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EMBASSY
OF THE REPUBLIC OF ALBANIA
THE HAGUE

No. 28/10

Note Verbal

The Embassy of Albania presents its compliments to the Secretariat of the Assembly of States Parties to the Rome Statute of the International Criminal Court and, with reference to its note ICC-ASP/S/PA/7, has the honour to enclose herewith the answers of Albania to the Implementing legislation questionnaire for the State Parties, prepared by the Registrar of the Court in the framework of the Review Conference of Kampala.

The Embassy of Albania avails itself of this opportunity to renew to the Secretariat of the Assembly of States Parties assurances of its highest consideration.

The Hague, the 6th of May 2010

To:

The Secretariat of the Assembly of States Parties
International Criminal Court
Maanweg 174, 2516AB The Hague,
The Netherlands

ALBANIA

Implementing legislation questionnaire for State Parties'

1. Has your Government adopted any national legislation implementing the Rome Statute ("the Statute").

The Republic of Albania signed the Rome Statute of the ICC on 18 of July 1998 and ratified it by law No. 8984, dated 23.12.2002 "On the ratification of the Rome Statute of the ICC". Under the Constitution of the Republic of Albania (Articles 116 and 122) ratified international agreements become part of the domestic legal system, prevail on domestic laws and are directly enforceable unless their enforceability requires the enactment of a law. Precisely, Article 116 providing for the hierarchy of norms, ranks ratified international agreements immediately after the Constitution and Article 122 provides for their direct enforceability. According to Article 123 of the Constitution, the Republic of Albania based on international agreements, delegates powers on certain issues to international organizations. Therefore, it is not necessary under the Albanian system to enact specific implementation legislation as regards international agreements. Nevertheless, while evaluating the compliance of domestic law with ratified international agreements, Albania repeatedly reviews domestic legislation so that compliance is ensured.

In this framework, there is no specific law on the implementation of the Statute, since following ratification it has become part of the domestic legal system and is directly enforceable but legislative steps to ensure implementation resulting in amendments to different laws have been undertaken.

In order to fully comply with the Statute's provisions, after signing but prior to ratification, Albania amended the Criminal Code by law No.8733, dated 24.1.2001, introducing changes to articles 73, 74 and 75 criminalizing respectively Genocide, Crimes against Humanity and War Crimes. In addition, the Criminal Procedure Code provisions on international judicial cooperation and a new law adopted lately, namely Law no.10193, dated 3.12.2009 "On jurisdictional relations with foreign authorities on criminal matters", provide procedures for mutual legal assistance issues and judicial cooperation also with international courts in compliance with forms of cooperation provided by the Statute.

IF YES
Part B

2. In implementing the Statute, did your Government draft special implementing legislation or did it incorporate the articles or substantive provisions of the Statute in the pre-existing law?

In implementing the Statute Albania, did not draft special implementing legislation but amended the Criminal Code as regards the criminal offences of Genocide, Crimes against Humanity and War Crimes, bringing them in line with the Statute's provisions. Articles 73, 74 and 75, after the amendments introduced by law No.8733, dated 24.1.2001, provide as follows:

Article 73
Genocide

The execution of a premeditated plan aiming at the total or partial destruction of a national, ethnic, racial or religious group directed towards its members, and combined with the following acts, such as: intentional murder a group's members, serious physical and psychological harm, placement in difficult living conditions which cause physical destruction, applying birth preventing measures, as well as the obligatory transfer of children from one group to another, is punishable by no less than ten years of imprisonment, or with life imprisonment.

Article 74
Crimes against humanity

Homicides, exterminations, turning into slaves, deportations and expulsions, and any kind of torture or other human violence committed in accordance with a pre-meditated concrete plan, against a group of civil population for political, ideological, racial, ethnic and religious motives, are punishable by non less than 15 years of imprisonment or by life imprisonment.

Article 75
War crimes

Acts committed by different persons in war time such as murder, ill-treatment or deportation for slave labor, as well as any other inhuman exploitation to the detriment of civil population or in occupied territory, murder or ill-treatment of war prisoners, murder of hostages, destruction of private or public property, destruction of towns, municipalities or villages, which are not dictated from military necessity, are punishable by no less than fifteen years of imprisonment, or life imprisonment.

According to the Criminal Procedure Code (namely Article 75/a), such crimes fall under the jurisdiction of the Serious Crimes Court. Law No.9110, dated 24.7.2003 "On the organization and functioning of the serious crimes courts" provides for the organization and functioning of such courts. According to Law No. 9877, dated 18.02.2008 "On the organization of the judiciary in the

Republic of Albania”, there is one First Sentence Serious Crimes’ Court and on Serious Crimes’ Appeal Court.

In 2008, the Criminal Code was re-amended introducing a new Article, (Article 74/a) providing as follows:

Article 74/a
Computer distribution of pro genocide or war crime materials

Public offering or intentional public distribution through computer systems of materials denying, minimizing to a great extent, approving or justifying acts constituting genocide or crimes against humanity, is punishable by three to six years of imprisonment.

3. Does the implementing legislation incorporate the substantive crimes through reference to the Statute or by incorporating the crimes in the legislation itself?

As explained above, the implementing legislation incorporates the substantive crimes by incorporating them in the legislation itself (Criminal Code) and not through reference to the Statute. However, according to Article 122 of the Constitution the Statute is directly enforceable.

4. Does the implementing legislation fully incorporate all modes of cooperation under Part 9 of the Statute?

In Albania there is no specific law providing for rules of cooperation with the ICC. But, in addition to the rules of the Statute, which according to the Constitution prevails on domestic law and is directly enforceable, the issue of cooperation is covered by rules of Criminal Procedure Code and other legislation.

Lately in 2009, Albania adopted a new law, Law No. 10193, dated 3.12.2009 “On jurisdictional relations with foreign authorities in criminal matters”, providing for supplemental procedures while dealing with incoming and outgoing requests of inter-judicial cooperation. The latter provides (in Article 3) that its provisions do also cover cases of proceedings that fall under the jurisdiction of international criminal courts the jurisdiction of which has been accepted by the Republic of Albania. The present law, while stating that international agreements on cooperation prevail, while providing for diplomatic channels of communication, stating the Ministry of Justice as Central Authority and introducing rules on direct communication in cases of urgency, does also provide for various forms of cooperation including extradition, transmission of letters rogatory, transfer of the criminal proceedings, transfer of the sentenced persons, recognition and execution of foreign court decisions.

As regards international judicial cooperation, article 10 of the Criminal Procedure Code provides that relations with foreign authorities in criminal matters are regulated by international agreements accepted by the Albanian State, the generally accepted principles and rules of international law and the Criminal Procedures Code. Rules of cooperation are provided in Title X of the Criminal Procedure Code and on a recently adopted law, namely Law No. 10193, dated 3.12.2009 “On jurisdictional relations with foreign authorities in criminal matters”.

The Criminal Procedure Code regulates relations with foreign authorities in criminal matters in Title X providing for extradition, mutual legal assistance procedures and instruments, and recognition and execution of foreign court decisions. The provisions state the Ministry of Justice as Central Authority. As regards channels of communication, it is provided for the use diplomatic channels and in cases of urgency, for direct communication as well.

5. Does the implementing legislation designate a channel of communication with the Court?

As mentioned above, the Criminal Procedure Code states that the Central Authority in jurisdictional relations with foreign authorities is the Ministry of Justice. Law No.10193, dated 3.12.2009 “On jurisdictional relations with foreign authorities in criminal matters” while asserting this provision, does also provide for direct of communication, in cases of urgency. The latter provides that the Ministry of Justice and domestic judicial authorities admit and enforce requests of foreign judicial authorities in proceedings being under the jurisdiction of international courts, the jurisdiction of which has been accepted by the Republic of Albania, including ICC. Since rules of the present law do also cover cooperation with the ICC and since the Minister of Justice is the Central Authority in jurisdictional relations, the latter would be the designated channel of communication with the Court. Rules on direct cooperation apply accordingly.