traffickers; offering premises, such as hotels, to house victims of trafficking; or purchasing means of transportation, such as boats, with the purpose of lending them to traffickers.

The **third paragraph** identifies another set of aggravating circumstances that merit greater penalties. These greater penalties are triggered when the crime is committed under the following circumstances:

- In collaboration with others
- More than once
- Accompanied by mistreatment and making the victim commit various actions through the use of physical or psychological force, or
- Brings serious consequences to the victim’s health

Each one of these four circumstances may stand alone, independent of the others.

1. **In collaboration with others.** This provision is first referred to in Article 28 of the Criminal Code, *special forms of collaboration*. It will be applied to all forms of collaboration, regardless of the organizational level, as long as two or more persons are involved in the commission of a crime. Typically, such criminal offenses are part of organized crime. The commission of this criminal offense



would be separate from participation in or creation of criminal organizations. Article 50 section gj, of the Criminal Code, which considers any crime committed in collaboration with others as an aggravating circumstance, would not be applied for Trafficking in Persons because collaboration is already specifically mentioned in the third paragraph of article 110/a (TiP), therefore the more specific article will be applied.

2. **More than once.** This provision would be applied against those who have committed the same criminal offense *more than once*, whether or not that person previously received a sentence.

3. **Mistreatment and making the victim commit various actions through physical or psychological force.** Here, traffickers have completed the recruitment and transport of persons, and now seek to exploit victims under the traffickers' control. Traffickers use physical and/or psychological force to compel victims to obey them.

4. **Results in serious consequences to victims' health.** Frequently, victims of trafficking suffer serious health consequences, such as depression and/or anxiety, from physical or sexual abuse, and they often acquire sexually transmitted diseases. The manner in which the damage occurs can affect the level of sentence.

The **fourth paragraph** states the most serious consequence of this criminal offense, the death of the victim, and consequently the harshest sentence. The death must be the direct result of force used by the offender. It is not necessary for death of the victim to have been intentional – it may also result from negligence.

The **fifth paragraph** only applies to individuals holding a government position or otherwise employed in the public service, such as police officers, secret service officers, court employees, customs or border officers, and local or central state administration employees.

The need to fight criminal activities such as corruption and organized crime with ties to government or public institutions requires more severe penalties for government employees who commit the trafficking offense. These officials' immunity from criminal prosecution does not extend to acts of trafficking.

In addition, this provision applies to persons with a private business temporarily assigned to a public position, such as doctors, notaries, experts, and NGO staff, who commit a criminal act taking advantage of their special status. For example, charges would be filed against NGO staff that organizes trips abroad with non-members, aware that some or all of them will end up exploited by traffickers.

This provision also applies to individuals involved in false marriages or who cover sexual exploitation activities; notaries who draft fictitious statements, while aware that persons have been exploited under Article 110 of the Criminal Code; public or private doctors who issue medical justification for an illegal organ-transplant.

### C. ENHANCED PENALTIES FOR TRAFFICKING IN WOMEN AND CHILDREN

#### Article 114(b) of the Criminal Code: Trafficking of Women:

*The recruitment, transport, transfer, harboring or reception of women through threat or use of force or other forms of coercion, of abduction, of deception, of abuse of power or taking advantage of social, physical or psychological condition or the giving or receipt of payments or benefits, in order to get the consent of a person who controls another person, with the purpose of exploitation of prostitution of others or other forms of sexual exploitation, forced services or work, slavery or forms similar to slavery, putting to use or transplanting organs, as well as other forms of exploitation, are punished with imprisonment from 7 to 15 years and with a fine of from 3 to 6 million lek.*

*The organization, management and financing of the trafficking of woman is punished with imprisonment of from 10 to 15 years and with a fine of from 5 to 7 million lek.*

*When this offence is committed in collaboration or more than once, or is accompanied by mistreatment and making the victim commit various actions through the use of physical or psychological force, or brings serious consequences to health, it is punished with imprisonment of no less than 15 years and with a fine of from 6 to 8 million lek.*

*When the offence has brought about the death of the victim as a consequence, it is punished with imprisonment of no less than 20 years or with life imprisonment, as well as with a fine of from 7 to 10 million lek.*

*When the criminal offence is committed through the use of a government position or public service, the punishment of imprisonment and the fines increase by one fourth of the punishment given.*

Article 114(b) has the same elements as the general trafficking crime under 110/a but provides for enhanced penalties if the victims are adult females. The need for special protection of women – due to the large number of cases where women are victims of trafficking and sexually exploited – resulted in the legislature enacting more serious measures of punishment for persons who traffic in women.

#### Article 128(b) of the Criminal Code: Trafficking of Children:

*The recruitment, transport, transfer, hiding or reception of minors with the purpose of exploitation for prostitution or other forms of sexual exploitation, forced services or work, slavery or forms similar to slavery, putting to use or transplanting organs, as well as other forms of exploitation, are punished with imprisonment from 7 to 15 years and with a fine of from 4 to 6 million lek.*

*The organization, management and financing of the trafficking of minors is punished with imprisonment from 10 to 20 years and with a fine of from 6 to 8 million lek.*

*When this offence is committed in collaboration or more than once, or is accompanied by mistreatment and making the victim commit various actions through physical or psychological force, or brings serious consequences to health, it is punished with imprisonment of no less than 15 years and with a fine of from 6 to 8 million lek.*

*When the offence has brought about the death of the victim as a consequence, it is punished with imprisonment of no less than 20 years or with life imprisonment, as well as with a fine of from 8 to 10 million lek.*

*When the criminal offence is committed through the use of a government position or public service, the punishment of imprisonment and the fines are increased by one fourth of the punishment given.*

Article 128(b) applies when the trafficking victims are minors under Albanian law (under 18 years of age). The main difference between the child trafficking and general trafficking offense is that consent is irrelevant in trafficking of children, and there is no need to prove the second element of the trafficking offense (“threats or the use of force or other forms of coercion, abduction, deception, abuse of power or taking advantage of the social, physical or psychological condition [of the victim] or the giving or receipt of payments or benefits in order to obtain the consent of a person who controls another person”). It is enough to prove “the recruitment, transportation, transfer, harboring or receipt of a child for the purposes of exploitation.”<sup>4</sup>

The range of sentences provided in Articles 114(b) (trafficking of women) and 128(b) (trafficking of children) are similar, with the exception of the second paragraph in article 128(b), which sets forth a much higher maximum sentence for “organization, management and financing” of trafficking involving children than in 114(b). This separate protection for child trafficking covers both male and female child victims.

In recent child trafficking cases, the Serious Crimes Court found the defendants guilty of trafficking Albanian children to Greece, where they were forced to work as beggars and sell napkins on the street.<sup>5</sup>

#### **D. THE ISSUE OF CONSENT**

A key issue in adult trafficking cases is whether the victim consented to the alleged exploitation – prostitution or begging. Consent is irrelevant if the victim is a minor under Albanian law (under 18 years old). If an alleged victim independently consented to the exploitation, then the defendant is not guilty of

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<sup>4</sup> See *UN Trafficking Protocol*; Art. 3 (e). (Annex B)

<sup>5</sup> See *SCC Decision No. 14* (June 2004) and *SCC Decision No. 3* (April 2004).

trafficking. However, the victim's consent is irrelevant and not valid if it is obtained through any of the methods listed in the second element – i.e., threats or the use of force or other forms of coercion, abduction, fraud, deception, the abuse of power or taking advantage of the social, physical or psychological condition of the victim, or of the giving or receiving of payments to achieve the consent of a person having control over another person.<sup>6</sup>

Even if defendants are not guilty of trafficking, they may be guilty of other crimes, such as exploitation of prostitution, assault, or battery.

#### **E. ASSISTING IN ILLEGAL BORDER CROSSING (SMUGGLING) VERSUS TRAFFICKING**

Article 298 of the Criminal Code (Help for Illegal Border Crossing):

*Sheltering, accompanying, putting at the use . . . sea transport, air transport or other means of transport, with the purpose of assisting in the unlawful crossing of the border, is punished with imprisonment from 1 to 4 years and with a fine of from 3 million to 6 million lek.*

*When the assistance is given for purposes of profit, it is punished with imprisonment of from 3 to 7 years and with a fine of from 4 to 8 million lek.*

*When this offence is committed in collaboration or more than once or has brought serious consequences, it is punished with imprisonment of from 5 to 10 years and with a fine of from 6 to 8 million lek.*

*When the offence has brought as a consequence death of the victim, it is punished with imprisonment of no less than 15 years or with life imprisonment, as well as with a fine of from 8 to 10 million lek.*

*When the criminal offence is committed through the use of a government position or public service, the punishment of imprisonment and the fines are increased by one fourth of the punishment given.*

To establish the criminal offence of illegal border crossing, the prosecution must prove each of the following elements:

- Consent of the person who is to cross the border illegally;
- Provision of assistance to cross the border illegally, and
- Sole purpose – to enable illegal border crossing.

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<sup>6</sup> See *Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime* (UN Anti-Trafficking Protocol), Art. 3(b). (Annex B)

Profit is not a necessary element of the criminal offense, but its presence leads to increased penalties. Helping someone to cross the border illegally includes “providing shelter,” “accompanying,” and “providing the use of sea, air, or land transportation.”

- **Providing shelter** includes the use of a house, hotel, or other premises.
- **Accompanying** includes traveling by means of transportation or on foot, until or through border-crossing points.
- **Providing the use of land, sea, or air transportation** – both the person who drives and lends the transport to enable illegal border crossing may be criminally liable.

The sole purpose of those who commit this offense is to help others cross borders illegally. In cases where the defendant has other intentions, such as those set forth in the trafficking provisions, the trafficking offense may apply.

Under the *United Nations Protocol against Smuggling of Migrants* (adopted by Albania), states are prohibited from criminally prosecuting a victim of trafficking for illegal border crossing or producing fraudulent documents such as identity cards, passports, or visas.

#### **F. PROSTITUTION VERSUS TRAFFICKING IN PERSONS**

If a trafficking victim has been sexually exploited against her will or through means such as fraud, coercion, threats, abuse of power or vulnerability, she must not be prosecuted for prostitution as she never validly consented to work as a prostitute. See also Discussion of Consent in Section D, above.

The UN Committee on Elimination of Discrimination against Women, which monitors countries’ compliance with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), expressed concern that “[w]hile prostitution is a crime in Albania, there is no provision in the Penal Code for the prosecution of clients of prostitutes.”<sup>7</sup> In addition, the UN committee noted that it is necessary to “change the mental attitude that condemns the victims of trafficking and prostitutes, especially in an area where poverty was often the root cause of their actions.”<sup>8</sup>

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<sup>7</sup> See CEDAW Press Release, “Experts in Women’s Anti-Discrimination Committee Express Concern at Decline of Women’s Situation in Albania” (January 16, 2003).

<sup>8</sup> CEDAW Press Release, “Principle of Equality, Customary Law, Human Trafficking Addressed, as Albania responds to Women’s Anti-Discrimination Committee” (January 24, 2003).

The UN committee further recommended that States Parties “review existing legislation and take steps to ensure that victims of trafficking are not penalized and that all those who exploit prostitutes are punished and prosecuted.”<sup>9</sup>

If some of the trafficking elements are not met, a defendant may be guilty of “Exploitation of Prostitution” under Article 114 of the Criminal Code (“Soliciting prostitution, mediating or gaining from it is punishable by a fine or up to five years of imprisonment”).

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<sup>9</sup> *Report of CEDAW (28<sup>th</sup> and 29<sup>th</sup> Sessions, January and June/July 2003)* Par. 71, p. 15. The CEDAW press releases and report are available on the Web site: <http://www.un.org/womenwatch/daw/cedaw/28sess.htm>.

### **III. WITNESS PROTECTION**

#### **A. INTERVIEWING TRAFFICKING VICTIMS PRE-TRIAL**

There are many reasons for providing trafficking victims with security, counseling, maintaining their anonymity, and protecting their privacy. Defendants threaten and attack victims of trafficking and their families to discourage them from testifying and in revenge for their cooperating with judicial authorities. The trafficking ordeal and judicial process often cause serious adverse psychological effects in the victims.

When victims of trafficking have been exploited, such as for prostitution or begging, revealing their identity may cause re-victimization and re-trafficking. Protecting the privacy of the trafficked victim may entail preventing disclosure of the unpleasant experience – such as prostitution – to the victim’s family or community. Often, victims come from communities where citizens hold them responsible for their own victimization. For example, the families of many trafficking victims forced to prostitute will disown them.

Article 25, Par. 1 of the UN Convention against Transnational Organized Crime requires Albania to “provide assistance and protection to victims” of trafficking, “in particular in cases of threat of retaliation or intimidation.” In addition, the Anti-Trafficking Protocol requires Albania to do the following:

- Protect the privacy and identity of trafficking victims
- Provide for the physical, psychological and social recovery of trafficking victims
- Provide for the physical safety of trafficking victims

The first procedural action during a preliminary investigation of the trafficking offense is an interview with a victim of trafficking as a witness. This interview aims to collect information relevant to the investigation, including:

- Whether the elements of the trafficking (or other) offenses have been verified;
- The identity of perpetrators and their accomplices;
- The method and timeline of the alleged trafficking offense; and
- The profit earned by traffickers, and how it was used.

After receiving a statement from a victim of trafficking and conducting an investigation, authorities may arrest the accused according to Albanian law.

As noted above, trafficking causes serious trauma to the victim, and psychological effects that may appear during questioning include recollections of panic and fear, desperation, and feeling of loss of self control. They are also plagued with

emotions such as revenge, hostility, and anger, and experience loss of self-respect. They might also be nervous and easily excitable.

The judge and court staff must treat the victim/witness as a victim, not a potential criminal for violating prostitution, migration, or labor laws. As the victim likely endured a brutal, violent, and terrifying experience, the judge must avoid re-traumatizing the witness.

Typically, victims of trafficking initially cannot provide detailed testimony, especially when they do not understand their situation, the importance of accurate and detailed facts, or the consequences of their actions.

Judges, court staff, (as well as prosecutors, and police) should avoid inappropriate behavior, and realize that lack of professionalism by government officials can cause the victim further psychological trauma. They should make every effort to treat the victim with respect and dignity, which will not only help to rehabilitate the victim, but also result in greater contributions to the investigative and judicial processes.

In addition the judge must be sensitive and make every effort to:

- Ensure that the victim has access to psychological, medical, legal, educational, and employment services.<sup>10</sup>
- Consider the fact that the defendant might intimidate or threaten the victim or attempt to flee the jurisdiction, and decide whether to issue a personal remand order.<sup>11</sup>
- Ensure confidentiality throughout the legal process – including information about the victim/witness.
- Ensure that the media understand ethical and legal obligations to preserve confidentiality of information, respect victim privacy, and safeguard the identity of the victim/witness.

During the pretrial stage, the judge should consider the following issues related to victim/witness testimony:

- Whether it is appropriate to receive the victim's testimony pre-trial due to safety, medical, or other concerns.<sup>12</sup>
- Whether, in order to protect the victim, the investigative judge, prosecutor, interpreter, or representative of an NGO should question the witness rather than allow the defense counsel to question the victim.

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<sup>10</sup> Appendix E lists Albanian NGOs that provide services to trafficking victims. The Albanian government also has established shelters for trafficking victims in Vlora and Tirana.

<sup>11</sup> See *Criminal Procedure Code* (CPC), Art. 227 -267

<sup>12</sup> See *CPC*, Art. 316-322



- Whether statements or a videotape of the testimony should be presented to the defendant and defendant’s counsel for review to avoid confrontation with the accused.
- Whether follow up questions should be addressed to the victim who again testifies by videotape or separately from the accused.

**B. JUDICIAL RECOMMENDATION THAT VICTIM/WITNESS ENTER THE WITNESS PROTECTION PROGRAM**

Albania recently passed a witness protection law, “On the Justice Collaborators and Witness Protection,” Law No. 9205 (2004) (WP Law) and Implementing Sub-legal Acts (August 2005) (WPSLA). See Appendix C.

A trafficking victim or other witness (“justice collaborator”) may be enrolled in Albania’s witness program under the following conditions: A witness is in a “real, concrete, and dangerous situation,” the witness may provide important evidence that will help prevent serious crimes, and ordinary measures will not provide protection. WP Law, Art. 8-9.

The Sub-Legal Acts define a “dangerous situation” as “a continuing situation, during which the life, health and property of the witness or justice collaborator is in danger. The danger must be present, not past or presumed that will happen in the future.” “A concrete dangerous situation” is defined as “a situation, where special elements of this danger have just emerged and may precipitate into concrete actions against the witness or justice collaborator.” “A serious dangerous situation” is defined as “a situation in which the life, health and property of the witness or justice collaborator are threatened in such a way that in case no appropriate measures are taken, he would suffer a serious damage.” WPSLA, Par. 5-7.

Under Article 10 of the WP Law, the special measures for witnesses, justice collaborators, or closely related persons include:

- change of identity;
- change of residence;
- temporary protection of the identity, information and documents of the protected person;
- witness testimony under another identity and presentation through voice and visual distortion equipment,
- special physical and technical measures of protection, in the place where the protected person resides, as well during transportation, including also situations where such protection is needed for the fulfillment of the obligations towards the justice authorities;

- protection and special treatment in cases when the justice collaborator has been placed in prison as a pre-trial security measure or sentenced by imprisonment;
- social rehabilitation;
- maintenance, change of the work place and temporary employment;
- financial aid for the period of time between two employments;
- professional re-qualification;
- advice and specialized legal assistance.

The WPSLA also provides for Temporary Measures of Protection that is valid for a maximum of 30 days, “for urgent reasons . . . with a view to temporarily ensure the necessary level of protection of life, health and property of the protected person, until the application of special protection measures.” The temporary measures are: “escorting the person for a close physical protection” and “taking into protection the dwelling or property.” *WPSLA*, Par. 41-44.

Under the new law, the prosecutor proposes to the Commission on the Evaluation of the Special Protection Measures for Witnesses (“Commission”) that a particular witness be enrolled in witness protection. The Commission is headed by the Deputy Minister of Public Order and composed of a judge, prosecutor, and member of the judicial police (appointed respectively by the High Council of Justice, the General Prosecutor, and the General Director of the State Police). However, the law does not prevent a judge from recommending to the prosecutor the suitability of witness protection (both temporary and permanent). Revealing confidential information that endangers the protected witness constitutes a crime under Article 313(b) of the Criminal Code.

### **C. PROTECTING SAFETY OF VICTIMS/WITNESSES AT TRIAL**

In general, the judge should use the following witness protection methods at trial:

- Protect victims/witnesses from intimidation, threat, abuse, revenge by defendants;
- Protect the victim’s privacy (e.g., avoid leaks to media);
- Hide the victim’s identity (e.g., use pseudonym);
- Avoid contact between the victim and the defendant;
- Have closed trials or trials *in camera* when possible

**The Unavailable Witness.** If the witness cannot be present at trial for security or logistical reasons, Article 369 of the CPC permits a witness statement or documents be read at trial.

**The Available Witness.** During the trial, a trafficking victim may be threatened or attacked when entering/exiting the court room or suffer a nervous breakdown or trauma due to aggressive questioning, especially during public hearings.

In order to address these potentialities and other victim/witness protection concerns, Albanian law allows for the following tools for judges:

- Distant interrogation of witnesses
- Physical separation of victim from accused
- Voice or visual distortion of witness
- Non-public/*in-camera* hearing

Distant interrogation of witnesses may occur through videoconferencing in Albania and abroad. A person authorized by the Court remains at the witness' location, confirms his/her identity, and ensures an accurate interrogation and implementation of protection measures. These actions are reflected in a report.<sup>13</sup>

Article 8, *Questioning of Witnesses, of the Law on the Organization of the Serious Crimes Court*, No. 9110 (SCC Law) (2003), provides that witnesses may be questioned in the presence of the defendant and the defense attorney, but without visual contact; without communicating to the defendant and the defense attorney the identity of the witness, or in other ways as specified by the WP Law

In addition, Article 7 (*Special Procedural Rules*) of the SCC Law provides that trials may take place behind closed doors when it is in the interest of national security, public order, justice and the protection of participants in the trial, at another venue, or at another court for serious crimes

Under CPC 361(a), by request of the parties or by decision of the court, a witness enrolled in the Witness Protection Program may testify at a distance through videoconferencing equipment and have her identity disguised through voice and face distortion equipment.

Under CPC Art. 340, a court may hold court examination *in camera* under the following circumstances:

- When the publicity may damage the social morality or may divulge data to be kept secret for the interest of the state, if this is requested by the competent authority;

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<sup>13</sup> CPC, Art. 361(7); 364.

- In case of behavior which impairs the normal performance of the hearing;
- *When it is necessary to protect the witnesses* or the defendant [emphasis added];
- When necessary during the questioning of juveniles.

Other practical and inexpensive ways to protect a victim/witness at trial include placing the witness in a room *separate from the courtroom* when defendant is present, and conducting questioning of the witness through a *closed audio and video circuit*, which allows the victim and defendant to communicate without being in the same courtroom.

#### **D. BALANCING RIGHTS OF DEFENDANTS TO FAIR TRIAL AND RIGHTS OF VICTIMS TO PROTECTION**

The rights of victims of trafficking under Albanian law and the UN Anti-Trafficking Protocol must be protected in a manner that does not violate the right of a defendant to a fair trial, including the right to examine witnesses.

**Right of Defendant to Confront Witnesses.** The accused has the right under Article 31 of the Albanian Constitution “to question witnesses who are present” and under Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedom (ECHR) to a fair trial and “to examine witnesses.” The judge must balance these rights against those of trafficking victims.

Article 6 of the ECHR also establishes the principle of “equality of arms” inherent in the right to a fair trial – that there should be equal treatment of witnesses called on behalf of the defense and prosecution. See *Bonisch v. Austria*, No. 8658/79, Par. 32 (1985). Also, the defendant or his attorney has the right to be present when a victim of trafficking gives her testimony and question the witness/ victim.

European Court of Human Rights decisions interpreting the rights of the accused under the ECHR include:

- *Brandstetter v. Austria*, No. 37/1990/228/292-294 (1991)
- *Rowe and Davis v. The United Kingdom*, No. 27052/95 (2000)
- *Birutis v. Lithuania*, Nos. 47698/99 and 48115/99 (2002)<sup>14</sup>

**Rights of Trafficking Victims.** In addition to other rights specified under the UN Anti-trafficking Protocol and Albanian law, the European Court of Human Rights

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<sup>14</sup> These and other decisions of the European Court of Human Rights may be found in *For a European Public Order* (Albanian Center for Human Rights), *Milestones, Human Rights in Europe* and the Web site of the European Court of Human Rights: <http://www.echr.coe.int/echr>.

has stated that victims and witnesses have rights under ECHR that must be balanced against the rights of the accused:

*It is true that Article 6 . . . does not explicitly require the interests of witnesses in general, and those of victims called upon to testify in particular, to be taken into consideration. However, their life, liberty or security of person may be at stake, as may interests coming generally within the ambit of Article 8 . . . of the Convention<sup>15</sup>. Such interests of witnesses and victims are in principle protected by other, substantive provisions of the Convention, which imply that Contracting States should organize their criminal proceedings in such a way that those interests are not unjustifiably imperiled. Against this background, principles of fair trial also require that in appropriate cases the interests of the defense are balanced against those of witnesses or victims called upon to testify.*

*Doorson v. Netherlands*, ECHR No. 54/1994/501/583, Par. 70 (1996).

In addition, the European Court of Human Rights has recognized privacy interests of witnesses in alleged sexual crime cases:

*The Court has had regard to the special features of criminal proceedings concerning sexual offences. Such proceedings are often conceived of as an ordeal by the victim, in particular when the latter is unwillingly confronted with the defendant. These features are even more prominent in a case involving a minor. In the assessment of the question whether or not in such proceedings an accused received a fair trial, account must be taken of the right to respect for the private life of the perceived victim. Therefore, the Court accepts that in criminal proceedings concerning sexual abuse certain measures may be taken for the purpose of protecting the victim, provided that such measures can be reconciled with an adequate and effective exercise of the rights of the defense.*

*S.N. v. Sweden*, No. 34209/96, Par. 47 (2002)

**Use of Anonymous Witness.** Two recent European Court of Human Rights cases have established that hiding the identity of the witness from the defense attorney or accused, as long as the defendant or his attorney has the opportunity to question the witness, does not violate the defendant's Article 6 right to a fair hearing by an impartial tribunal or right to examine witnesses under Article 6(1) under the ECHR. However, a conviction should not be based solely or "to a decisive extent" on the basis of anonymous statements. See *Doorson v. Netherlands*, at Par. 68-71. *Kostovski v. Netherlands*, ECHR 10/1988/154/208, Par. 44 (1989).

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<sup>15</sup> Section 1 of Article 8 of the ECHR establishes a general right to privacy: "Everyone has the right to respect for his private and family life, his home and his correspondence."

The table on the next page provides an overview of the measures that can be taken to protect witnesses under Albania's legal framework.

## OVERVIEW OF MEASURES TO PROTECT WITNESSES

| Type of witness  | Measure   | Conditions to apply   | Article/s   |
|--|---|---|---|
| Any witness  | Securing of evidence during the pre-trial investigation. Defense lawyer has to be present, defendant <i>has the right</i> to participate  | Grounded reasons to believe that witness may be subject to violence, threat or be offered benefits not to testify or give false testimony   | CPC 316   |
| Any witness  | <i>In-camera</i> hearing (only public and media excluded)   | Necessary to protect witness/s  | CPC 340, CivPC 173 dh)                                      |
| Any witness  | Hearing where the witness is located/resides. <i>In-camera</i> hearing where defense counsel has to be present and the defendant “may” be present.  | “Absolute impossibility,” illness or other particular reasons   | CPC 364, CivPC 236  |
| Any witness  | Expulsion of persons intimidating a witness   | Hinders the normal performance of hearing   | CPC 341   |
| Any witness  | It is a criminal offence to influence a witness   | Action directed against the person in her/his capacity as a witness   | CC 79, 311, 312 and 312/a                                   |
| Witness at SCC   | Questioning of witness in the presence but without visual contact with defendant  | No conditions mentioned in the law, but purpose is to protect witness   | SCC Law 8 a)  |
| Witness at SCC   | Questioning of witness without revealing the identity of the witness (anonymous witness)  | No conditions mentioned in the law, but purpose is to protect witness   | SCC Law 8 b)  |
| Protected witnesses and justice collaborators at trial | Questioning of witness under another/fictive identify   | That the person has been defined as a protected witness or justice collaborator   | Witness Protection Law 10, 1 d), CPC 361/a and SCC Law 8 c  |
| Protected witnesses and justice collaborators at trial | Questioning of witness through special means of voice deformation   | That the person has been defined as a protected witness or justice collaborator   | Witness Protection Law, 10, 1 d), CPC 361/a and SCC Law 8 c |
| Protected witnesses and justice collaborators at trial | Questioning of witness at a distance via audiovisual link   | That the person has been defined as a protected witness or justice collaborator   | Witness Protection Law, 10, 1 d), CPC 361/a and SCC Law 8 c |
| Protected witnesses and justice collaborators          | Change of identity, relocation within or without the country, temporary protection of identity, information and documents, physical and/or technical protection measures, social rehabilitation, maintenance, change of work and temporary employment, financial aid, professional re-qualification, specialized legal assistance or other measures defined by law. | The testimony of the person must be of fundamental importance for the case at hand or to prevent other serious crimes and the person must be in a real, concrete and serious situation and be willing to collaborate fully. | Witness Protection Law 8 and 9                              |

*Source: OSCE Albania Mission Working Paper, On the Integrity of Witnesses and Related Issues (OSCE WP Paper) at 6-7 (February 2006).*

**Regional Programs for Victims of Trafficking.** There are also regional programs for temporary residence permits for victims of trafficking. While Albania has committed to participating in this program, amendments to the Law on Foreigners have been suggested but not yet adopted.<sup>16</sup> Such programs encourage victims of trafficking to testify as witnesses in trafficking cases due to better protection from defendants.<sup>17</sup> Consequently, shelters for victims of trafficking in foreign jurisdictions, to the extent they protect victims and encourage victim cooperation and testimony, can be helpful in trafficking cases.<sup>18</sup>

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<sup>16</sup> Law No. 8492, dated August 1999, “On Foreigners”; *see also* the Stability Pact for South Eastern Europe, Task Force on Trafficking in Human Beings; Statement on Commitments – Legalisation of the Status of Trafficked Persons, Tirana, 11 Dec. 2002; *OSCE WP Paper* at 7.

<sup>17</sup> Council of Europe Recommendation (2000) 11 on Action against Trafficking in Human Beings for the Purpose of Sexual Exploitation (19/5/2000), Hague Ministerial Declaration on European Guidelines for Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation (26/4/1997); *OSCE WP Paper* at 7.

<sup>18</sup> See OSCE Ministerial Council Decision No. 1, Enhancing the OSCE’s Efforts to Combat Trafficking in Human Beings (28/11/2000); *OSCE WP Paper* at 7.



#### **IV. OBTAINING EVIDENCE IN FOREIGN JURISDICTIONS: LETTERS ROGATORY AND THE EUROPEAN CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS**

As trafficking often takes place in multiple jurisdictions, it is important for the prosecutor to gather evidence in foreign countries. The majority of victims from Albania are trafficked to Italy and Greece. Important evidence in the foreign jurisdiction might include testimony of witnesses, copies of documents related to any police or prosecution investigation, judicial decisions or convictions related to the accused, financial information of the accused, medical reports, or other evidence related to alleged criminal activity.

One of the primary weaknesses in trafficking cases to date has been the lack of evidence. In many trafficking cases, the only evidence of the defendant's guilt is the victim's testimony.

**Letters Rogatory.** The primary tool for requesting evidence from foreign jurisdictions is "letters rogatory." Currently, Article 509-511 of the CPC covers Albanian requests for evidence in foreign jurisdictions via letters rogatory. While both judges and prosecutors may request evidence through letters rogatory, prosecutors use them much more frequently since they must gather evidence during the investigation phase of the case. Under the CPC, judges or prosecutors may send letters rogatory to the Albanian Ministry of Justice (MOJ), which forwards it to the foreign MOJ, which in turn forwards it to the foreign judicial authorities (police, prosecutor's office, or courts), and then back the same route to the Albanian courts or prosecutors. It is a slow process.

Due to the long delays of the formal method, in practice, prosecutors send evidence requests directly to the foreign judicial authorities, the International Criminal Police Organization (Interpol) office, or to foreign liaison police officers, magistrates or prosecutors working in Albania. A copy of the letters rogatory would also be sent to the Albanian MOJ to comply with the CPC. While these practices are not allowed under Albanian law, they are recognized by the second protocol to EMCAC.

The CPC, as it relates to letters rogatory, will likely be amended in the near future to comply with the European Convention on Mutual Assistance in Criminal Matters (ECMAC) (No. 30) and two Protocols (Nos. 99 and 182) (attached as Appendix D). The ECMAC and its protocols allow for these different methods of sending letters rogatory between parties.

Albania has signed and ratified the ECMAC and its two protocols. Of note, Italy has neither signed nor ratified, while Greece has signed but not ratified, the second protocol to the ECMAC. The ECMAC (and its protocols) specifically relate to letters rogatory and gathering evidence in foreign countries for use in criminal matters.

Under Article 14 of ECMAC, requests for evidence in “letters rogatory” should include:

- The authority making the request ;
- The object of and reason for the request;
- Where possible, the identity and the name of the person to be served; and,
- A description of the alleged offense and a summary of the facts;

The Revised Article 15 of ECMAC, as revised by the second protocol, provides for the following:

*Requests for mutual assistance, as well as spontaneous information, shall be addressed in writing by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party and shall be returned through the same channels. However, they may be forwarded directly by the judicial authorities of the requesting Party to the judicial authorities of the requested Party and returned through the same channels.*

*Second Protocol to ECMAC (ECMAC-182); Art. 4(1).*

Thus, the ECMAC provides for the practice currently followed by Albanian prosecutors: letters rogatory are generally sent directly to the foreign judicial authorities (to speed up the process of obtaining the evidence) and through diplomatic channels (via the Albanian and foreign MOJ). In addition, revised Art. 15 of the ECMAC allows for direct transmission of evidence through Interpol. ECMAC-182; Art. 4(7).

However, where the requested assistance involves the transfer of a person in custody from the requested country to the requesting country to take testimony for evidentiary purposes and not to stand trial, the request and response must go through the MOJ of the requesting and requested countries. ECMAC-182; Art. 4(2).

**Evidentiary hearings by telephone and videoconference.** Article 9 of the ECMAC-182 provides for hearings by videoconference. It provides for testimony of experts or witnesses by videoconference where it is not desirable or possible for the witness or expert to travel to the territory of the requesting party. The hearing should be conducted according the law and procedural requirements of the requesting country. Requests for videoconferences, in addition to the general information for letters rogatory listed above (Art. 14 of ECMAC), should also include the reason why it is not desirable for the witness to travel to the requesting country, the name of the judicial authority, and the names of persons who will be conducting the hearing. Finally, methods for the protection of the person to be heard (i.e., voice or visual distortion) shall be agreed upon between the authorities of the requesting and requested parties.

Article 10 of the ECMAC-182 provides for hearings by telephone conference. Such a hearing may only take place if the witness or expert agrees. Requests for hearing by telephone conference, in addition to the general information for letters rogatory listed above (Art. 14 of ECMAC), should include the name of the judicial authority and an indication that the witness or expert is willing to testify via telephone conference.

Letters rogatory should be translated into the language of the requested country and specify any procedural requirements of the requesting country (i.e. that a judge be present during the taking of testimony). It is also helpful to provide a copy of the relevant legal provision translated into the language of the requested party.

ECMAC and the two Protocols refer to different types of evidence that may be requested: testimony by witnesses or experts, police reports, judicial records, judicial verdicts, or property. ECMAC, Art 3-5. In practice, the documents or evidence requested will vary from case to case.

In one case where an Albanian citizen allegedly committed a trafficking offense in Italy involving two women, the Albanian prosecutor requested a police report summarizing statements by a victim/prostitute, a medical report, and a copy of any other relevant information in the file of the Italian prosecutor. In another case, prosecutors traveled to Italy to interview witnesses, accompanied by a judge of the Albanian SCC.

There are additional resources that interpret and implement ECMAC and the two protocols. First, there are “Explanatory Reports” on the Council of Europe’s website related to these treaties. The explanatory reports highlight background conditions that led to the final text in the treaties. These reports are located at the following Web addresses:

- <http://conventions.coe.int/Treaty/en/Reports/Html/030.htm> (ECMAC-30)
- <http://conventions.coe.int/Treaty/en/Reports/Html/099.htm> (ECMAC-99)
- <http://conventions.coe.int/Treaty/en/Reports/Html/182.htm> (ECMAC-182)

In addition, the Council of Europe has an intergovernmental Committee on International Co-operation in Criminal Matters (the PC-OC). The committee reviews the operation of the conventions related to mutual assistance in criminal matters. It has developed tools to implement the conventions. Currently, topics include a “manual” on assistance in criminal matters (contributions from Finland, Hungary, Moldova, Portugal, Romania, and Switzerland), information about the required language in assistance requests, temporary transfer of witnesses (Art. 11 of ECMAC), distinguishing police from judicial authorities, data protection standards, and compliance with Article 22 of the ECMAC (exchange of information from judicial records). These implementing tools can be found on the Council of Europe Web site.



# APPENDIX A

## UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME

### *Article 1*

#### *Statement of purpose*

The purpose of this Convention is to promote cooperation to prevent and combat transnational organized crime more effectively.

### *Article 2*

#### *Use of terms*

For the purposes of this Convention:

(a) “Organized criminal group” shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit;

(b) “Serious crime” shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty;

(c) “Structured group” shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure;

(d) “Property” shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets;

(e) “Proceeds of crime” shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence;

(f) “Freezing” or “seizure” shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;

(g) “Confiscation”, which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority;

(h) “Predicate offence” shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in article 6 of this Convention;

(i) “Controlled delivery” shall mean the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence;

(j) “Regional economic integration organization” shall mean an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it; references to “States Parties” under this Convention shall apply to such organizations within the limits of their competence.

### *Article 3*

#### *Scope of application*

1. This Convention shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of:

(a) The offences established in accordance with articles 5, 6, 8 and 23 of this Convention; and

(b) Serious crime as defined in article 2 of this Convention; where the offence is transnational in nature and involves an organized criminal group.

2. For the purpose of paragraph 1 of this article, an offence is transnational in nature if:

(a) It is committed in more than one State;

(b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;

(c) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or

(d) It is committed in one State but has substantial effects in another State.

#### *Article 4*

##### *Protection of sovereignty*

1. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

2. Nothing in this Convention entitles a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.

#### *Article 5*

##### *Criminalization of participation in an organized criminal group*

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) Either or both of the following as criminal offences distinct from those involving the attempt or completion of the criminal activity:

(i) Agreeing with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group;

(ii) Conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes an active part in:

a. Criminal activities of the organized criminal group;

b. Other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim;

(b) Organizing, directing, aiding, abetting, facilitating or counseling the commission of serious crime involving an organized criminal group.

2. The knowledge, intent, aim, purpose or agreement referred to in paragraph 1 of this article may be inferred from objective factual circumstances.

3. States Parties whose domestic law requires involvement of an organized criminal group for purposes of the offences established in accordance with paragraph 1 (a) (i) of this article shall ensure that their domestic law covers all serious crimes involving organized criminal groups. Such States Parties, as well as States Parties whose domestic law requires an act in furtherance of the agreement for purposes of the offences established in accordance with paragraph 1 (a) (i) of this article, shall so inform the Secretary-General of the United Nations at the time of their signature or of deposit of their instrument of ratification, acceptance or approval of or accession to this Convention.

#### *Article 6*

##### *Criminalization of the laundering of proceeds of crime*

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(b) Subject to the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counseling the commission of any of the offences established in accordance with this article.

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;



(b) Each State Party shall include as predicate offences all serious crime as defined in article 2 of this Convention and the offences established in accordance with articles 5, 8 and 23 of this Convention. In the case of States Parties whose legislation sets out a list of specific predicate offences, they shall, at a minimum, include in such list a comprehensive range of offences associated with organized criminal groups;

(c) For the purposes of subparagraph (b), predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence;

(f) Knowledge, intent or purpose required as an element of an offence set forth in paragraph 1 of this article may be inferred from objective factual circumstances.

#### *Article 7*

##### *Measures to combat money-laundering*

###### 1. Each State Party:

(a) Shall institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer identification, record-keeping and the reporting of suspicious transactions;

(b) Shall, without prejudice to articles 18 and 27 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of

a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.

2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

3. In establishing a domestic regulatory and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.

4. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

#### *Article 8*

##### *Criminalization of corruption*

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences conduct referred to in paragraph 1 of this article involving a foreign public official or international civil servant. Likewise, each State Party shall consider establishing as criminal offences other forms of corruption.

3. Each State Party shall also adopt such measures as may be necessary to establish as a criminal offence participation as an accomplice in an offence established in accordance with this article.

4. For the purposes of paragraph 1 of this article and article 9 of this

Convention, “public official” shall mean a public official or a person who provides a public service as defined in the domestic law and as applied in the criminal law of the State Party in which the person in question performs that function.

#### *Article 9*

##### *Measures against corruption*

1. In addition to the measures set forth in article 8 of this Convention, each State Party shall, to the extent appropriate and consistent with its legal system, adopt legislative, administrative or other effective measures to promote integrity and to prevent, detect and punish the corruption of public officials.

2. Each State Party shall take measures to ensure effective action by its authorities in the prevention, detection and punishment of the corruption of public officials, including providing such authorities with adequate independence to deter the exertion of inappropriate influence on their actions.

#### *Article 10*

##### *Liability of legal persons*

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in serious crimes involving an organized criminal group and for the offences established in accordance with articles 5, 6, 8 and 23 of this Convention.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

#### *Article 11*

##### *Prosecution, adjudication and sanctions*

1. Each State Party shall make the commission of an offence established in accordance with articles 5, 6, 8 and 23 of this Convention liable to sanctions that take into account the gravity of that offence.

2. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences covered by this Convention are exercised to maximize the effectiveness of law

enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

3. In the case of offences established in accordance with articles 5, 6, 8 and 23 of this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

4. Each State Party shall ensure that its courts or other competent authorities bear in mind the grave nature of the offences covered by this Convention when considering the eventuality of early release or parole of persons convicted of such offences.

5. Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence covered by this Convention and a longer period where the alleged offender has evaded the administration of justice.

6. Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.

## *Article 12*

### *Confiscation and seizure*

1. States Parties shall adopt, to the greatest extent possible within their domestic legal systems, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds;

(b) Property, equipment or other instrumentalities used in or destined for use in offences covered by this Convention.

2. States Parties shall adopt such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

3. If proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

4. If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

5. Income or other benefits derived from proceeds of crime, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

6. For the purposes of this article and article 13 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. States Parties shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

7. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law and with the nature of the judicial and other proceedings.

8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

9. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party.

### *Article 13*

#### *International cooperation for purposes of confiscation*

1. A State Party that has received a request from another State Party having jurisdiction over an offence covered by this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or

(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of

the requesting State Party in accordance with article 12, paragraph 1, of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, situated in the territory of the requested State Party.

2. Following a request made by another State Party having jurisdiction over an offence covered by this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

3. The provisions of article 18 of this Convention are applicable, *mutatis mutandis*, to this article. In addition to the information specified in article 18, paragraph 15, requests made pursuant to this article shall contain:

(a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

(b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested;

(c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested.

4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral treaty, agreement or arrangement to which it may be bound in relation to the requesting State Party.

5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.

6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

7. Cooperation under this article may be refused by a State Party if the offence to which the request relates is not an offence covered by this Convention.

8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

9. States Parties shall consider concluding bilateral or multilateral treaties, agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this article.

#### *Article 14*

##### *Disposal of confiscated proceeds of crime or property*

1. Proceeds of crime or property confiscated by a State Party pursuant to articles 12 or 13, paragraph 1, of this Convention shall be disposed of by that State Party in accordance with its domestic law and administrative procedures.

2. When acting on the request made by another State Party in accordance with article 13 of this Convention, States Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting State Party so that it can give compensation to the victims of the crime or return such proceeds of crime or property to their legitimate owners.

3. When acting on the request made by another State Party in accordance with articles 12 and 13 of this Convention, a State Party may give special consideration to concluding agreements or arrangements on:

(a) Contributing the value of such proceeds of crime or property or funds derived from the sale of such proceeds of crime or property or a part thereof to the account designated in accordance with article 30, paragraph 2 (c), of this Convention and to intergovernmental bodies specializing in the fight against organized crime;

(b) Sharing with other States Parties, on a regular or case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with its domestic law or administrative procedures.

#### *Article 15*

##### *Jurisdiction*

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with articles 5, 6, 8 and 23 of this Convention when:

(a) The offence is committed in the territory of that State Party; or

(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State Party;

(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or

(c) The offence is:

(i) One of those established in accordance with article 5, paragraph 1, of this Convention and is committed outside its territory with a view to the commission of a serious crime within its territory;

(ii) One of those established in accordance with article 6, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 6, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory.

3. For the purposes of article 16, paragraph 10, of this Convention, each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

4. Each State Party may also adopt such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite him or her.

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that one or more other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

6. Without prejudice to norms of general international law, this Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.



*Article 16*  
*Extradition*

1. This article shall apply to the offences covered by this Convention or in cases where an offence referred to in article 3, paragraph 1 (a) or (b), involves an organized criminal group and the person who is the subject of the request for extradition is located in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

2. If the request for extradition includes several separate serious crimes, some of which are not covered by this article, the requested State Party may apply this article also in respect of the latter offences.

3. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

4. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

5. States Parties that make extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of their instrument of ratification, acceptance, approval of or accession to this Convention, inform the Secretary-General of the United Nations whether they will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If they do not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

6. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

7. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

8. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

9. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

10. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

11. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 10 of this article.

12. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting Party, consider the enforcement of the sentence that has been imposed under the domestic law of the requesting Party or the remainder thereof.

13. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

14. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for

believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

15. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

16. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

17. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

#### *Article 17*

##### *Transfer of sentenced persons*

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences covered by this Convention, in order that they may complete their sentences there.

#### *Article 18*

##### *Mutual legal assistance*

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention as provided for in article 3 and shall reciprocally extend to one another similar assistance where the requesting State Party has reasonable grounds to suspect that the offence referred to in article 3, paragraph 1 (a) or (b), is transnational in nature, including that victims, witnesses, proceeds, instrumentalities or evidence of such offences are located in the requested State Party and that the offence involves an organized criminal group.

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 10 of this Convention in the requesting State Party.

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

- (a) Taking evidence or statements from persons;
- (b) Effecting service of judicial documents;
- (c) Executing searches and seizures, and freezing;
- (d) Examining objects and sites;
- (e) Providing information, evidentiary items and expert evaluations;
- (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
- (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
- (h) Facilitating the voluntary appearance of persons in the requesting State Party;
- (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party.

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.

7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply these paragraphs if they facilitate cooperation.

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

9. States Parties may decline to render mutual legal assistance pursuant to this article on the ground of absence of dual criminality. However, the requested State Party may, when it deems appropriate, provide assistance, to the extent it decides at its discretion, irrespective of whether the conduct would constitute an offence under the domestic law of the requested State Party.

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

11. For the purposes of paragraph 10 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention.

Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally, but shall be confirmed in writing forthwith.

15. A request for mutual legal assistance shall contain:

(a) The identity of the authority making the request;

(b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;

(c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;

(d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;

(e) Where possible, the identity, location and nationality of any person concerned; and

(f) The purpose for which the evidence, information or action is sought.

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

21. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article;

(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests;

(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;

(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

23. Reasons shall be given for any refusal of mutual legal assistance.

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requested State Party shall respond to reasonable requests by the requesting State Party on progress of its handling of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.



27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfill the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

29. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

#### *Article 19*

##### *Joint investigations*

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be

undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

#### *Article 20*

##### *Special investigative techniques*

1. If permitted by the basic principles of its domestic legal system, each State Party shall, within its possibilities and under the conditions prescribed by its domestic law, take the necessary measures to allow for the appropriate use of controlled delivery and, where it deems appropriate, for the use of other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, by its competent authorities in its territory for the purpose of effectively combating organized crime.

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods to continue intact or be removed or replaced in whole or in part.

#### *Article 21*

##### *Transfer of criminal proceedings*

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence covered by this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

#### *Article 22*

##### *Establishment of criminal record*

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence covered by this Convention.

*Article 23*

*Criminalization of obstruction of justice*

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences covered by this Convention;

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences covered by this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public officials.

*Article 24*

*Protection of witnesses*

1. Each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences covered by this Convention and, as appropriate, for their relatives and other persons close to them.

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

(b) Providing evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the witness, such as permitting testimony to be given through the use of communications technology such as video links or other adequate means.

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

#### *Article 25*

##### *Assistance to and protection of victims*

1. Each State Party shall take appropriate measures within its means to provide assistance and protection to victims of offences covered by this Convention, in particular in cases of threat of retaliation or intimidation.

2. Each State Party shall establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this Convention.

3. Each State Party shall, subject to its domestic law, enable views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

#### *Article 26*

##### *Measures to enhance cooperation with law enforcement authorities*

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in organized criminal groups:

(a) To supply information useful to competent authorities for investigative and evidentiary purposes on such matters as:

(i) The identity, nature, composition, structure, location or activities of organized criminal groups;

(ii) Links, including international links, with other organized criminal groups;

(iii) Offences that organized criminal groups have committed or may commit;

(b) To provide factual, concrete help to competent authorities that may contribute to depriving organized criminal groups of their resources or of the proceeds of crime.

2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.

3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.

4. Protection of such persons shall be as provided for in article 24 of this Convention.

5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

#### *Article 27*

##### *Law enforcement cooperation*

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. Each State Party shall, in particular, adopt effective measures:

(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

(ii) The movement of proceeds of crime or property derived from the commission of such offences;

(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(c) To provide, when appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(d) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;

(e) To exchange information with other States Parties on specific means and methods used by organized criminal groups, including, where applicable, routes and conveyances and the use of false identities, altered or false documents or other means of concealing their activities;

(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the Parties may consider this Convention as the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

3. States Parties shall endeavour to cooperate within their means to respond to transnational organized crime committed through the use of modern technology.

#### *Article 28*

#### *Collection, exchange and analysis of information on the nature of organized crime*

1. Each State Party shall consider analysing, in consultation with the scientific and academic communities, trends in organized crime in its territory, the circumstances in which organized crime operates, as well as the professional groups and technologies involved.

2. States Parties shall consider developing and sharing analytical expertise concerning organized criminal activities with each other and through international and regional organizations. For that purpose, common definitions, standards and methodologies should be developed and applied as appropriate.

3. Each State Party shall consider monitoring its policies and actual measures to combat organized crime and making assessments of their effectiveness and efficiency.

*Article 29*

*Training and technical assistance*

1. Each State Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its law enforcement personnel, including prosecutors, investigating magistrates and customs personnel, and other personnel charged with the prevention, detection and control of the offences covered by this Convention. Such programmes may include secondments and exchanges of staff.

Such programmes shall deal, in particular and to the extent permitted by domestic law, with the following:

(a) Methods used in the prevention, detection and control of the offences covered by this Convention;

(b) Routes and techniques used by persons suspected of involvement in offences covered by this Convention, including in transit States, and appropriate countermeasures;

(c) Monitoring of the movement of contraband;

(d) Detection and monitoring of the movements of proceeds of crime, property, equipment or other instrumentalities and methods used for the transfer, concealment or disguise of such proceeds, property, equipment or other instrumentalities, as well as methods used in combating money-laundering and other financial crimes;

(e) Collection of evidence;

(f) Control techniques in free trade zones and free ports;

(g) Modern law enforcement equipment and techniques, including electronic surveillance, controlled deliveries and undercover operations;

(h) Methods used in combating transnational organized crime committed through the use of computers, telecommunications networks or other forms of modern technology; and

(i) Methods used in the protection of victims and witnesses.

2. States Parties shall assist one another in planning and implementing research and training programmes designed to share expertise in the areas referred

to in paragraph 1 of this article and to that end shall also, when appropriate, use regional and international conferences and seminars to promote cooperation and to stimulate discussion on problems of mutual concern, including the special problems and needs of transit States.

3. States Parties shall promote training and technical assistance that will facilitate extradition and mutual legal assistance. Such training and technical assistance may include language training, secondments and exchanges between personnel in central authorities or agencies with relevant responsibilities.

4. In the case of existing bilateral and multilateral agreements or arrangements, States Parties shall strengthen, to the extent necessary, efforts to maximize operational and training activities within international and regional organizations and within other relevant bilateral and multilateral agreements or arrangements.

#### *Article 30*

#### *Other measures: implementation of the Convention through economic development and technical assistance*

1. States Parties shall take measures conducive to the optimal implementation of this Convention to the extent possible, through international cooperation, taking into account the negative effects of organized crime on society in general, in particular on sustainable development.

2. States Parties shall make concrete efforts to the extent possible and in coordination with each other, as well as with international and regional organizations:

(a) To enhance their cooperation at various levels with developing countries, with a view to strengthening the capacity of the latter to prevent and combat transnational organized crime;

(b) To enhance financial and material assistance to support the efforts of developing countries to fight transnational organized crime effectively and to help them implement this Convention successfully;

(c) To provide technical assistance to developing countries and countries with economies in transition to assist them in meeting their needs for the implementation of this Convention. To that end, States Parties shall endeavour to make adequate and regular voluntary contributions to an account specifically designated for that purpose in a United Nations funding mechanism. States Parties may also give special consideration, in accordance with their domestic law and the provisions of this Convention, to contributing to the aforementioned account a



percentage of the money or of the corresponding value of proceeds of crime or property confiscated in accordance with the provisions of this Convention;

(d) To encourage and persuade other States and financial institutions as appropriate to join them in efforts in accordance with this article, in particular by providing more training programmes and modern equipment to developing countries in order to assist them in achieving the objectives of this Convention.

3. To the extent possible, these measures shall be without prejudice to existing foreign assistance commitments or to other financial cooperation arrangements at the bilateral, regional or international level.

4. States Parties may conclude bilateral or multilateral agreements or arrangements on material and logistical assistance, taking into consideration the financial arrangements necessary for the means of international cooperation provided for by this Convention to be effective and for the prevention, detection and control of transnational organized crime.

### *Article 31* *Prevention*

1. States Parties shall endeavour to develop and evaluate national projects and to establish and promote best practices and policies aimed at the prevention of transnational organized crime.

2. States Parties shall endeavour, in accordance with fundamental principles of their domestic law, to reduce existing or future opportunities for organized criminal groups to participate in lawful markets with proceeds of crime, through appropriate legislative, administrative or other measures. These measures should focus on:

(a) The strengthening of cooperation between law enforcement agencies or prosecutors and relevant private entities, including industry;

(b) The promotion of the development of standards and procedures designed to safeguard the integrity of public and relevant private entities, as well as codes of conduct for relevant professions, in particular lawyers, notaries public, tax consultants and accountants;

(c) The prevention of the misuse by organized criminal groups of tender procedures conducted by public authorities and of subsidies and licences granted by public authorities for commercial activity;

(d) The prevention of the misuse of legal persons by organized criminal groups; such measures could include:

(i) The establishment of public records on legal and natural persons involved in the establishment, management and funding of legal persons;

(ii) The introduction of the possibility of disqualifying by court order or any appropriate means for a reasonable period of time persons convicted of offences covered by this Convention from acting as directors of legal persons incorporated within their jurisdiction;

(iii) The establishment of national records of persons disqualified from acting as directors of legal persons; and

(iv) The exchange of information contained in the records referred to in subparagraphs (d) (i) and (iii) of this paragraph with the competent authorities of other States Parties.

3. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences covered by this Convention.

4. States Parties shall endeavour to evaluate periodically existing relevant legal instruments and administrative practices with a view to detecting their vulnerability to misuse by organized criminal groups.

5. States Parties shall endeavour to promote public awareness regarding the existence, causes and gravity of and the threat posed by transnational organized crime. Information may be disseminated where appropriate through the mass media and shall include measures to promote public participation in preventing and combating such crime.

6. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that can assist other States Parties in developing measures to prevent transnational organized crime.

7. States Parties shall, as appropriate, collaborate with each other and relevant international and regional organizations in promoting and developing the measures referred to in this article. This includes participation in international projects aimed at the prevention of transnational organized crime, for example by alleviating the circumstances that render socially marginalized groups vulnerable to the action of transnational organized crime.

## *Article 32*

### *Conference of the Parties to the Convention*

1. A Conference of the Parties to the Convention is hereby established to improve the capacity of States Parties to combat transnational organized crime and to promote and review the implementation of this Convention.

2. The Secretary-General of the United Nations shall convene the Conference of the Parties not later than one year following the entry into force of this Convention. The Conference of the Parties shall adopt rules of procedure and rules governing the activities set forth in paragraphs 3 and 4 of this article (including rules concerning payment of expenses incurred in carrying out those activities).

3. The Conference of the Parties shall agree upon mechanisms for achieving the objectives mentioned in paragraph 1 of this article, including:

(a) Facilitating activities by States Parties under articles 29, 30 and 31 of this Convention, including by encouraging the mobilization of voluntary contributions;

(b) Facilitating the exchange of information among States Parties on patterns and trends in transnational organized crime and on successful practices for combating it;

(c) Cooperating with relevant international and regional organizations and non-governmental organizations;

(d) Reviewing periodically the implementation of this Convention;

(e) Making recommendations to improve this Convention and its implementation.

4. For the purpose of paragraphs 3 (d) and (e) of this article, the Conference of the Parties shall acquire the necessary knowledge of the measures taken by States Parties in implementing this Convention and the difficulties encountered by them in doing so through information provided by them and through such supplemental review mechanisms as may be established by the Conference of the Parties.

5. Each State Party shall provide the Conference of the Parties with information on its programmes, plans and practices, as well as legislative and administrative measures to implement this Convention, as required by the Conference of the Parties.

### *Article 33* *Secretariat*

1. The Secretary-General of the United Nations shall provide the necessary secretariat services to the Conference of the Parties to the Convention.

2. The secretariat shall:

(a) Assist the Conference of the Parties in carrying out the activities set forth in article 32 of this Convention and make arrangements and provide the necessary services for the sessions of the Conference of the Parties;

(b) Upon request, assist States Parties in providing information to the Conference of the Parties as envisaged in article 32, paragraph 5, of this Convention; and

(c) Ensure the necessary coordination with the secretariats of relevant international and regional organizations.

#### *Article 34*

##### *Implementation of the Convention*

1. Each State Party shall take the necessary measures, including legislative and administrative measures, in accordance with fundamental principles of its domestic law, to ensure the implementation of its obligations under this Convention.

2. The offences established in accordance with articles 5, 6, 8 and 23 of this Convention shall be established in the domestic law of each State Party independently of the transnational nature or the involvement of an organized criminal group as described in article 3, paragraph 1, of this Convention, except to the extent that article 5 of this Convention would require the involvement of an organized criminal group.

3. Each State Party may adopt more strict or severe measures than those provided for by this Convention for preventing and combating transnational organized crime.

#### *Article 35*

##### *Settlement of disputes*

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Convention through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Convention, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

#### *Article 36*

##### *Signature, ratification, acceptance, approval and accession*

1. This Convention shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

2. This Convention shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Convention in accordance with paragraph 1 of this article.

3. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Convention is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Convention. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

#### *Article 37*

##### *Relation with protocols*

1. This Convention may be supplemented by one or more protocols.

2. In order to become a Party to a protocol, a State or a regional economic integration organization must also be a Party to this Convention.

3. A State Party to this Convention is not bound by a protocol unless it becomes a Party to the protocol in accordance with the provisions thereof.

4. Any protocol to this Convention shall be interpreted together with this Convention, taking into account the purpose of that protocol.

#### *Article 38*

##### *Entry into force*

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Convention after the deposit of the fortieth instrument of such action, this Convention shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument.

#### *Article 39*

##### *Amendment*

1. After the expiry of five years from the entry into force of this Convention, a State Party may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Convention. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Convention and any earlier amendments that they have ratified, accepted or approved.

*Article 40*  
*Denunciation*

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Convention when all of its member States have denounced it.

3. Denunciation of this Convention in accordance with paragraph 1 of this article shall entail the denunciation of any protocols thereto.

*Article 41*  
*Depositary and languages*

1. The Secretary-General of the United Nations is designated depositary of this Convention.

2. The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

# APPENDIX B

## **PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME**

### **Preamble**

*The States Parties to this Protocol,*

*Declaring* that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights,

*Taking into account* the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons,

*Concerned* that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected,

*Recalling* General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing trafficking in women and children,

*Convinced* that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument for the



prevention, suppression and punishment of trafficking in persons, especially women and children, will be useful in preventing and combating that crime,

*Have agreed as follows:*

## **I. General provisions**

### *Article 1*

#### *Relation with the United Nations Convention against Transnational Organized Crime*

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.

2. The provisions of the Convention shall apply, *mutatis mutandis*, to this Protocol unless otherwise provided herein.

3. The offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.

### *Article 2*

#### *Statement of purpose*

The purposes of this Protocol are:

(a) To prevent and combat trafficking in persons, paying particular attention to women and children;

(b) To protect and assist the victims of such trafficking, with full respect for their human rights; and

(c) To promote cooperation among States Parties in order to meet those objectives.

### *Article 3*

#### *Use of terms*

For the purposes of this Protocol:

(a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the

exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) “Child” shall mean any person under eighteen years of age.

#### *Article 4*

##### *Scope of application*

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 5 of this Protocol, where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences.

#### *Article 5*

##### *Criminalization*

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.

2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:

(a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;

(b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and

(c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

## **II. Protection of victims of trafficking in persons**

#### *Article 6*

*Assistance to and protection of victims of trafficking in persons*

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.

2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:

(a) Information on relevant court and administrative proceedings;

(b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.

3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:

(a) Appropriate housing;

(b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;

(c) Medical, psychological and material assistance; and

(d) Employment, educational and training opportunities.

4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.

5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.

6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

*Article 7*

*Status of victims of trafficking in persons in receiving States*

1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.

2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

#### *Article 8*

#### *Repatriation of victims of trafficking in persons*

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.

2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.

3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.

4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.

5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.

6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

### **III. Prevention, cooperation and other measures**

## *Article 9*

### *Prevention of trafficking in persons*

1. States Parties shall establish comprehensive policies, programmes and other measures:

(a) To prevent and combat trafficking in persons; and

(b) To protect victims of trafficking in persons, especially women and children, from revictimization.

2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.

3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.

5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

## *Article 10*

### *Information exchange and training*

1. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:

(a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;

(b) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and

(c) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.

2. States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

3. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

#### *Article 11*

##### *Border measures*

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.

2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with article 5 of this Protocol.

3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.

4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.

5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.

6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

#### *Article 12*

##### *Security and control of documents*

Each State Party shall take such measures as may be necessary, within available means:

(a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and

(b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

#### *Article 13*

##### *Legitimacy and validity of documents*

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in persons.

### **IV. Final provisions**

#### *Article 14*

##### *Saving clause*

1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention<sup>3</sup> and the 1967 Protocol<sup>4</sup> relating to the Status of Refugees and the principle of non-refoulement as contained therein.

2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

#### *Article 15*

##### *Settlement of disputes*

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

#### *Article 16*

##### *Signature, ratification, acceptance, approval and accession*

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.

3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.



4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

#### *Article 17*

##### *Entry into force*

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

#### *Article 18*

##### *Amendment*

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

#### *Article 19*

##### *Denunciation*

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

#### *Article 20*

##### *Depositary and languages*

1. The Secretary-General of the United Nations is designated depositary of this Protocol.

2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol

# APPENDIX C

**REPUBLIC OF ALBANIA  
THE ASSEMBLY**

**LAW**

**No. 9205, Dated 15/03/2004**

**ON THE JUSTICE COLLABORATORS AND WITNESS PROTECTION**

Based on Articles 78 point 1, 81 point 1 and 83 point 1 of the Constitution, upon the proposal of the Council of Ministers,

**THE ASSEMBLY OF THE REPUBLIC OF ALBANIA**

**DECIDED**

**CHAPTER I**

**GENERAL PROVISIONS**

**Article 1**

**Object of the law**

This law regulates the special measures, manner and procedure of protection of witnesses and justice collaborators, as well as the organization, functioning, competencies and relationships between the bodies in charge of the proposal, assessment, approval and implementation of the special measures of protection.

## **Article 2**

### **Definitions**

Within the meaning of this law the following terms mean as follows:

- 1) "Witness of justice" is considered the person towards whom the special measures of protection have been applied, who in the quality of a witness or a damaged person, notifies or testifies for facts or circumstances, which constitute evidence in the criminal proceeding of the offenses provided in point 7 of this article, and that due to this information or testimony is in a real, concrete or serious danger.
- 2) "A collaborator of justice" is considered a person that serves a criminal sentence or a defendant in a criminal proceeding, towards whom special measures of protection have been applied due to collaboration, notifications and declarations made during the criminal proceeding on the offences provided in point 7 of this article, and for these reasons is in a real, concrete or serious danger.
- 3) "Close persons" are considered the persons who are in a real, concrete or serious danger due to their kinship relations based on blood or marriage with the witness or the collaborator of justice in accordance to the definitions in article 16 of the Code of the criminal Procedure, and, as a rule, live or cohabit with them in a stable manner.
- 4) "Related persons" are considered those persons who, due to the nature of the concrete relationship they have with the witness or the collaborator of justice, are in a real, concrete or serious dangerous situation.
- 5) "Protected persons" are considered, separately or jointly, collaborators of justice, witnesses and other persons close or related to them based on the definitions provided in points 1, 2, 3 and 4 of this article.
- 6) "A dangerous situation" is considered a real, concrete and serious situation, because of which, life, health and fundamental rights and freedoms as provided by law, as well as property and the rights related to it, are in danger.
- 7) "A serious crime", for the purpose of this law, is the criminal offense provided in articles 73, 74, 75, 79, 89, letter "a", 100, 101, 109, 110, letter "a", 111, 114, letters "a" and "b", 128, letter "b", 208, 209, 211, 213, 219, 220, 221, 222, 230, 230 letter "a", 231, 232, 233, 234, 278, letter "a", 282, letter "a", 283, 284, letter "a", "c" and "ç", 286, 287, 333 and 334 of the Criminal Code, as well as other criminal provisions included expressly in the implementation of the provisions of this law.

**CHAPTER II**  
**RESPONSIBLE BODIES FOR WITNESS PROTECTION AND**  
**COLLABORATORS OF JUSTICE**

**Article 3**  
**Responsible bodies**

Responsible bodies for the preparation, evaluation, approval and implementation of the special measures of protection of witnesses and collaborators of justice are as follows:

- a) Directorate for Witness Protection and Justice Collaborators;
- b) Commission for Evaluation of Special Measures of Witness Protection and Justice Collaborators.

**Article 4**  
**The Directorate for Justice Collaborators and Witness Protection**

1. For preparing, pursuing and implementing the specific measures of protection, a Directorate of Justice Collaborators and Witness Protection is established, as a special central state structure in the State Police under the direct supervision of the General Director of State Police, operating countrywide in the Republic of Albania.
2. Organizational and personnel structure of the Directorate of Justice Collaborators and Witness Protection are approved by the Minister of Public Order.
3. Issues related to the treatment of the employees of the Directorate of Witness Protection and Justice Collaborators are to be regulated by a decision of the Council of Ministers.
4. Special rules related to the specific administration of the necessary assets and funds for the exercise of activities of the Directorate of Justice Collaborators and Witness Protection, are to be defined by joint instructions of the Minister of Public Order, Minister of Finances and Minister of Justice.

**Article 5**  
**The area of activity of the Directorate of Justice Collaborators and Witness Protection**

1. The Directorate for Justice Collaborators and Witness Protection exercises the following competencies:

- a) prepares for review by the Commission of Evaluation of Special Measures of the Witness Protection and Justice Collaborators, proposals sent by the prosecutor for taking special measures of protection;
- b) upon the request of the Prosecutor or the Commission of Evaluation of Special Measures of the Witness Protection and Justice Collaborators, and after performing the necessary verifications, presents additional information related to the technical aspects of the proposal for implementing the special measures of protection;
- c) decides the application of temporary measures of protection until the final decision is taken by the Commission of Evaluation of Special Measures of the Witness Protection and Justice Collaborators in the cases and manner provided in this law;
- ç) prepares and signs the agreements on the special measures of protection with the protected persons in accordance to this law;
- d) follows up the implementation of the special measures of protection, approved by the Commission of Evaluation of Special Measures of the Witness Protection and Justice Collaborators;
- dh) administers the database related to the activity of the Directorate and the progressing of the special measures of protection, and takes measures to safeguard and administer them in compliance with the appropriate level of the classification of the information, in accordance to the provisions in force;
- e) administers the assets and funds in the disposal of the Directorate for the exercising of its activity and implementation of the special measures of protection;
- ë) proposes and takes measures for coordinating the work with other institutions for the development of activities and implementation of the special measures of witness protection and justice collaborators;
- f) manages the issues of collaboration with international bodies or other states, in the area of witness protection and justice collaborators;
- g) prepares periodical reports on its activities, and makes proposals for the improvement of the legislation and activities of the institutions, for the implementation of special measures of witness protection and justice collaborators.

2. The Directorate of Witness Protection and Justice Collaborators, after receiving the approval in principle of the Commission of Evaluation of Special Measures of Witness Protection and Justice Collaborators, prepares the rules of a technical and operative character, for the conditions, methodologies and procedures of verification, preparation and implementation of ordinary and special measures of protection, for the manners, forms and means of communication, as well as for the administration of acts and information related to its activity.

### **Article 6**

#### **The Commission on Evaluation of Special Measures of Witness Protection and Justice Collaborators**

1. For evaluating the proposals and approving the special measures of protection program, amending, revoking or terminating them, the Commission of Evaluation of Special Measures of Witness Protection and Justice Collaborators is established.
2. The Commission of Evaluation of Special Measures of Witness Protection and Justice Collaborators is headed by the Deputy Minister of Public Order, and is composed of:
  - a) a judge deputy chairman;
  - b) a prosecutor member;
  - c) an officer of the judicial police member
3. The High Council of Justice, General Prosecutor and General Director of State Police, each appoint respectively one of the members for the composition of this Commission. They are convened in the meetings of the Commission by the chairman of the Commission.

High Council of Justice, the General Prosecutor and the Director of State Police appoint respectively another alternative member, which will attend the meetings of the Commission when the respective members of the commission appointed in compliance with the above paragraph of this article are absent.

4. The judges, prosecutors and officers of the judicial police appointed as members of the Commission on Evaluation of Special Measures of Witness Protection and Justice Collaborators, should be reliable and have a pure moral character, should have experience and special professional skills in the criminal field in general and in serious and organized crime in particular.
5. The members of the Commission are appointed for a term of three years and may be re-appointed. The mandate may end earlier in these cases:
  - a) when the member does not hold anymore the position in the institution from where he/she was appointed;
  - b) upon his/her request, presenting the reasons for the request;
  - c) when the member violates the legal provisions of this law and the rules of functioning of the Commission.
6. The decision on the end of mandate of the member of the commission, in the case of letter "a", of point 5 of this law, is taken and made known by the competent body for their nomination, whereas in the cases of letters "b" and "c", respectively, upon the request of the member himself or the commission.
7. The judges, prosecutors and officers of the judicial police that are members of the commission, cannot take part in discussion and decision-taking, when they are informed that the proposal for special measures of protection has to do with criminal procedures or activities that are investigated or tried by them. The above mentioned ban is also valid for cases where there are conflicts of

interests or doubts for a bias position as provided in the Code of the Criminal Procedure and in other legal provisions in force.

8. The detailed rules on the criteria and procedures for convening and participating in the meetings of the commission, the workload, absences, obstacles, and non-feasibility of assigning and performing this assignment are to be defined in common instructions of the General Prosecutor, Minister of Public Order and Minister of Justice.

#### **Article 7**

#### **The meetings of the Commission of Evaluation of Special Measures of Witness Protection and Justice Collaborators**

1. The Commission of Evaluation of Special Measures of Witness Protection and Justice Collaborators is convened by its chairman, or in case of absence, by the deputy, within 5 days from the submission of the proposal of the prosecutor for implementing the special measures of protection, as well as when it is requested by the General Prosecutor. In particular and emergency cases, the Commission is convened immediately.
2. The meetings of the Commission are valid when 3 members are present. The decisions of the commission are valid when they are approved by three members present in the meeting.
3. The Commission should take decisions not later than 10 days from the first meeting, and in any case, not later than 30 days from the submission of the relevant documents and the prosecutor's proposal.
4. All acts and information on the activities of the commission are considered as classified information.
5. The detailed rules related to the functioning and procedures of the work of the Commission, as well as the rights, obligations and treatment of its members, are to be provided in common instructions of the General Prosecutor, Minister of Public Order, Minister of Justice and Minister of Finance.

### **CHAPTER III**

#### **Special Measures of Witness Protection and Justice Collaborators**

#### **Article 8**

#### **The general conditions for applying special measures for the protection of witnesses**

1. When the implementation of the ordinary measures of protection of the witness is not sufficient and suitable, special measures of protection according to this law are implemented, if the witness accepts and willingly collaborates with the prosecution office and court, and through his complete testimony made without conditions and reserves, gives firmly grounded information which:



- a) constitute fundamental evidence related to a criminal proceeding for serious crimes;
  - b) help preventing serious crimes or reducing their effects;
  - c) help in repairing losses and damages caused by committing a serious crime.
2. The implementation of the special measures on witness protection is decided only if the witness is in a real, concrete and serious situation, suitable to be included in these measures, and provided that he/she accepts and participates actively in their implementation with free will.
  3. Depending upon concrete circumstances, the Commission of Evaluation of Special Measures of Witness Protection and Justice Collaborators can apply the special measures of protection also to persons close to the witness or related to him/her.
  4. The rules and detailed criteria on the issues provided in points 1, 2 and 3 of this article are to be provided in common instructions of the General Prosecutor, Minister of Public Order and Minister of Justice.

#### **Article 9**

#### **General conditions for applying special measures of protection for justice collaborators**

1. When the implementation of the ordinary protection measures for the collaborator of justice is not sufficient and suitable, special protection and treatment measures are applied according to this law, when the person accepts and collaborates with the Prosecution Office and Court, and when through firmly grounded information and declarations:
  - a) gives light to facts and important circumstances during the criminal process, which serve as fundamental and irreplaceable evidence in detecting, investigation and judgement of serious crimes;
  - b) assists or testifies for the prevention of serious crimes and for recovering of losses and damages caused by the commitment of these crimes.
2. The implementation of special protection measures is decided only if the collaborator of justice is in a real, concrete and serious dangerous situation, is suitable to be included in these measures and with the condition that during the session, he/she makes complete declarations without conditions and reserves, accepts the implementation of the special measures, and actively participates in their implementation with his/her free.
3. Depending on concrete circumstances, the special protection measures are set by the Commission of Evaluation of Special Measures of Witness Protection and Justice Collaborators, and applied also for the persons closed to or related with the collaborator of justice.

4. The rules and detailed criteria on the issues provided in points 1, 2 and 3 of this article are to be determined by joint guidelines of the General Prosecutor, Minister of Public Order and Minister of Justice.

### **Article 10** **Special measures of protection**

1. The special protection measures for the witnesses, justice collaborators and their relatives or closely related persons are as follows:
  - a) change of identity;
  - b) change of residence;
  - c) temporary protection of the identity, information and documents of the protected person;
  - ç) declarations of the witness under another identity and their administration with special means for voice deformation, non-appearance and other forms defined by law;
  - d) special physical and technical measures of protection, in the place where the protected person resides, as well during transportation, including also situations where such protection is needed for the fulfillment of the obligations towards the justice authorities;
  - dh) protection and special treatment in cases when the justice collaborator has been placed in prison as a pre-trial security measure or sentenced by imprisonment;
  - e) social rehabilitation;
  - ë) maintenance, change of the work place and temporary employment;
  - f) financial aid for the period of time between two employments;
  - g) professional re-qualification;
  - gj) giving of the advice and specialized legal assistance;
  - h) other ways as defined by law.
2. The special protection measures are not to be implemented to such an extent and certain way, which would consequently lead to the improvement of the economical condition of the protected person as a result of their implementation.
3. The special protection measures, as a rule, are set for an indefinite time limit and can be applied to all phases of the criminal proceeding, as well as after its termination.
4. The duration of the special protection measures depends on the level of danger, suitability of the protected person in relation to the special protection measure, as well as from his/her correctness in the fulfillment of the legal obligations and conditions provided in the agreement of protection.
5. The rules and detailed criteria for the content, meaning, suitability, manner and procedures of the issuance and upgrading of the implementation of the

special protection measures are to be defined by joint guidelines of the General Prosecutor, Minister of Public Order and Minister of Justice.

### **Article 11**

#### **Responsibilities for implementing the special protection measures**

1. The Directorate of Witness Protection and Collaborators of Justice is responsible for the preparation, coordination and pursuance of the implementation of the special protection measures.
2. Ministries and other central institutions, based on the responsibilities and tasks provided by law, organize the work and are responsible for pursuing and implementing common and special protection measures for the protected people.
3. The bodies, mentioned in point 2 of this article, coordinate their work with the Directorate of Witness Protection and Collaborators of Justice, reply to the requests of this Directorate and those to the prosecutors, as well as inform on issues and circumstances that have to do with the preparation of proposals, implementation of special protection measures and relevant agreements made for this reason with the protected persons.
4. The detailed rules related to the tasks, responsibilities, forms, coordinating and informing procedures between the institutions, are to be defined by joint instructions of the Minister of Public Order, Minister of Justice and General Prosecutor.

### **Article 12**

#### **Administration of the acts, documents and information**

1. The acts, documents and information related to the proposal, approval and implementation of the special protection measures are considered as classified information and are preserved and administered by the Directorate of Witness Protection and Collaborators of Justice.
2. The criteria and procedures on the protection, administration and classification of the information concerning witness protection and collaborators of justice, are set by joint instructions of the Minister of Public Order, Minister of Justice and General Prosecutor.
3. The acts, documents, data as well as any information on special protection measures that the ministers and other central institutions possess, are considered as classified information. The heads of the institutions approve the relevant instructions for the depositing, maintenance and administration of these documents, after they have received the opinion of the Minister of Public Order, Minister of Justice and General Prosecutor.

## **CHAPTER IV**

### **THE PROCEDURES ON THE APPROVAL AND IMPLEMENTATION OF SPECIAL PROTECTION MEASURES**

#### **Article 13**

##### **Presentation of the proposal**

1. The Prosecutor General has the right to propose the implementation of special protection measures.
2. In cases when the prosecutor argues and there are reasons that justify the implementation of special protection measures, the Prosecutor General proposes to the Commission on the Evaluation of the Special Protection Measures for Witnesses to review and approve the special protection measures.
3. The proposal for the approval of special protection measures, together with the basic information according to this law, are to be deposited with the Directorate for the Protection of Witnesses and Justice Collaborators, which also carries the functions of technical secretariat unit. This Directorate prepares the documentation for examination by the Commission for the Evaluation of Special Protection Measures for Witnesses and Justice Collaborators.
4. When it is the case, together with the proposal, the Prosecutor General may present a reasoned request to the Directorate for the Protection of Witnesses and Justice Collaborators for implementing temporary and appropriate protection measures in compliance with the concrete circumstances.
5. The regulations and the procedures foreseen in this article are also applied in cases of the proposal for changing, or revoking the special protection measures.

#### **Article 14**

##### **Temporary protection measures**

1. In specific and urgent cases, the Directorate for the Protection of the Witnesses and the Collaborators of Justice, upon the prosecutor request and after taking the written approval of the protected person, decides on the immediate implementation of the temporary protection measures. The decision of the Directorate is implemented after the Head of the Commission for the evaluation of Special Measures for

the Protection of Witnesses and Justice Collaborators and the General Prosecutor or any prosecutor authorized by him, give their approval.

2. The temporary protection measures are established in accordance with the level of danger and in such forms that they can guarantee, temporarily and preliminarily, the minimal necessary protection level.
3. The detailed regulations regarding the cases, procedures and methods of the temporary protection, are to be provided by common instructions of the Minister of the Public Order, Minister of Justice and the General Prosecutor.

### **Article 15**

#### **Content of the proposal for the application of special protection measures and the accompanying documents**

1. The proposal of the Prosecutor General for the application of special protection measures, contains necessarily the following data:
  - a) personal data of the person who has been proposed for protection;
  - b) information on the development of the criminal case and evaluation of the collected evidence;
  - c) explanations on the importance of the statements made or that can be obtained from the witness or the justice collaborator, and reasons why free testimony or statements cannot be obtained in any other manner;
  - ç) the circumstances in which or due to which the witness or the justice collaborator has become aware of the data and statements given by him or that can be obtained from him;
  - d) information and other explanations that serve to motivate and support the evaluation of the danger that the person proposed to be protected faces or is expected to face;
  - dh) information on the financial status of the witness;
  - e) other information as evaluated by the prosecutor.
2. The Prosecutor General can request to the Directorate for the Protection of Witnesses and Justice Collaborators to elaborate and prepare more detailed or additional information on the motives and effects of the implementation of the special protection measures.

### **Article 16**

#### **The Agreement with the protected person**

1. In the shortest time possible and at any case not later than 15 days from the approval of the special protection measures, the Directorate for the Protection of Witness and the Justice Collaborators prepares the

agreement for the application of the special protection measures and takes the measures for discussing and signing it by the witness, the justice collaborator and other protected persons.

2. In cases reasoned by him, the prosecutor participates in the preparation and discussion of the conditions of the special agreement on the implementation of the special protection measures.
3. In any case the prosecutor is informed and gives his approval before the agreement is signed by the Directorate of Witness Protection and Justice Collaborators and the protected person.
4. The rights, responsibilities and effects of the protection measures start at the time and manner provided in the agreement.
5. In case of a minor, the approval and signing of the agreement is done by the parent or legal custodian appointed by law, by taking into consideration the highest interest of the child and also the limited legal capacity as provided by law,
6. In case of an adult that is mentally ill and consequently has limited legal capacity, the approval and signing of the agreement is done by the legal custodian appointed by law.

#### **Article 17**

#### **Content of the agreement**

1. In the protection agreement the following issues are to be obligatory:
  - a) the rights and obligations of the protected persons;
  - b) the rights and obligations of the Directorate for the Protection of the Witnesses and the Collaborators of Justice in order to offer to the protected person the proper protection according to the level and circumstances of danger;
  - c) the cases and circumstances of the amendment and removal of special measures of protection;
  - ç) the predicted duration, in advance, for the implementation of the special measures of protection;
2. Also, the protection agreement predicts for a more detailed regulation of the fulfillment of conditions and obligations from the witness or the collaborator of justice as follows:
  - a) to give full information and without a reserve or condition concerning all the facts, events and circumstances that regard the criminal offence and about which he is aware of;
  - b) to accept and respect the conditions mentioned in the special measures of program;
  - c) to be aware of the nature of classified information and under any circumstance, not to make known any data on the special measures of protection and other data related to those;

- ç) to avoid every action or inaction that can put in danger the implementation of the special measures of protection or that might bring as a result another situation of danger for the protected person;
  - d) to inform at once the Directorate on issues that are valuable for and asked from it, or for events or changes of the life circumstances or its personal activity, and also about the contacts and relations to the third parties that can endanger the implementation and guaranties offered by the special measures of protection;
  - dh) to accept, without the need of a special court decision, if it is necessary for protection purposes, to use in its facilities the protection, surveillance and recording equipments.
- 3. Apart the issues provided in points 1 and 2 of this article, the collaborator of justice has to inform in details the Directorate on the kind and the quantity of the properties (wealth) owned by him or his relatives or special persons related to him.
- 4. The Directorate for the Protection of the Witnesses and the Collaborators of Justice, informs the Commission of the Assessment of the Special Measures of Protection on the ongoing, deadline of the implementation of the protection program, at the time and manner indicated by it related to the protection program, respecting the conditions of the protection agreement, and in case by case for the problems and circumstances not foreseen in these documents.
- 5. Detailed rules related to the procedures of expressing the will, talks and signature, content and form of the protection agreement, and for following the implementation of the conditions of the agreement are to be regulated by a common instruction of the Minister of Public Order, Minister of Justice and General Prosecutor.

### **Article 18**

#### **Extraordinary protective measures**

1. The State Police, pre-detention or prison institutions, in accordance with the level of risk involved for the protected person, can order and implement extraordinary protective measures, amongst those provided by this law or by other provisions that regulate their activity. These measures, not later than 24 hours from the time being issued, are communicated immediately to the Directorate of Justice Collaborators and Witness Protection and to the case prosecutor.
2. The extraordinary measures, with the consent of the Directorate and of the case's prosecutor, can be extended for a determined period of time, until the danger motivating these measures is avoided or until the Commission

of Evaluation of the Special Measures of Protection has taken the appropriate decision.

### **Article 19**

#### **Amending and revoking the special protection measures**

1. The special protection measures could be amended or revoked in the following cases:
  - a) when it is evidenced that there is no dangerous situation that motivates the implementation of special protection measures;
  - b) if during the investigation and trial of the criminal offence, is evidenced that the witness or the justice collaborator are giving false testimony or information;
  - c) if the protected person willingly commits a criminal offence;
  - ç) if after the beginning of the implementation of special protection measures there are reasonable and firmly grounded data on the involvement of the protected person in criminal activity;
  - d) if the witness, the collaborator of justice or other protected persons do not respect the obligations mentioned in the protection agreement or refuse, neglect or provide false information;
  - dh)if the protected person refuses the employment opportunity provided by the Directorate of Witness Protection and Justice Collaborators or gives up the performance of activities that provide income without a supported motif;
  - e) if an authority of an another state requires termination of the special protection measure of the change of residence in the territory of that state.

### **Article 20**

#### **Cases of termination of special protection measures**

1. The special protection measures are ceased in the following cases:
  - a) with the termination of the time limit of the protection agreement;
  - b) if the protected person is dead;
  - c) with a written request of the protected person or his/her tutor;
  - ç) due to the depriving of the implementation of special protection measures and the agreement.

### **Article 21**

1. The Directorate of Justice Collaborator and Witness Protection informs immediately, in writing, the prosecutor on the circumstances mentioned in article 19 and 20 of this law.
2. In the case of request for ceasing the special protection measures or when the protected person is dead, the special protection measures are



immediately ceased for the person requiring or for the dead person, but continues in accordance with the case for the witness or any other person included in those special measures.

## **CHAPTER V FINAL PROVISIONS**

### **Article 22 International cooperation**

1. The international cooperation is achieved, in compliance with the right and obligations that derive from international agreements where the Republic of Albania is a member.
2. The international agreements can foresee the mutual implementation of special protection measures, including the change of residence and the stay of the protected persons in the respective territories of the parties.

### **Article 23 Sub-legal acts**

The Council of Ministers, the ministries and other central institutions, within 6 months from the entry into force of this law, shall issue sublegal acts for its application.

The ministries and other central institutions assigned according to this law, shall take measures for the creation of the Directorate for Witness Protection and Justice Collaborators as well as the Commission for the Evaluation of Special Measures for the Protection of Witnesses and Justice Collaborators, not later than 60 days from the entry into force of this law.

### **Article 24 The effects of the law**

The protection of witnesses and justice Collaborators, according to this law, shall commence the first day after the end of the 6-monthly deadline, as provided in article 23 of this law.

### **Article 25 Transitory provisions**

1. Until the date established in article 24 of this law, in extraordinary cases and in compliance with the criteria and procedures of this law as much as possible, the Prosecutor General and the Minister of Public order, after having obtained the

approval of the Minister of Justice, may decide and apply one or more special protection measures.

2. For the continuity, the change or the revocation of special protection measures, applied in accordance with point 1 of this article, the Commission for the Evaluation of Special Measures for the Protection of Witnesses and Justice Collaborators, issues its decision not later than 30 days from its creation.

**Article 26**  
**The entry into force of the law**

This law enters into force 15 days after its publication in the “Official Journal”.

**Issued by decree No. 4191, of 05.04.2004 of the President of the Republic of Albania, Alfred Moisiu**

**THE SPEAKER**  
**SERVET PËLLUMBI**

**REPUBLIC OF ALBANIA**

**MINISTRY OF PUBLIC ORDER**  
Prot. No. 1554 dated 29.06.2005

**MINISTRY OF JUSTICE**  
Prot. No. 4642 dated 01.07.2005

**GENERAL PROSECUTOR'S OFFICE**  
Prot. No. 150/3 dated 01.07.2005

**JOINT INSTRUCTION**  
**ON**  
**THE ESTABLISHMENT OF CRITERIA AND RULES FOR THE**  
**MEETINGS OF THE COMMISSION FOR EVALUATION OF SPECIAL**  
**MEASURES FOR JUSTICE COLLABORATORS AND WITNESSES**  
**PROTECTION**

Pursuant to Article 102 point 4 and Article 6 point 8 of the Law no. 9205 dated 15.03.2004 "On Justice Collaborators and Witnesses Protection",

**WE INSTRUCT**

1. The Commission for evaluation of special measures for justice collaborators and witnesses protection, hereinafter "the Commission", is the body who exercises the powers established by the law No. 9205 dated 15.03.2004 "On Witnesses Protection and Justice Collaborators".
2. Members of the Commission are those persons who are appointed according to article 6, paragraph 2 of the Law No. 9205 dated 15.03.2004 "On Justice Collaborators and Witnesses Protection" and who fulfill the criteria established in the article 6 paragraph 4 of the above mentioned law. The Classified Information Department equips these persons with a security certificate. The same criterion applies to the alternate members.
3. The Chairman of the Commission or, in his absence, the vice Chairman, summons the meeting within 5 days from the submission of the request from the General Prosecutor, by notifying all the members of the Commission about the date, the place and the time of the meeting. The written notice which is sent to the members of the Commission has enclosed to it the agenda and the documents which will be discussed in the meeting. The notification to the members of the meeting is sent in a close envelope where it is written "confidential".

4. The notification about the meeting is also sent to the alternate members of the Commission by respecting the same procedures and modalities of sending the documentation. The alternate members receive only the invitation with the date and hour of the meeting, and in case the member, that the alternate member should replace, does not participate in the meeting, the alternate receives also the other documentation.
5. In urgent and special cases the requests foreseen in points 2 and 3 of this instruction are not applicable and the notification could be done through telephone or fax, and in no case the meeting should be held later than 24 hours from the time of receiving the request.
6. The documentation provided from the Law No. 9205 dated 15.03.2004 “On Justice Collaborators and Witnesses Protection” is prepared from the Sector of Justice Collaborators and Witnesses Protection, hereinafter “the Sector”, and it is submitted to the Chairman of the Commission who distributes it through the Sector. In urgent and special cases’ meetings the documentation is provided to the members during the meeting.
7. The members of the Commission are obliged to participate in its meetings, the direct superiors or their employers should not impede their participation in the meetings. The member does not participate in the meeting only for objective reasons and in these cases he urgently informs the Chairman of the Commission and the Sector, in order to permit them to take the steps for notifying the alternate member.
8. The meetings take place in the location established in the notification and are chaired from the Chairman of the Commission. The chief, the specialists of the Sector, authorized representatives of the General Prosecutor have the right to participate in the meetings together with the members of the Commission. They are summoned in the meeting when the members of the Commission deem it reasonable in order for them to provide clarifications or explanations for cases under discussion or for different documents. The invited persons have no right to participate in the meeting during the voting process.
9. At the beginning of the meeting the Chairman of the Commission requests from the members of the Commission, immediately after the session opening, to declare under their responsibility if any of the reasons mentioned in article 6 point 7 of the Law No. 9205 dated 15.03.2004 “On Justice Collaborators and Witnesses Protection”, which impede the exercise of function, exists.
10. If one of the reasons mentioned in point 9 impedes the attainment of the necessary quorum for holding the meeting, the last one is postponed for

not more than 24 hours, by replacing the impeded member with his alternate substitute.

11. The Commission, because of performing its activities, has its own seal, with this content:
  - Emblem of the Republic of Albania;
  - Republic of Albania;
  - The Commission for evaluation of special measures for justice collaborators and witnesses protection.
  
12. The Commission for Evaluation of Special Measures for Justice Collaborators and Witnesses Protection, the Sector for Justice Collaborators and Witnesses Protection and the respective structures within the General Prosecutor Office are in charge for implementing this instruction.

This instruction enters into force after its publication in the Official Journal.

**MINISTER OF PUBLIC ORDER  
JUSTICE  
Igli Toska**

**MINISTER OF  
Fatmir Xhafaj**

**GENERAL PROSECUTOR  
Theodhori Sollaku**

## REPUBLIC OF ALBANIA

### JOINT ORDER

#### **“On the Functioning and Work Procedures of the Whiteness and Collaborators of Justice Protection and Evaluation of Extraordinary Measures Commission , as well as its Rights, Obligations and Treatment of its Members”.**

*MoPO Prot. No. 857*  
*Gen.Prosec. Prot. No. 142*  
*Min. Justice Prot. No. 3586*

In conformity article 102/4 of the Constitution and Law 9205, March 15, 2004 (point 5 and 7) “ On Protection of Whiteness and Justice Collaborators”, for determining the procedures of work of the Whiteness and Collaborators of Justice Protection and Evaluation of Extraordinary Measures Commission, as well as its rights, obligations and treatment of its members.

#### 1. General dispositions

Responsible bodies for the preparation, evaluation, approval, and enforcement of extraordinary measures are:

- a. Sector of Whiteness and Collaborators of Justice Protection
- b. the Whiteness and Collaborators of Justice Protection and Evaluation of Extraordinary Measures Commission

#### II. Special Dispositions

1. This guideline defines the method of functioning and work procedures of the Whiteness and Collaborators of Justice Protection and Evaluation of Extraordinary Measures Commission, herein after named as “the Commission”.
2. Commission is the responsible body for the preparation, evaluation, approval, and enforcement of extraordinary measures for whiteness and justice collaborators.
3. Commission has the duty to organize and conduct physical search of the protection program documentation. It also requires from the personnel in charge, information on Extraordinary Measures for Whiteness and Collaborators of Justice Protection.
4. If Commission notices that the proposal for enforcing extraordinary measures for a whiteness or justice collaborator is not complete, has the right to ask for further additional documentation.

5. The commission, based on the documentation it is presented with, and the level of exposure (danger), actual, concrete and serious, may decide to deploy different extraordinary measures of protection from what the General Prosecutor has asked in his proposal.
6. Commission makes its decision not later than 10 days from its first meeting and in any case not later than 30 days from the time that pertinent documentation and the proposal of the General Prosecutor is deposited.
7. Acts and every information on the activity of Commission is considered as classified information.
8. Commission determines the time frame for the extraordinary measures of protection during and after the investigation of the criminal case. Commission establishes the time limit for the deployment of extraordinary measure not less than 6 months and not more than 5 years. This time limit is set up in the same act in which the extraordinary measures are determined.

If the Commission doesn't spell out a time frame for the deployment of extraordinary measures, than the Sector of Whiteness and Collaborators of Justice, decides a time frame of 1 year starting from the day of extraordinary measures approval.

9. Commission can extend the deployment of extraordinary measures if finds it reasonable and based on the documentation it possesses on the cases.

In conformity with articles 19 and 20 of the Law No. 9205 " On Whiteness and Collaborators of Justice Protection", the commission approves changes, revokes, or ending of extraordinary measures deployment.

10. Meeting of the Commission for Witnesses and Collaborators of Justice Protection and Evaluation of Extraordinary Measures are valid when three members are present and its decision takes power when approved by three members
11. Commission cooperates with analogue structures from other countries to exchange experience in the field of protection programs.
12. All acts, the documentation and every information linked with the activity of the Commission is considered as classified and is kept and administrated by the Sector of Witnesses and Justice Collaborators.
13. The Sector informs the interested persons about the decision of the Commission about the proposal.

14. The Director of Organized Crime may also attend the Commission meeting, since the Sector falls under his command.
15. Commission benefits a pay raise for the job they carry as following: the chairman of the commission benefits a raise of 20,000 Lek/month, the members benefits a raise of 15, 000 Lek/month.
16. Sector of Witnesses and Justice Collaborators Commission for Whiteness and Collaborators of Justice Protection and Evaluation of Extraordinary Measures , are responsible for the enforcement of this guideline.
17. This guideline takes power after the publication in the Official Notebook and its effects start from May 01, 2005.

**Minister of Public Order**

**Minister of Justice**

**General Prosecutor**

**Minister of Finance**



## REPUBLIC OF ALBANIA

**Ministry of Public Order**

No. \_\_\_\_ date \_\_. \_\_. 2005

**Ministry of Justice**

No. \_\_\_\_ date \_\_. \_\_. 2005

**General Prosecutor's Office**

No. \_\_\_\_ date \_\_. \_\_. 2005

### JOINT INSTRUCTION

**On the terms, criteria and procedures for establishing temporary, extraordinary, special protection measures for witnesses and justice collaborators.**

In reliance to point 4 of article 102 of the Constitution, point 4 of article 8, point 4 of article 9, point 3 of article 14, point 5 of article 10 and point 5 of article 17 of the Law No. 9205, dated 15.03.2004 "On the Protection of Witnesses and Justice collaborators" ,

**WE INSTRUCT:**

#### CHAPTER I. GENERAL PROVISIONS

1. The objective of this instruction is to provide detailed guidelines on the terms, criteria and procedures for the establishment of protection measures for witnesses and justice collaborators, for persons related or close to them and for any other citizen whose life, health or property is at risk due to the given assistance, in compliance with the criminal law.
2. The abbreviations used in this instruction refer to the following definitions:
  - Witness – witness of justice;
  - Collaborator – collaborator of justice
  - Protected person – witness, collaborator, or person related or close to them;
  - Commission – The Commission on the Evaluation of Special Protection Measures for Witnesses and Justice Collaborators.
  - Unit – The Unit on the Protection of Witnesses and Justice Collaborators at the Directorate against Organised Crime and Witness Protection, Ministry of Public Order.
  - Chief Prosecutor – Chief Prosecutor of the Serious Crimes Prosecution Office, Chief Prosecutors of Judicial Districts and Appeal Chief Prosecutors;

3. Ordinary protection measures are measures for the protection of life, health and property, under the law and by-laws that regulate the activity of the State Police.

## **CHAPTER II. TERMS FOR ESTABLISHING SPECIAL PROTECTION MEASURES**

4. When ordinary protection measures are estimated as inappropriate or insufficient for the protection of life, health or property of the witness or justice collaborator, special protection measures are imposed.

Special protection measures cannot be imposed or applied unless there is a real, concrete or serious danger.

5. A dangerous situation is a continuing situation, during which the life, health and property of the witness or justice collaborator is in danger. The danger must be present, not past or presumed that will happen in the future.

6. A concrete dangerous situation is a situation, where special elements of this danger have just emerged and may precipitate into concrete actions against the witness or justice collaborator.

7. A serious dangerous situation is a situation in which the life, health and property of the witness or justice collaborator are threatened in such a way that in case no appropriate measures are taken, he would suffer a serious damage.

8. Special protection measures are imposed and applied when such factors as: the statements made to prosecutor or judicial police, the testimony and statements offered to court, or the signing of any other act in compliance with the criminal procedure law without imposing any conditions or remarks regarding their content or use, are estimated as very important to:

- a) Provide source of evidence, the lack of which may raise doubts on the charges or the decision to declare declaring a person guilty;
- b) Discover other collaborators in the crime under investigation or court proceedings;
- c) Arrest the person against whom it has been issued an arrest warrant or imposed the security measure of “prison arrest”;
- d) Significantly reduce the consequences of the crime or prevent other crimes under preparation;
- e) Discover criminal assets of the accused persons or persons related to them;
- f) Create opportunities to remunerate the injured party or his inheritors for the damages caused as a result of the criminal act;
- g) Review final court decisions;

9. Special protection measures cannot be imposed and applied when the beneficiary does not accept do be subject of these measures or shows no willingness to collaborate for their implementation.

The will to collaborate shall be shown in written.

10. Persons related to the witness or justice collaborator are persons defined as such under article 2 of the Law No. 9205, dated 15.03.2004 "On the Protection of Witnesses and Justice Collaborators".

11. Persons close to the witness or justice collaborator are persons or legal entities for which there is sufficient information proving that their property or activity is partially or entirely, directly or indirectly, owned by the witness or the collaborator.

### **CHAPTER III. THE DECISION PROCEDURE**

12. If the Prosecutor in charge of the preliminary investigation or representing the accusatory party in the trial has grounded information or deems that, due to reasons related to the statements made in front of the prosecutor or judicial police, or due to the signing of any other act in compliance with the criminal procedure law, the witness or the collaborator must be granted special protection, he informs the Chief Prosecutor, in writing.

The notification is an explanatory report on the dangerous situation, with the following attachments:

- a) Copy of the original statements or testimony;
- b) Any information of the judicial police on the dangerous situation;
- c) Birth and family status certificates of the person or persons proposed to be under protection;
- d) Any other necessary document.

When the chief Prosecutor considers that the dangerous situation is real, concrete and serious he informs the General Prosecutor, requesting the latter to propose special protection measures.

13. The General Prosecutor proposes to the Commission to assign special protection measures for the witness and the collaborator.

The General Prosecutor's proposal contains the following data:

- a) personal information, family status, domicile, and any other information required for the identification of the person to be taken under protection;
- b) Information on the personal and family income, immovable and movable property owned by him or persons related or close to him;
- c) The number of the case under investigation or court proceeding, personal information about the accused persons, personal information about the injured party, the status of the proceeding;
- d) Determination of the elements establishing that the person's complaint, statements or testimony are of a special importance for the case under investigation or in the court;

- e) Determination of the elements establishing that the person is in real, concrete and serious dangerous situation due to the information provided by him;
- f) Information on other persons that must be offered protection at the same time and the relationship to the person in question;
- g) The concrete protection measure considered as more appropriate for the concrete case;
- h) The proposal if necessary for the establishment of temporary protection measures due to urgent needs.
- i) Any other useful information.

The General Prosecutor may consider the above information as confidential, in order to keep the investigation secret as long as the defendant or his defence counsel has not been informed about these data.

14. The General Prosecutor's proposal is filed in the Unit for the Protection of Witnesses and Justice Collaborators. It has a special register for the protocol. The cover letter, signed by the person responsible for the protocol, contains the protocol number, data and time of the arrival at the Unit.

15. Not later than 3 days from the arrival of the proposal, the Unit prepares the documents to be reviewed by the Commission. A status report of the situation, with concrete suggestions about the most appropriate solution, prepared by the Unit, is attached to the General Prosecutor's proposal.

The documents are presented to the Chairman of the Commission, who assigns one of the members to report.

The Chairman sets the date of the meeting not later than 2 days from the date when the documents were submitted by the Unit.

The reporter may request additional data or clarifications from the Head of the Unit or the specialist in charge of the case, until the meeting date.

16. The case under review is reported to the Commission by the member assigned by the Chairman.

The Chairman of the Commission and other members may ask questions and require clarifications.

**REPUBLIC OF ALBANIA**

**THE MINISTRY OF PUBLIC ORDER      THE MINISTRY OF JUSTICE**

**No. 1553, Date 29.06.2005**

**No. 4644, Date 01.07.2005**

**THE GENERAL PROSECUTOR'S OFFICE**

**No. 150/2, Date 01.07.2005**

**Joint Ordinance**

**On**

**The Criteria and Procedures for the Information Protection,  
Administration, and Classification**

Pursuant to point 4 of Article 102 of the Constitution, point 2 of Article 12 of the Law No. 9205, of 15.03.2004 “On the Witness Protection and Justice Collaborators”,

**WE ORDER:**

1. Information, to the purpose of this ordinance, means any knowledge that may be communicated or documented regardless of the way, and that is under the control of the Sector for the Witness Protection and Justice Collaborators.
2. With classification it is understood the act or process through which the information is determined as classified.
3. The Sector for the Witness Protection and Justice Collaborators, the Committee for the Evaluation of the Specific Measures for the for the Witness Protection and Justice Collaborators that create, produce, and administrate information classified as “state secret”, classify the information and documents in compliance with Law No. 8457, of 11.02.1999 “On information classified as “state secret””.
4. Employees of the Sector for the Witness Protection and Justice Collaborators should be provided with “security certificates”, in compliance with Law No. 8457, of 11.02.1999 “On information classified as “state secret”” by the Directorate for the Security of Classified Information.

5. The classification levels are:
  - a) “Top secret”, when its unauthorized exposure can cause significantly great damages to the implementation process of specific protection measures.
  - b) “Secret”, when its unauthorized exposure can cause serious damages to the implementation process of specific protection measures.
  - c) “Confidential”, when its unauthorized exposure can cause damages to the implementation process of specific protection measures.
6. The documentation of the Sector for the Witness Protection and Justice Collaborators and the Committee for the Evaluation of the Specific Measures for the Witness Protection is administrated in the secretariat – this sector’s archive.
7. The access to the Sector for the Witness Protection and Justice Collaborators, with the exemption of the sector’s employees, is upon authorization. The authority that issues the access permit in this Sector is the Director of the Directorate of the Fight Against Organized Crime and Witness Protection.
8. In the Sector for the Witness Protection and Justice Collaborators it is created per order of the senior official “The commission for the analyzing of the information classified as “State Secret” and the declassification and devaluation of the information classified as “State Secret”. This commission has no less that five members.
9. The commission for the analyzing of the information classified as “State Secret” analyzes the types of documents that come out of this sector and proposes the document category that need to be classified, reevaluated, and the documents' classification and retention period
10. The documentation declassification should be performed after the termination of the program for the implementation of the specific protection measures for ten years.
11. The information and documentation that will be analyzed by the Sector for the Witness Protection and Justice Collaborators at no time should have a level lower than confidential.
12. In the cases when during the administration by authorized personnel, certain parts are extracted by the classified information, the derived information should have the same level of classification as the original.

13. When information is classified, all the documents where this information is part of should have the same level of classification as the classified information.
14. When within a file of classified information there is information that has a higher level of classification, the whole file should have the level of the document with the higher level of classification.
15. Unless otherwise stipulated in this ordinance, dispositions of Law No. 8457, of 11.02.1999 “On information classified as “state secret’” and the by laws issued based and pursuant to it, will be implemented.
16. The Sector for the Witness Protection and Justice Collaborators, the Committee for the Evaluation of the Specific Measures for the Witness Protection, the structures of the Ministry of Justice, the prosecutors of the First Instance Courts, and the Prosecutors of the Serious Crime Prosecution Office will be responsible for the implementation of this guideline.

This ordinance enters into force after its publication on the Official Gazette.

**THE MINISTER OF PUBLIC ORDER  
JUSTICE**

**Igli TOSKA**

**THE MINISTER OF**

**Fatmir XHAFAJ**

**THE GENERAL PROSECUTOR**

**Theodhori SOLLAKU**

## REPUBLIC OF ALBANIA

**Ministry of Public Order**  
Protocol no. 858/1; dated 09.05.2005

**Ministry of Finance**  
Protocol no.2824; dated 16.05.2002

**Ministry of Justice**  
Protocol no. 3587/1 dated 20.06.2005

### JOINT REGULATION

#### **On administration rules for the management of property and funds of Witness Protection and Justice Collaborators Sector**

The following instructions are written pursuant to point 4, of article 102 of the Constitution, point 4, article 4 and article 5 point “e” of the Law no.9205, dated 15.03.2004 “On Witness and Justice Collaborators protection” in order to administer, manage and use funds effectively,

#### Instructions:

##### I. General Dispositions

The terms “Justice Witness”, “Justice Collaborator”, “Related persons”, “Connected persons”, “Protected persons” and “Dangerous Situation”, refer to article 2 of the law no.9205, dated 15.03.2004 “On Witness Protection and Justice Collaborators”.

##### II. Specific Dispositions

The following agencies are responsible for the protection of justice witnesses and collaborators:

- a) Sector “On protection of Witnesses and Justice Collaborators”
- b) Commission for Evaluation of Specific Measures on Protection of Witnesses and Justice Collaborators.

##### III. Allocating Government Funds

- a) Experts of the sector “On Witness and Justice Collaborators Protection”, who support the needs of the witness and justice collaborators program –



prepare a draft budget, which is submitted to the General State Police Director after its approval within August 10, 2005 by the Organized Crime and Witness Protection Director.

- b) General State Police Directorate has a specific budget for this sector and the financial program starts on January 1<sup>st</sup> and finishes on December 31<sup>st</sup> of every fiscal year. Detailed budgets are prepared every 2 and 4 months and will be deposited in the Tirana branch so that they could be used later.

3. Requests for funds are based on article 10, law no.9205, dated 15.03.2004 “On witness and justice collaborators protection” and are distributed based on:

- Number of cases (individuals) that benefit from these protective measures with specific costs; expenses of the previous year and the first semester of that year,
- Third party level of taxes and fees (in those cases where identities, places of residence, medical services inside or outside the country are changed or professional qualification, counseling, special legal help are needed etc)
- Number of cases that need financial help, based on financial needs and time constrains between two jobs, number of apartments rented in the country of abroad and the monthly fee that should be paid.
- Number of apartments rented in the country and abroad for professional operational work and the monthly fee that should be paid.
- Creation and improvement of infrastructure (asset inventory) and, specific materials that are needed for operational work, etc

Budget should comprise also funds for the accommodation and financial treatment of foreigners, in compliance with the reciprocity agreement (Sector of Witness and Justice Collaborators Protection and Respective Governments)

Funds offered by a foreign donor will be part of the budget allocated for the Sector “On Witness an Justice Collaborators Protection”.

Donors will define the detailed use of funds. Funds are opened in the same way as government funds.

#### IV. Taxes, fee and financial help level of application

1. Expenses that will cover the processes of changing identity, places of residency, medical service in the country and abroad, professional re qualification, legal counseling is needed, will be defined in the financial legislation, - law on the Albanian Republic taxes, law on local tax system, Order of the Minister of Public, Minister of Health, Minister of Justice on the application of fees and services that are offered to a third party.

2. Proceeds designed to help “Justice Witnesses” financially, during the period of time between two jobs will be based on their financial situation before their involvement in the protection program.

3. Commission for evaluation of Specific Measures regarding Protection of Witnesses and Justice Collaborators, approves case by case the limited sum of money that individuals described in this law will receive:

- a) Individuals who are not working or minors. The financial aid that these individuals will receive should not be lower than the minimal national salary, approved with a decision of the Counsel of Ministers and this sum should not be 2.5 higher than this salary.
- b) The maximal sum of money that individuals employed in government institutions or private companies can receive will be equal to the net salary that they have received in the last month, before their involvement in the witness protection program and this sum should not be 1.5 times more than this salary.
- c) Individuals who receive partial pensions, invalidity support or full pensions before they are involved in the protection program are reimbursed, in accordance with the minimal and maximal financial limits mentioned in the point “a” of this order.

4. The absolute value of reimbursement, in case of minimum and maximum level, is recorded or approved in the agreement signed by the person involved in the protection program as well as by the representative of the Sector “On Witnesses’ Protection and Justice Collaborators”.

c) In cases when relatives of justice witnesses, who live or cohabit permanently with him/her, are included in the special protection program, based on definitions of article 16 of the Penal Procedure Code, the limit of the financial support for every person taken under protection will be the same with the level of minimal salary on country scale approved by the Decision of Council of Ministers.

On special occasions, with the Commission’s proposal and upon the approval of the Minister of Public Order, the level of financial support for persons defined upon letter “a” and “c” of this instruction will be three times higher than the level of minimum salary on country scale and three times higher than net salary of the last months; this rule applies to persons employed in the governmental institutions or private companies.

The proposal for the increase of the amount of the financial support should be argued and it should anticipate the effects of the salary increase.

Financial limits defined in this instruction should be implemented even for relatives or justice collaborators.

4. For justice collaborators, relatives and other persons that will be accommodated abroad, the Commission for the Evaluation of Special Measures on Witnesses Protection and Justice Collaborators approves the financial limit in foreign currency (USD, EURO, etc) according to the currency of the respective country and it should not be lower than the minimum standard of living in these countries.

In case of program on witness protection and protection of relative persons (article 16 of the Penal Procedural Code), the financial limit for every person will be the same as the minimal country salary accommodated.

5. The Commission for the Evaluation of Special Measures on Witnesses' Protection and Justice Collaborators approves the rate for the rent apartments or buildings of the justice witnesses and other persons considered as relatives. The commission bases its decision on the rate on the surface per square meter, supplies that are needed in these apartments, rates published in the written media thought real estate agencies and their adaptability for security element etc. Based on these elements, the Commission defines the monthly or yearly rate.

Expenditure liquidation for the rent of the apartments or buildings is covered by the budget available for the Sector on Witnesses Protection and Justice Collaborators. Regarding other expenditures such as power, drinking water will be covered based on bills issued by respective institutions and such expenditures will be covered by the financial support that the person under protection presumes.

Such a thing is arranged in the agreement signed between the protected person and representative of the Sector of Witnesses Protection and Justice Collaborators.

The Head of the Commission for the Evaluation of Special Measures on Witnesses Protection and Justice Collaborators approves the level of taxes, rates and financial support in cases of the implementation of measures taken on temporary protection.

#### V. Procedures for budget implementation

1. The opening of budget plan for the consolidated fund and that deriving from income and sponsoring (only from foreign donors) done at chapter level (034) (1;5 and 6) and article and they all represent the maximum allowed limit for implementation;

2. Monthly report of factual expenditures from the Treasury branch is carried out according to economical, functional and organizational classification and according to Treasury procedures. Economical calculation of expenditures and income is defined in the manual of budget economical classification approved by the Minister of Finance.

3. Treasury branch, based on the plan sent by the budget branch, approves the financial documentation (check or payment order etc) to carry out the expenditures. In such documentation, in addition to standard notes, the action description is written “Secret expenditures of the Sector on Witnesses Protection and Justice Collaborators”. The authorized person for this purpose and the head of the Treasury Branch, Tirana approves the documentation in the treasury branch.

4. Reconciliation process, recording in the accounting books, management and use of funds with efficiency will be in conformity to the requests of the organic law “On State Budget”, Instructions of the Minister of Finance “On the implementation of State Budget”, Law “On Accounting” and article 14 of the order of the Minister of Public Order no 2087, dated 15.03. 2005 “On the functioning and organization of the Sector of Witnesses Protection and Justice Collaborators.

## VI. Property Administration

1. Property Administration will be carried out according to the request on the Law on Accounting and on the approved unified accounting plan.

2. The structure and analytical accounting classification of the property will be conform the unique accounting plan.

3. *For the administration of the special equipments* (that are in the apartments that have been rented), despite recording in the bank account, kartela should be filled in, where the technical characteristics and the amount should be recorded, such as gross accounting value, total of depreciation, accounting net value and equipment repair value.

4. The assets administration must assure:

- The protection and administration of the assets in use,
- The chronological registration of all documents in the accounting book
- Data maintenance and its availability at anytime
- The full control of the quantity and quality of the assets and their movement
- Preparation of the summary documents and the collection of the data necessary to design a material and financial program and the control of its achievement.

5. The commission for the assessment of the special measures related to the Protection of Justice Collaborators and witnesses, depending on the case, approves the way movable and immovable property of the persons under protection are administered.

VII. The Protection of Justice Collaborators and Witnesses Sector and the Commission for the Assessment of the Special Measures related to the Protection of Justice Collaborators and Witnesses will implement this order.

VIII. This order will come into force after the publication in the official book and will start being implemented from 01.04.2005

The Minister of Public Order  
Igli TOSKA

The Minister of Finance  
Arben MALAJ

The Minister of Justice  
Fatmir XHAFAJ

**REPUBLIC OF ALBANIA**

**MINISTRY OF PUBLIC ORDER**

Prot. No. 1551 dated 29.06.2005  
01.07.2005

**MINISTRY OF JUSTICE**

Prot. No. 4643 dated

**GENERAL PROSECUTOR'S OFFICE**

Prot. No. 150/1 dated 01.07.2005

**JOINT DIRECTIVE  
ON  
DUTIES, RESPONSIBILITIES, FORMS AND PROCEDURES ON  
COORDINATION AND INFORMATION BETWEEN STATE  
INSTITUTIONS**

Pursuant to Article 102 point 4 of the Constitution, Article 11 point 4 of the Law no. 9205 dated 15.03.2004 on "Protection of Witnesses and Justice Collaborators",

**WE DIRECT:**

1. When national security institutions and state bodies are involved in the procedures for the protection of witnesses and justice collaborators in the application of the law no. 9205 dated 15.03.2004 on the "Protection of Witnesses and Justice Collaborators", cooperate with the General Prosecutor's Office, Ministry of Public Order, Ministry of Justice, Sector for the Protection of Witnesses and Justice Collaborators and the Commission for the Evaluation of Special Measures for the Protection of Witnesses and Justice Collaborators.
2. State institutions and bodies cooperate among them and exchange notification and information not only on persons that are included in the protection program but also for their relatives and persons related to them.
3. The Commission for the Evaluation of Special Measures for the Protection of Witnesses and Justice Collaborators has the right to make questions and proposals to the Sector for the Protection of Witnesses and Justice Collaborators, central institutions, executive and administrative bodies and to request from them explanation on any issue pertaining to the fulfillment of duty for the protection of the person that will be taken into protection. These bodies are bound to examine the questions and proposals made and reply to the Commission within 15 days from the date of their submission.

4. The Commission for the Evaluation of Special Measures for the Protection of Witnesses and Justice Collaborators present to the respective bodies requests, complaints, remarks and proposals made by the persons under protection. These bodies should take into account and within 30 days from the date of presentation inform the Commission on the manner they have been solved.
5. The Sector for the Protection of Witnesses and Justice Collaborators within 7 days from the date when the Commission has received the reply from respective bodies must inform the person under protection on the manner the requests or complaints have been solved, measures taken or reasons of non acceptance.
6. When the Commission for the Evaluation of Special Measures for the Protection of Witnesses and Justice Collaborators notices that the personnel or different employees do not carry out duties or breach the law and sub-legal acts issued under and for the application of the law on “Protection of Witnesses and Justice Collaborators”, requests from the competent bodies the taking of appropriate measures against guilty persons. These bodies are bound that within 15 days to examine the request and inform the Commission on the measures taken.
7. The competent body for the acceptance and examination of requests and complaints of Justice Collaborators is the Commission for the Evaluation of Special Measures for the Protection of Witnesses and Justice Collaborators. These requests and complaints are submitted to the Commission by the directing bodies of the Prison Administration where the collaborator serves the sentence.
8. The Commission for the Evaluation of Special Measures for the Protection of Witnesses and Justice Collaborators in every case, informs and may request the intervention of supervising bodies of institutions that are entrusted with the application of the law and sub-legal acts issued according to it, to supervise the execution of and to perform the respective verifications taking immediate measures for issues ascertained and requests made by the Sector for the Protection of Witnesses and Justice Collaborators.
9. The Sector for the Protection of Witnesses and Justice Collaborators immediately after presenting the proposal conform article 13 of the law no. 9205 dated 15.03.2004 on the “Protection of Witnesses and Justice Collaborators”, establishes contacts with close relatives or persons related to the proposed person subject of the application of special protection measures, and also may request from the state bodies additional

information on the compatibility of persons for their inclusion under the special protection measures.

10. After the decision of the Commission to change, withdraw or end the special protection measures, the Sector for the Protection of Witnesses and Justice Collaborators, according to the case, notifies in writing the Prosecutor. In case of withdrawing or ending the special protection measures, the Sector for the Protection of Witnesses and Justice Collaborators notifies State Police structures on the residence or living place of the person whose protection measures have been withdrawn or ended. State Police structures take common protection measures sufficient to face possible risks, if the risk becomes concrete, actual and serious on the life, these structures address the General Prosecutor for evaluation through detailed information.
11. Decisions of the Commission for the Evaluation of Special Measures for the Protection of Witnesses and Justice Collaborators are notified to the General Directorate of Prisons by the Sector for the Protection of Witnesses and Justice Collaborators with special notices, which do not reveal information on the contribution of the collaborator and the criminal proceeding. In the notice, the Sector stipulates the obligations of the state bodies and the manner of execution of the decision of the Commission. This procedure is followed also for the decisions of the Commission which change, withdraw or end the special protection measures.
12. In cases when the person under protection is a foreign citizen, refugee or a person without a state, the Sector for the Protection of Witnesses and Justice Collaborators through the Ministry of Foreign Affairs should inform and coordinate the actions in order to create the necessary facilities for communication with the diplomatic or consulate representatives in the Republic of Albania of the state where he belongs, representative of the state that undertakes the protection of their interests or national or international authorities that have as object of their activity the protection of the interest of these persons.
13. The Sector for the Protection of Witnesses and Justice Collaborators in every case of cooperation with the prosecutor of the criminal proceedings, in which the person protected has given his contribution in cooperating, based on an agreement shall aim in a just definition of responsibilities, rights, obligations and consequences in compliance with articles 16 and 17 of the law no. 9205 dated 15.03.2004 on “Protection of Witnesses and Justice Collaborators”.
14. For the use of fictitious identification documents for the person under protection, after obtaining the written authorization of the Commission for the Evaluation of Special Measures for the Protection of Witnesses and



Justice Collaborators, the chief of the Sector for the Protection of Witnesses and Justice Collaborators request from the competent bodies blank samples of identification cards and other identification documents.

15. Justice collaborators that serve a sentence of imprisonment, not excluding the clause on willful cooperation, are accommodated in special institutions or sections specifically determined by an order of the Minister of Justice.
16. Heads of prisons/pre-detention institutions are bound to inform the Sector for the Protection of Witnesses and Justice Collaborators on any request or complaint of the collaborator, conform law no. 8328 on the “Rights and treatment of prisoners”. Communication and contacts of the personnel of the Sector for the Protection of Witnesses and Justice Collaborators with collaborators that serve a sentence of imprisonment or are under pre-detention are unlimited.
17. For the application of this directive are charged the Commission for the Evaluation of Special Measures for the Protection of Witnesses and Justice Collaborators, Sector for the Protection of Witnesses and Justice Collaborators, relevant structures in the Ministry of Justice, Prosecutors attached to the Courts of First Instance and Prosecutors of Serious Crime Prosecution Office.

This directive comes into force after being published in the Official Gazette.

**Minister of Public Order  
Justice  
Igli TOSKA  
XHAF AJ**

**Minister of  
Fatmir**

**Prosecutor General  
Theodhori SOLLAKU**

# APPENDIX D

## EUROPEAN CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS

**Strasbourg, 20.IV.1959**

### **Preamble**

The governments signatory hereto, being members of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity among its members;

Believing that the adoption of common rules in the field of mutual assistance in criminal matters will contribute to the attainment of this aim;

Considering that such mutual assistance is related to the question of extradition, which has already formed the subject of a Convention signed on 13th December 1957,

Have agreed as follows:

### **Chapter I – General provisions**

#### **Article 1**

1. The Contracting Parties undertake to afford each other, in accordance with the provisions of this Convention, the widest measure of mutual assistance in proceedings in respect of offences the punishment of which, at the time of the

request for assistance, falls within the jurisdiction of the judicial authorities of the requesting Party.

2. This Convention does not apply to arrests, the enforcement of verdicts or offences under military law which are not offences under ordinary criminal law.

## **Article 2**

Assistance may be refused:

- a. if the request concerns an offence which the requested Party considers a political offence, an offence connected with a political offence, or a fiscal offence;
- b. if the requested Party considers that execution of the request is likely to prejudice the sovereignty, security, *ordre public* or other essential interests of its country.

## **Chapter II – Letters rogatory**

### **Article 3**

1. The requested Party shall execute in the manner provided for by its law any letters rogatory relating to a criminal matter and addressed to it by the judicial authorities of the requesting Party for the purpose of procuring evidence or transmitting articles to be produced in evidence, records or documents.

2. If the requesting Party desires witnesses or experts to give evidence on oath, it shall expressly so request, and the requested Party shall comply with the request if the law of its country does not prohibit it.

3. The requested Party may transmit certified copies or certified photostat copies of records or documents requested, unless the requesting Party expressly requests the transmission of originals, in which case the requested Party shall make every effort to comply with the request.

### **Article 4**

On the express request of the requesting Party the requested Party shall state the date and place of execution of the letters rogatory. Officials and interested persons may be present if the requested Party consents.

### **Article 5**

1. Any Contracting Party may, by a declaration addressed to the Secretary General of the Council of Europe, when signing this Convention or depositing its instrument of ratification or accession, reserve the right to make the execution of letters rogatory for search or seizure of property dependent on one or more of the following conditions:

- a. that the offence motivating the letters rogatory is punishable under both the law of the requesting Party and the law of the requested Party;

- b. that the offence motivating the letters rogatory is an extraditable offence in the requested country;
  - c. that execution of the letters rogatory is consistent with the law of the requested Party.
2. Where a Contracting Party makes a declaration in accordance with paragraph 1 of this article, any other Party may apply reciprocity.

## **Article 6**

1. The requested Party may delay the handing over of any property, records or documents requested, if it requires the said property, records or documents in connection with pending criminal proceedings.
2. Any property, as well as original records or documents, handed over in execution of letters rogatory shall be returned by the requesting Party to the requested Party as soon as possible unless the latter Party waives the return thereof.

## **Chapter III – Service of writs and records of judicial verdicts – Appearance of witnesses, experts and prosecuted persons**

### **Article 7**

1. The requested Party shall effect service of writs and records of judicial verdicts which are transmitted to it for this purpose by the requesting Party. Service may be effected by simple transmission of the writ or record to the person to be served. If the requesting Party expressly so requests, service shall be effected by the requested Party in the manner provided for the service of analogous documents under its own law or in a special manner consistent with such law.
2. Proof of service shall be given by means of a receipt dated and signed by the person served or by means of a declaration made by the requested Party that service has been effected and stating the form and date of such service. One or other of these documents shall be sent immediately to the requesting Party. The requested Party shall, if the requesting Party so requests, state whether service has been effected in accordance with the law of the requested Party. If service cannot be effected, the reasons shall be communicated immediately by the requested Party to the requesting Party.
3. Any Contracting Party may, by a declaration addressed to the Secretary General of the Council of Europe, when signing this Convention or depositing its instrument of ratification or accession, request that service of a summons on an accused person who is in its territory be transmitted to its authorities by a certain time before the date set for appearance. This time shall be specified in the aforesaid declaration and shall not exceed 50 days. This time shall be taken into account when the date of appearance is being fixed and when the summons is being transmitted.

## **Article 8**

A witness or expert who has failed to answer a summons to appear, service of which has been requested, shall not, even if the summons contains a notice of penalty, be subjected to any punishment or measure of restraint, unless subsequently he voluntarily enters the territory of the requesting Party and is there again duly summoned.

## **Article 9**

The allowances, including subsistence, to be paid and the travelling expenses to be refunded to a witness or expert by the requesting Party shall be calculated as from his place of residence and shall be at rates at least equal to those provided for in the scales and rules in force in the country where the hearing is intended to take place.

## **Article 10**

1. If the requesting Party considers the personal appearance of a witness or expert before its judicial authorities especially necessary, it shall so mention in its request for service of the summons and the requested Party shall invite the witness or expert to appear.

The requested Party shall inform the requesting Party of the reply of the witness or expert.

2. In the case provided for under paragraph 1 of this article the request or the summons shall indicate the approximate allowances payable and the travelling and subsistence expenses refundable.

3. If a specific request is made, the requested Party may grant the witness or expert an advance. The amount of the advance shall be endorsed on the summons and shall be refunded by the requesting Party.

## **Article 11**

1. A person in custody whose personal appearance as a witness or for purposes of confrontation is applied for by the requesting Party shall be temporarily transferred to the territory where the hearing is intended to take place, provided that he shall be sent back within the period stipulated by the requested Party and subject to the provisions of Article 12 in so far as these are applicable.

Transfer may be refused:

- a. if the person in custody does not consent;
- b. if his presence is necessary at criminal proceedings pending in the territory of the requested Party;
- c. if transfer is liable to prolong his detention, or
- d. if there are other overriding grounds for not transferring him to the territory of the requesting Party.

2. Subject to the provisions of Article 2, in a case coming within the immediately preceding paragraph, transit of the person in custody through the territory of a third State, Party to this Convention, shall be granted on application, accompanied by all necessary documents, addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the Party through whose territory transit is requested.

A Contracting Party may refuse to grant transit to its own nationals.

3. The transferred person shall remain in custody in the territory of the requesting Party and, where applicable, in the territory of the Party through which transit is requested, unless the Party from whom transfer is requested applies for his release.

## **Article 12**

1. A witness or expert, whatever his nationality, appearing on a summons before the judicial authorities of the requesting Party shall not be prosecuted or detained or subjected to any other restriction of his personal liberty in the territory of that Party in respect of acts or convictions anterior to his departure from the territory of the requested Party.

2. A person, whatever his nationality, summoned before the judicial authorities of the requesting Party to answer for acts forming the subject of proceedings against him, shall not be prosecuted or detained or subjected to any other restriction of his personal liberty for acts or convictions anterior to his departure from the territory of the requested Party and not specified in the summons.

3. The immunity provided for in this article shall cease when the witness or expert or prosecuted person, having had for a period of fifteen consecutive days from the date when his presence is no longer required by the judicial authorities an opportunity of leaving, has nevertheless remained in the territory, or having left it, has returned.

## **Chapter IV – Judicial records**

### **Article 13**

1. A requested Party shall communicate extracts from and information relating to judicial records, requested from it by the judicial authorities of a Contracting Party and needed in a criminal matter, to the same extent that these may be made available to its own judicial authorities in like case.

2. In any case other than that provided for in paragraph 1 of this article the request shall be complied with in accordance with the conditions provided for by the law, regulations or practice of the requested Party.

## **Chapter V – Procedure**

### **Article 14**

1. Requests for mutual assistance shall indicate as follows:
  - a. the authority making the request,
  - b. the object of and the reason for the request,
  - c. where possible, the identity and the nationality of the person concerned, and
  - d. where necessary, the name and address of the person to be served.
2. Letters rogatory referred to in Articles 3, 4 and 5 shall, in addition, state the offence and contain a summary of the facts.

### **Article 15**

1. Letters rogatory referred to in Articles 3, 4 and 5 as well as the applications referred to in Article 11 shall be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party and shall be returned through the same channels.
2. In case of urgency, letters rogatory may be addressed directly by the judicial authorities of the requesting Party to the judicial authorities of the requested Party. They shall be returned together with the relevant documents through the channels stipulated in paragraph 1 of this article.
3. Requests provided for in paragraph 1 of Article 13 may be addressed directly by the judicial authorities concerned to the appropriate authorities of the requested Party, and the replies may be returned directly by those authorities. Requests provided for in paragraph 2 of Article 13 shall be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party.
4. Requests for mutual assistance, other than those provided for in paragraphs 1 and 3 of this article and, in particular, requests for investigation preliminary to prosecution, may be communicated directly between the judicial authorities.
5. In cases where direct transmission is permitted under this Convention, it may take place through the International Criminal Police Organisation (Interpol).
6. A Contracting Party may, when signing this Convention or depositing its instrument of ratification or accession, by a declaration addressed to the Secretary General of the Council of Europe, give notice that some or all requests for assistance shall be sent to it through channels other than those provided for in this article, or require that, in a case provided for in paragraph 2 of this article, a copy of the letters rogatory shall be transmitted at the same time to its Ministry of Justice.
7. The provisions of this article are without prejudice to those of bilateral agreements or arrangements in force between Contracting Parties which provide for the direct transmission of requests for assistance between their respective authorities.

### **Article 16**

1. Subject to paragraph 2 of this article, translations of requests and annexed documents shall not be required.
2. Each Contracting Party may, when signing or depositing its instrument of ratification or accession, by means of a declaration addressed to the Secretary General of the Council of Europe, reserve the right to stipulate that requests and annexed documents shall be addressed to it accompanied by a translation into its own language or into either of the official languages of the Council of Europe or into one of the latter languages, specified by it. The other Contracting Parties may apply reciprocity.
3. This article is without prejudice to the provisions concerning the translation of requests or annexed documents contained in the agreements or arrangements in force or to be made between two or more Contracting Parties.

#### **Article 17**

Evidence or documents transmitted pursuant to this Convention shall not require any form of authentication.

#### **Article 18**

Where the authority which receives a request for mutual assistance has no jurisdiction to comply therewith, it shall, *ex officio*, transmit the request to the competent authority of its country and shall so inform the requesting Party through the direct channels, if the request has been addressed through such channels.

#### **Article 19**

Reasons shall be given for any refusal of mutual assistance.

#### **Article 20**

Subject to the provisions of Article 10, paragraph 3, execution of requests for mutual assistance shall not entail refunding of expenses except those incurred by the attendance of experts in the territory of the requested Party or the transfer of a person in custody carried out under Article 11.

### **Chapter VI – Laying of information in connection with proceedings**

#### **Article 21**

1. Information laid by one Contracting Party with a view to proceedings in the courts of another Party shall be transmitted between the Ministries of Justice concerned unless a Contracting Party avails itself of the option provided for in paragraph 6 of Article 15.



2. The requested Party shall notify the requesting Party of any action taken on such information and shall forward a copy of the record of any verdict pronounced.

3. The provisions of Article 16 shall apply to information laid under paragraph 1 of this article.

## **Chapter VII – Exchange of information from judicial records**

### **Article 22**

Each Contracting Party shall inform any other Party of all criminal convictions and subsequent measures in respect of nationals of the latter Party, entered in the judicial records. Ministries of Justice shall communicate such information to one another at least once a year. Where the person concerned is considered a national of two or more other Contracting Parties, the information shall be given to each of these Parties, unless the person is a national of the Party in the territory of which he was convicted.

## **Chapter VIII – Final provisions**

### **Article 23**

1. Any Contracting Party may, when signing this Convention or when depositing its instrument of ratification or accession, make a reservation in respect of any provision or provisions of the Convention.

2. Any Contracting Party which has made a reservation shall withdraw it as soon as circumstances permit. Such withdrawal shall be made by notification to the Secretary General of the Council of Europe.

3. A Contracting Party which has made a reservation in respect of a provision of the Convention may not claim application of the said provision by another Party save in so far as it has itself accepted the provision.

### **Article 24**

A Contracting Party may, when signing the Convention or depositing its instrument of ratification or accession, by a declaration addressed to the Secretary General of the Council of Europe, define what authorities it will, for the purpose of the Convention, deem judicial authorities.

### **Article 25**

1. This Convention shall apply to the metropolitan territories of the Contracting Parties.

2. In respect of France, it shall also apply to Algeria and to the overseas Departments, and, in respect of Italy, it shall also apply to the territory of Somaliland under Italian administration.

3. The Federal Republic of Germany may extend the application of this Convention to the *Land* of Berlin by notice addressed to the Secretary General of the Council of Europe.

4. In respect of the Kingdom of the Netherlands, the Convention shall apply to its European territory. The Netherlands may extend the application of this Convention to the Netherlands Antilles, Surinam and Netherlands New Guinea by notice addressed to the Secretary General of the Council of Europe.

5. By direct arrangement between two or more Contracting Parties and subject to the conditions laid down in the arrangement, the application of this Convention may be extended to any territory, other than the territories mentioned in paragraphs 1, 2, 3 and 4 of this article, of one of these Parties, for the international relations of which any such Party is responsible.

## **Article 26**

1. Subject to the provisions of Article 15, paragraph 7, and Article 16, paragraph 3, this Convention shall, in respect of those countries to which it applies, supersede the provisions of any treaties, conventions or bilateral agreements governing mutual assistance in criminal matters between any two Contracting Parties.

2. This Convention shall not affect obligations incurred under the terms of any other bilateral or multilateral international convention which contains or may contain clauses governing specific aspects of mutual assistance in a given field.

3. The Contracting Parties may conclude between themselves bilateral or multilateral agreements on mutual assistance in criminal matters only in order to supplement the provisions of this Convention or to facilitate the application of the principles contained therein.

4. Where, as between two or more Contracting Parties, mutual assistance in criminal matters is practised on the basis of uniform legislation or of a special system providing for the reciprocal application in their respective territories of measures of mutual assistance, these Parties shall, notwithstanding the provisions of this Convention, be free to regulate their mutual relations in this field exclusively in accordance with such legislation or system. Contracting Parties which, in accordance with this paragraph, exclude as between themselves the application of this Convention shall notify the Secretary General of the Council of Europe accordingly.

## **Article 27**

1. This Convention shall be open to signature by the members of the Council of Europe. It shall be ratified. The instruments of ratification shall be deposited with the Secretary General of the Council.

2. The Convention shall come into force 90 days after the date of deposit of the third instrument of ratification.

3. As regards any signatory ratifying subsequently the Convention shall come into force 90 days after the date of the deposit of its instrument of ratification.

### **Article 28**

1. The Committee of Ministers of the Council of Europe may invite any State not a member of the Council to accede to this Convention, provided that the resolution containing such invitation obtains the unanimous agreement of the members of the Council who have ratified the Convention.

2. Accession shall be by deposit with the Secretary General of the Council of an instrument of accession which shall take effect 90 days after the date of its deposit.

### **Article 29**

Any Contracting Party may denounce this Convention in so far as it is concerned by giving notice to the Secretary General of the Council of Europe. Denunciation shall take effect six months after the date when the Secretary General of the Council received such notification.

### **Article 30**

The Secretary General of the Council of Europe shall notify the members of the Council and the government of any State which has acceded to this Convention of:

- a. the names of the signatories and the deposit of any instrument of ratification or accession;
- b. the date of entry into force of this Convention;
- c. any notification received in accordance with the provisions of Article 5 – paragraph 1, Article 7 – paragraph 3, Article 15 – paragraph 6, Article 16 – paragraph 2, Article 24, Article 25 – paragraphs 3 and 4, Article 26 – paragraph 4;
- d. any reservation made in accordance with Article 23, paragraph 1;
- e. the withdrawal of any reservation in accordance with Article 23, paragraph 2;
- f. any notification of denunciation received in accordance with the provisions of Article 29 and the date on which such denunciation will take effect.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg, this 20th day of April 1959, in English and French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to the signatory and acceding governments.

## **ADDITIONAL PROTOCOL TO THE EUROPEAN CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS**

**Strasbourg, 17.III.1978**

The member States of the Council of Europe, signatory to this Protocol,

Desirous of facilitating the application of the European Convention on Mutual Assistance in Criminal Matters opened for signature in Strasbourg on 20th April 1959 (hereinafter referred to as "the Convention") in the field of fiscal offences;

Considering it also desirable to supplement the Convention in certain other respects,

Have agreed as follows:

### **Chapter I**

#### **Article 1**

The Contracting Parties shall not exercise the right provided for in Article 2.a of the Convention to refuse assistance solely on the ground that the request concerns an offence which the requested Party considers a fiscal offence.

#### **Article 2**

1. In the case where a Contracting Party has made the execution of letters rogatory for search or seizure of property dependent on the condition that the offence motivating the letters rogatory is punishable under both the law of the requesting Party and the law of the requested Party, this condition shall be fulfilled, as regards fiscal offences, if the offence is punishable under the law of the requesting Party and corresponds to an offence of the same nature under the law of the requested Party.

2. The request may not be refused on the ground that the law of the requested Party does not impose the same kind of tax or duty or does not contain a tax, duty, customs and exchange regulation of the same kind as the law of the requesting Party.

### **Chapter II**

#### **Article 3**

The Convention shall also apply to:

- a. the service of documents concerning the enforcement of a sentence, the recovery of a fine or the payment of costs of proceedings;
- b. measures relating to the suspension of pronouncement of a sentence or of its enforcement, to conditional release, to deferment of the commencement of the enforcement of a sentence or to the interruption of such enforcement.

### **Chapter III**

#### **Article 4**

Article 22 of the Convention shall be supplemented by the following text, the original Article 22 of the Convention becoming paragraph 1 and the below-mentioned provisions becoming paragraph 2:

"2 Furthermore, any Contracting Party which has supplied the above-mentioned information shall communicate to the Party concerned, on the latter's request in individual cases, a copy of the convictions and measures in question as well as any other information relevant thereto in order to enable it to consider whether they necessitate any measures at national level. This communication shall take place between the Ministries of Justice concerned."

### **Chapter IV**

#### **Article 5**

1. This Protocol shall be open to signature by the member States of the Council of Europe which have signed the Convention. It shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
2. The Protocol shall enter into force 90 days after the date of the deposit of the third instrument of ratification, acceptance or approval.
3. In respect of a signatory State ratifying, accepting or approving subsequently, the Protocol shall enter into force 90 days after the date of the deposit of its instrument of ratification, acceptance or approval.
4. A member State of the Council of Europe may not ratify, accept or approve this Protocol without having, simultaneously or previously, ratified the Convention.

#### **Article 6**

1. Any State which has acceded to the Convention may accede to this Protocol after the Protocol has entered into force.
2. Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession which shall take effect 90 days after the date of its deposit.

#### **Article 7**

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Protocol shall apply.
2. Any State may, when depositing its instrument of ratification, acceptance, approval or accession or at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend this Protocol to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.
3. Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn by means of a notification addressed to the Secretary General of the Council of Europe. Such withdrawal shall take effect six months after the date of receipt by the Secretary General of the Council of Europe of the notification.

## **Article 8**

1. Reservations made by a Contracting Party to a provision of the Convention shall be applicable also to this Protocol, unless that Party otherwise declares at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession. The same shall apply to the declarations made by virtue of Article 24 of the Convention.
2. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it reserves the right:
  - a. not to accept Chapter I, or to accept it only in respect of certain offences or certain categories of the offences referred to in Article I, or not to comply with letters rogatory for search or seizure of property in respect of fiscal offences;
  - b. not to accept Chapter II;
  - c. not to accept Chapter III.
3. Any Contracting Party may withdraw a declaration it has made in accordance with the foregoing paragraph by means of a declaration addressed to the Secretary General of the Council of Europe which shall become effective as from the date of its receipt.
4. A Contracting Party which has applied to this Protocol a reservation made in respect of a provision of the Convention or which has made a reservation in respect of a provision of this Protocol may not claim the application of that provision by another Contracting Party; it may, however, if its reservation is partial or conditional claim the application of that provision in so far as it has itself accepted it.
5. No other reservation may be made to the provisions of this Protocol.

## **Article 9**

The provisions of this Protocol are without prejudice to more extensive regulations in bilateral or multilateral agreements concluded between Contracting Parties in application of Article 26, paragraph 3, of the Convention.

## **Article 10**

The European Committee on Crime Problems of the Council of Europe shall be kept informed regarding the application of this Protocol and shall do whatever is needful to facilitate a friendly settlement of any difficulty which may arise out of its execution.

## **Article 11**

1. Any Contracting Party may, in so far as it is concerned, denounce this Protocol by means of a notification addressed to the Secretary General of the Council of Europe.
2. Such denunciation shall take effect six months after the date of receipt by the Secretary General of such notification.
3. Denunciation of the Convention entails automatically denunciation of this Protocol.

## **Article 12**

The Secretary General of the Council of Europe shall notify the member States of the Council and any State which has acceded to the Convention of:

- a. any signature of this Protocol;
- b. any deposit of an instrument of ratification, acceptance, approval or accession;
- c. any date of entry into force of this Protocol in accordance with Articles 5 and 6;
- d. any declaration received in pursuance of the provisions of paragraphs 2 and 3 of Article 7;
- e. any declaration received in pursuance of the provisions of paragraph 1 of Article 8;
- f. any reservation made in pursuance of the provisions of paragraph 2 of Article 8;
- g. the withdrawal of any reservation carried out in pursuance of the provisions of paragraph 3 of Article 8;
- h. any notification received in pursuance of the provisions of Article 11 and the date on which denunciation takes effect.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 17th day of March 1978, in English and in French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each of the signatory and acceding States.

## **SECOND ADDITIONAL PROTOCOL TO THE EUROPEAN CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS**

### **Strasbourg, 8.XI.2001**

The member States of the Council of Europe, signatory to this Protocol,

Having regard to their undertakings under the Statute of the Council of Europe;

Desirous of further contributing to safeguard human rights, uphold the rule of law and support the democratic fabric of society;

Considering it desirable to that effect to strengthen their individual and collective ability to respond to crime;

Decided to improve on and supplement in certain aspects the European Convention on Mutual Assistance in Criminal Matters done at Strasbourg on 20 April 1959 (hereinafter referred to as "the Convention"), as well as the [Additional Protocol thereto](#), done at Strasbourg on 17 March 1978;

Taking into consideration the Convention for the Protection of Human Rights and Fundamental Freedoms, done at Rome on 4 November 1950, as well as the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, done at Strasbourg on 28 January 1981,

Have agreed as follows:

### **Chapter I**

#### **Article 1 – Scope**

Article 1 of the Convention shall be replaced by the following provisions:

"1 The Parties undertake promptly to afford each other, in accordance with the provisions of this Convention, the widest measure of mutual assistance in proceedings in respect of offences the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting Party.

2 This Convention does not apply to arrests, the enforcement of verdicts or offences under military law which are not offences under ordinary criminal law.



3 Mutual assistance may also be afforded in proceedings brought by the administrative authorities in respect of acts which are punishable under the national law of the requesting or the requested Party by virtue of being infringements of the rules of law, where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters.

4 Mutual assistance shall not be refused solely on the grounds that it relates to acts for which a legal person may be held liable in the requesting Party."

### **Article 2 – Presence of officials of the requesting Party**

Article 4 of the Convention shall be supplemented by the following text, the original Article 4 of the Convention becoming paragraph 1 and the provisions below becoming paragraph 2:

"2 Requests for the presence of such officials or interested persons should not be refused where that presence is likely to render the execution of the request for assistance more responsive to the needs of the requesting Party and, therefore, likely to avoid the need for supplementary requests for assistance."

### **Article 3 – Temporary transfer of detained persons to the territory of the requesting Party**

Article 11 of the Convention shall be replaced by the following provisions:

"1 A person in custody whose personal appearance for evidentiary purposes other than for standing trial is applied for by the requesting Party shall be temporarily transferred to its territory, provided that he or she shall be sent back within the period stipulated by the requested Party and subject to the provisions of Article 12 of this Convention, in so far as these are applicable.

Transfer may be refused if:

- a the person in custody does not consent;
- b his or her presence is necessary at criminal proceedings pending in the territory of the requested Party;
- c transfer is liable to prolong his or her detention, or
- d there are other overriding grounds for not transferring him or her to the territory of the requesting Party.

2 Subject to the provisions of Article 2 of this Convention, in a case coming within paragraph 1, transit of the person in custody through the territory of a third Party, shall be granted on application, accompanied by all necessary documents,

addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the Party through whose territory transit is requested. A Party may refuse to grant transit to its own nationals.

3 The transferred person shall remain in custody in the territory of the requesting Party and, where applicable, in the territory of the Party through which transit is requested, unless the Party from whom transfer is requested applies for his or her release."

#### **Article 4 – Channels of communication**

Article 15 of the Convention shall be replaced by the following provisions:

"1 Requests for mutual assistance, as well as spontaneous information, shall be addressed in writing by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party and shall be returned through the same channels. However, they may be forwarded directly by the judicial authorities of the requesting Party to the judicial authorities of the requested Party and returned through the same channels.

2 Applications as referred to in Article 11 of this Convention and Article 13 of the Second Additional Protocol to this Convention shall in all cases be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party and shall be returned through the same channels.

3 Requests for mutual assistance concerning proceedings as mentioned in paragraph 3 of Article 1 of this Convention may also be forwarded directly by the administrative or judicial authorities of the requesting Party to the administrative or judicial authorities of the requested Party, as the case may be, and returned through the same channels.

4 Requests for mutual assistance made under Articles 18 and 19 of the Second Additional Protocol to this Convention may also be forwarded directly by the competent authorities of the requesting Party to the competent authorities of the requested Party.

5 Requests provided for in paragraph 1 of Article 13 of this Convention may be addressed directly by the judicial authorities concerned to the appropriate authorities of the requested Party, and the replies may be returned directly by those authorities. Requests provided for in paragraph 2 of Article 13 of this Convention shall be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party.

6 Requests for copies of convictions and measures as referred to in Article 4 of the Additional Protocol to the Convention may be made directly to the competent authorities. Any Contracting State may, at any time, by a declaration addressed to

the Secretary General of the Council of Europe, define what authorities it will, for the purpose of this paragraph, deem competent authorities.

7 In urgent cases, where direct transmission is permitted under this Convention, it may take place through the International Criminal Police Organisation (Interpol).

8 Any Party may, at any time, by a declaration addressed to the Secretary General of the Council of Europe, reserve the right to make the execution of requests, or specified requests, for mutual assistance dependent on one or more of the following conditions:

a that a copy of the request be forwarded to the central authority designated in that declaration;

b that requests, except urgent requests, be forwarded to the central authority designated in that declaration;

c that, in case of direct transmission for reasons of urgency, a copy shall be transmitted at the same time to its Ministry of Justice;

d that some or all requests for assistance shall be sent to it through channels other than those provided for in this article.

9 Requests for mutual assistance and any other communications under this Convention or its Protocols may be forwarded through any electronic or other means of telecommunication provided that the requesting Party is prepared, upon request, to produce at any time a written record of it and the original. However, any Contracting State, may by a declaration addressed at any time to the Secretary General of the Council of Europe, establish the conditions under which it shall be willing to accept and execute requests received by electronic or other means of telecommunication.

10 The provisions of this article are without prejudice to those of bilateral agreements or arrangements in force between Parties which provide for the direct transmission of requests for assistance between their respective authorities."

#### **Article 5 – Costs**

Article 20 of the Convention shall be replaced by the following provisions:

"1 Parties shall not claim from each other the refund of any costs resulting from the application of this Convention or its Protocols, except:

a costs incurred by the attendance of experts in the territory of the requested Party;

b costs incurred by the transfer of a person in custody carried out under Articles 13 or 14 of the Second Additional Protocol to this Convention, or Article 11 of this Convention;

c costs of a substantial or extraordinary nature.

2 However, the cost of establishing a video or telephone link, costs related to the servicing of a video or telephone link in the requested Party, the remuneration of interpreters provided by it and allowances to witnesses and their travelling expenses in the requested Party shall be refunded by the requesting Party to the requested Party, unless the Parties agree otherwise.

3 Parties shall consult with each other with a view to making arrangements for the payment of costs claimable under paragraph 1.c above.

4 The provisions of this article shall apply without prejudice to the provisions of Article 10, paragraph 3, of this Convention."

#### **Article 6 – Judicial authorities**

Article 24 of the Convention shall be replaced by the following provisions:

"Any State shall at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by means of a declaration addressed to the Secretary General of the Council of Europe, define what authorities it will, for the purpose of the Convention, deem judicial authorities. It subsequently may, at any time and in the same manner, change the terms of its declaration."

### **Chapter II**

#### **Article 7 – Postponed execution of requests**

1 The requested Party may postpone action on a request if such action would prejudice investigations, prosecutions or related proceedings by its authorities.

2 Before refusing or postponing assistance, the requested Party shall, where appropriate after having consulted with the requesting Party, consider whether the request may be granted partially or subject to such conditions as it deems necessary.

3 If the request is postponed, reasons shall be given for the postponement. The requested Party shall also inform the requesting Party of any reasons that render impossible the execution of the request or are likely to delay it significantly.

#### **Article 8 – Procedure**

Notwithstanding the provisions of Article 3 of the Convention, where requests specify formalities or procedures which are necessary under the law of the requesting Party, even if unfamiliar to the requested Party, the latter shall comply with such requests to the extent that the action sought is not contrary to fundamental principles of its law, unless otherwise provided for in this Protocol.

#### **Article 9 – Hearing by video conference**

1 If a person is in one Party's territory and has to be heard as a witness or expert by the judicial authorities of another Party, the latter may, where it is not desirable or possible for the person to be heard to appear in its territory in person, request that the hearing take place by video conference, as provided for in paragraphs 2 to 7.

2 The requested Party shall agree to the hearing by video conference provided that the use of the video conference is not contrary to fundamental principles of its law and on condition that it has the technical means to carry out the hearing. If the requested Party has no access to the technical means for video conferencing, such means may be made available to it by the requesting Party by mutual agreement.

3 Requests for a hearing by video conference shall contain, in addition to the information referred to in Article 14 of the Convention, the reason why it is not desirable or possible for the witness or expert to attend in person, the name of the judicial authority and of the persons who will be conducting the hearing.

4 The judicial authority of the requested Party shall summon the person concerned to appear in accordance with the forms laid down by its law.

5 With reference to hearing by video conference, the following rules shall apply:

a a judicial authority of the requested Party shall be present during the hearing, where necessary assisted by an interpreter, and shall also be responsible for ensuring both the identification of the person to be heard and respect for the fundamental principles of the law of the requested Party. If the judicial authority of the requested Party is of the view that during the hearing the fundamental principles of the law of the requested Party are being infringed, it shall immediately take the necessary measures to ensure that the hearing continues in accordance with the said principles;

b measures for the protection of the person to be heard shall be agreed, where necessary, between the competent authorities of the requesting and the requested Parties;

c the hearing shall be conducted directly by, or under the direction of, the judicial authority of the requesting Party in accordance with its own laws;

d at the request of the requesting Party or the person to be heard, the requested Party shall ensure that the person to be heard is assisted by an interpreter, if necessary;

e the person to be heard may claim the right not to testify which would accrue to him or her under the law of either the requested or the requesting Party.

6 Without prejudice to any measures agreed for the protection of persons, the judicial authority of the requested Party shall on the conclusion of the hearing draw up minutes indicating the date and place of the hearing, the identity of the person heard, the identities and functions of all other persons in the requested Party participating in the hearing, any oaths taken and the technical conditions under which the hearing took place. The document shall be forwarded by the competent authority of the requested Party to the competent authority of the requesting Party.

7 Each Party shall take the necessary measures to ensure that, where witnesses or experts are being heard within its territory, in accordance with this article, and refuse to testify when under an obligation to testify or do not testify according to the truth, its national law applies in the same way as if the hearing took place in a national procedure.

8 Parties may at their discretion also apply the provisions of this article, where appropriate and with the agreement of their competent judicial authorities, to hearings by video conference involving the accused person or the suspect. In this case, the decision to hold the video conference, and the manner in which the video conference shall be carried out, shall be subject to agreement between the Parties concerned, in accordance with their national law and relevant international instruments. Hearings involving the accused person or the suspect shall only be carried out with his or her consent.

9 Any Contracting State may, at any time, by means of a declaration addressed to the Secretary General of the Council of Europe, declare that it will not avail itself of the possibility provided in paragraph 8 above of also applying the provisions of this article to hearings by video conference involving the accused person or the suspect.

#### **Article 10 – Hearing by telephone conference**

1 If a person is in one Party's territory and has to be heard as a witness or expert by judicial authorities of another Party, the latter may, where its national law so provides, request the assistance of the former Party to enable the hearing to take place by telephone conference, as provided for in paragraphs 2 to 6.

2 A hearing may be conducted by telephone conference only if the witness or expert agrees that the hearing take place by that method.

3 The requested Party shall agree to the hearing by telephone conference where this is not contrary to fundamental principles of its law.

4 A request for a hearing by telephone conference shall contain, in addition to the information referred to in Article 14 of the Convention, the name of the judicial authority and of the persons who will be conducting the hearing and an indication that the witness or expert is willing to take part in a hearing by telephone conference.

5 The practical arrangements regarding the hearing shall be agreed between the Parties concerned. When agreeing such arrangements, the requested Party shall undertake to:

- a notify the witness or expert concerned of the time and the venue of the hearing;
- b ensure the identification of the witness or expert;
- c verify that the witness or expert agrees to the hearing by telephone conference.

6 The requested Party may make its agreement subject, fully or in part, to the relevant provisions of Article 9, paragraphs 5 and 7.

#### **Article 11 – Spontaneous information**

1 Without prejudice to their own investigations or proceedings, the competent authorities of a Party may, without prior request, forward to the competent authorities of another Party information obtained within the framework of their own investigations, when they consider that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings, or might lead to a request by that Party under the Convention or its Protocols.

2 The providing Party may, pursuant to its national law, impose conditions on the use of such information by the receiving Party.

3 The receiving Party shall be bound by those conditions.

4 However, any Contracting State may, at any time, by means of a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to be bound by the conditions imposed by the providing Party under paragraph 2 above, unless it receives prior notice of the nature of the information to be provided and agrees to its transmission.

#### **Article 12 – Restitution**

1 At the request of the requesting Party and without prejudice to the rights of bona fide third parties, the requested Party may place articles obtained by criminal means at the disposal of the requesting Party with a view to their return to their rightful owners.

2 In applying Articles 3 and 6 of the Convention, the requested Party may waive the return of articles either before or after handing them over to the requesting Party if the restitution of such articles to the rightful owner may be facilitated thereby. The rights of bona fide third parties shall not be affected.

3 In the event of a waiver before handing over the articles to the requesting Party, the requested Party shall exercise no security right or other right of recourse under tax or customs legislation in respect of these articles.

4 A waiver as referred to in paragraph 2 shall be without prejudice to the right of the requested Party to collect taxes or duties from the rightful owner.

### **Article 13 – Temporary transfer of detained persons to the requested Party**

1 Where there is agreement between the competent authorities of the Parties concerned, a Party which has requested an investigation for which the presence of a person held in custody on its own territory is required may temporarily transfer that person to the territory of the Party in which the investigation is to take place.

2 The agreement shall cover the arrangements for the temporary transfer of the person and the date by which the person must be returned to the territory of the requesting Party.

3 Where consent to the transfer is required from the person concerned, a statement of consent or a copy thereof shall be provided promptly to the requested Party.

4 The transferred person shall remain in custody in the territory of the requested Party and, where applicable, in the territory of the Party through which transit is requested, unless the Party from which the person was transferred applies for his or her release.

5 The period of custody in the territory of the requested Party shall be deducted from the period of detention which the person concerned is or will be obliged to undergo in the territory of the requesting Party.

6 The provisions of Article 11, paragraph 2, and Article 12 of the Convention shall apply *mutatis mutandis*.

7 Any Contracting State may at any time, by means of a declaration addressed to the Secretary General of the Council of Europe, declare that before an



agreement is reached under paragraph 1 of this article, the consent referred to in paragraph 3 of this article will be required, or will be required under certain conditions indicated in the declaration.

#### **Article 14 – Personal appearance of transferred sentenced persons**

The provisions of Articles 11 and 12 of the Convention shall apply *mutatis mutandis* also to persons who are in custody in the requested Party, pursuant to having been transferred in order to serve a sentence passed in the requesting Party, where their personal appearance for purposes of review of the judgement is applied for by the requesting Party.

#### **Article 15 – Language of procedural documents and judicial decisions to be served**

- 1 The provisions of this article shall apply to any request for service under Article 7 of the Convention or Article 3 of the Additional Protocol thereto.
- 2 Procedural documents and judicial decisions shall in all cases be transmitted in the language, or the languages, in which they were issued.
- 3 Notwithstanding the provisions of Article 16 of the Convention, if the authority that issued the papers knows or has reasons to believe that the addressee understands only some other language, the papers, or at least the most important passages thereof, shall be accompanied by a translation into that other language.
- 4 Notwithstanding the provisions of Article 16 of the Convention, procedural documents and judicial decisions shall, for the benefit of the authorities of the requested Party, be accompanied by a short summary of their contents translated into the language, or one of the languages, of that Party.

#### **Article 16 – Service by post**

- 1 The competent judicial authorities of any Party may directly address, by post, procedural documents and judicial decisions, to persons who are in the territory of any other Party.
- 2 Procedural documents and judicial decisions shall be accompanied by a report stating that the addressee may obtain information from the authority identified in the report, regarding his or her rights and obligations concerning the service of the papers. The provisions of paragraph 3 of Article 15 above shall apply to that report.
- 3 The provisions of Articles 8, 9 and 12 of the Convention shall apply *mutatis mutandis* to service by post.

4 The provisions of paragraphs 1, 2 and 3 of Article 15 above shall also apply to service by post.

#### **Article 17 – Cross-border observations**

1 Police officers of one of the Parties who, within the framework of a criminal investigation, are keeping under observation in their country a person who is presumed to have taken part in a criminal offence to which extradition may apply, or a person who it is strongly believed will lead to the identification or location of the above-mentioned person, shall be authorised to continue their observation in the territory of another Party where the latter has authorised cross-border observation in response to a request for assistance which has previously been submitted. Conditions may be attached to the authorisation.

On request, the observation will be entrusted to officers of the Party in whose territory it is carried out.

The request for assistance referred to in the first sub-paragraph must be sent to an authority designated by each Party and having jurisdiction to grant or to forward the requested authorisation.

2 Where, for particularly urgent reasons, prior authorisation of the other Party cannot be requested, the officers conducting the observation within the framework of a criminal investigation shall be authorised to continue beyond the border the observation of a person presumed to have committed offences listed in paragraph 6, provided that the following conditions are met:

- a the authorities of the Party designated under paragraph 4, in whose territory the observation is to be continued, must be notified immediately, during the observation, that the border has been crossed;
- b a request for assistance submitted in accordance with paragraph 1 and outlining the grounds for crossing the border without prior authorisation shall be submitted without delay.

Observation shall cease as soon as the Party in whose territory it is taking place so requests, following the notification referred to in a. or the request referred to in b. or where authorisation has not been obtained within five hours of the border being crossed.

3 The observation referred to in paragraphs 1 and 2 shall be carried out only under the following general conditions:

- a The officers conducting the observation must comply with the provisions of this article and with the law of the Party in whose territory they are operating; they must obey the instructions of the local responsible authorities.

b Except in the situations provided for in paragraph 2, the officers shall, during the observation, carry a document certifying that authorisation has been granted.

c The officers conducting the observation must be able at all times to provide proof that they are acting in an official capacity.

d The officers conducting the observation may carry their service weapons during the observation, save where specifically otherwise decided by the requested Party; their use shall be prohibited save in cases of legitimate self-defence.

e Entry into private homes and places not accessible to the public shall be prohibited.

f The officers conducting the observation may neither stop and question, nor arrest, the person under observation.

g All operations shall be the subject of a report to the authorities of the Party in whose territory they took place; the officers conducting the observation may be required to appear in person.

h The authorities of the Party from which the observing officers have come shall, when requested by the authorities of the Party in whose territory the observation took place, assist the enquiry subsequent to the operation in which they took part, including legal proceedings.

4 Parties shall at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession, by means of a declaration addressed to the Secretary General of the Council of Europe, indicate both the officers and authorities that they designate for the purposes of paragraphs 1 and 2 of this article. They subsequently may, at any time and in the same manner, change the terms of their declaration.

5 The Parties may, at bilateral level, extend the scope of this article and adopt additional measures in implementation thereof.

6 The observation referred to in paragraph 2 may take place only for one of the following criminal offences:

- assassination;
- murder;
- rape;
- arson;
- counterfeiting;
- armed robbery and receiving of stolen goods;
- extortion;

- kidnapping and hostage taking;
- traffic in human beings;
- illicit traffic in narcotic drugs and psychotropic substances;
- breach of the laws on arms and explosives;
- use of explosives;
- illicit carriage of toxic and dangerous waste;
- smuggling of aliens;
- sexual abuse of children.

### **Article 18 – Controlled delivery**

- 1 Each Party undertakes to ensure that, at the request of another Party, controlled deliveries may be permitted on its territory in the framework of criminal investigations into extraditable offences.
- 2 The decision to carry out controlled deliveries shall be taken in each individual case by the competent authorities of the requested Party, with due regard to the national law of that Party.
- 3 Controlled deliveries shall take place in accordance with the procedures of the requested Party. Competence to act, direct and control operations shall lie with the competent authorities of that Party.
- 4 Parties shall at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession, by means of a declaration addressed to the Secretary General of the Council of Europe, indicate the authorities that are competent for the purposes of this article. They subsequently may, at any time and in the same manner, change the terms of their declaration.

### **Article 19 – Covert investigations**

- 1 The requesting and the requested Parties may agree to assist one another in the conduct of investigations into crime by officers acting under covert or false identity (covert investigations).
- 2 The decision on the request is taken in each individual case by the competent authorities of the requested Party with due regard to its national law and procedures. The duration of the covert investigation, the detailed conditions, and the legal status of the officers concerned during covert investigations shall be agreed between the Parties with due regard to their national law and procedures.
- 3 Covert investigations shall take place in accordance with the national law and procedures of the Party on the territory of which the covert investigation takes place. The Parties involved shall co-operate to ensure that the covert investigation is prepared and supervised and to make arrangements for the security of the officers acting under covert or false identity.

4 Parties shall at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession, by means of a declaration addressed to the Secretary General of the Council of Europe, indicate the authorities that are competent for the purposes of paragraph 2 of this article. They subsequently may, at any time and in the same manner, change the terms of their declaration.

#### **Article 20 – Joint investigation teams**

1 By mutual agreement, the competent authorities of two or more Parties may set up a joint investigation team for a specific purpose and a limited period, which may be extended by mutual consent, to carry out criminal investigations in one or more of the Parties setting up the team. The composition of the team shall be set out in the agreement.

A joint investigation team may, in particular, be set up where:

- a a Party's investigations into criminal offences require difficult and demanding investigations having links with other Parties;
- b a number of Parties are conducting investigations into criminal offences in which the circumstances of the case necessitate co-ordinated, concerted action in the Parties involved.

A request for the setting up of a joint investigation team may be made by any of the Parties concerned. The team shall be set up in one of the Parties in which the investigations are expected to be carried out.

2 In addition to the information referred to in the relevant provisions of Article 14 of the Convention, requests for the setting up of a joint investigation team shall include proposals for the composition of the team.

3 A joint investigation team shall operate in the territory of the Parties setting up the team under the following general conditions:

- a the leader of the team shall be a representative of the competent authority participating in criminal investigations from the Party in which the team operates. The leader of the team shall act within the limits of his or her competence under national law;
- b the team shall carry out its operations in accordance with the law of the Party in which it operates. The members and seconded members of the team shall carry out their tasks under the leadership of the person referred to in sub-paragraph a, taking into account the conditions set by their own authorities in the agreement on setting up the team;

c the Party in which the team operates shall make the necessary organisational arrangements for it to do so.

4 In this article, members of the joint investigation team from the Party in which the team operates are referred to as "members", while members from Parties other than the Party in which the team operates are referred to as "seconded members".

5 Seconded members of the joint investigation team shall be entitled to be present when investigative measures are taken in the Party of operation. However, the leader of the team may, for particular reasons, in accordance with the law of the Party where the team operates, decide otherwise.

6 Seconded members of the joint investigation team may, in accordance with the law of the Party where the team operates, be entrusted by the leader of the team with the task of taking certain investigative measures where this has been approved by the competent authorities of the Party of operation and the seconding Party.

7 Where the joint investigation team needs investigative measures to be taken in one of the Parties setting up the team, members seconded to the team by that Party may request their own competent authorities to take those measures. Those measures shall be considered in that Party under the conditions which would apply if they were requested in a national investigation.

8 Where the joint investigation team needs assistance from a Party other than those which have set up the team, or from a third State, the request for assistance may be made by the competent authorities of the State of operation to the competent authorities of the other State concerned in accordance with the relevant instruments or arrangements.

9 A seconded member of the joint investigation team may, in accordance with his or her national law and within the limits of his or her competence, provide the team with information available in the Party which has seconded him or her for the purpose of the criminal investigations conducted by the team.

10 Information lawfully obtained by a member or seconded member while part of a joint investigation team which is not otherwise available to the competent authorities of the Parties concerned may be used for the following purposes:

a for the purposes for which the team has been set up;

b subject to the prior consent of the Party where the information became available, for detecting, investigating and prosecuting other criminal offences. Such consent may be withheld only in cases where such use would endanger criminal investigations in the Party concerned or in respect of which that Party could refuse mutual assistance;

c for preventing an immediate and serious threat to public security, and without prejudice to sub-paragraph b. if subsequently a criminal investigation is opened;

d for other purposes to the extent that this is agreed between Parties setting up the team.

11 This article shall be without prejudice to any other existing provisions or arrangements on the setting up or operation of joint investigation teams.

12 To the extent that the laws of the Parties concerned or the provisions of any legal instrument applicable between them permit, arrangements may be agreed for persons other than representatives of the competent authorities of the Parties setting up the joint investigation team to take part in the activities of the team. The rights conferred upon the members or seconded members of the team by virtue of this article shall not apply to these persons unless the agreement expressly states otherwise.

#### **Article 21 – Criminal liability regarding officials**

During the operations referred to in Articles 17, 18, 19 or 20, unless otherwise agreed upon by the Parties concerned, officials from a Party other than the Party of operation shall be regarded as officials of the Party of operation with respect to offences committed against them or by them.

#### **Article 22 – Civil liability regarding officials**

1 Where, in accordance with Articles 17, 18, 19 or 20, officials of a Party are operating in another Party, the first Party shall be liable for any damage caused by them during their operations, in accordance with the law of the Party in whose territory they are operating.

2 The Party in whose territory the damage referred to in paragraph 1 was caused shall make good such damage under the conditions applicable to damage caused by its own officials.

3 The Party whose officials have caused damage to any person in the territory of another Party shall reimburse the latter in full any sums it has paid to the victims or persons entitled on their behalf.

4 Without prejudice to the exercise of its rights vis-à-vis third parties and with the exception of paragraph 3, each Party shall refrain in the case provided for in paragraph 1 from requesting reimbursement of damages it has sustained from another Party.

5 The provisions of this article shall apply subject to the proviso that the Parties did not agree otherwise.

### **Article 23 – Protection of witnesses**

Where a Party requests assistance under the Convention or one of its Protocols in respect of a witness at risk of intimidation or in need of protection, the competent authorities of the requesting and requested Parties shall endeavour to agree on measures for the protection of the person concerned, in accordance with their national law.

### **Article 24 – Provisional measures**

1 At the request of the requesting Party, the requested Party, in accordance with its national law, may take provisional measures for the purpose of preserving evidence, maintaining an existing situation or protecting endangered legal interests.

2 The requested Party may grant the request partially or subject to conditions, in particular time limitation.

### **Article 25 – Confidentiality**

The requesting Party may require that the requested Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting Party.

### **Article 26 – Data protection**

1 Personal data transferred from one Party to another as a result of the execution of a request made under the Convention or any of its Protocols, may be used by the Party to which such data have been transferred, only:

- a for the purpose of proceedings to which the Convention or any of its Protocols apply;
- b for other judicial and administrative proceedings directly related to the proceedings mentioned under (a);
- c for preventing an immediate and serious threat to public security.

2 Such data may however be used for any other purpose if prior consent to that effect is given by either the Party from which the data had been transferred, or the data subject.

3 Any Party may refuse to transfer personal data obtained as a result of the execution of a request made under the Convention or any of its Protocols where



- such data is protected under its national legislation, and
- the Party to which the data should be transferred is not bound by the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, done at Strasbourg on 28 January 1981, unless the latter Party undertakes to afford such protection to the data as is required by the former Party.

4 Any Party that transfers personal data obtained as a result of the execution of a request made under the Convention or any of its Protocols may require the Party to which the data have been transferred to give information on the use made with such data.

5 Any Party may, by a declaration addressed to the Secretary General of the Council of Europe, require that, within the framework of procedures for which it could have refused or limited the transmission or the use of personal data in accordance with the provisions of the Convention or one of its Protocols, personal data transmitted to another Party not be used by the latter for the purposes of paragraph 1 unless with its previous consent.

#### **Article 27 – Administrative authorities**

Parties may at any time, by means of a declaration addressed to the Secretary General of the Council of Europe, define what authorities they will deem administrative authorities for the purposes of Article 1, paragraph 3, of the Convention.

#### **Article 28 – Relations with other treaties**

The provisions of this Protocol are without prejudice to more extensive regulations in bilateral or multilateral agreements concluded between Parties in application of Article 26, paragraph 3, of the Convention.

#### **Article 29 – Friendly settlement**

The European Committee on Crime Problems shall be kept informed regarding the interpretation and application of the Convention and its Protocols, and shall do whatever is necessary to facilitate a friendly settlement of any difficulty which may arise out of their application.

### **Chapter III**

#### **Article 30 – Signature and entry into force**

1 This Protocol shall be open for signature by the member States of the Council of Europe which are a Party to or have signed the Convention. It shall be subject to ratification, acceptance or approval. A signatory may not ratify, accept or

approve this Protocol unless it has previously or simultaneously ratified, accepted or approved the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

2 This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the deposit of the third instrument of ratification, acceptance or approval.

3 In respect of any signatory State which subsequently deposits its instrument of ratification, acceptance or approval, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit.

### **Article 31 – Accession**

1 Any non-member State, which has acceded to the Convention, may accede to this Protocol after it has entered into force.

2 Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession.

3 In respect of any acceding State, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of accession.

### **Article 32 – Territorial application**

1 Any State may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Protocol shall apply.

2 Any State may, at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date or receipt of such notification by the Secretary General.

### **Article 33 – Reservations**

1 Reservations made by a Party to any provision of the Convention or its Protocol shall be applicable also to this Protocol, unless that Party otherwise declares at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession. The same shall apply to any declaration made in respect or by virtue of any provision of the Convention or its Protocol.

2 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it avails itself of the right not to accept wholly or in part any one or more of Articles 16, 17, 18, 19 and 20. No other reservation may be made.

3 Any State may wholly or partially withdraw a reservation it has made in accordance with the foregoing paragraphs, by means of a declaration addressed to the Secretary General of the Council of Europe, which shall become effective as from the date of its receipt.

4 Any Party which has made a reservation in respect of any of the articles of this Protocol mentioned in paragraph 2 above, may not claim the application of that article by another Party. It may, however, if its reservation is partial or conditional, claim the application of that provision in so far as it has itself accepted it.

### **Article 34 – Denunciation**

1 Any Party may, in so far as it is concerned, denounce this Protocol by means of a notification addressed to the Secretary General of the Council of Europe.

2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

3 Denunciation of the Convention entails automatically denunciation of this Protocol.

### **Article 35 – Notifications**

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe and any State which has acceded to this Protocol of:

a any signature;

b the deposit of any instrument of ratification, acceptance, approval or accession;

c any date of entry into force of this Protocol in accordance with Articles 30 and 31;

d any other act, declaration, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 8th day of November 2001, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to the non-member States which have acceded to the Convention.

# APPENDIX E

## **SUMMARY OF SERVICES FOR VICTIMS OF TRAFFICKING**

**SOURCE: COORDINATED ACTION AGAINST HUMAN TRAFFICKING (CAAHT)**

Many organizations are engaged in activities throughout Albania to protect and rehabilitate trafficking victims, including providing legal and psychological assistance, assisting in their voluntary return and reintegration into their communities, vocational training, and awareness-raising for the public. Mostly, these services are provided by Albanian and international nongovernmental organizations (NGOs). The role of these NGOs is invaluable; not only do they complement support provided by the state and ensure victims receive adequate assistance, they understand the victims' perspectives and seek to balance law enforcement needs with a victim-centered, human rights-based approach to assistance. Such assistance often increases victims' willingness to cooperate with law enforcement, rendering prosecutions more effective. Moreover, NGOs assist the government in its efforts to implement the National Action Plan to combat trafficking for the years 2005-2007. That plan calls for a referral mechanism, improving witness protection and instituting vocational training, among other activities.

### **GOVERNMENT OF ALBANIA SERVICES FOR VICTIMS:**

As reported in the 2006 report, *Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report*, United States Department of State (<http://www.state.gov/g/tip/rls/tiprpt/2005/>), the government currently operates a National Reception Center for the Reception of Victims of Trafficking (NCRVT) and has created a national referral mechanism for trafficking victims that includes law enforcement, social services, and NGOs. The referral mechanism is intended to improve the identification, reception, protection, and reintegration procedures for returnee victims. Police refer victims to shelters such as the Vlora Women's Health Center, in Vatra, via both the International Office of Migration and NGOs. The government has also opened temporary shelters within a number of police directorates to accommodate trafficking victims.

#### **SHELTERS RUN BY ALBANIAN NON-GOVERNMENTAL ORGANIZATIONS (NGOS):**

The following shelters for trafficking victims are operated by nongovernmental organizations as of March, 2006. These shelters serve only certain regions within Albania:

Vlora Women's Hearth (Vatra): Vatra, located in Vlora, provides shelter to trafficking victims, counseling, reintegration services and vocational training. Vatra also conducts research, local public awareness campaigns, and chairs the southern regional branch of the NGO coalition Network of the Institutions for the Anti-Trafficking Fight. Currently, Vatra is implementing a project, funded CAAHT, to sensitize young people in the towns of Vlora and Fier, and the localities of Roskovec, Patos, Novosele and Levan, to the risk of trafficking and to teach youth to protect themselves.

Contact: Vera Lesko Address: "Pirro Bisha" –Vlore, Tel: 0355 33 28048, pall 1406,E-mail: qvatra@abcom-al.com

Different and Equal (D&E) provides shelter and reintegration services for victims of trafficking, also with CAAHT funding. The project directly assists approximately fifty (50) beneficiaries every year, with at least fifteen more beneficiaries provided with initial assistance on an individual basis.

Contact: Mujo Haxhiaj, Address: Ish-Stabilimenti, Rruga e Kavajes, Tirana, Tel.: +355-68-20-54-741.

Tjeter Vizion/Another Vision sponsors residential centers, shelters and secure apartments in the district of Elbasani for children, adolescents and adult female victims of trafficking. It also provides shelter, legal services and psychological counseling to unaccompanied minors who have returned from other countries and to at-risk (street) children. Another Vision's goals are social rehabilitation and integration of minors who have been trafficked and reduction of trafficking through services to at-risk and vulnerable groups. The European Committee on Formation and Agriculture-Albania is partnering with Another Vision to extend these services and programs to the underserved region of Gramshi.

Contact:Mirela Gjoni, Address: Rr.Rinia 88, Elbasan, Tel/Fax: +355 54 53397,e-mail:tjetervizion@albmail.com

Community Center of Gjirokastra has opened a transit sheltering facility in Gjirokastra where victims receive shelter for up to seven days. The center is also implementing a project on prevention, assistance and reintegration of victims and engages in public awareness activities targeting vulnerable communities.

Contact: Fatbardha Idrizi, Address: L. 18 shtatori, Gjirokaster, Tel.:+355 84 63650/63275

**NON-RESIDENTIAL ASSISTANCE PROGRAMS OFFERED BY ALBANIAN NON-GOVERNMENTAL ORGANIZATIONS (NGOS):**

VMA Kukësi helps adult victims reintegrate into their communities, and in 2006 began assisting police interviews of deportees from Kosova. The project intends to establish a referral mechanism at the local level for trafficked and at-risk children

Contact: Laureta Cenaj Adress: Kukes cel. 068 22 80954 E-mail:kukesi@albmail.com

Protection of Urban and Rural Women, Berati provides free psycho-social and legal support to adult victims in the Berati region who have refused shelter assistance and have returned to their families or to communities near their families. The organization also conducts awareness-raising on trafficking of women and girls and otherwise assists victims reintegrate.

Contact: Arta Dyrmishi Address:Shtepia e Officerave,K2 Berat Cel: +355 682298134 e-mail:artadyrmishi@yahoo.com

In Help of Northern Women of Puka provides vocational education to adult victims and awareness raising activities, which include trainings, visits to families of children who have abandoned school, publishing and distributing leaflets and posters, and airing TV spots. Similar to Protection of Urban and Rural Women, Berati, this organization supports victims who have refused shelter assistance and have returned to their families or to communities near their families. Three vocational education courses serve 60 young women and girls, mainly from Gypsy community.

Contact:Bukurie Ymeri Adress: Rr.Migjeni, P.43, Puke Cel.:+355 68 244 82 63

Legal Clinic for Minors (LCM) provides psycho-social counseling and legal assistance to the children and unaccompanied minors who have been returned from other countries. The LCM also conducts public awareness campaigns and trains police on the legal framework concerning trafficking in children, children's rights and child-friendly interviewing techniques. LCM refers cases to private and public service providers for further assistance according to the needs of the child. The goal is preventing children from becoming victims of trafficking and to guarantee their protection and reintegration should they fall prey.

Contact: Holta Kotherja, Address:Blv.Gjergj Fishta,Kulla 5,KII,Tirane,tel/Fax:+355 4 269 307,E-mail:legalclinic@albaniaonline.net

Terre des Hommes (Tdh), an international development and humanitarian aid organization, in cooperation with the Albanian NGO, Ndihme per Femijet assists victims who wish to return to their families and communities after having been trafficked. Both organizations also are engaged in prevention activities.

Contact: Artur Marku Address:Rr. 4 shkurti, PO.Box 74 26 Tel: + 0355 4 374798/363730,e-mail tdhalbanie@albaniaonline.com, erisa.cela@tdhalbania.org

International Social Service-Albania (ISS), provides psycho-social services for vulnerable, disadvantaged children and families affected by child trafficking. ISS staff assist individual families with their various needs.

Contact:Lida Leskaj Address: Rr. Tefta Tashko, No 3, Tirane.Tel: 355 4 230427/251999. E-mail: iss@albaniaonline.net

**OTHER ALBANIAN NGOS ENGAGED IN ANTI-TRAFFICKING ACTIVITIES:**

All Together Against Child Trafficking (BKTF) is a coalition of Albanian NGOs formed in 2002 to combat trafficking in persons. Their aim is to coordinate NGOs' actions in the field of illegal child trafficking, to engage in advocacy, and to advise the government, as well as other NGOs, on prevention, protection, assisted voluntary repatriation, and rehabilitation. BKTF was heavily involved in drafting Albania's Child Trafficking National Action Plan, adopted in 2005, and the Child Trafficking Cooperation Agreement with Greece.

Address: Bul Zhan Dark, Kulla Nr 5 kati Ap 9, Tel.: 355 4 269307, E-mail:bktf@albmail.com

Citizens' Advocacy Office (CAO) provides legal services to the victims of trafficking as well as legal education to citizens and local governments.

Contact: Kreshnik Spahiu, Address: Bul.Gjergj Fishta,Projekti 2000,Kulla I,K3, Tirane, e-mail:leginet@albaniaonline.net

Children's Human Rights Center of Albania (CRCA) has been active during the drafting of the National Plan of Action on trafficking, advising the inter-ministerial working group on specific issues related to elimination of child labor and child trafficking for exploitation.

Address: Pallatet e Shallvareve, Vila mbrapa fushave te tenisit, Tel / Fax: ++ 355 4 24 22 64, E-mail: crca@crca.org.al

Institute for Gender Applied Policies (IGAP), funded by CAAHT, conducts awareness raising campaigns on the risks of trafficking targeted at girls, women and children in under-served rural areas. The project has an innovative house-to-house information campaign, disseminates information on possibilities for legal migration, provides age- appropriate information on sexual relationships, gender sensitivity, and life skills.

Contact:Miranda Fishka,Address: Rr. Shyqeri Bëxolli, Nr. 1,Tirane, Tel/fax04266562, E- mail: mfishka@icc-al.org



Murialdo Social Center provides counseling and vocational training for minors vulnerable to trafficking, particularly those from the Roma community through outreach efforts. The project gives these children new perspectives on their situation that helps them strengthen their bonds with their families and society. Activities help them to integrate at school, acquire vocational skills, work more efficiently and develop personal skills that help them protect themselves from being trafficked.

Address:Shen Leonardo Murialdo,Sheq i Vogel, Fiertel:+355 34 23552 Fax:+355 34 282 85

Refleksione has been particularly active in protecting women rights against all forms of violence and discrimination, including sheltering victims of domestic violence, and promoting social-economic integration of women. Through their “Women Employment Centers” in Tirana, Shkodra and Pogradec, they have contributed to poverty and unemployment reduction, which in turn undermines trafficking.

Contact: Monika Asllani, Address:Rr. Elbasanit, Pall. Fratarit, Tershana 2 Kati 1,Tirana, Tel/Fax:+355 4 340432,e-mail:refleksione@icc-al.org

**FOREIGN NON-GOVERNMENTAL ORGANIZATIONS ENGAGED IN ANTI-TRAFFICKING ACTIVITIES:**

Christian Children's Fund (CCF), a CAAHT grantee, is conducting an assessment of trafficking of children and young women in the northeast Albanian districts of Tropoja, Kukësi, Has and Dibra, to determine their vulnerability to trafficking. The assessment will provide a better understanding of trafficking vis a vis smuggling or voluntary migration and enable anti-trafficking organizations to better design projects. CCF also plans to conduct workshops to educate communities on the risks of trafficking and to help communities devise tracking systems for vulnerable/at risk minors.

Contact: Ingrid Jones ,Aida Orgocka. Address: Rr. Murat Toptani, Nr. 25, Tirane, Tel. 355 4 256 833 fax 4 270 667, e-mail: ccfalbania@interalb.net

International Catholic Migration Commission (ICMC), has recently established, under CAAHT grant, a pilot project in Durrësi Qarku in which local government and an NGO coalition cooperate to prevent trafficking and protect victims in this community. ICMC develops the capacities of governmental agencies and civil society institutions to prevent trafficking and to address the needs of returning victims.

Contact: Julian Çaraoshi, Address: Rr. Zhan Dark, Pall ngjyre Kafe kati 6, Tirane. Tel.: 355 4 235953, e-mail: hiscock@icmc.net

Save the Children - Albania is a joint program of Save the Children organizations in Norway, UK, US, Italy and Sweden that provides training or education on

children's rights. They have programs in basic education, early childhood development, child protection and child advocacy.

Address: Rr. " Komuna e Parisit", Lagjia 8, Pallatet 1 Maji, Vila "Lami" P.O. Box 8185. Tel: +355 4 261840 / +355 4 261929 / +355 4 266227

Young Women's Christian Association of Albania (YWCA) - Over the past several years, the has built a strong relationship with residents and leaders in the suburban areas of Tirana, particularly within where the Roma community. Working with local community leaders and NGOs, the project raises awareness amongst women, girls and children of the risks of trafficking. It also conducts programs designed to improve self-esteem, and develop personal skills which enable women and girls to better protect themselves and their children from traffickers.

Address:Rr Mujo Ulqinaku, Nr2/1, Tirana Tel/Fax: + 355 4 248 699,e-mail:ywca@icc-al.eu.org

**THE FOLLOWING ALBANIAN NGOS INDIRECTLY CONTRIBUTED TO ANTI-TRAFFICKING EFFORTS THROUGH SUPPORT TO VULNERABLE GROUPS:**

Center for Legal Civic Initiatives (formerly Women Advocacy Center) in Tirana has lobbied for greater access of women and girls to the legal system. It offers free legal support and psychological and social assistance to victims of domestic violence.

Contact: Aurela Anastasi,Address.Rr.sami Frasheri,Pall 20,Sh1,Ap8Tirana, Tel+355 4 240 933,Fax.+355 4 241 914, e-mail:avokatore@albmail.com

Korça Women in Korça provides vocational education to rural women who are vulnerable to being trafficked, including to those referred to the organization by anti-trafficking police office in Korça.

Contact:Klara Cela(Mitrushi) Address: Rr.Dhimiter Derasi, Nr. 3, prane Bashkise Korce, Tel.:+355 82 43563/43353

Human Dimension in Shkodra has implemented vocational education for vulnerable women from the poor areas of the city. This organization has also organized a cross border anti-trafficking seminar where participants discussed anti-trafficking issues in Montenegro and Albania, and potential areas of cooperation.

Contact: Donika Selimi Adress;L.Perash, Nr.#85, Shkoder Tel. 022 43 705

Women and Girls Counseling Centers in Tirana, Shkodra, Pogradeci and Berati provides vulnerable women with psychological and social counseling and provide mediation services to families affected by trafficking.

Contact: Iris Luarasi and Etleva Jubani. Address:Rr."Sami Frasheri" P.9 shk 5 kati  
I trete,Tirane, Tel 355 4 233408/9, E-mail;:qkgv@albnet.net

# APPENDIX F

## WITNESS PROTECTION CHECKLIST

### HAVE YOU CONSIDERED THE FOLLOWING ISSUES/TAKEN THE FOLLOWING ACTIONS?

- What is the psychological state of the witness/victim?
- Have you referred the witness/victim or his/her family to NGOs providing psychological, legal, medical, education or employment assistance?
- If the witness/victim is child, have you involved social workers and psychologists?
- Is the safety of the witness/victim at risk?
- If so, have you issued a personal remand order for the accused?
- If so, have you considered taking the testimony of the witness/victim pretrial?
- If so, is the witness/victim enrolled in the witness protection program? Should she be? Follow up with prosecutor.
- If so, should the identity of the victim/witness remain anonymous? Do you have access to voice or visual distortion equipment?
- Have you questioned the victim/witness in a room separate from the accused or using video?
- Have you protected the privacy of the victim?
- Do the media know to keep information about the witness confidential?
- Should the hearing be *in camera* as opposed to in public?
- Should distance interrogation techniques be used? Videoconferencing or telephone conference?
- Should the trial venue be relocated?
- Did you instruct your staff, prosecutors, and police to treat the victim/witness with dignity and respect?

# APPENDIX G

## LETTERS ROGATORY CHECKLIST

The following information is typically required or recommended in a request for evidence (“letters rogatory”) from a foreign authority under the European Convention of Mutual Assistance in Criminal Matters and two Protocols (“ECMAC”):

- The name of the Albanian authority making the request
- The purpose of the request
- The identity and the name of the person to be served
- A description of the alleged offense and a summary of the facts
- The relevant Albanian legal provision
- Any procedural requirements under Albanian law for the requested action (i.e. if a judge must be present for the taking of testimony)
- (Videoconference Requests): The reason why it is not desirable for the witness to travel to the requesting country, the name of the judicial authority, and the names of persons who will be conducting the hearing.
- “Letters Rogatory” requests (and all attached documents) should be translated into the language of the requested country.
- Typically, evidentiary requests should be addressed in writing BOTH directly from the requesting judicial authority (i.e. police, prosecutor, judge) to the requested judicial authority AND from the requesting Ministry of Justice to the requested Ministry of Justice (though exceptions apply – see ECMACM)
- Typical requests include: testimony of witnesses of victims, prosecutor or judicial records, judicial verdicts, medical reports, police reports, property, or assistance with covert investigations
- Check the Council of Europe’s Web site – [www.coe.int](http://www.coe.int) – for “implementing tools” that will assist with preparing the Letters Rogatory.

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