



## Universal Periodic Review - Albania

### Defence for Children International - Albania section<sup>1</sup>

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Albania is currently experiencing many difficulties implementing the standards set forth in the UN Convention on the Rights of the Child, and knowledge of the Convention throughout the country is minimal.

The following UPR submission is a thematic report on the implementation of children's rights in juvenile justice in Albania. The information in this report was drawn from two reports published by DCI-Albania in 2007, "Juvenile Delinquency in Albania: Analysis of Factors and Causes of Juvenile Delinquency in Albania" and "Juvenile Justice in Albania: An Analysis of the Juvenile Justice System and the Situation of Juveniles in Albania"<sup>2</sup>.

#### Legislation

1. Albanian law has undergone continuous reform since the early 1990s, particularly with the emergence of a new constitution in 1998. Provisions related to the rights of children, however, remain scattered across numerous codes and statutes, some of which contradict one another. The lack of a comprehensive child rights code and separate juvenile justice system is one of the greatest challenges impeding the rights of Albanian children today.
2. Albania ratified the UN Convention on the Rights of the Child (CRC) on 28 March 2002, but has thus far abstained from ratifying the Optional Protocol on Children in Armed Conflict and Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, despite having declared its intentions to do so during its 2005 review by the Committee on the Rights of the Child. Although Albania is not a member of the European Union (EU), it signed the Memorandum of Stabilisation and Association (MSA) with the EU, obligating itself to meet international standards for criminal juvenile justice.
3. Knowledge and understanding of the CRC and other accords to which Albania is party, however, remain alarmingly low even among officials that work with juveniles on a regular basis. This problem persists despite the fact that the 1998 Constitution mandates the publication of the content of such international accords and the Committee on the Rights of the Child highlighted this issue in Articles 19-20 of its Concluding Observations in 2005.
4. In theory, ratified international agreements become domestic law in Albania upon their publication in the *Official Gazette*, avoiding the need for the promulgation of new law. This practice, however, can lead to confusion and contradiction between domestic and

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<sup>1</sup> DCI-Albania/CRCA (Children's Human Rights Centre of Albania) is a national section of Defence for Children International, an international movement for the promotion and protection of children's rights. DCI has special consultative status with ECOSOC

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international legislation. Standard law is often not accompanied by the appropriate by-laws necessary to ensure its implementation, leading to a disconnect between juvenile justice as legislated and juvenile justice as practiced.

5. Articles 86 and 87 of the Albanian Criminal Code are incompatible with the definition of torture articulated in the UN Convention against Torture and Other Cruel, Degrading or Inhuman Treatment or Punishment.

6. The 1998 Constitution established the institution of an Ombudsperson and the "On Ombudsperson" law was passed by Parliament in 1999. No aspect of this office, however, focuses exclusively on juveniles as dependents and distinct rights holders.

7. The Criminal Procedure Code entered into force in 1996, but Albania has still not succeeded in creating separate courts for juveniles.

### Minimum Age of Criminal Responsibility

8. The 1998 Constitution does not specify an age of legal responsibility. This is a particularly troubling gap given that persons under the age of eighteen years make up 40% of the Albanian population.

9. The Albanian Criminal Code dictates that persons are legally responsible for crimes beginning at fourteen years of age and for contraventions beginning at sixteen years of age. In Article 21 of its Concluding Observations in 2005, the UN Committee on the Rights of the Child lamented the lack of clarity on the legal status of children aged fourteen to eighteen years. UNICEF and other working groups reviewing Albanian juvenile justice legislation have also argued that the age of legal responsibility in Albania should be at least sixteen years for both contraventions *and* crimes.

10. Article 31 of the Criminal Code stipulates that minors who were under eighteen years of age at the time of the crime cannot be sentenced to life imprisonment.

### Number of Children in and Length of Detention

11. The UN Committee on the Rights of the Child noted the inadequacy of the data and information available on Albanian children in paragraphs 17-18 of its 2005 Concluding Observations. Today there remains a dire need for such data, particularly on children in the judicial system or in detention.

12. Juvenile offences in Albania increased between 2002 and 2004 before declining slightly in 2005. The biggest concern has been the increase in juvenile delinquency among children under fourteen years of age, many of who commit crimes on behalf of exploitative adults.

### Juvenile Delinquency

13. Although cultural stereotypes associate child offenders with serious crimes, in fact most juvenile delinquents are arrested for crimes against property (i.e. petty theft). Such offenders are often motivated by poverty, as recent movements from rural regions to urban centres in Albania have augmented challenges such as unemployment, high costs of living, inadequate social services, and discrimination. There is discrimination in tackling juvenile delinquency, and a disproportionately large number of juveniles apprehended are of Roma, Egyptian, or other ethnic minority origin.

### Trial Conditions

14. Despite the fact that most juvenile offences are relatively minor, court decisions sometimes reflect the harshest penalties for those particular crimes. There is so much subjectivity and variance from trial to trial that court decisions are practically arbitrary.

15. Certain provisions of the Albanian Criminal Code are the subject of much confusion and controversy. Article 51 asserts that juveniles should not be imprisoned for more than half the stated sentence for that particular crime. In practice, however, Article 51 has only been applied to maximum sentences, meaning that as long as the maximum sentence is not chosen, juveniles often receive the same sentences as adults in similar criminal situations would receive. Article 49 allows courts to reduce sentences due to "relieving" circumstances, but age is not considered among those relieving circumstances.

16. Juveniles are rarely diverted away from the justice system and, as some crimes are only punishable by imprisonment, may be incarcerated for minor offences. This is a clear violation of international standards dictating that the deprivation of liberty must be used a last resort.

17. Since legal representatives of juveniles in Albanian courts earn very modest wages, such work is typically taken on by the least qualified practitioners. Attorneys for children are often appointed by courts, show up unprepared, and have little motivation. These attorneys rarely bother to present evidence, choosing instead to settle with prosecutors in the interest of ending the trial as quickly as possible. This phenomenon has undoubtedly contributed to the high rate of imprisonment sentences for juveniles in Albania.

18. Despite relevant provisions in Article 35 of the Criminal Code, the Albanian justice system in practice rarely provides any kind of psychological support to children on trial.

19. There is not an appropriate complaints mechanism through which violators of child rights can be held accountable, and children's views are rarely taken into account.

20. Even though the Council of Europe and European Commission have translated cases of the European Court of Human Rights (ECHR) into Albanian, ECHR jurisprudence is mostly unknown to Albanian judges and ECHR cases are rarely cited in Albanian courts.

### Detention Conditions

21. Albanian law mandates that prisoners be separated by gender and age. In reality, however, overpopulation in prisons and pre-trial detention centres has led to many juveniles being imprisoned with adults. No cases of abuse have been officially reported.

22. Article 28/2 of the Constitution states that an offender should appear before court within forty-eight hours of detention. It is unclear how regularly this rule is followed.

23. Juveniles held in pre-trial detention centres suffer from very poor living conditions. They do not receive educational services and are kept locked up for all but an hour (often reduced to thirty minutes) each day. Pre-trial detention centres often lack beds, blankets, or shelves and exist in a terrible state of repair. Toilets are shared and used according to a specific schedule, and there is little privacy in either the toilets or the showers. Juveniles lack access to quality medical care or legal aid. Occasionally families are not even made aware of the whereabouts or states of their children.

24. Having children imprisoned in pre-trial detention facilities can be a major financial burden on Albanian families. Juveniles usually must provide their own soap, shampoo, and other hygienic products, and most centres lack any kind of laundry services. The average meal plan consists of tea and bread for breakfast, soup with meat and bread for supper, and beans and bread for dinner. This food, however, is often prepared in an unsanitary manner (typically by adult prisoners) and children are not allowed the use of tables or silverware. For these reasons, many children depend on regular shipments of food and other essentials from their families for basic survival, a major problem given that most offenders come from families that are already poor.

25. On average, regular prisons have slightly better facilities than pre-trial detention centres. Imprisonment of adults and children together, inadequate sanitation, lack of educational and recreational services, lack of psychologists and social workers, and chronic scarcity of resources, however, are problems throughout the detention system in Albania.

26. State police are supervised by the Ministry of the Interior and officers are prohibited from using unnecessary force, torturing, or preventing individuals from receiving medical care; the law, however, does not have specific provisions or protections for juveniles.

27. Log books keeping statistical records of juveniles in contact with the police do not exist, and there is little coordination between judiciary police, police, and governmental and nongovernmental forces to provide services to juveniles.

### Alternative Measures

28. Article 46 of the Criminal Code mandates that educational measures be applied to children under fourteen years old in cases of criminal offences and to children under sixteen years old in cases of petty crimes; so far, however, no juvenile has received this sentence in court.

29. An array of alternatives to imprisonment is available to the Albanian courts. Under suspension of imprisonment, the offender is put on probation and must not commit another criminal act of the same or greater scale. Fragmentation of the imprisonment sentence is an option in which the detention is served in segments of no less than two days per week for no longer than three years. Offenders can also be assigned to community service, typically consisting of between 40 and 240 hours of work. Such alternative measures, however, are *very rarely* used in Albania because they are not specific to juveniles and are not supported by the institutional mechanisms and resources necessary for effective implementation. This major concern was articulated by the UN Committee on the Rights of the Child in Article 77 of its 2005 Concluding Observations, but the situation four years later is still very dire.

30. Albania's incoherent, uncoordinated, and piecemeal approach to juvenile justice has generated a system that is more punitive than educational or rehabilitative.

### Training of Professionals

31. Largely due to the fact that it does not have a separate juvenile justice system, Albania suffers from a severe lack of specialised judges, prosecutors, police, lawyers, social workers, and other officials trained in the particularities of working with juvenile offenders.

32. A small number of prosecutors have attended trainings organised by the School of Magistrates, but the overall number of prosecutors educated on child rights issues remains low.

Given the aforementioned challenges facing Albania in legislating and implementing an effective and humane juvenile justice system, Defence for Children International (DCI) recommends the following reforms:

1. Albania must develop a more **unified, holistic, and coherent approach to juvenile justice**. The first step in this process is to legislate a **comprehensive child rights code that recognises children as distinct rights holders** and contains provisions specific to their level of physical, mental, spiritual, and emotional development in society.
2. Albania should create a **Special Ombudsperson for Children** to help ensure that children's rights are being protected in practice.
3. Albania should **ratify both Optional Protocols to the UN Convention on the Rights of Child** and ensure that all its policies are in accordance with the UN Convention against Torture and Other Cruel, Degrading or Inhuman Treatment or Punishment.
4. The state should clarify the legal status of children in conflict with the law (i.e. the minimum age of criminal responsibility) and **ensure their right to legal assistance**. An "on call" system of experienced lawyers would ensure that children receive representation quickly.
5. With an eye to reducing juvenile delinquency, the state should establish a **floor monetary value** for goods stolen, below which a child offender cannot be sent to court. A referral management system linking juveniles with probation officers and other mentors might also help prevent children from becoming repeat offenders.
6. Keeping with the principle that **deprivation of liberty should be a last resort and for the shortest period of time possible**, Albania is obligated to take steps to **reduce the number of children in detention**. The state should focus particularly on pre-trial detention, working to ensure that juveniles are not held waiting to appear before court for more than 48 hours (as stipulated in domestic law).
7. Albania must **improve conditions in pre-trial detention facilities** in observance of children's rights to security, education, health care, food and drink, leisure activities, etc. The state should bear the costs of incarceration rather than offenders' families.
8. The state should seek to make **alternative sanctions** viable options for judges. Institutional mechanisms need to be crafted, as well as appropriately staffed and financed, in order for the implementation of such alternatives to be possible.
9. Albania must **provide adequate training, capacity building, pay, and professional development** for justice professionals and all those working with children.
10. The Albanian justice system must shift in focus from retributive justice to **rehabilitative or restorative justice**. This would entail a broader approach that notes the social conditions that lead to juvenile delinquency and seeks to reduce them, as well as emphasises re-educating children in conflict with the law to enable them to experience a healthy and smooth reinsertion into society.