



Child Protection Measures for Children Below the Age of Criminal Responsibility who Are in Conflict With the Law in Albania

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Acronyms

CCJJ	Criminal Code of Juvenile Justice
CMD	Council of Ministers' Decision
CPC	Criminal Procedure Code
CPU	Child Protection Unit
CRC	UN Convention on the Rights of the Child
Law on Children's Rights	Law No. 18/2017 "On the Rights and Protection of the Child"
MACR	Minimum age for criminal responsibility
MoJ	Ministry of Justice
MoU	Memorandum of Understanding
NGO	Non-Governmental Organisation
SACP	State Agency on Child Protection
Tdh	Terre des hommes

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1. Introduction

1.1 Scope of the research study

The focus of this research study is on the child protection measures for children below the age of criminal responsibility who are in conflict with the law in Albania. This topic might not seem a new one because several research studies and analyses have already been conducted on this topic. One research study worth mentioning here is “A Research into the Current System for Children in Contact with the Law in Albania” which was commissioned by Terre des Hommes (Tdh) in 2015.¹ This research study builds upon this and other such documents.

The novelties of this research study rests with the recent developments in Albania regarding the comprehensive Justice Reform which was approved in 2016. This reform introduced substantial amendments to the legislation of the Albanian justice system, including the juvenile justice system.² Furthermore this research study is in line with the goal of the MATRA-funded “Child Protection System Strengthening for Children in Conflict with the Law” project. The goal of this project is to support the development of the rule of law as it pertains to children in Ukraine, Georgia, Albania and Kosovo by improving the implementation of children’s rights in the child protection and justice systems to ensure that children in conflict with the law are better protected. This means that the research and analyses, though conducted locally in Albania, aims to emphasis the compliance of the Albanian juvenile justice system with the international standards. Under the auspices of the project, and together with stakeholders from government organisations and civil society, a focus area has chosen in each country based on what is specifically needed in that country. In Albania it was decided that the focus would on the position of children in conflict with the law who are below the age of 14, the set minimum age of criminal responsibility.

The hypothesis of this research study is:

The Albanian legislative and policy framework on the rights of the children below the age of criminal responsibility who are in conflict with the law is *de jure* in compliance with international standards on juvenile justice. Further efforts are needed to ensure the child protection system functions effectively for children below the age of criminal responsibility. Inter-institutional cooperation, data collection and reporting mechanisms on child protection for this group of children should be improved.

The approach of this research study is mostly a deductive one aiming and testing this theory. In other words the approach taken aims to describe the strengths and weaknesses of the child protection system and formulate recommendations on what measures are needed to improve the protection of the rights of children below the age of criminal responsibility who are in conflict with the law in practice.

¹ childhub.org/fr/system/tdf/library/attachments/children_in_contact_with_the_law_eng.pdf?file=1&type=node&id=12704

² The Albanian Justice Reform of 2016 is quite comprehensive. It includes substantial amendments to the Constitution and a list of approximately 40 laws, aiming to fight the corruption, to eliminate the political influence on the judiciary, to strengthen the professionalism and to enhance the efficiency of the Albanian justice system. The most important law, part of this comprehensive reform, which deals with children in conflict with the law is the Criminal Justice Code for Children

A team of experts were engaged to conduct this research study. In order to conduct extensive in-depth analysis, the team used a range of quantitative and qualitative methods to examine the current Albanian protection system for children below the age of criminal responsibility who are in conflict with the law. The instruments were chosen to ensure the data are reliable, valid, proper, effective and impartial. The main instruments were:

- Desk review of key relevant documents
- Semi-structured interviews with 39 representatives from public authorities, NGOs, lawyers, mediators, police officers, child protection workers, school social workers and psychologists and different records

For further details on data collection through interviews, please refer to Annex 1.

The team worked mainly in six municipalities: Durrës, Elbasan, Korça, Shkodra, Tirana and Vlora. These areas were chosen due to their previous experience on juvenile justice and that their data was richer than in other districts. In addition these districts, from a geographical perspective, give an oversight throughout Albania, from the north, east, centre, west and south of the country.

The team was composed of four local experts: Marsida Xhaferllari, Joana Qeleshi, Irida Agolli and Naureda Bajraktari. Their diverse backgrounds enabled a comprehensive review on the compliance of the relevant Albanian legal framework with the international and European standards as well as an exploration of strengths and weaknesses of the current Albanian protection system for children below MACR in conflict with the law in practice. The team of local experts worked in accordance with the principles of Tdh's programme. Every local expert respected the Child Protection Policy and Procedures.

There is a concern about the quality of statistics collected and analysed during this research study. Albania has long been criticised for the quality of its official statistical data, especially in its ability to create solid track records when different institutions provide different data. On the other hand the implementation of the Justice Reform in Albania is still in the transition phase. This means that the new institutions dealing with criminal justice and especially with children in conflict with the law are at a very early stage in implementing the new legal framework and establishing the necessary track records. Overall Albanian institutions are perceived to lack the tradition and uniform practice in collecting and properly analysing relevant data in order to better plan and successfully implement relevant policies. Due to this limitation, the research study is oriented to presenting the data as it was presented to it, but not to extracting solid conclusions from this data. Preference is given to the primary data such as the results of the interviews.

Another limitation of this study was caused by the delayed approval of some bylaws in Albania, which means the substance of these bylaws has not been analysed. The stakeholders who were interviewed emphasised that the missing bylaws were a problem to the implementation of the legislation. At the end of this research study, three new bylaws³ for the implementation of Law no.18/2017 "On the Rights and Protection of the Child" (Law on Children's Rights) were approved:

³ In February 2019 eight bylaws were approved to implement the Law on Children's Rights and the Ministry of Health and Social Protection reports that the remaining five necessary bylaws are to be approved soon.

1. Council of Ministers Decision no.578, dated 3 October 2018, "On the referral procedures for the case management, drafting and content of the individual protection plan, financing of expenses for its implementation, and the implementation of the protection measures"
2. Council of Ministers Decision no.635, dated 26 October 2018, "On the activity of the structures for the protection of the child below minimum age for criminal responsibility, suspected or that has committed a criminal offence"⁴
3. Council of Ministers Decision no.636, dated 26 October 2018, "On establishing types, way and processing of the information and statistical data, required by the State Agency on Child Protection from the liable state central and local structures"⁵

It should be mentioned however that the first of these bylaws only entered in force on 11 October 2018⁶ and the other two in November 2018 since they were only published in the Official Journal during November.⁷ Implementation of the bylaws will occur during 2019. It was observed in the stakeholder interviews, which took place between October and November 2018 that none of the child protection workers or other professionals was aware of these bylaws and as a result they had not implemented them.⁸

The main finding of this research study is that the Albanian legislation is in line with international standards on the rights of children below MACR in conflict with the law. While the law provides for an effective child protection system, there is lack of cooperation and coordination when it comes to implementation which is hindering the effectiveness of the system. Moreover there is a need to construct the proper infrastructure to facilitate the effectiveness of the system.

1.2. General background and statistical data on children in conflict with the law in Albania

Albania has been an official candidate country to join European Union since 2014. The EU granted Albania candidate status in acknowledgement of the efforts it had made and the progress achieved on its road to EU accession. Regarding the rights of the child, the 2017 EU Progress Report stated that *"The legislative and policy framework on the rights of the child was reinforced in 2017 with the adoption of the Law for the Protection of Children's Rights, the Criminal Justice for Children Code and the 'Children's Agenda 2020'. The Law for the Protection of Children's Rights provides for a child protection system. However, related bylaws are needed to make it operational. Inter-institutional cooperation, data collection and reporting mechanisms on child protection should be improved. Further efforts are also needed to ensure the child protection system functions effectively"*⁹

⁴ The purpose of this decision is to regulate the activity of child protection structures for the treatment of a child under age for criminal liability and who is suspected of or has committed a criminal offence, taking into consideration the child's highest interest. This decision defines the role and responsibilities of the structures and mechanisms involved in the protection of a child under the age of criminal responsibility who is suspected of or has committed a criminal offence.

⁵ This bylaw is expected to improve the cooperation between central and local authorities through providing a good mechanism on collecting and analysing the relevant data.

⁶ Published in the Official Journal no.144, dated 11 October 2018.

⁷ Published in the Official Journal no.156, dated 6 November 2018.

⁸ The Ministry of Health and Social Protection reports that these bylaws were disseminated to the stakeholders after their publication in the Official Journal.

⁹ See p. 29, at ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-albania-report.pdf, last visited on 27 October 2018

In addition the “Future of Integrated Child Protection Service in Albania” Report, prepared in 2015 by Ms Anniki Lai a Council of Europe expert on the rights of the child and child protection systems, mentioned that despite the law, related bylaws are needed to make it operational and guarantee that other relevant laws and regulations are adopted accordingly.¹⁰ The need to improve the coordination and co-operation between central and local authorities on the implementation of the legislation concerning the protection of children and of social policies in general was stressed even by the Council of Europe’s Commissioner for Human Rights in her report following her visit to Albania in May 2018.¹¹

At the beginning of 2018 Albania had a population of 2,870,324 inhabitants, 721,586 were aged up to 19 years old and 506,950 were children below the age of 14 years old, which represents 17.6 % of the Albanian population.¹²

In 2013 1,535 children aged between 14 and 18 years were arrested and charged with criminal acts, this was slightly less in 2014 with 1,506 children. In 2014 67 children were held in pre-trial detention for more than six months, six months being the maximum period to hold children in pre-trial detention in most European countries. Almost four times as many children were held in pre-trial detention for more than nine months in 2014 than in 2011, while some children are held in pre-trial detention for more than a year in Albania.¹³

In 2015 a risk analysis on children in conflict with the law conducted by General Directorate of Prisons found, according to the statistical data of the preceding five years, that children’s criminality was increasing continuously.¹⁴ The number of children involved in crimes related to narcotics had increased as well¹⁵. It recommended building up efficient prevention programmes, which should include not only children in conflict with the law, but also children exposed to risk factors.¹⁶

The situation seems to have improved in the recent years. In 2017 the number of juvenile suspects aged between 14 and 17 years old was 1,740. Between 2015 and 2017 the number of juvenile suspects decreased by 11.4 % while the number of adult suspects decreased by 2.4 % for the same period. In 2017 4.9% of the total of suspected persons were juveniles. The share of juvenile suspects has decreased during this period from 5.3 % to 4.9 %.¹⁷

The Prosecutor General’s 2017 Report to Parliament “On the Status of Crime” showed an improved situation. In 2017 510 juvenile offenders were investigated compared to 987 who had been prosecuted in 2015 and 753 who had been prosecuted in 2016. The number of juvenile offenders prosecuted in 2016 decreased by 23% compared to 2015 and the number of juvenile offenders prosecuted in 2017 decreased by 32.3 % compared to 2016. In 2017 386 juveniles were

¹⁰ See p. 48, at femijet.gov.al/al/wp-content/uploads/2016/03/FUTURE-OF-INTEGRATED-CHILD-PROTECTION-SYSTEM-2015.pdf, last visited on 27 October 2018.

¹¹ See p. 5, at rm.coe.int/commdh-2018-15-report-on-albania-06-07-2018/16808d5652, last visited on 27 October 2018.

¹² Data of 1 January 2018, as calculated by INSTAT and published at www.instat.gov.al/al/temat/treguesit-demografik%C3%AB-dhe-social%C3%AB/popullsia/ last visited on 27 October 2018

¹³ See 60 quick facts about Juvenile Justice, June 2016, pp. 2-3

¹⁴ See Children in Conflict with the Law, General Directorate of Prisons, Ani Beqo & Blerta Doçi, November 2015, p. 47, at www.dpbsh.gov.al/skedaret/1450093768-Faktoret%20e%20kriminalitetit%20tek%20te%20miturit-studim.pdf, last visited on 27 October 2018

¹⁵ Ibid, p. 44

¹⁶ See Children in Conflict with the Law, General Directorate of Prisons, Ani Beqo & Blerta Doçi, November 2015, p. 47, at www.dpbsh.gov.al/skedaret/1450093768-Faktoret%20e%20kriminalitetit%20tek%20te%20miturit-studim.pdf, last visited on 27 October 2018

¹⁷ See Crime and Criminal Justice Statistics 2018, INSTAT 2018, p. 43

sent to trial compared to 608 in 2016, which means that there had been a decrease of 36.5%.¹⁸ 393 juveniles were found guilty by the court and the court imposed alternative measures on 53% of them. The numbers of juveniles involved in criminal investigations and court trials had decreased by 48.8% compared to 2016 when 753 juveniles were investigated, 608 juveniles were sent to court and 762 were found guilty.¹⁹

The most common offences committed by juvenile offenders were theft, with 44% of the total number of the prosecuted juveniles, illegally driving vehicles (21%) and other intentional damages (15%). Possession of narcotics constituted 9% of the cases involving juveniles and possession of arms or munitions constituted 2%.

In 53% of cases juvenile offenders have been sentenced to alternative sanctions, mostly to probation. In the last two years the requests by prosecutors to sentence juveniles to imprisonment have decreased. It should be mentioned here that UNICEF stated in its “Evaluation of the impact of reforms in juvenile justice in 2006 – 2010” report that Albania had the highest percentage of juveniles sentenced to imprisonment.²⁰ Since data of this report do not cover several years it is not possible to draw any safe conclusions on the tendency of the criminality of juveniles. Besides, as has already been mentioned, the quality of statistics collected by Albanian public authorities needs to be improved and thus, it is not safe to extract conclusions on data provided.

The General Director of State Police provided²¹ statistical data on children below the minimum age of criminal responsibility (MACR) in the two following tables. This data does not offer information on the type of criminality. The data collected by State Police show that the number of child suspects below MACR during 2017 was 334, 15 % of the total number of child suspects. During the first 9 months of 2018 this number was 184, representing 11.4 % of the total number of child suspects. Since the data for 2018 is not complete, the conclusion that there has been a reduction in the number of child suspects below MACR is not solid.

Child suspects by Age Groups	2017	2018 (9 months)
Children below 14 years old	334	184
Children 14 – 18 years old	1,756	1,428
Total (0 – 18 years old)	2,090	1,612

Table 1. Statistical data on suspected children according to their age

Following the geographical criteria, it is clear that most criminal cases, where child suspects below MACR were involved, occurred in the districts of Tirana, Durrës, Lezha and Vlora. It is true these districts have big urban areas, but it is interesting that Shkodra, Korça and Fier, also known as big urban areas, do not have so many cases. There should be other factors related to the trends, which should be analysed and studied in the future. However, it is worth mentioning

¹⁸ See p. 5 of the Council of Ministers Decision no.541, dated 19 September 2018 “On the approval of the strategy on juvenile justice and of the action plan 2018-2021”

¹⁹ See the Report at www.pp.gov.al/web/raporti_vjetor_2017_1350.pdf, last visited on 27 October 2018, pp. 239 and 241

²⁰ See p. 5 of the Council of Ministers Decision no.541, dated 19 September 2018 “On the approval of the strategy on juvenile justice and of the action plan 2018-2021”

²¹ The information was submitted through the letter No 8027/1, dated 19 December 2018 of the Director General of State Police

that the statistical data provided by the Director General of the State Police were descriptive and did not include any comparative analysis of differences between years or cities. In addition the data was offered at the end of the study and as a consequence, the interviews could not collect information on the difference between 2017 and 2018 in Durres and Lezha.

Analysing the data given by state authorities and considering the limitation on the quality of the data provided, there are three findings to be noted:

- i) there is a discrepancy of data given by each institution, which means data are not kept in a solid manner
- ii) the number of children 14 – 18 years old in conflict with the law seems to be more than 6 times bigger than the number of children in conflict with the law below the age of 14 years
- iii) the biggest number of children in conflict with the law, no matter their age, seems to belong to big cities in Albania

No	State Police Local Directories	Year	Suspected children		
			Below 14	14-18 years old	Total
1	Berat	2017	6	53	59
		2018	3	46	49
2	Dibra	2017	1	43	44
		2018	6	53	59
3	Durrës	2017	88	208	296
		2018	15	289	304
4	Elbasan	2017	24	86	110
		2018	7	82	89
5	Fier	2017	12	117	129
		2018	8	58	66
6	Gjirokastra	2017	4	56	60
		2018	4	42	46
7	Korça	2017	10	94	104
		2018	14	101	115
8	Kukës	2017	18	80	98
		2018	10	34	44
9	Lezha	2017	43	113	156
		2018	8	82	90
10	Shkodra	2017	13	109	122
		2018	6	79	85
11	Tirana	2017	82	696	778
		2018	75	415	490
12	Vlora	2017	33	101	134
		2018	28	147	175

2. Child Protection Framework in Albania for Juvenile Offenders

This chapter explains the Albanian legal and policy framework on child protection in general and of children below MACR. It gives an overview on the key strategic documents and legislation, putting emphasis on novel definitions and concepts, as well as on core principles of child protection.

2.1. Legislative and policy framework on protecting children in conflict with the law

2.1.1 The concept of Child Protection

According to international standards, States are required to develop and implement a comprehensive policy for juvenile justice, with a multidisciplinary approach to children in conflict with the law. States must ensure that every child alleged as, accused of, or recognised as having infringed the criminal law is treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others, and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society (Article 40(1) of the CRC). This requires that all involved professionals are knowledgeable about child development, the dynamic and continuing growth of children, what is appropriate to their well-being, and all forms of violence against children. It also requires that professionals are aware of children's rights and fully respect them throughout the entire process of dealing with the child. As children are the future of society, it is important to bear in mind that children in conflict with the law can learn a great deal from a positive and child rights based attitude of professionals. These contacts can be crucial for a child to assume a constructive role in society later in life.²²

The goal of child protection is to promote, protect and fulfil children's rights to protection as laid down in the UN Convention on the Rights of the Children (CRC). The Albanian Law on Children's Rights defines 'child protection' as *"the prevention of and response to violence, abuse, exploitation and neglect of the child, including kidnapping, sexual abuse, trafficking and child labour"* (Article 3 Para. 8). This Law defines even the "integrated protection system" as *"the entire set of legal acts, political acts and necessary services, in all fields, particularly those of social welfare, education, health, security and justice, in order to prevent and respond to risks posed during their enforcement. The responsible institutions take concrete measures aiming at cooperation, division of responsibilities and coordination among all the governmental agencies, local government bodies, public and non-public service providers, community groups, including*

²² See International and European legal framework for the MATRA-funded "Child protection system strengthening for children in conflict with the law" project, p. 6

the case referral system, as components of the child protection system” (Article 3 Para. 15). It is worth mentioning that the family is the most important part of the integrated system. As stated in the Preamble of the CRC, the family is the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children (for further details, please refer to section 3.2 Role of the family).

The Albanian Criminal Code of Juvenile Justice (CCJJ), which entered into force on 1 January 2018, introduces a new definition related to the child protection, which is the “criminal justice for children”. According to Article 3 Paragraph 2 of CCJJ, this definition encompasses “*proceedings related to criminal offences, including investigation, criminal prosecution, court proceedings, execution of sentences, and any other measures involving a child in conflict with the law, victim or witness of a criminal offence*”.

From a children’s rights perspective it is very positive that the Albanian legal framework, in line with international standards, provides for a multidisciplinary approach to children in need of protection as well as obliges the professionals involved to take concrete measures in order to prevent and respond to risks posed to such children.

2.1.2 General principles of child protection

Albania has ratified the main conventions and protocols of the United Nations and Council of Europe related to children’s rights and offering them special protection and attention. It ratified the Convention on the Rights of the Child (CRC) in 1992 and its subsequent Optional Protocols, including Optional Protocol to the Convention on the Rights of the Child on a communications procedure.²³ The international obligations of these conventions have inspired the Albanian legislative and policy framework regarding the rights of the child.

The Albanian Constitution, approved in 1998, provides *the “right of children to special protection by the State.”* Every child is entitled to be protected from violence, ill treatment, exploitation and use for work, especially under the minimum age for work,²⁴ which could damage their health and morals or endanger their life or normal development.²⁵ The right of children to special protection by the State is a rule of general application, which applies in the context of juvenile justice as it does in other contexts. This constitutional provision has been considered in every piece of legislation related to children, such as the Family Code, the Civil Code, the Civil Procedural Code, the Criminal Code, the Criminal Procedure Code and Social Services legislation as well as the recent legislation approved by the Parliament – the Law on Children’s Rights and the Criminal Code of Juvenile Justice. Each piece of legislation, based upon its scope of application, contains different tools and mechanisms available to children, which can be considered as special protection by the State. In the case of children under the age of 14 in conflict with the law, the relevant legislation provides for a child protection system, the advantages and deficiencies of which, are analysed in this study.

²³ See treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11-d&chapter=4&clang=en#EndDec, last visited on 19 February 2019

²⁴ 16 years old according to the Article 24 paragraph 2 of Children Rights Law

²⁵ Article 54 of the Constitution of Albania

The legislative and policy framework on the rights of the child has been improving in Albania ever since the Constitution came into force. There are several laws, strategic documents and bylaws offering a protection system for the children in conflict with the law, with no specific and detailed reference to children below minimum age for criminal responsibility (MACR) and obliging state institutions to take active measures to guarantee the rights of the child. In 2017 the new Law on Children's Rights,²⁶ the Criminal Code of Juvenile Justice and the 'Children's Agenda 2020' were adopted, reinforcing the rights of the child. All these documents, in compliance with international standards and specifically with CRC, are underpinned by a number of key principles such as the **best interest of the child** (Article 3), **multidisciplinary approach to assess and determine the best interest of the child, respect for the views of the child** (Article 12), **non-discrimination** (Article 2), **right to life, survival and development** (Article 6) and **dignity of the child** (Article 40.1).

In 2017 the Albanian Government approved the National Agenda for the Children's Rights, a strategic document which envisions the creation of favourable conditions for the healthy physical and psychosocial development of children, social inclusion and participation in all processes, based on the best interest of the child. The National Agenda sets out the priorities of state institutions in the field of children's rights and at the same time, a unified framework for monitoring the progress of the Albanian Government towards the realisation of children's rights in all relevant sectors. The National Agenda contains three strategic pillars:

- i) Governance in the function of promoting, respecting and protecting children's rights
- ii) Elimination of all forms of violence against children
- iii) Child friendly and adolescent systems and services: development and education, justice, health and nutrition and social protection.

The National Agenda states that its leading principles are:

- the **best interest of the child**, which should prevail in every action or intervention related to children
- **non-discrimination**, meaning that every child should enjoy the right with no discrimination of any kind
- the **right to survive and development** of the child should be guaranteed at the maximum of possibilities
- the **view and opinion of the child is to be considered** in all the child related issues in accordance with his/her age and development²⁷

Following the vision and objectives of National Agenda, the Albanian Parliament approved the new Law No 18/2017 "On the Rights and Protection of the Child". This law defines the rights and protection that any child is entitled to, the mechanisms and responsible authorities that shall guarantee effective exercise of, respect for, promotion of these rights, and also the special protection of the child. It recognises the child as a right-holder and every right affirmed to the child corresponds to specific obligation of state authorities.

²⁶ This new Law repealed the Law No 10 347, dated 4 November 2010 "On the Protection of Child's Rights", which was the first piece of integrated legislation on children's rights in Albania

²⁷ See Chapter 4 "Vision and strategic goals", p. 19

According to the Explanatory Report of the Law, this new legislation aimed to establish an integrated child protection and a multidisciplinary approach in every child related policy and intervention.²⁸ The Law on Children's Rights provides a comprehensive child protection system, redefining the obligations of institutional mechanisms and structures at central and local level. It contains specific rules for children below MACR, considering them as children in need for protection and trying to address the previous situation in Albania, when such children were discussed and treated as part of the juvenile justice, ignoring their need for social protection. The Law on Children's Rights provides for detailed procedural rules of child protection to be determined by sublegal acts. In June 2018 the Council of Ministers approved CMD No 353/2018 on the rules of Inter-sectorial Technical Group.²⁹ Tdh has been continuously supporting the drafting process of these sublegal acts.

The Law on Children's Rights states 11 general principles to be considered when observing and protecting the rights of the child, including the best interest of the child, non-discrimination, the right to development and the right of participation, as well as the respect for the dignity, honour and personality of the child.³⁰

The best interest of the child shall be the primary consideration in any child-related actions. This principle is elaborated further in the law as an obligation for the public and non-public authorities, including the court. It implies the right of the child to have a sound physical, mental, moral, spiritual and social development and to enjoy an appropriate family and social life suitable for the child. In implementing this principle, the following shall be considered:

- a) needs of the child for physical and psychological development, education and health, security and sustainability as well as the upbringing/belonging in a family
- b) views of the child depending on age and maturity of the child
- c) background of the child considering special situations of abuse, neglect, exploitation or other forms of violence against the child and the potential risk of occurrence of similar situations in the future
- d) ability of the child or persons caring for the child to respond to the needs of the child
- e) continuity of personal relations between the child and persons with whom they have kinship, social and/or spiritual relations³¹

Another important step to strengthening the protection of children in conflict with the law was the approval of the new Criminal Code of Juvenile Justice (CCJJ) by the Albanian Parliament in 2017, as part of the thorough Justice Reform in Albania. The Code complements the provisions of Law on Children's Rights offering special legal protection only for children in conflict with the law at the age of criminal responsibility.³² It is very important therefore to understand that in cases of such children, these two pieces of legislation should be implemented in a complementary manner.

²⁸ See Explanatory Report, p. 2 at parlament.al/Files/ProjektLigje/RELACION-TE-DREJTAT-E-FEMIJES.pdf

²⁹ In February 2019 8 bylaws were approved to implement the Law on Children's Rights and the Ministry of Health and Social Protection reported that the remaining 5 necessary bylaws are to be approved soon.

³⁰ Article 5 of the Law on Children's Rights

³¹ Article 6 of the Law on Children's Rights

³² Article 4, Para.3 of the CCJJ states that: "The provisions foreseen in the Code do not apply to children who commit criminal offences under the age of criminal responsibility, as criminal proceedings against them may not be initiated or if initiated, they shall be dismissed immediately. In such case, the child protection structures shall act and all the measures foreseen by the law on the rights and protection of children shall apply in order to provide them with procedural rights, assistance and service similar to the child in conflict with the law/victim or witness concerning the cross-examination process and contact with the police and prosecution bodies"

The CCJJ is the first specific law dedicated to criminal justice for children. It introduces a conceptual shift from a retributive to a rehabilitative and restorative approach in handling juvenile offending.³³ The Code designs a friendlier justice for children as victims or witnesses of crime. Its rules try to adapt the criminal justice system to the needs of the child for access to justice and legal remedies, protection, education and rehabilitation of those in conflict with the law, victims or witnesses. Some of the important changes are:

- the rules on detention of a child as a measure of last resort and for the shortest possible time
- the concept of diverting the child from the traumatic court process
- mandatory presence of a psychologist
- free legal and psychological assistance for children
- child friendly courthouse and session
- community-based rehabilitation services
- the requirement that all professionals involved in the justice for children process to be specialised to handle children's cases

The CCJJ promotes restorative justice for children in order to encourage the child to understand his/her responsibility and to strengthen the participation of the child in reducing or eliminating the consequences of the offence. The new Code promotes mediation as a means to improve the offender – victim relation through involving the child in a dialogue process. The essential tools to restorative justice and mediation for children are the individual programmes based upon the multidisciplinary assessment of the individual needs of the child.

The CCJJ not only affirms the leading principles of juvenile justice, but it also explains their meaning. The best interest of the child shall be a primary consideration by the competent bodies in any decision taken and activity performed under this Code. In implementing this principle, the competent body shall consider the:

- a) needs of the child for physical and psychological development, education and health, security and sustainability and also the child's upbringing/belonging to a family
- b) views of the child, in accordance with the age and maturity of the child
- c) history of the child, considering the special situations of abuse, neglect, exploitation or other forms of child violence, and the potential risk that similar situations may occur in the future
- d) capacity of the parents or persons in charge of the child's upbringing to respond to the needs of the child
- e) continuity of personal relations between the child and the parents, with whom the child has gender, social and/or spiritual relations

The decisions and acts of the competent bodies must contain a special reasoning related to how the best interest of the child is analysed and how it will be ensured.³⁴ It can easily be noted that the involvement of the parents, mentioned as part of the best interest of the child, is extended in the criminal procedure provided by the CCJJ. They take part in the procedure by different means, such as offering support through their presence, issuing declarations and authorisation, giving specific information on the child and even supporting the child through the enforcement of the court decision, especially when an alternative measure is imposed.

³³ See also p. 10, at rm.coe.int/commdh-2018-15-report-on-albania-06-07-2018/16808d5652, last visited on 27 October 2018.

³⁴ Article 10 of CCJJ

According to the CCJJ, the principle of protection from discrimination means that the rights deriving of the child shall be guaranteed, without any discrimination, to any child in conflict with the law, victim or witness, irrespective of gender, race, colour, ethnic origin, language, gender identity, sexual orientation, political beliefs, religious or philosophical, economic condition, educational or social, pregnancy, parental affiliation, parental responsibility, family or marital status, civil status, residence, health condition, genetic predisposition, disability, belonging to a particular group and any situation of the child, parents or legal representatives of the child. The rights of the child, foreseen in the CCJJ, are protected from all forms of discrimination on one of the above grounds.³⁵

Another leading principle affirmed by the CCJJ is the right to harmonious development of the child, which obliges the competent authority that in any decision and proceedings related to criminal justice for children to consider the right of the child to physical, mental, spiritual, moral and social development shall be considered. Decisions and acts of these authorities must contain a special reasoning related to how the right of the child to this development will be assessed and how this principle will be applied.³⁶

The CCJJ affirms even the principle of child participation in the process, which includes the right of the child to be heard and express his/her own views which are given due weight in accordance with the age and maturity of the child. This rule is to be applied in combination with the best interest of the child.³⁷

A recent development is the 'Justice for Children 2018-2021' Strategy, which encompasses both juvenile justice and equitable access to justice for children. The strategy was approved by the Government on 19 September 2018 with CMD no.541. This Strategy, elaborated by the Ministry of Justice (MoJ), offers a description of the current situation in Albania and details the objectives and interventions with a view to guarantee the fundamental principles of justice for children.

2.2. Protection of children below MACR in conflict with the law

2.2.1 Strategic documents on children below MACR

The protection system for children below MACR in conflict with the law stems from the whole package of legislation on children's rights. There is no specific law or document in Albania dedicated specifically to children below MACR in conflict with the law. This is not a strange thing, since even in international and European law, there are very few provisions explicitly dealing with children below the minimum age of criminal responsibility who come into conflict with the law.³⁸

³⁵ Article 11 of CCJJ

³⁶ Article 12 of CCJJ

³⁷ Article 16 of CCJJ

³⁸ International and European legal framework for the MATRA-funded "Child protection system strengthening for children in conflict with the law" project, p. 16.

The **National Agenda for Children's Rights** does not specifically mention children below MACR in conflict with the law, but it is one of the most important strategic documents for children, irrespective of their age. It emphasises juvenile justice and confirming the situation is still problematic in Albania.

According to the National Agenda, approved prior to the passage of the CCJJ and the Law on Children's Rights, juvenile justice in Albania still takes a punitive approach to the children in conflict with the law. Mostly it fails to consider children's needs or to respect their rights and dignity, though in recent years the situation is improved.³⁹ The basic problems identified in the National Agenda were:

- large numbers of children in pre-detention
- justice processes not being adequate or friendly to children
- capacities of judges, prosecutors and police officers needing to be strengthened
- low- levels of legal education of the children
- need to improve children's access to justice

The National Agenda highlighted as the main barriers of an effective juvenile justice as:

- lack of independent capacity
- financial limitations
- physical distance of the child from the institutions
- absence of information and support
- lack of trust in institutions
- cultural acceptance of domestic violence
- mentality on the child's place within the family⁴⁰

The National Agenda sets out as objectives improvement of legal and institutional mechanisms to:

- ensure an integrated and effective protection system
- ensure child friendly systems and services
- and to improve child access to justice

To achieve such objectives there are several indicators and activities focused on education, juvenile justice, elastic budgets of institutions in charge and participation of children and parents in different activities related to education and juvenile justice. Special attention is put on strengthening the capacities of professionals involved with children in conflict with the law such as psychologists, social workers and sign language translators. An interesting action provided in the Action Plan of the National Agenda is the establishment of friendly children's rights centres through the development of a model based on best international practices.⁴¹ The

³⁹ The National Agenda mentions as steps forward the progress of alternative measures imposed on children in conflict with the law, the reduced number of children in pre-detention and the capacity building of professionals dealing with juvenile justice. Apart from this, it should be mentioned that after the National Agenda was approved and published, a huge step forward in this direction is the approval of the new Criminal Code of Juvenile Justice.

⁴⁰ Chapter "Juvenile Justice", p. 15

⁴¹ The National Agenda does not give specifics of the services to be offered by these centres, while their aim is to improve the access to justice of children. As the Ministry of Justice informed, there is a process going on to collaborate with the local government in establishing such centres focusing on the alternative measures and diversion imposed on children in conflict with the law. The process is in its very beginning, thus the result needs to be assessed in the future.

activities are to be implemented through a cross-cutting approach mainly by the Ministry of Education, Ministry of Justice and Ministry of Social Welfare and Youth.⁴²

The National Agenda provided for a mid-term evaluation which was foreseen to be conducted at the end of 2018.⁴³ The Ministry of Health and Social Protection reported in February 2019 that the mid-term monitoring process of this Agenda is still being developed. It should be mentioned that this strategic document was elaborated and approved prior to the passage of the CCJJ and the new Law on Children's Rights. Most of the problems of the actual situation identified in the National Agenda were addressed by the new legislation, following its vision and objectives.

The **Justice for Children Strategy 2018-2021**⁴⁴ is the first document with a special focus on children below MACR in conflict with the law. This Strategy aims to promote and effectively protect the rights and needs of children in conflict with the law, victims or witnesses, who face judicial processes and alternatives to these procedures through the implementation of national and international children's rights standards. The vision stated in this Strategy is *"improving juvenile justice that guarantees a child friendly justice that protects their best interest"*. Its priorities are focused on:

- access to juvenile justice
- due legal process
- prevention of re-offending of children
- reintegration and social inclusion
- capacity building of professionals involved in juvenile justice and strengthening of their cooperation

Regarding children below MACR in conflict with the law Objective 3 "Prevention of Re-offending" offers programmes to support children and their families, especially the most vulnerable ones to prevent the re-offending. The Government plans to achieve this objective by:

- establishing a Centre on Prevention of Child and Youth Criminality under MoJ which will be functional in 2019
- conducting an evaluation of the criminality of children below MACR
- identifying groups at risk
- securing the necessary infrastructural framework to implement reoffending

In addition an action plan to prevent the involvement of children in crime, particularly those under 14 years of age will be developed. Family, community and peer groups, schools, vocational training, employers, police and probation officers will be involved in such a plan and there will be a pilot project in two municipalities.

The Strategy foresees that memorandums of cooperation will be signed at the local level to prevent juvenile delinquency. In the area of prevention, a rehabilitation programme for children under the age of 14 will be prepared and implemented. The expected estimation is the decrease

⁴² After the 2017 national elections, this Ministry does not exist anymore and the responsibilities related to children were taken over respectively by either by the Ministry of Health and Social Protection or by Ministry of Education, Sport and Youth.

⁴³ Chapter 7 Monitoring and Evaluation of the Agenda paragraph 13.

⁴⁴ The Strategy approved by CMD No 541, dated 19 September 2018, at www.qbz.gov.al/Botime/Akteindividuale/Janar%202018/Fletore%20138/VKM%20nr.%20541,%20date%2019.9.2018.pdf, last visited on 27 October 2018.

of recidivism of juveniles by 40%.⁴⁵ The Strategy does not offer any information where this estimation is based upon, but its Action Plan provides for periodical annual assessments of criminality of children below MACR to be conducted between 2019 and 2021.

Objective 4 is also related to children below MACR and is focused on the reintegration of children in contact or in conflict with the law. Under this objective a pilot counselling and support programme for parents of children below MACR in conflict with the law will be developed, in cooperation with experienced non-profit organisations. This objective will be achieved also through both promoting cooperation among organisations which provide services to such children in conflict with the law and other forms of multi-disciplinary work, involving police, prosecutors, medical staff, social services personnel, psychologists, probation officers and CPUs at the local government. The strategy foresees that counselling and rehabilitation programmes for parents of children below MACR in conflict with the law will be implemented.⁴⁶ Objective 5 is the last objective dealing with children below MACR in conflict with the law. This objective aims to address the lack of specialisation of professionals working with children. It states that the capacities of specific staff institutions/professionals should be strengthened, both on the international standards ratified by Albania and the national legislation in the area of the rights and protection of the child, and techniques and specific aspects of interacting with children.⁴⁷ Specific staff of institutions/ professionals includes everyone mandated or licensed to deal with children in contact with the law. This includes police officers, lawyers, prosecutors, judges, probation officers, penitentiary staff, staff of education/rehabilitation centres for children in conflict with the law, mediators, interpreters, social workers, psychologists, civil servants and child protection workers. The importance of the authorities to pursue their efforts to provide professionals working with children with adequate and systematic training on children's rights and on the application of the principle of the best interest of the child was also addressed by the Council of Europe's Commissioner for Human Rights following their visit to Albania in May 2018⁴⁸.

During the interview with the MoJ official it was reported that the Ministry is currently establishing a cooperation process with Municipalities to ensure the necessary infrastructure and institutional framework to successfully implement alternative measures and diversion imposed on children in conflict with the law at local level. The scope of these memorandums is oriented toward the juvenile justice, meaning it does not include child protection in general. By October 2018 the MoJ had signed Memorandums of Cooperation with the Municipalities of Tirana and Korça.⁴⁹ The MoJ expects this process to have impact even on children below MACR in conflict with the law.⁵⁰

The **Social Protection Strategy for 2015 – 2020** is another relevant document which reflects the commitments of the Albanian Government in the area of social protection. This Strategy aims to ensure that every Albanian citizen despite his/her income, origin, age, gender, ethnicity, sexual orientation, education and cultural identity, political or religious beliefs receives qualitative public services. The Strategy aims at reforming the Social Protection Programme (SPP) through:

⁴⁵ See the Chapter "Policies" of the Strategy, p. 10

⁴⁶ See Chapter "Policies" of the Strategy, p. 10

⁴⁷ See Chapter "Policies" of the Strategy, p. 10

⁴⁸ See p. 1 of the Report, at rm.coe.int/commdh-2018-15-report-on-albania-06-07-2018/16808d5652, last visited on 28 October 2018.

⁴⁹ The MoJ informs further that by February 2019, they have signed 9 MoUs in Tirana, Korça, Durres, Kukes, Puka, Berat, Elbasan, Kavaja and Lushnja

⁵⁰ This information refers the situation of 15 October 2018

- transformation of the social assistance (NE) scheme into an active scheme enabling social re-integration
- revision of the system of disability evaluation
- intervention and ensuring re-integration of children in families and community, while placing particular care for social and biological orphans, and ensuring delivery of integrated services

One of the priorities is to ensure the necessary funding for groups at stake through the National Fund for Social Services and Regional Funds for Social Services, as part of the Social Fund. The Social Protection Strategy focuses on households and groups at risk. One of these groups at risk is children in conflict with the law, no matter of their age.

2.2.2 Key concepts related to the child below MACR in conflict with the law

a) Definition of the child

Albanian legislation gives several definitions related to children below MACR in conflict with the law. The definitions themselves are applied in different services offered to the child by law. They are part of different laws governing the rights of the child, the criminal justice and social care services in Albania.

The 'child' is defined by Albanian legislation as any person less than 18 years of age. This definition is given by the CCJJ (Article 3 Para. 3), the Law on Children's Rights (Article 3 Para. 4) and the Law No 121/2016 "On Social Care Services in the Republic of Albania" (Article 3 Paragraph 9).

The CCJJ introduced a new definition, 'child in conflict with the law', which includes children aged between 14 and 18 years old. Article 3 Paragraph 4 of the Code defines this as any child who has reached the age of criminal responsibility up to 18 years of age, against whom there is a reasonable doubt to believe that the child has committed a criminal offence, has been summoned as a defendant and/or the child has been sentenced by a final court decision for the commission of a criminal offence.

The Law on Children's Rights defines a 'child in need of protection' as a person under 18 years of age, irrespective of having the capacity to act, according to the legislation in force,⁵¹ who may be a victim of abuse, neglect, exploitation, discrimination, violence or any criminal activity, and also the individual under the age of criminal responsibility, who is alleged to have committed or accused of the commission of a criminal offence, and the children in conflict with the law (Article 3 Para. 6). The law also includes a specific category of the 'child in need of protection' expressly for children below MACR that are suspected or charged with having committed a criminal offence (Article 6/3).

⁵¹ The Civil Code foresees that children below the age of 14 years old do not have legal capacity to act, while children aged 14-18 have limited legal capacity to act. If the woman is married before the age of 18, she gains full legal capacity to act. However, the Family Code foresees that either the man or the woman can be allowed to marry before the age of 18 years old by the court, stating the principle of equality. Since the Family Code is a later law than the Civil Code, the first is applied regarding this issue, meaning that if the child is allowed by the court to marry before the age of 18 years old, s/he gains full legal capacity to act.

The Law No 121/2016 “On Social Care services in the Republic of Albania” provides another legal definition for ‘children in need for special protection’ (Article 3 Para. 10). This definition includes:

- i) an individual below the age of 18, who might be a victim of abuse, neglect, exploit, discrimination, violence or a criminal activity
- ii) an individual below the age of 18 in conflict with the law

This definition is based only upon the capacity ‘child in conflict with the law’, no matter of their age and no matter of their criminal liability. Thus, reading these legal provisions combined together, it is obvious that children below MACR in conflict with the law are entitled to the same treatment as regards benefits of legal aid, social care services, social housing, etc.

b) Age of criminal responsibility

One of the most important provisions of CRC is Article 40(3) (a) which obliges States to establish a minimum age “below which children shall be presumed not to have the capacity to infringe the penal law” (MACR). Setting the MACR at below the age of 12 is not recommended. States may set the MACR at age of 12 but this age is the absolute minimum and is deemed a low level and States should increase the MACR to a higher age, “for instance 14 or 16 years of age”. No exceptions to the MACR are allowed, for example in cases of serious offences.⁵²

In most EU Member States the MACR is 14 or 15 years old. Some jurisdictions have a lower MACR for example in Ireland it is 12, in England, Wales and Northern Ireland it is 10 and in Scotland it is 12.⁵³ In the Netherlands the MACR is also 12.

Albanian legislation is fully in line with this international standard. It has been years since the Criminal Code established the minimum age at 14.⁵⁴ There have been no recent scientific studies or strong debate in Albania about the minimum age of criminal responsibility.⁵⁵ Regarding the “minimum age of criminal responsibility”, even the CCJJ approved in 2017, does not bring any changes: the minimum age is 14 years old in case of commission of a felony and 16 years old in case of commission of misdemeanours foreseen by the Criminal Code⁵⁶. If there is uncertainty about the age of a person, the prosecuting body, pursuant to a motion of a party or on its own initiative, shall issue immediately a ruling determining the age of the child. If, even after verification and expertise, the age of the child is again uncertain, it shall be presumed that the person is a child.⁵⁷

⁵² See International and European legal framework for the MATRA-funded “Child protection system strengthening for children in conflict with the law” project, p. 16

⁵³ See 60 Quick Facts about Juvenile Justice, June 2016, p. 3

⁵⁴ The minimum age of 14 years was provided for the first time by the Criminal Code of 1952, Article 6

⁵⁵ A study on the juvenile justice in Albania in 2007 mentions that “the working groups involved in reviewing the juvenile legislation (Ministry of Justice and UNICEF), defined that the age of legal responsibility should be set at 16 for crimes and contraventions. For defining this age they took into account the juvenile criminal tendencies on one side and the principle of the child’s best interest on the other, as well as the conviction that education is more effective than punishment. The Legal Reform Commission has thus concluded that the age limit found in the Criminal Code is coherent with the current situation of juvenile delinquency as well as other factors that dictate a certain age of responsibility”, Arta Mandro, Prof & Hazizaj, Altin. (2007). Juvenile Justice in Albania, UNICEF ALBANIA, p. 30

⁵⁶ According to Article 1 Paragraph 2 of the Albanian Criminal Code, criminal offences are classified into crimes and contraventions. The distinction between them is always drawn in the provisions of the Special Part of the Criminal Code.

⁵⁷ Article 46 of Criminal Code of Juvenile Justice

c) Child protection

As explained previously the definition on 'child protection' given by the Law on Children's Rights and the CCJJ is in line with international standards, because it provides for a multidisciplinary approach to children in need of protection as well as obliges the professionals involved to take concrete measures in order to prevent and respond to risks posed to such children (see above section 2.1.1 The concept of Child Protection).

It should be noted though that the provisions foreseen in the CCJJ do not apply to children who commit criminal offences below MACR, as criminal proceedings against them may not be initiated or if initiated, they shall be dismissed immediately. In such cases the child protection structures shall act and all the measures foreseen by the law on the rights and protection of children shall apply in order to provide them with procedural rights, assistance and service similar to the child in conflict with the law/victim or witness concerning the cross-examination process and contact with the police and prosecution bodies.⁵⁸ Despite of this non-applicability rule, Article 77 Paragraph 7 of the same Code provides that the child under 14 years of age who has committed a criminal offence shall be cross-examined after it is explained to the child in a clear and understandable way that the child has no criminal responsibility because of their age. In addition it shall be explained to the child that s/he has no criminal liability if the child refuses to testify or gives false testimony. The interrogation, both in the court and in the police station, can take place only in the presence of the legal representative of the child, the lawyer and the psychologist (Article 76 Para. 5 CJCC). The CJCC has not foreseen in Article 77 a specific rule regarding the environment where the child's interrogation can take place. Children in conflict with the law however, are being questioned as witnesses. As a result Article 39, Paragraph 4(a), applies stating that the child should be interrogated in child-friendly environments outside the court⁵⁹. Providing for the performance of child interrogations in specific child-friendly environments has been considered as a gap of the Albanian legislation.⁶⁰ However, it should be mentioned that such environments do not exist yet in the Albanian institutions (for further details on the interrogation of the child, please refer to "4.2 The action of police and prosecutor office in cases with children below MACR").

On the other hand the Albanian Criminal Code foresees that the court may impose an educational measure on children not criminally liable because of their age by placing the child in an institution for education. This decision to impose an educational measure can at any time be revoked if the circumstances under which they were imposed cease to exist, but, in any case, the court is obliged to reconsider its decision one year after the date of the court decision.⁶¹ It is obvious the time limit of one year is a long period of time when dealing with children under MACR. The rules imposing or revoking educational measures in relation to the child are foreseen in the CCJJ.⁶² However, since the CCJJ is not applicable to children below MACR in conflict with the law, it is not clear how the rules on imposing educational measures are to be implemented in practice.

⁵⁸ Article 4 of Criminal Code of Juvenile Justice

⁵⁹ Article 39, paragraph 4, letter a) of the CJCC

⁶⁰ See pp. 150, 168 and 175, at www.reformanedrejttesi.al/sites/default/files/dokumenti_shqip_0.pdf last visited on 28 October 2018.

⁶¹ Article 46 of Criminal Code

⁶² Article 46 of Criminal Code

The Criminal Procedure Code provides that the prosecutor and the juvenile section of courts in judicial district courts are competent to take measures and review requests related to the enforcement of decisions issued towards minors. According to the Criminal Code, the manner of enforcement of measures and any decision issued towards minors shall be governed by special law, which is the CJCC⁶³. It should be mentioned that Article 46 of the Criminal Code foresees the possibility of the court to apply educational measures for the children below MACR. In the amendments done to this provision in 2017,⁶⁴ it is foreseen that further rules for educational measures are to be provided in CCJJ. However CCJJ does not foresee any possibility for children below MACR to be subject to educational measures. As already mentioned Article 4/3 of the CJCC excludes children below MACR from its application. While clarifying this exclusion, the provision foresees the duty of the procedural bodies to immediately notify the structures for the child protection in such cases.

The Albanian Criminal Code entered into force in 1995. This Code provided for educational measures on children below MACR in conflict with the law or aged between 14 and 18 years old. Different studies emphasised these educational measures were not imposed by the courts⁶⁵ and could not be enforced due to absence of the necessary infrastructure.⁶⁶ This is an additional problem to the situation of children below MACR in conflict with the law, apart from the non-applicability of CCJJ on such children. The Office of the Ombudsman and other actors have also mentioned that coordination and institutionalisation among local government, NGOs and other state structures is missing. An urgent situation mentioned by them is the lack of a specialised institution treating children with mental health needs or behavioural disorder.

One last remark regarding the criminality of children is the special attention of the Criminal Code on inducing minors to criminality. Article 129 of the Code provides that the crime of inducing or encouraging minors under the age of 14 to criminality is subject to a sentence of up to five years of imprisonment. The US State Department's Albania 2017 Human Rights Report noted when analysing the situation of displaced children: "Since the law prohibits the prosecution of children under age 14 for burglary, criminal gangs at times used displaced children to burglarise homes."⁶⁷ This is a concern discussed and perceived by professionals in Albania, who believe criminal gangs use not only displaced children, but children in general. This concern was mentioned anecdotally by different interviewees of this study, but without providing any evidence. The judge who was interviewed for this study emphasised this concern especially. In her opinion, it is very difficult to understand or to measure the significance of this phenomenon, because the children take responsibility for the criminal act without confessing about the role of adults who pushed them into committing the crime. In this situation, we have a statistic about the juvenile crime, but it obstructs the reality related to adults' role in juvenile's crime. It should be stressed however that no solid study or research has been conducted on this topic.

63 Article 462/a of Criminal Procedure Code

64 Amendments with Law no 36/2017 added a third paragraph to Article 46 of Criminal Code.

65 Arta Mandro, Prof & Hazizaj, Altin. (2007). Juvenile Justice in Albania, UNICEF Albania, p. 31

66 Maestral (2015). Mapping and Analysis of Albania Child Protection System. A participatory documenting of practices and perceptions.

67 See Albania 2017 Human Rights Report, p. 19 at www.state.gov/documents/organization/277377.pdf, last visited on 27 October 2018

2.2.3 Summary on legal framework

As a summary, under the CRC, States have the obligation to ensure that:

- a) Children below the MACR who come into conflict with the law are not taken through the juvenile justice/criminal justice system; they may not be formally charged and held responsible in a penal law procedure
- b) Legal safeguards including due process are in place to ensure that the treatment of children below the MACR who come into conflict with the law is as fair and just as that of children at or above MACR
- c) Children who commit an offence at an age below the MACR receive, if necessary in their best interests, appropriate interventions that address their behaviour. Such interventions can include educational measures, supervision by social workers and other alternatives to institutional care. Placement in institutions may only be used as a measure of last resort (Articles 37(b) and 20(3) of the CRC⁶⁸ and the Guidelines for the Alternative Care of Children⁶⁹)

By analysing the Albanian legislation through these obligations, it can be noted that:

- a) Children below the MACR, who come into conflict with the law, are not formally charged and held responsible in a penal law procedure. Criminal proceedings against them may not be initiated or if initiated, they shall be dismissed immediately
- b) In such cases, the child protection structures shall act and all the measures foreseen by the law on the rights and protection of children shall apply in order to provide them with procedural rights, assistance and service similar to the child in conflict with the law/victim or witness concerning the cross-examination process and contact with the police and prosecution bodies
- c) Children who commit an offence at an age below the MACR receive, if necessary in their best interests, appropriate interventions that address their behaviour. Such interventions can include educational measures, supervision by social workers and other alternatives to institutional care

Different laws in Albania use different definitions which leaves room for misinterpretation in practice. Even the procedural rules on imposing such measures are found in different pieces of legislation, adding to the difficulty for public authorities to act promptly and efficiently:

- The procedural rules of criminal justice to impose educational measures are not clear and relevant educational institutions are still missing
- The Law on Children's Rights considers such children as 'Children in need of protection' and thus, the Child Protection rules are to be applied, taking into consideration the best interest of the child and the other core principles.

⁶⁸ See International and European legal framework for the MATRA-funded "Child protection system strengthening for children in conflict with the law" project, p. 19

⁶⁹ See www.unicef.org/protection/alternative_care_Guidelines-English.pdf, last visited on 26 February 2019

3. Child Protection Structures

This chapter explains the main organisations involved in the child protection system in Albania, being either public authorities or civil society. The role of the family is also explained as it constitutes an essential part of the protection system.

3.1 Main organisations in Child Protection Structures

The child protection system is made up of a number of organisations working together. Some focus on the needs of children by looking after their welfare, providing services like health, social services, education and housing. Others, which are non-devolved such as the police, the prosecutors and the courts, focus on enforcing the law to hold them to account for their offences.

When discussing the situation of children in conflict with the law “it should be noticed that there are many actors in the ‘play’ and difficulty comes in trying to find out how each actor can work together in harmony. Each component of a juvenile justice system should, in its facilities and its mode of functioning, consider the needs and best interests of the child and address the root causes of conflict with the law, as well as protecting the rights and welfare of children, contributing to the healthy development of the child, and safeguarding the community.”⁷⁰

The Committee on the Rights of the Child recommends that as far as possible a multidisciplinary team of professionals should be involved in assessing and determining the best interests of the child. This also requires the participation of the child and parents or other persons legally responsible for the child, taking into account the evolving capacities of the child.⁷¹ The right of children to be heard and to have their views given due weight must be respected systematically in all decision-making processes, and their empowerment and participation should be central to child care-giving and protection strategies and programmes. To assess the best interests of the child, it is important to include the child’s view. Children have the right to information (Article 17 of the CRC) and the right to express their views and have them given due weight (Article 12(1) of the CRC). This includes the right to be heard in all judicial proceedings affecting them, which must be respected and implemented throughout every stage of the process (Article 12(2) of the CRC). If the child chooses to be heard, s/he can decide to be heard either directly, or through a representative or appropriate body. It is recommended that, wherever possible, the child must be given the opportunity to be directly heard in any proceedings.

The Law on Children’s Rights provides that institutional advisory and coordination mechanisms for the rights and protection of the child, in accordance with the scope of their activity, operate both at the central and local level. Coordination of their activity over issues related to the rights and protection of the child, set out in this law, shall be determined by decision of the Council

⁷⁰ See The United Nation Convention on the Rights of the Child: Are children “in conflict with the law” really protected? A case study of Republic of Albania’s Juvenile Justice System, Eva MANCO, 2008, p. 34, at [etheses.whiterose.ac.uk/15014/1/577552.pdf](https://theses.whiterose.ac.uk/15014/1/577552.pdf), last visited on 27 October 2018

⁷¹ Ibid, p. 8

of Ministers. These mechanisms and structures cooperate with non-profit organisations to implement national and local policies for the protection and rights of the child, and also for the provision of necessary child protection services, based on detailed rules determined by the CMD No 148, dated 13 March 2018.⁷² It should be noted though that apart from the organisations mentioned specifically by the Law on Children's Rights, the Prosecutor's Office and the police are in charge of several duties for the protection of the children below MACR in conflict with the law. These structures operate for all children up to 18 years old, including children below MACR in conflict with the law.

Central level

- i) **National Council for the Rights and Protection of the Child** is an advisory body established by order of the Prime Minister. It advises on and coordinates government policy for guaranteeing the rights and protection of the child in all fields, particularly in justice, social service, education, health and culture. Rules of the functioning of the National Council for the Rights and Protection of the Child are determined in the regulation of this council, approved by the CMD No 54, dated 31 January 2018. The first meeting of the Council was held on 1 March 2018,⁷³ and the second meeting was held on 29 June 2018.⁷⁴ The officials interviewed for this study reported that only two meetings have been held so far and the agenda of these meetings did not include any issue related children below MACR in conflict with the law.
- ii) **Minister of Health and Social Protection** is the Minister currently coordinating action for issues of rights and protection of the child. The Minister has political duties regarding the direction and monitoring of government policy and situation of the rights of the child and regarding child protection. The manner of coordination of action between the state authorities responsible for the rights and protection of the child are defined by the CMD No 565, dated 29 September 2018 "On coordination of activity between advisory mechanisms and coordinators of institutions and structures at central and local level on issues related to the rights and protection of children".
- iii) **State Agency on Child Protection** is responsible for the organisation and coordination of the integrated child protection system, in implementing national child protection policies, including the implementation of interventions and taking of measures for prevention and protection of children from abuse, neglect, maltreatment and violence. The Agency is currently a subordinate institution of the Ministry of Health and Social Protection.
- iv) **Other Ministers**, any minister responsible, by respective area of competence, for the rights and protection of the child. Apart from the Minister of Health and Social Protection, these includes the ministers in charge of education, internal affairs and justice.
- v) The **Office of the Ombudsman** monitors the enforcement of the Law on Children's Rights in line with the Convention on the Rights of the Child. The Ombudsman operates in line with the Law No 8454, dated 4 February 1999, "On the People's Advocate" as amended. In order to fulfil this obligation a specific structure called the Section of Children was

⁷² This CMD sets out the rules of cooperation between institutional mechanisms, child protection structures at central and local level and non-profit organisations for the implementation of national and local policies, as well as for providing the necessary services for child protection. The decision envisages the actual commitments undertaken by the child protection and child protection mechanisms at the central and local level within the framework of this cooperation, as well as on the other the non-profit organisations according to the legislation in force to fulfil this cooperation

⁷³ See The Report of State Agency for the Rights and Protection of the Child, p. 13

⁷⁴ See femijet.gov.al/al/mbledhja-e-keshillit-kombetar-per-te-drejtat-dhe-mbrojtjen-e-femijeve, last visited on 22 February 2019

created in 2017. This section examined 64 complaints in 2017.⁷⁵

- vi) Commissioner for Protection from Discrimination** is charged with ensuring effective protection of citizens, including children, from any kind of discrimination. The Commissioner operates under the rules of the Law No 10221/2010 “On the Protection from Discrimination”, as amended.
- vii) Prosecutors, police officers and probation officers** provide a link between the justice and child protection system, following the rules of CCJJ and the Law on State Police. The organisational structure of the prosecution and probation service is expected to be thoroughly reformed during the implementation of Justice Reform of 2016. Following the enactment of CCJJ the State Police⁷⁶ adapted a new organisational structure to include designated staff on juveniles and domestic violence. This included:
 - designated sector within the General Directorate of State Police composed of three employees
 - One designated police officer in each of the twelve Local Directories of State Police
 - One to three police officers in police stations according to the territory and number the police station has jurisdiction over.

It is worth mentioning that the roles of the Ombudsman and the Commissioner for Protection from Discrimination, as independent human rights institutions, is complimentary.

Local level

- a) Municipalities** are responsible for the establishment of the respective child protection structures at municipality and at administrative unit level under their jurisdiction, in implementing standards, and, through these, an integrated system of child protection. The responsibilities of the municipalities are listed in Article 46 of the Law on Children’s Rights;
- b) Social services** structure at the municipality, headed by a Director, takes all the necessary measures to realise and guarantee child protection within the municipality. They operate through their subordinate structures and in cooperation with other municipality directorates, the local protection mechanisms and other local institutions. The social services structure report to the Mayor and the Municipality Council. It sets up the Inter-sectorial Group (ITG), and it coordinates and supervises its activity.
- c) Child Protection Unit (CPU)** is attached to the social services structure within the municipality. It is a specialised unit within the social services structures at municipality level and is tasked, specifically, with the prevention, identification, assessment, protection and following up of cases of children at risk and/or in need of protection.⁷⁷
- d) Needs Assessment and Referral Unit** is attached to the municipality or municipal administrative units, and is composed of Child Protection Workers. Any municipal administrative unit with more than 3,000 children shall have at least one child protection worker.⁷⁸ The Ministry of Health and Social Protection⁷⁹ reported that in September 2018 there are 223 child protection workers throughout the country.

⁷⁵ See pp. 8, 15 & 50 at www.avokatipopullit.gov.al/sites/default/files/RAPORTET/RAPORTET_VJETORE/RAPORTI%202017.pdf, last visited on 27 October 2018.

⁷⁶ The information was submitted through letter No 8027/1, dated 19 December 2018 from the Director General of State Police

⁷⁷ This unit is separate from probation office. The probation office is considered as part of the justice system in Albania and it is organised by the Ministry of Justice

⁷⁸ According to the Law on Children’s Rights, if the administrative unit of the municipality has less than 3,000 children, this task may be performed by one of the staff of the Needs Assessment and Reference Unit, which defines the job description as a child protection worker

⁷⁹ Information received via email

- e) **Inter-sectorial Technical Group (ITG)** is an *ad hoc* structure. Every municipality with at least 3,000 resident children is obliged to establish an ITG. They evaluate the situation of the child, prepare and approve individual plans, re-examine cases and decide to close cases. ITG meet at the request of the Director of the municipal social services or the child protection worker at the administrative unit level. The ITG is called when the CPU or child protection worker has assessed, through initial assessment, that the child's risk is medium, high or immediate, or when the case is low risk, but is very complex.

The ITG is composed of representatives of the respective police station, social services structures, and representatives from the field of education, health, justice, representatives of non-profit organisations, as well as any other specialist who is familiar with the situation of the child or who may contribute in taking or implementing child protection measures, who are obliged to attend the ITG meetings (Article 52/3 of the Law on Children's Rights and p.2 of the CMD No 353, dated 12 June 2018 "On the rules on the functioning of the inter-sectorial technical group for the protection of children in the municipalities and administrative units").

Neither the law nor the bylaws explain what is understood by 'representatives of the justice sector'. In practice this provision has been applied as having as a member the chief judge of the court exercising the duty on the administrative unit and the chief prosecutor. According to CMD No.353/2018 judges and prosecutors exercising their duty in the administrative unit where the case is being managed may participate in the meeting but not having a status of a representative member. It is unclear who is going to be considered as a representative of the justice sector and what does the participation as a non-representative mean.

Parents/legal representatives or other members of the child's family and the child, if appropriate for them relating their best interest, also participate in the ITG meetings (Article 52/4 of the Law on Children's Rights). If the child participates in the meeting, their opinion is taken through child-friendly approach. This is conducted on the basis of the principles that:

- the child is not obliged to give information
- the child is informed on the use of the given information and the limitations to confidentiality
- measures are taken to avoid the possibility of traumatising the child due to the interview
- measures are taken to allow the free story-version of the child in their rhythm (p.II/12 of the CMD no.353/2018)

In the 2017 Annual Report the State Agency on Child Protection (SACP) has not addressed any issue related to children in conflict with the law under the MACR. However SACP has stated in this report that only 35% of the child protection workers⁸⁰ are social workers and that 45 out of 223 perform only this duty. The Agency has estimated that 170 workers are needed to perform only this job and another 251 are also needed to perform other jobs⁸¹. Based upon the results of the interviews, it is believed the CPU staff at local level are undertaking tasks beyond their job description in their workplace such as administrative works related to other sectors of social service in the Municipality due to the lack of human resources and the limited budgets of the institution. The same is evidenced with police officers and other professionals working within state institutions.

⁸⁰ The SACP Report does not mention the background of the other 65% of child protection workers.

⁸¹ See 2017 Report of State Agency on Child Protection p. 19

3.2 Experiences of professionals with the child protection system

All the persons interviewed during the conduct of this research study,⁸² irrespective of their position or function, mentioned that there was a lack of the human resources and necessary infrastructure to ensure the proper application of the law as regards the rights and protection of children. Most of child protection workers perform not only this duty but they also perform other duties. They are obliged to perform other duties due to the lack of staff and the lack of budgets in the municipality to recruit staff for other necessary positions. In some administrative units, the administrator who deals with economic aid is also assigned as a member of the child protection staff. This makes it impossible to follow cases related to children adequately and with professionalism.

The monitoring of the activities of existing structures regarding the quality and the right implementation of the legal provisions is not done properly. Mostly school psychologists cover two schools which makes it impossible to follow all children. Insufficient funds was also mentioned by all the interviewed persons as the main problem regarding the implementation of the law and the poor quality of the services offered. All child protection workers mentioned the indifference of other actors in the process as a problem and in some cases, such as in Shkodra, institutions have not yet appointed their representatives in the mechanism.

Community services are mostly missing, especially in the northern areas of Albania. Most donors' programmes are more focused in the south and central areas of the country. Poverty and unemployment are at the highest levels in the northern areas of Albania and the largest part of the municipality's budget is focused in addressing the economic needs of the community. Even in the places where community services are functioning, their location is very difficult to be accessed. In some local areas the CPU does not even have a contact number and social workers are obliged to use their personal telephone numbers to contact families. Lawyers working in the municipalities are not trained on how to properly draft requests for the courts.

The Office of the Ombudsman and the other actors have also mentioned that coordination and institutionalisation among local government, NGO's and other state structures is missing.

Stakeholders highlighted different difficulties in implementing the new legislation which included:

- financial costs and budget limitations
- poor infrastructure of public authorities
- overload of CPUs
- frequent and not always justified changes of legislation

CPU staff stated that they were not properly supported by the central government in the process to implement the new legislation, the division of the roles and responsibilities is not clear enough and so far most of the attention has been on discussing the legislation rather than on implementing it. The delay in the approval of the bylaws was highlighted by almost every person interviewed, no matter their position. One lawyer in an NGO stressed that this delay

⁸² See the Annex 1 on the list of interviewed persons, the methodology and the topic of interviews

hindered the multidisciplinary system ability to function. This delay⁸³ was even pointed out by local government officials.

We expect the Council of Ministers' Decision on case management to be approved based upon the new Law no 18/2017, which should specifically deal with the children below MACR in conflict with the law.

Chief of Child Protection and Gender Equality Sector⁸⁴

Police officers stated that the main difficulties in guaranteeing children's rights was their heavy workload and other additional duties being assigned to them. They also highlighted difficulties such as the lack of financial means and the poor infrastructure to address the needs of children. One police officer described a case when a child below MACR in conflict with the law was arrested and was subsequently released at night. The police officers could not find the child's home and there is no available alternative place for the child to go. On this occasion the police officers paid for clothes and food for the child with their own money.

The poor infrastructure in police stations does not allow the standards regarding interviewing children to be followed properly. The inadequate infrastructure was confirmed by psychologists assisting children in conflict with the law in police stations.

Police officers stated that other difficulties included the lack of coordination with other public authorities, the non-availability of specialised lawyers due to the lack of financial means offered by the state, the non-availability of psychologists due to the very low number of them. NGOs were seen as the only supporters in such cases.

The legislation in Albania clearly emphasises the need for coordination of structures, which are supposed to work together on divided roles and responsibilities, based on the fundamental principles of child protection. Cooperation between institutions is crucial to ensure a holistic approach to the issue. It should be stated however that there are several factors hindering the cooperation between public authorities. These were identified by the analysis of the legislation, the Ombudsman's reports and the findings of the interviews. The hindering factors can be summarised as:

- i) lack of human resources⁸⁵
- ii) continuous structural changes at governmental level⁸⁶
- iii) frequent changes of legislation challenges capacity building and the establishment of traditions and good practice

⁸³ As mentioned in section 1.1 Scope of the Study, the bylaws were approved in October & November 2018, after the interviews were conducted

⁸⁴ Please do note that the interviews were conducted prior to the approval of DCM No 578, dated 3 October 2018 "On case referral and case management procedures, drafting of the content of the individual protection plan, financing the costs for its implementation, and the implementation of the protection measures" and DCM No. 635, of 26 October 2018 "On the activity of child protection structures in relation to a child under the age of criminal responsibility who is suspected or committed a criminal offense"

⁸⁵ See p. 67, at www.avokatipullit.gov.al/sites/default/files/RAPORTE/RAPORTE_VJETORE/RAPORTI%202017.pdf, last visited 28 October 2018.

⁸⁶ As an example, after the 2017 National Elections, the government reorganised the Ministry of Social Welfare and Youth and State Social Services into the New Ministry of Health and Social Care

- iv) the workload for professionals in the juvenile justice system leaves little to no time for training, reduces personal motivation, and leads quickly to burn-out
- v) limited financial resources that impedes the undertaking of new services in following the dynamics of child's needs⁸⁷

Furthermore it is also noted a lack of coordination and institutionalisation of the cooperation among local government, NGOs and other state structures that should be properly addressed in the future.⁸⁸

3.3 The role of the family

International standards pay attention to the involvement of the family. Parents or, in some cases, legal guardians have the primary responsibility for the upbringing and development of the child (Article 18(1) of the CRC). States must respect the responsibilities, rights and duties of parents or, where applicable, members of the extended family or the community as provided by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights in the CRC (Article 5 of the CRC). The State has the responsibility to assist parents who need support. States are obliged to render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities (Article 18(2) of the CRC).

When parents or other persons legally responsible for the child are not able to sufficiently take care of the child, the State has the responsibility to step in. Separation of a child from their parents is always a measure of last resort. States are obliged to ensure that a child shall not be separated from their parents against their will except when the competent authorities determine, subject to judicial review and in accordance with applicable law and procedures, that such a separation is necessary for the best interests of the child (Article 9(1) of the CRC). The role of the family is recognised as crucial for the upbringing and development of the child by the legislation in Albania. The Law on Children's Rights foresees as one of the general principles that every child shall live and grow up in a proper family environment and separating a child from their family must be the action of last resort (Article 5 Para. 6). Enjoying an appropriate family and social life suitable for the child is a key component of the best interest of the child. When implementing the best interest of the child the authorities should consider the upbringing and belonging to a family (Article 6 Para. 3). The development and well-being of the child in the family environment is the aim of the Child Protection (Article 53). The Law on Children's Rights (Article 9) explains thoroughly the right of the child to stay with their parents, providing as an exception the separation decided by a court order based upon the interest of the child. It should be noted that lack of financial means does not constitute sufficient grounds for state authorities to either separate the child from the family or relatives living with the child, or to remove parental responsibility.

⁸⁷ See p. 67, at www.avokatipopullit.gov.al/sites/default/files/RAPORTET/RAPORTET_VJETORE/RAPORTI%202017.pdf, last visited 28 October 2018.

⁸⁸ *Ibid*, p. 68.

The Law on Children's Rights also contains detailed rules for exercising parental responsibility (Article 30). The parent or legal guardian shall have the obligation to secure the child's emotional, physical, social and material well-being by caring for them and by taking the necessary measures for the child to exercise every right under this law. When the parent or legal guardian fails to do so, the CPU shall take measures to support the parent in fulfilling obligations towards the child. Due to the important role of the family, the different actors responsible for implementing child protection measures and interventions are obliged by law to provide appropriate assistance to parents and legal guardians, as well as to consider them as important part of the different programmes related to child protection. The National Council for the Rights and Protection of the Child, concerning the protection of the child, has the duty to recommend specifically designed child and family oriented programmes (Article 37.c). The State Agency on Child Protection has the duty to analyse the needs for specific intervention in the field of child protection and family support, with a special focus on prevention (Article 41, Para. 3). The Child Protection Worker has the duty to facilitate and support the child and/or the family of the child in fulfilling the actions or duties set in the Individual Protection Plan (Article 51, Para. 2.ë).

The CCJJ contains several rules regarding the role of the family in juvenile justice system, as previously explained (*see above at General Principles*). The child's parents take part in the proceedings at every stage and by different means. They offer support to the child through their presence; they facilitate the implementation of best interest of the child by issuing declarations and authorisation on different actions taken during the proceedings; they provide specific information on the child and even support the child through the enforcement of the court decision, especially when an alternative measure is imposed.

3.4 The role of civil society

Civil society organisations play an important role in promoting the rights of the child in different ways:

- advocating for legislative changes to protect children's rights
- collecting and assessing data related to children's rights over the years
- educating the public and raising awareness of issues related to children's rights

The Committee on the Rights of the Child recognised in General Comment No 5 (2003): *"General measures of implementation of the Convention on the Rights of the Child" that "responsibilities to respect and ensure the rights of children extend in practice beyond the State and State-controlled services and institutions to include children, parents and wider families, other adults, and non-State services and organisations."*

The Committee agrees, for example, with General Comment No. 14 (2000) of the Committee on Economic, Social and Cultural Rights on the right to the highest attainable standard of health, paragraph 42, of which states: *"While only States are parties to the Covenant and thus ultimately accountable for compliance with it, all members of society - individuals, including health professionals, families, local communities, intergovernmental and non-governmental organisations, civil society organisations, as well as the private business sector - have*

responsibilities regarding the realisation of the right to health. States parties should therefore provide an environment which facilitates the discharge of these responsibilities.”⁸⁹

It should be noted that while the primary responsibility for the development, resourcing and delivery of national social protection programmes lies with the public authorities, it is the primary role of a civil society organisation is to support the development and implementation of policies, strategies and programmes. Thus it is important that these organisations must avoid the parallel delivery of social protection in lieu of or alongside government obligations and commitments.

The Law on Children’s Rights contains some basic rules, which allows for the supportive role of the civil society in the child protection system in Albania. To facilitate the advocating role of civil society in drafting strategies, policies and programmes, the Law foresees that they are part of consultative bodies at both central and local levels. Five representatives from civil society are members of the National Council for the Rights and Protection of the Child, which is the highest advisory body at central level. These representatives are elected by the Council, from activists familiar with and highly active in the field of protection of the rights of the child (Article 35). At local level, representatives of non-profit organisations are part of inter-sectorial technical groups (Article 52).

Civil society is also involved in the implementation of child protection measures and interventions. To this end the State Agency on Child Protection is obliged by law to initiate and implement pilot projects in cooperation with the civil society and it gives technical support to the non-profit organisations working in the field of rights and protection of the child (Article 42). Another activity that can be fulfilled jointly by the State Agency and civil society is the toll-free telephone line for children, with an available telephone number widely publicised, which makes possible the verification and referral of the reported case from the State Agency to the CPUs or other competent structures (Article 68).

At local level, the child protection worker should collaborate and exchange information with any responsible health, education, police prosecution and judicial structure at local and national level, as well as with civil society on the case management of a child in need of protection, by maintaining also confidentiality of personal data of the child (Article 51).

The Law on Children’s Rights, recognising the important role of the civil society, obliges the Minister coordinating action on issues of the rights and protection of the child, to provide support to non-profit organisations operating in the field of rights and protection of the child. This is in accordance with the procedures stipulated in the legislation in force on organisation and functioning of the Agency for the Support of Civil Society (Article 38). In order to fulfil this obligation, as well as to smooth the cooperation between public authorities and civil society, the State Agency develops and maintains an information system focused on institutions specialised on children, non-profit organisations working in the field of protection of rights of the child and other data related to child protection (Article 42). In practical terms most direct services to children are provided by NGOs in Albania. Child protection workers report that in many cases they need to cooperate with NGOs to provide different services to children, as these services are not covered by state institutions. The needs of children for different services such as legal,

⁸⁹ See Para. 56

psychological and residential, are referred to NGOs, because these services cannot be provided by state institutions due to the lack of or limited human and financial resources. NGOs provide such services mostly through MoUs. However, these services are depended and limited by the length of projects and the focus of donors' calls for proposals.

3.5 Capacity building of the professionals in the child protection system

In order to safeguard the well-being of the child, several international and European documents emphasise specialised training and professional personnel.

Earlier assessments of the situation in Albania have noted the persistent discrepancy between the legal requirements for staff qualifications and the real balance of staff involved in social care in general and in the protection of children.⁹⁰ The regular improvements in the legal framework have not been matched with the same progress in terms of their implementation in relation to staff qualifications.

The lack of basic qualifications, combined with other difficulties created by overlapping tasks and case overload, have caused issues and challenges to the quality of work, self-confidence and satisfaction. Over 30% of the child protection workers interviewed reported that they felt that they were 'somewhat', 'little' or 'not at all' capable of exercising their duty as a child protection worker. This indicator highlights, among other things, the need for continuous training and workplace training for staff already involved in child protection work or positions.⁹¹ At the personal level, trainings and seminars on: (i) the clarification of the role of the child protection worker in accordance with the provisions of the criminal justice code are reported by the child protection workers as a need and a priority, (ii) the clarification of the procedures for the implementation of protection measures at the unit level, (iii) qualifications and raised capacities of the child protection workers to deal with children in street situation.

Key staff reported that some weaknesses or uncertainties can be closely linked to the low level of information on the legal framework and the legal obligations deriving from it. The frequent changes of legislation as well as the slow mechanisms for disseminating information on legal changes and enrichment are mentioned as some of the key causes. For this reason training sessions, seminars and workshops on the legal framework and related procedures were considered a priority for the participants.

Actors involved in child protection system had been involved in the drafting process of legislation. While it was noted that they were given the opportunity to comment on the respective drafts, in some cases the time was not enough.

We have participated only in meetings where the rights of unaccompanied children were discussed. No other meetings. During the drafting process, we have submitted some suggestions.

NGO Executive Director

⁹⁰ Dhëmbó, 2016. Studimi fillestar mbi identifikimin e praktikave për Mbrojtjen e Fëmijëve dhe nevojat e stafit përkatës në Shqipëri. Platforma për Mbrojtjen e Fëmijëve.

⁹¹ Dhembo, E. Mapping of the basic child protection structures (at local level) and prioritization of their capacity building needs, Terre des hommes, 2018.

We have been asked to give opinions on the draft laws, but the deadline was not sufficient. Some parts of the law are written with no regard to the current Albanian context.

Municipality CPU official

Most of the stakeholders believed there is no need to improve the legislation. The legislation in Albania is quite new and they were not able to identify any needs to change the law. Instead the focus should be shifted towards building up and consolidating good practice, which needs some time.

Local Government officials, NGOs, police officers, mediators were able to identify easily the new Law on Children's Rights and the CCJJ as the key pieces of legislation on children's rights. Their knowledge seems to be at a basic level because they could not give specifics. When asked about the legal framework their job were based upon, the answers were often the same: those interviewed answered with general words, referring only to the titles of the laws and to the annual plans and strategies. On the other hand, all of them pointed out that the implementation of the legislation has not been a success because other officials do not have proper information on children's rights.

The situation of lawyers working for NGOs and psychologists assisting the children during the criminal proceedings was different, they seemed to have sufficient information on the legal framework. Mediators also looked like having the necessary information on children's rights, but when it came to practical questions regarding the implementation of the laws they did not have an answer due to the lack of cases addressed by them.

Most psychologists working within the justice system have received a single intensive training of three months organised with at the MoJ's request by the Order of Psychologist between May and July 2018. This training served to raise the capacities of those mediators working within the justice system, and also helped to create the first list of expert and assistant psychologists who work nearby justice institutions. Previously trainings for psychologists in the justice system had been short and occurred very rarely. It is worth mentioning that now that this list is available nearby every District Court and Prosecution Local office. The list shows that in all districts besides Tirana, there is a very limited number of trained psychologists in who fulfil the criterion to provide these services. The training was focused on raising capacities of psychologists to:

- a) assist the child during the interview process
- b) conduct psychological evaluation of children in criminal proceedings

No training has been provided till now for psychological treatment of children who are below the MACR and children in conflict with the law in general.

Most of the education staff did not have the proper level of information on legislation about children's rights. They gave general references to legislation and strategies related to education. A social worker in a school stated that she had no knowledge on the specific legislation and had never any training on the legal framework.

I have not been trained on the legal framework. The trainings were of poor quality and I hardly remember them.

School social worker with 11 years of work experience

It is worrying that children in conflict with the law themselves do not have any knowledge on their specific rights. The situation with their parents seems the same. It seems that the obligatory information was given to them in written form, but verbally they were told not to worry because the criminal case will be closed due to the young age of the child.

A lot of activities had been organised to disseminate information, to raise awareness or to train state officials. The quality of these activities was questionable since none of those interviewed was clear on the topic. The most popular activity reported by police officers and school social workers was training they had received from a Swedish project on juvenile justice. It is worth mentioning that police officers stated that one of the difficulties in implementing the legal framework on children's rights was the fact that they are not properly trained on the new legislation, especially on CCJJ.

During the interviews, child protection workers, teachers, medical staff, and police officers replied that they were not trained at all or were not always adequately trained regarding the legislation on the children's rights, child protection or on social services. Police officers who were interviewed declared that they had participated in trainings related to the CCJJ but not to other laws. The continuous transfer of police officers from their positions often affects the quality of the services. Lawyers and mediators had also not been trained on the law on children's rights and child protection. While some lawyers had been trained on the CCJJ, neither the lawyers nor mediators had received any training on the Law on Children's Rights. Mediators based outside Tirana had not yet undertaken any special training on children in conflict with the law and the applicable laws.

School psychologists had not received any information about Criminal Code of Juvenile Justice. CPUs also stated a similar situation. In addition each actor still seemed unclear about some of their roles and responsibilities.

All persons interviewed considered the training of all actors participating in the process on not only the legal framework, but also on the specific function and duty of each actor very important for capacity building. They also considered trainings necessary in order for each actor to understand the obligation and the importance of cooperation and referral. Conducting interviews, communication with children, procedure and follow-up of the referral are some of the priority areas mentioned by the interviewees.

The training of professionals was conducted by different organisations with different curriculum which took into consideration the different official status of the trainees and their needs.

- **School of Magistrates** is responsible for training of judges and prosecutors
- **Albanian School of Public Administration and SACP** are responsible for training child protection workers
- **National Bar Association** is responsible for training lawyers
- **Order of Psychologists** is responsible for training psychologists
- **Academy of Police** is responsible for training police officers

3.6 Summary of protection structures for children below MACR

The Albanian child protection system is made up of a number of organisations, which according to the law should work together. The role of the family in the upbringing and development of the child is recognised as crucial by Albanian legislation. Albanian legislation also contains some basic provisions which allows the supportive role of the civil society in the child protection system to promote children’s rights in Albania.

The protection structures for children below MACR in conflict with the law is a two-fold system. The local level allows a better assessment of situation of the child, while the central level is in charge of coordinating and producing policies at large. The legislation put emphasis on the professionalism of officials working with children and requires them to update their knowledge, thus ensuring quality in services. The legislation outlines the shared responsibility of state institutions, parents and society to care for and protect the children below MACR in conflict with the law. The level of their cooperation needs to be enhanced and strengthened.

As previously mentioned, the Albanian law puts emphasis on coordination of structures, which are supposed to work together on divided roles and responsibilities, following the fundamental principles of child protection. Cooperation between institutions is crucial to ensuring a holistic approach to child protection. Several factors were identified as hindering the cooperation between the public authorities:

- i) lack of human resources⁹²
- ii) continuous structural changes at governmental level⁹³
- iii) frequent changes of legislation which challenges capacity building and the establishment of traditions and good practice
- iv) the workload for professionals in the juvenile justice system leaves little to no time for training, reduces personal motivation, and leads quickly to burn-out
- v) limited financial resources that impedes the undertaking of new services in following the dynamics of child’s needs⁹⁴
- vi) lack of proper training

Furthermore it is also noted a lack of coordination and institutionalisation of the cooperation among local government, NGOs and other state structures that should be properly addressed in the future⁹⁵.

⁹² See p. 67, at www.avokatipopullit.gov.al/sites/default/files/RAPORTET/RAPORTET_VJETORE/RAPORTI%202017.pdf, last visited 28 October 2018.

⁹³ As an example, after the 2017 National Elections, the Government reorganised the Ministry of Social Welfare and Youth and State Social Services into the New Ministry of Health and Social Care

⁹⁴ See p. 67, at www.avokatipopullit.gov.al/sites/default/files/RAPORTET/RAPORTET_VJETORE/RAPORTI%202017.pdf, last visited 28 October 2018.

⁹⁵ *Ibid*, p. 68.

4. Case Management

This chapter describes the Albanian legal framework and its implementation in practice through the work processes involved in case management. Special attention is paid to data systems and monitoring and evaluation.

It should be explained that case management should follow the goals of the **integrated system for child protection**, which are to:

- place the child at the system's centre
- place the child's best interests at the system's core
- work to promote, protect and fulfil children's rights to protection as laid down in the Convention on the Rights of the Child
- give special attention to the rights to protection of vulnerable groups like children deprived of liberty and children in conflict with the law
- ensures that all essential actors and systems - education, health, social welfare, justice, civil society, community and family - work in concert to protect and assist children

International standards provide that an integrated system for child protection pays particular attention to the protection of vulnerable groups like children below MACR who come into conflict with the law. States are obliged to ensure the child such protection and care as is necessary for their well-being, taking into account the rights and duties of their parents, legal guardians, or other individuals legally responsible for the child. To this end, States must take all appropriate legislative and administrative measures including protecting children in conflict with the law who are below the MACR (Article 3(2) of the CRC).⁹⁶

4.1 Reporting mechanism

Despite the improvements to the Albanian legislation on juvenile justice, there are no bylaws or guidelines that describe all the institutions and steps that should be followed in cases of crimes or offences involving children, either for the child in conflict with the law, or for the child victim or witness. Different laws and bylaws provide principles, steps and actions that should be taken in these situations, but the volume and specificity of these provisions makes it very difficult for the relevant authorities to identify their duties and follow them. On the other hand, the lack of clear guidelines on how to manage such cases⁹⁷ and also the lack of information also makes it difficult for children themselves and their families to know what to expect from the institutions in such circumstances and how to ask for help.

⁹⁶ See International and European legal framework for the MATRA-funded "Child protection system strengthening for children in conflict with the law" project, p. 19

⁹⁷ As already explained in 1.1 Scope of the Study, CMD No 635, dated 26 October 2018 "On the activity of child protection structures in relation to a child under the age of criminal responsibility who is suspected or committed a criminal offense". It is obvious there has been a delay in the approval process of this bylaw, considering the Law on Children's Rights entered into force on 9 June 2017 and according to the Article 71 of this Law, the bylaws should have been approved by 9 December 2017.

This situation is even worse in cases relating to children below MACR in conflict with the law, when clear information on the rights, steps and procedures to be followed is crucial. While identifying and analysing the legislation applicable in these cases, it was evidential that different laws are applicable and many authorities are involved aiming to guarantee a multi-structural and multidisciplinary approach.

The basic idea of the Law on Children's Rights is to oblige anyone in possession of valid information on children in need of protection to notify the relevant authorities, thus treating the issue of the interest of the child as a public interest (Article 67). The relevant authorities who would receive and react to these reports are the central institutions and local child protection structures or the State Police. Following this idea, reporting the suspicion of abuse is an obligation for:

- a) any natural or legal person, who possesses information on the child themselves
- b) any employee of public and private institutions who comes into contact with children because of duty
- c) teachers and providers of school psychosocial service
- d) employees of public or private health or child care institutions

With a view to facilitate this reporting, child protection structures shall take measures to post contact information notices in all public and private child care institutions, education and health institutions. According to SACP the number of reports from the institutions increased between 2016 and 2017 and has the number of cases treated by the CPUs increased from 1,352 cases in 2016 to 1,650 cases in 2017⁹⁸. The 2017 Report of SACP stated that all institutions having the duty to report should be trained on the legislation, especially on cases relating violence.⁹⁹ All persons, who have a duty to report, are obliged to protect personal data. The procedures for reporting cases shall be regulated by joint instruction of the respective ministers, which is not approved yet.¹⁰⁰

SACP is obliged by law to make a toll-free telephone line for children available, with a widely publicised telephone number. It is also obliged to verify and refer any reported cases to CPUs or other competent structures. The Ministry of Health and Social Protection confirmed that ALO 116, a national advice line for children, had been established by a CSO following an agreement with SACP. In 2017 34,654 calls were received, 581 cases were managed by the CSO itself through referral, service and advice, and 181 cases were referred to public authorities. From January to November 2018 42,310 calls were received, 929 cases were managed by the CSO itself through referral, advice and psychological support and 330 cases were referred to public authorities. Though the data for this national line is impressive, it should be noted that it was established and is managed by a CSO. Approximately three times the number of reported valid cases are directly managed by the CSO itself. The CSO did not give data on the overall number of reported cases referred to CPUs or to the State Police, or on the response taken by the public authorities to the reported cases.

⁹⁸ See 2017 Report of State Agency for the Rights and Protection of the Child, pp. 20 -23

⁹⁹ *ibid*, p. 57.

¹⁰⁰ As already explained in 1.1 Scope of the Study, there has been a delay in the approval process of the bylaws foreseen by the Law on Children's Rights, considering this law entered into force on 9 June 2017 and according to its Article 71, the foreseen bylaws should have been approved within 9 December 2017.

The Office of the Ombudsman and the other actors cited that coordination and institutionalisation among local government might be one of the main reasons for the referral system not functioning. During interviews conducted for this research study it was found that when specialised psychological help is needed, mostly cases are referred at the school psychologist, who not only covers two or more schools, but does not always has the required qualification. Interviewees stated that the lack of a specialised institution treating children with mental health needs or behavioural disorders was an urgent situation.

Children below MACR are not considered to be a special category by any of the institutions in respect to special needs or treatment. This category of children is treated like any other juvenile, and there are no specific statistics regarding them. When asked about statistics on children under MACR, all employees answered that their institutions do not consider such children as a specific category.

Some cases with low risk level can be managed inside the school services. There is an underreporting of cases by the police, teachers, medical services or other actors to child protection workers or to specialised psychological services of children below MACR who are exhibiting deviant behaviour or who are regularly involved in criminal acts. Police officers, teachers, medical services and other actors are not aware on their duty to refer cases regarding children below MACR in conflict with the law and in need of protection¹⁰¹ to a child protection worker. Many interviewees stated that schools have many cases of children in conflict with the law, including children below MACR, but they prefer not to refer the cases, because they tend to deal with them inside the school. Parents also prefer not to refer these cases mostly due to the fact that the child's name remains in the system.

Most medical staff does not consider themselves part of the referral process and do not refer cases, although the Law on Children's Rights clearly obliges everyone to notify the central institutions and local child protection structures or the State Police of any suspected or eventual case of abuse, neglect or exploitation of the child (Article 67). All child protection workers found the indifference of other actors in the referral process and in some cases institutions, such as in Shkodra, who have not yet appointed their representatives in the mechanism as a problem. It was noted that state institutions staff perceived the duty to refer only related to cases when the child had been abused or is subject to damages, but not to cases when the child had infringed the law. None of them mentioned any case when a child had been referred or was being assisted by a child protection worker as result of their being in conflict with the law.

When a crime/offence is committed, apart from it is reported by third parties, the first authority to arrive at the crime scene is usually the police. According of the Criminal Procedure Code (CPC) the judicial police has a duty to note the criminal offences, to prevent further consequences, to search for the person(s) that has committed the offence, to investigate and to gather anything that serves the implementation of the criminal law (Article 30). While investigating a case the police must follow the normal procedural rules, but if the person that is suspected of having committed the crime is found to be a minor, there are specific rules to be followed.

Police stations are the first institutions to be in contact with these children. There are few or no referral processes from other institutions. Even though schools identify children involved

¹⁰¹ It should be noted that not all children below MACR in conflict with the law are in need of protection, but professionals should be contact to address the deviant behavior of the child.

in deviant behaviour, they follow the same procedures as for all other children and do not refer cases unless the risk is deemed to be high or the behaviour becomes unmanageable when they refer the case to the CPU. Counselling within schools and ensuring the children do not abandon school are their two focus areas.

Under normal procedure rules, when a suspect is identified, police officers bring the suspect to the police station to verify their identity and to take other necessary investigation measures as provided by the law. If the person is suspected of having committed a crime or in other relevant situations, the police have a duty to arrest them in flagrante (Article 251 of the CPC). In the cases when the suspect person is identified to be a minor this procedure can only be followed if the conditions of Article 86 of the CCJJ are met¹⁰². If that is the case Article 255/3 of the CPC foresees the steps and measures the prosecutor should follow. These criteria do not apply to children below MACR due to the fact that these children cannot be prosecuted. No coercive measure can be applied to them despite the gravity of the crime they may be suspected of having committed.

There is no legal provision explaining what should be the first actions of the police officers when they notice that the suspect is a child under the age of 14. Law No 128/2014 "On the State Police" does not foresee any specific rules that police officers have to follow in cases when the suspect is identified as a minor. There is only one provision in this law regarding the protection of minors (Article 123), which relates to situations when children leave their homes or are abandoned by their parents. Law No 8677, dated 2 November 2000, "On the Judicial Police" as amended, does not contain any provisions relating to the judicial police officers dealing with children.¹⁰³ Therefore when investigating such cases the police have to refer to the provisions in the Law on Children's Rights and in the CCJJ.

Article 67 of the Law on Children's Rights foresees the duty of all natural or legal persons to refer any case when a child is suspected of having being subject to abuse, neglect or exploitation or is at risk for any of these situations to the central or local structures on the child protection or to the State Police. This article does not specify any obligation of the State Police to refer a case in which a child, either below MACR or under the age of 18 years old, is suspected of having committed a criminal offence to the central or local child protection structures.

When interpreting the provisions of the Law on Children's Rights regarding the treatment of children below MACR in conflict with the law, it is obvious that the police have a duty to refer such cases to the local child protection structures, which should then follow the procedures provided by the law and bylaws on the possible measures to be taken (*see below*). The child below MACR in conflict with the law is considered a 'child in need of protection' (Article 3 Para. 6 of the Law on Children's Rights) and they should be referred to the CPU. The aim of the referral of such cases rests with the need to contact professionals in charge of responding to deviant behaviour of children below MACR. The general principles and provisions of the CJCC are helpful in establishing when the judicial police officers should refer cases to the local child protection structures.

¹⁰² Article 86 of the CCJC "Criteria for imposition of arrest against a child" provides that: "In addition to the provisions of Article 228 of the Code of Criminal Procedure, the measure of arrest in prison may be imposed against a child as a last alternative and only upon fulfilment of one of the following criteria: a) the sanction foreseen for the criminal offence of which the child is accused is imprisonment and the minimum sentence is over 7 years; b) the measure is indispensable, because the child: i) is a threat to himself/herself and/or to others and such threat may not be avoided by any other way; ii) tries to flee justice"

¹⁰³ There is an initiative of Parliament to approve a new law on the judicial police and the draft is being discussed.

4.2. Actions of Police and Prosecutor Office in cases with children below MACR

Police officers may be able to discern that the child is below MACR from the first moment they have contact with the child or they may verify that the child is below MACR after they have brought them to the police station. It should be emphasised that in all cases concerning children at least one of the police officers managing the case should be specialised in juvenile justice and if necessary and possible they should be the same gender of the child (Article 25/4 of the CCJJ).¹⁰⁴ It is extremely important to respect this provision when dealing with children below MACR.

In both scenarios the police officers should immediately notify the prosecutor of the juvenile section, the parents of the child (or in their absence, another adult indicated as a trusted person and accepted by the child), and should refer the case immediately to the child protection worker who performs the function of case manager (Article 51/1 of the Law on Children's Rights). If the age of the child is identified from the first moment, the case can be managed sooner and better by not only the judicial authorities but also by the child protection worker. The child protection worker will draft the **Individual Protection Plan**¹⁰⁵ earlier (see below the section 4.3.1 – The legal framework of case management) and the necessary protection measures can be taken sooner. The child would not be arrested irrespective of the crime and they can be taken to their home or other facilities to be taken care of. The wrong procedural actions may be taken if the age of the child is not established from the beginning.

If the child is a foreigner citizen and does not understand the Albanian language, a translator should be contacted immediately to enable the communication between the police officer and the child. In such cases the Ministry of Foreign Affairs shall be notified as soon as possible in order that the diplomatic mission or the consular post of the respective state is notified. If the child is citizen of a country that does not have a diplomatic mission or consular post in Albania, is a refugee or a stateless person, they shall be given the opportunity, through the Ministry of Foreign Affairs, to contact the diplomatic mission of the country that assumes the responsibility over interests of the child or any national or international organisation in the field of human rights operating in the child protection field. In all cases the notice should be sent before the child is interrogated (Article 51/2/3 CCJJ).

If the child needs immediate medical help the police officers should send them to a hospital so that the child gets professional medical help. It is advisable for the police officers ask the child if they needs medical care.

If the police officers consider it is necessary to perform a personal search of the child, it can only be carried out in the presence of a lawyer and after they inform the child of the reasons and the act where it was decided (Article 78 Para.2, 3 and 4 of CCJJ). The personal search of any child can only be performed by a police officer of the same gender of the child, or of the gender chosen by the child, and the protection of privacy and dignity of the child should be guaranteed (Article 78/4.1 CCJJ).

¹⁰⁴ This provision is applicable for all children, no matter of their age

¹⁰⁵ The Individual Protection Plan is drafted in collaboration with other actors of Inter-sectorial Technical Group

If it is necessary to interrogate the child,¹⁰⁶ for example for the investigation of the case or if the child is suspected to have acted in conspiracy with another person, the child's parents and the child protection worker, as well as the chosen or an ex-officio lawyer and the psychologist, should be notified. The interview cannot start before the child has been in contact with their parents.

The law does not specify the place where the child below MACR can be questioned if there is immediate need for the child to be interrogated regarding the criminal offence, such as in cases when the crime may be committed in collaboration with other persons. It can be assumed, under the provisions of the CPC, the CCJJ and the Law on Children's Rights, that the child may be questioned either at the police child friendly interview units or at another appropriate premises such as their home or premises offered by the local authorities. Such requirement is not foreseen by Articles 42 or 77 of the CCJJ regulating the interrogation of the child below MACR.

In cases where the child is being interviewed as a witness, Article 42 of the CJCC are applicable. According pg. 1 of this provision all other rights guaranteed in CCJJ and Article 361/a of the CPC are applicable.¹⁰⁷ Therefore Article 39, pg.4/a is also applicable. This provision requires that when a child is interrogated as a victim or a witness, the child should be interviewed in a child friendly environment. In cases of testimony regarding sexual abuse or sexual exploitation this requirement derives for Albanian authorities from Article 35.1/b of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the Lanzarote Convention)¹⁰⁸. In the analysis of the legislation it should be recognised that the CCJJ is a very new piece of legislation which entered into force on 1 January 2018. This means its application in this regards should be monitored in the future.

If the police station does not have a child friendly interview unit, it is not advisable for the police officer to bring the child to the police station. In such cases the child's interview should take place either in the appropriate offices of the child protection worker, at the child's home or at any other appropriate place. It is important for the interview to be performed in a place where the child under MACR feels comfortable. The police officer has the obligation to explain to the child all the actions that they undertake.

Article 73 of CCJJ and Article 297/3 of the CPC foresees that the questioning of the child shall take place in the presence of their parents or in their absence, another adult indicated and accepted by the child and a psychologist.¹⁰⁹ The prosecutor and the judicial police officer can only prohibit the participation of a legal representative during procedural actions, if this serves the best interest of the child (Article 73/5 of the CCJJ).

CCJJ does not foresee the obligation of the prosecutor to interrogate the child in conflict with the law and according to Articles 42/5 and 77/5 the interrogation can be carried out by the prosecutor or the judicial police officer. The only obligation deriving from the general principle is

¹⁰⁶ In 2013, as a result of an NGO's project, there were produced basic standard guidelines/protocols in Albania how to conduct the interviews of the child by police officers, prosecutors and judges, which were broadly disseminated and relevant trainings, were organised.

¹⁰⁷ Article 42/1 provides: "For victims and witnesses children under the age of 14, except rules of this article, all rights and guarantees foreseen by this Code and Article 361/a of the Criminal Procedure Code, are applicable".

¹⁰⁸ Article 35.1/ b of the Lanzarote Convention provides: "Each Party shall take the necessary legislative or other measures to ensure that: ...b) interviews with the child take place, where necessary, in premises designed or adapted for this purpose".

¹⁰⁹ The psychologist working at the police station.

for each of these professionals is trained in juvenile justice. According to Article 256 of the CPC the interrogation of an arrested or a detained person may only be performed by the prosecutor.

In the first scenario when the police officer has identified from the beginning that the child is below MACR, the child cannot be detained and it is felt in these cases the prosecutor will decide whether the interview will be conducted by the prosecutor or the police officer. In specific cases, such as those involving very young children or depending on the mental health of the child, the child may be interviewed by an expert, after the necessary questions have been discussed with the prosecutor. When the prosecutor or judicial police officer is asking the questions they have a legal duty to consult with the psychologist beforehand about the questions the child is to be asked, in order to ease the procedure for the child, to avoid any intimidation or reluctance of the child, and to guarantee proper questioning (Article 76/4 CCJJ). In cases with a child below MACR the prosecutor should also get the consent of the child's parent(s), the consent of the psychologist and child's lawyer for the interview before conducting it (Article 42/5 CCJJ).

Before starting the interrogation the prosecutor should explain to the child in a clear and understandable way that s/he has no criminal liability for the crime/offence because of their age and also that s/he does not have any criminal liability if they refuse to give any explanation or answer the questions that are going to be asked (Article 77/6 CCJJ).

The questioning of a child cannot take place between the times of 22:00 – 08:00 and can stop at any time the child, their legal representative or the psychologist request a break. The prosecutor shall consider the need for continuous breaks in the questioning relating the age, level of development and other circumstances of the child (Article 77/1-3 CCJJ). The prosecutor shall be careful to treat the child respectfully and to guarantee their rights as a human being and as a child (Article 76/2 CCJJ), without using any physical or psychological mistreatment of the child in order to get the required information (Article 76/3 CCJJ) and shall also be careful in limiting as much as possible the number of the questions posed to the child (Article 77/6 CCJJ). Although a case will be registered since a child below MACR cannot be prosecuted there will be no procedures against the child. According to Article 291/1 of the CPC the prosecutor should decide not to initiate proceedings and to prosecute on the grounds that the person has not reached the age for criminal liability (Article 290/1/b of CPC). The prosecutor should be careful to take a decision not to prosecute within 15 days from the date that the case has been registered otherwise he cannot proceed with this legal instrument any more. Normally 15 days is considered more than enough time for the prosecutor to verify the age of the suspect.

In cases where the age of the suspect is identified later in the investigation after the passing of the 15 days, the prosecutor cannot decide not to prosecute, but instead they have to proceed with a dismissal of the case based on the same ground, because the person cannot be prosecuted (Article 328/1ç CPC). In this case the decision to dismiss a case is taken either by the prosecutor themselves for criminal offences (Article 328/1 CPC) or by the criminal court by the preliminary hearing judge (Article 329/a CPC).

It should be noted that the decision of the prosecutor or the judge not to prosecute or to dismiss is related only to charges to the child, it does not necessarily relate to the case. If the criminal offence has been committed in conspiracy with an adult, the criminal investigation and the criminal procedure will continue for the adult(s). It should be also mentioned that if the investigation proves that the criminal offence was not committed by the child, the grounds of

the decision not to prosecute or to dismiss should not be the age of the child but the fact that s/ he did not commit the offence (Article 328/1/dh CPC).

Regardless of the criminal prosecution procedure cases involving a child below MACR must be managed by a child protection worker as soon as possible. The child protection worker within a municipality has the legal duty to conduct the risk assessment of the referred case within 24 hours (Articles 51/2/b and 59 of the Law on Children's Rights)¹¹⁰ and to prepare the Individual Protection Plan for the child including an evaluation of the need for protective measures.

4.3. Actual situation of cases dealt by the Police involving with children below MACR

It should be mentioned that no monitoring of the police officers activity involving juveniles has taken place since the CCJJ came into force and when referring to the interviews of children some problems with the application of the law should be mentioned.

Both the children interviewed by the research study explained that the interviews at police stations had sometimes taken place even during the night or in the early hours of the morning such as at 5 am. The children had sometimes been questioned for up to 10 hours. In all cases at least one of their parents had been present during the interview, and the presence of the psychologist had been offered to them but only during the interviews without either of the children having had prior support from the psychologist. In one of the interviews with one of the children a child protection worker had also been present and the child referred to them by name.

Both children explained that the police officers had informed them that they are not going to be prosecuted due to the fact that they were under the age criminal responsibility, and they had both been advised not to behave in the same way in the future. The children complained that the police officers had never asked them about the reasons why they had broken the law or about their personal and familiar conditions. During the interviews neither of the children has been informed about the possibility of their situation being referred to the child protection worker, even in the case this referral was made by the police officers.

After leaving the police stations neither of the children nor their parents had any information about the support that the law offers the child and the family. In both cases the children had left school despite their wish to continue their education. Both were convinced that there was no possibility that they could be accepted back into their schools. Neither of the children interviewed nor their parents had heard of the term 'individual protection plan'. Although one of the families was being helped by the social services, no individual protection plan had been offered to him as a child in conflict with the law.

In terms of the practical implementation of the law, all the professionals interviewed explained that the procedure is the same. Generally police officers are the first ones to have contact with children when they are caught committing a criminal act and are stopped by the police.

¹¹⁰ According to Art. 51/2/b of the Law on Children's Rights, risk assessment is part of the mandate of the Child Protection Worker.

The police officers interviewed reported that they notified the parents immediately and asked them to join the interrogation of their children. They also called a psychologist to be present during the interrogation. In most police stations outside of Tirana, It was difficult to find a psychologist who was available at any hour of day. There are still many cases when children are interrogated in the late evening.

No one comes, only the psychologist of Vatra. They do not come in the evening. Also, we cannot pay them and that's why no one is willing to provide this service

Police Officer in Vlora

In most of cases, these are lawyers and psychologists from NGOs who provide these services for free such as ARSIS, the Centre of Integrated Legal Services and Practices or Vatra in Vlora. Psychologists who provide this service often came from NGOs. The psychologist enters this process as an assistant based on the role that the Criminal Code of Juvenile Justice has foreseen for them. The CCJJ has assigned two different roles for a psychologist in the criminal justice processes, the assistant and the expert evaluator. The same psychologist should not take both these roles. Psychologists who provide services in police stations were clear about their role. The psychologist who acts as the assistant evaluator in police station assists the child by easing his communication with police officer, ensuring the child's rights are respected of and supports the psycho-emotional state of the child is optimal during the interrogation or at least permits an interrogations session to be conducted. Their role in this process is to support the child. Psychologists are not always the given the time to create a basic relationship with the child before the interrogation session starts. In few cases, this was respected. There is little connection between the psychologist, who is called only for assisting the child during interrogation, and the CPU. The psychologist had no contact with CPU, because they assumed that the police set this communication. According to the CCJJ, the psychologist who assists the child during the initial interrogation should be the same psychologist involved throughout the whole investigative and judicial process, which is a positive step. However the psychological support that receive within justice system, only assistance during interrogation, is totally separated from child protection structures and system.

The police officers stated that they warn the children about the consequences of violating the law and then they let the children go. They continued to monitor these children in the community. They felt unsupported in this process and did not have partner institutions to collaborate. Most NGOs are donor dependent and their services are fragmented in different periods of time because lack of funds.

After we set them free because of the age, monitoring them in the community and counselling them is the only thing that a police officer can do

Police Officers in Vlora and Korca

NGOs representatives who are involved in service provision at police stations referred to different challenges with the interrogation process of children:

There are no special rooms for these children, (except in two police stations in Tirana where these rooms are recently created), too many people enter and come out from the interrogation room, and notification of the lawyer is not done regularly, especially outside Tirana.

NGO representative Tirana

NGOs had also made efforts to ensure the psycho-emotional state of the child when they were interrogated: are they tired, are they under the influence of drugs, are they hungry or sleepy? According to all the interviewees, the NGOs' work had had a crucial impact, especially in Tirana, in creating good practice in the process of attending to, interrogating and referring of children under 14 in police stations, but also of children in conflict with the law in general.

NGO psychosocial staffs had made efforts to explain and assist police officers in order that the police officers do not interrogate children in conditions that affect the child's ability to respond and affect their psycho-emotional state. Ensuring that these rules of interrogation are respected had made it possible that the best interest of the child had been respected in many cases.

School psychologists seemed to also be assisting the process at police stations. They also inform the parents about the risks of their child's behaviour and they work with the children providing treatment for them. They often accompanied the children to the different institutions where they were referred to, including to the police station. They also kept monitoring and supporting the child in order that they follows education.

4.4 Managing cases

4.4.1 The legal framework on case management

The procedures of case referral and management, the drafting and content of the individual protection plan, financing of expenses for its application as well as the enforcement of protection measures on children below MACR according Article 54/4 of the Law on Children's Rights shall be governed by decision of the Council of Ministers but the approval of this bylaw was belatedly agreed on 3 November 2018. The very first article of this bylaw states that the child protection procedures are governed by the principle of the best interest of the child.

Since the approval of this necessary bylaw was delayed, all structures continue to follow the rules and provisions outlined in Joint Instruction No.10, dated 25 February 2015¹¹¹ of the Minister of Social Welfare and Youth, Minister of Education and Sport, Minister of Health and the

¹¹¹ This bylaw was approved based upon the old Law 10 347, dated 4 November 2010 "On the protection of child's rights", repealed by the new Law on Children's Rights. The application of this bylaw after entry into force of the new Law is confirmed by the State Agency on Child Protection in its 2017 Report, see p. 24.

Minister of Interior “On the ways and forms of collaboration and the intervention procedures of the children in danger from the institutions and the relevant responsible structures on child protection”. It should be mentioned that this Joint Instruction refers only to children in need of protection from violence, abuse, negligence and/or exploitation (Para. 2 of Joint Instruction) and does not include children below MACR, unless they are in need of protection from violence, abuse, negligence and/or exploitation. However since there was no other specific bylaw for this category, the rules that are applied by the structures managing cases with children below the MACR were the same.

The management of a case involving children at risk, the same as for children below MACR, is based in the concept of ‘continuous care’¹¹² according to the following steps:

1. Identification/referral
2. Initial evaluation
3. Complete evaluation (all-inclusive evaluation)
4. Planning of the protection and care
5. Implementation, monitor and follow-up of the plan
6. Closure of the case

1. Identification/referral

The identification/referral of the case is considered as the first step in managing a case related to a child in need. The case may be identified as a result of an incident or due to the increase of the concern related to the well-being of the child. Institutions such as the school, medical institutions or the police that identify the case have the duty according to the Joint Instruction to refer the case to the CPU by filling the form provided in Annex 2 of the Joint Instruction. If it is not possible to fill all the required fields, it should be given as much information as possible.

The referral should be done within 24 hours or at least within next working day. If the child is in an emergency situation the police should be contacted first and afterwards the case should be referred to the CPU or the structures of the State Social Service in order to guarantee the security of the child and to offer them immediate protection and necessary services such as shelter, food and social care. The case should not be referred to any CPU in the municipality, it should be referred to the Child Rights Unit of the District, which should fill the ‘Minutes on taking the child in immediate risk on protection’ as provided by the Joint Instruction.

The child protection structures shall take immediate measures for the case assessment of the child, by engaging the Needs Assessment and Referral Unit and the multi-disciplinary group in the development of the Individual Protection Plan, which contains one of the protection measures, as well as other services and interventions that are necessary for the child’s reintegration, considering:

- a) the conditions, facilitating child’s involvement in the crime
- b) the level of social risk and the criminal offence committed
- c) the environment where the child was brought up and lived

¹¹² The concept of ‘continuous care’ means that the protection of the child is simultaneously proactive and reactive.

- d) the risk or the likelihood that the child may commit another criminal offence
- e) any other factor, which may help understand the situation the child¹¹³

According to the Law on Children’s Rights, the child protection worker at the municipality or administrative unit level or the Director of the CPU at the municipality level shall send the Individual Protection Plan along with the proposal on the protection measure, to the Director of the social services structure at the municipality, who takes the decision on the protection measure within 24 hours. This decision enters into force on the same day. In the case of emergency protection measures, or the protection measure placing the child in alternative care, the decision shall apply until the relevant court decision is taken. The decision on the protection measure of specialised supervision in the family environment shall apply until the measure is repealed by the Director of the social services structure, based on the proposal of the child protection worker and it shall not be sent for judicial review.

The Individual Protection Plan should include any eventual proposal for **protective measures** to be taken for the child¹¹⁴, which include:

- a) Emergency protection measure, which is a provisional protection measure removing the child from the family and placing the child in alternative care
- b) Protection measure placing the child in alternative care
- c) Protection measure ensuring specialised supervision of the child in family environment

The Individual Protection Plan might provide counselling sessions for parents of the child below MACR in conflict with the law. Article 65 of the Law on Children’s Rights provides for special protection for the child below MACR in conflict with the law. This measure shall be applied by allowing the child to stay with their family, provided that the following activities are supervised:

- a) attendance of school on a regular basis
- b) participation in activities of pre-social services
- c) following medical treatment or psychological counselling
- d) prohibition to go or attend certain places

If it is impossible to leave the child with the family, or the child does not fulfil the conditions set in the Individual Protection Plan, the child protection structures may propose and decide on one of the other protection measures, including the measure of placement of the child with one of the relatives, and asking the child, in any case, to comply with the conditions set out in the Individual Protection Plan.

Different social services that can be offered to children below MACR as one of the categories protected by the law are provided in Article 3 of the Law no.121/2016 “On the social care on the Republic of Albania” and they include:

¹¹³ Collaborating and gathering information with all pertinent medical, educational, police prosecutorial and judicial structures, in the local and national level and also the civil society, always protecting the personal data of the child (Article 51/1/d of the Law on Children’s Rights)

¹¹⁴ These measures are listed in the CMD No. 578, dated 3 October 2018 “On the procedures of the referral and case management, drafting and content of the individual protection plan, its financing and implementation and the implementation of protective measures”, which has been recently approved.

- i. **Residential services (shelters)** – are 24 hours services and long-term services offered by public or private residential centres
- ii. **Community services** – that include services offered in local community centres or other environments, such as daily services or services for the temporary substitution of the guardian
- iii. **Family services** – include social services offered in family in cases when taking daily, community or residential services is impossible
- iv. **Foster family** – is an alternative family decided by the court to provide the child with a family environment and conditions for their growth, education and physical and emotional support
- v. **Specialised services** – include services offered by professionals in cases of children with disabilities, communication problems or any other need that requires special treatment

In drafting this plan the child protection worker is also supported by the other structures¹¹⁵, providing a multidisciplinary assessment. According to the Law on Children’s Rights, the inter-sectorial technical group for handling of cases of children in need of protection shall be established on ad hoc basis in every municipality and municipality administrative unit, which has over 3,000 children. The inter-sectorial technical group supports the child protection worker and the Needs Assessment and Referral Unit in assessing the case, developing the Individual Protection Plan, facilitating case referral, and implementing interventions or actions specified in the Individual Protection Plan.

2. Initial evaluation

The initial evaluation is the second step to be taken in case management. It is a quick evaluation of the risk level of the case based on the available information. The child protection worker and CPU are the principal responsible structures for performing this evaluation and even at this stage other relevant institutions can be contacted in order to perform an adequate evaluation. The initial evaluation should be performed as soon as possible, preferably within 24 hours or at maximum within 48 hours, having as its principle aim the security of the child. The initial evaluation is performed before the preparation of the Individual Protection Plan.

3. Complete evaluation

The complete evaluation is a very important stage of the case management since it includes the drafting of the Individual Protection Plan. It is mostly based on the needs of the child and their family and their need of security. It shall identify:

- the risk level of the child in short, medium and long term¹¹⁶
- the child’s needs regarding their age and development
- the child’s strengths and capacities and also the sources of the child and their family, including the extended family if necessary

¹¹⁵ Meaning the health, education, police, prosecutorial and judicial structures, in the local and national level and also the civil society

¹¹⁶ This is already done in the initial evaluation, but in this stage the child protection worker has a clear picture of the child situation and can re-evaluate the risk level of child.

This evaluation should be concluded within 20 working days from the initial evaluation and should be based primarily on the needs and security of the child and their family. The Individual Protection Plan is developed after the evaluation is completed. During this period the basic needs of the child are completed by the child protection worker and the social service department. For the complete evaluation is filled the form provided in Annex 4 of the Joint Instruction and a copy is shared with the Technical Inter-sectorial Group (before the Technical Multi-disciplinary Group).

The Joint Instruction also contains forms providing simple methods for the evaluation of the child and their family during the process, and it foresees that at least one home visit should be done during which different details should be noted and reflected in the specific form. In conducting a family visit, the child protection worker and a member of the Technical Inter-sectorial Group should be present. In cases where the security of the child is in question, a police officer should also be present during the visit. The Joint Instruction contains also a form for the questioning of the child.

4. Planning the protection and care of the child

After the evaluation is completed, the fourth step is planning the protection and care of the child, meaning drafting the Individual Protection Plan. This plan contains the steps to be taken by different actors to fulfil the needs of the child and to reduce the risk level. The Individual Protection Plan contains the proposal for protection measures and, if needed, other interventions needed to ensure the respect for and facilitating child's access to their rights and also social services or other necessary services, based on the needs identified during case, and even measures for investigation and immediate intervention if the child is at risk and measures for medical aid, psychological, legal, social or other necessary rehabilitating or reintegrating service, according to the needs identified during case assessment. The plan is prepared by the child protection worker within 5 working days after the complete evaluation. It should be prepared in cooperation with the Needs Assessment and Referral Units and the Inter-Sectorial Technical Group.

In preparing the Individual Protection Plan, the child protection worker has a duty to assess the family situation of every child in need of protection and, in any priority case, aim to ensure child protection within the family. If needed, a Parenting Skills Plan is drafted, as part of the Individual Protection Plan, aiming to prepare the parents for the return of the child in the family, once the protection measure terminates. The Parenting Skills Plan may contain measures obliging parents to attend parenting skills courses, psychological counselling for anger management, medical treatment against alcohol or use of narcotic and psychotropic substances, mental health treatment, as well as interventions to support the family for registration with the civil registry office, the economic aid scheme, employment services, health services, and any other interventions that would improve family situation and guarantee the child protection within the family.

The child protection worker shall send the Individual Protection Plan along with the proposal on the protection measure, to the Director of the social services structure at the municipality, who takes the decision on the protection measure within 24 hours. This decision enters into force on the same day.

If the child is placed in alternative care, the child protection worker should deposit in the respective district court within five days from the day the decision on the relevant protection measure is taken, the request for the confirmation of the emergency protection measure or of the protection measure placing the child in alternative care. The request should also contain the request for the placement of the child in legal guardianship. The court shall examine and decide upon the request within five days. When the court decides that the protection measure be taken, it proceeds even with the examining of the request to place the child in legal guardianship, if needed. The case is heard by the ordinary jurisdiction, preferably by judges of the Family Section, specialised in Family Law. The court shall rule for the removing of the protection measure upon the request of the child protection worker where during the judicial review it finds that the grounds upon which this measure was imposed, no longer exists. The law does not provide for periodical review of the measure by the court, although this is required by Article 35 of the CRC. It should be stated though that the Law on Child's Rights does not prefer the displacement of the child in general and of the child below MACR in particular, from their family (Articles 65 and 66).

5. Implementation, monitor and follow-up of the plan

The child protection measures are monitored by the child protection worker, who reports to the Director of the social services structure, at least once a month, on the progress, advancement of the measure and/or the need to amend or change it. Monitoring the implementation of the Individual Protection Plan means supervising all the actors involved in the process. The CPU undertakes frequent visits to the family to evaluate the efficiency of interventions provided by the Plan. It conducts a formal examination of the plan six weeks after it was first prepared and then, examinations are conducted every three months. Such examinations aim to evaluate the current level of the risk and if needed, the Individual Protection Plan is revised. The CPU collaborates with the members of Inter-sectorial group, who might offer services according to the plan and who are aware of the concrete case.

6. Closure of the case

The case is closed when:

- i)** the child becomes 18 years old
- ii)** the interventions have reduced or diminished the risk
- iii)** the situation of the child has changed and there are no circumstances to bring the child back at risk before they becomes 18 years old
- iv)** the child dies
- v)** the child is transferred in another area and another CPU is in charge of managing their case

It is the task of the child protection worker to propose the Technical Inter-sectorial Group for the closure of the case based upon the results of the Individual Protection Plan. After the Technical Inter-section Group examines the proposal of the child protection worker, it recommends to the Director of the social services structure on the closure of the case, who under this recommendation decides whether to close or not the case (p.VI/5,6 of the DCM No.353, dated 12 June 2018).

Expenses: All the interventions and services foreseen in the Individual Protection Plan are provided free of charge. The Law No 111/2017 “On state guaranteed legal aid” provides that legal aid and the Law No 98/2017 “On Court Fees in the Republic of Albania” confirm that children in conflict with the law are beneficiary of legal aid and thus, they are exempt from court fees.

4.4.2 Case management in practice

The case management process as a collaborative process of assessment, planning, facilitation and advocacy for options and services to meet a child’s individual holistic needs through services and available resources. It is strongly integrated with the above-mentioned professionals who are legally responsible to guarantee that the child’s rights are met and the best interest of the child is taken into consideration. Currently in Albania CPUs, located in every municipality, are directly involved and fully responsible for guaranteeing that every child needs are met and this should be done through case management. Nevertheless, they are just a part of the chain that works for and serves the children in Albania. From the interviews with professionals, CPUs as structures of local authorities were considered as a positive step towards ensuring children’s well-being but that they are not yet a firm unit in terms of capacities, resources, and services. The interviewers report that the case management process for children below MACR in conflict with the law, involves similar steps in almost all structures with minor and specific changes depended on responsibilities of professionals and/or institutions/organisations involved. The steps that are commonly followed include:

- a) Referral to the CPU
- b) Contact with the parents/caregivers
- c) Communication with the parents and the child
- d) Contact with the teacher and/or headmaster
- e) Mutual meetings with parents-child-teacher
- f) Referral to other institutions when the case cannot be handled
- g) Keeping the child under surveillance and monitoring
- h) Parents and the child are kept informed for the following procedure and them collaboration it is fundamental to find the best solution for the children
- i) Evaluation and follow up
- j) Closing the case

When the child has been in alternative care institutions we evaluate the familial situation whether it is ready and willing to welcome the child. We assess whether the situation or conditions are improved and if it is the right moment to bring back the child. For the evaluation, we use a standardised format and usually, the social service is responsible for evaluating the family, in collaboration with CPU. After the evaluation, a decision is taken whether the minor should be returned home or not. In the following steps, we monitor the integration of the child.

NGO Executive Director, Tirana

From the data reported from service providers it turns out that children in conflict with the law do not receive services at first, as the school and the family in general try to manage the case silently. Child protection workers report that cases have been referred to them about other issues but during case management they have found out that the child had been in conflict with the law.

Any case that I will refer to will be included in case management and will pass all the steps. They are classified as cases in need of protection, emergencies and not cases in conflict with the law. More are classified as cases that have behavioural disorders. More cases are classified for other issues than conflicts with the law.

Head of the Child Protection Sector and Gender Equality, Elbasan

It is important to mention the fact that even though they conduct case management for the group age of children below MACR in conflict with the law the cases are not considered or referred to as children being in conflict with the law instead are considered to be 'children with a harsh attitude', 'bad behaviour children', 'stubborn children' and so on, and the tendency is to solve the situation or the issue within the institution that it takes place for example at school.

There are cases when many actors involved such as the school and the parents do not want the case to be referred to the police station in order to avoid what follows after a denunciation and how that can affect the child. Since cases are about conflicts and fights between children they are often resolved in school.

School Social Worker, Tirana

Most of the stakeholders, mainly police officers, report that they usually do not refer cases to the child protection worker but they try to manage the case in collaboration with the family and the school. The parents are involved because it is an obligation for the service providers to have their consent and for the parents to be present if the child is referred to the police station. The work with the child mainly focused on counselling about their behaviour. Information provided in an accessible and practical way can be a powerful tool in helping children and families to understand their rights, services that they can benefit and knowing about the options available to them and make informed decisions.

According to child protection workers cases are handled by following the procedures laid out by the child protection protocol. Actors are more informed about the attribution of roles and responsibilities within the case management processes, but the lack of services and resources is one of the main concerns in successfully managing the case and the lack of the capacities to manage cases of children in conflict with law. There is a need to raise the capability of service providers in terms of their practical skills of working on children's rights, alternative methods of treatment of children, and programmes for rehabilitation and reintegration. An integrated approach and the cooperation between the various service providers involved, such as legal,

educational, child protection, is very important, along with observing the child in their family, at school, in the community and identifying risk behaviour, as well as monitoring children in conflict with law after the services have been provided. There are some cases reported by child protection worker where the response of the child protection worker is not adequate and the child protection actors are not fully knowledgeable about the attribution of roles and responsibilities within the case management processes. The low level of involvement is also reflected and in other steps of engagement to support the implementation of the Individual Protection Plan.

The engagement of child protection actors depends on situations, involvement in case management is something extra that they are asked for. Child protection is not in their job description.

Child Protection Worker, Shkoder

The attitude is to solve cases without taking them to the judicial police station or other institutions. School social workers, psychologists, and teachers intend to work with children themselves through counselling and interventions rather than 'push' the children to the judicial system at this group age or referring to the child protection worker. Service providers report that parents in many cases choose to handle the problem with the child and not refer the case to other professionals. Leaving the child in the family, by imposing a specialised supervision measure, is not always the best solution, as some families do not provide the appropriate environment for the child's development either because the parental model the child is provided with is inappropriate or the parents do not carry out their duty of supervising and educating the child.

There are cases where children below MACR in conflict with the law have been part of the judicial system and in these cases police officers and judicial police station representatives declare that what they do is ask the children, assisting when they are questioned and after a counselling session the children are set free. In any case, parents are involved and in specific cases a lawyer and a psychologist/social worker too, furthermore child protection worker representatives are involved especially in cases of violence within the family. There is an understanding among the service providers that the child protection worker usually manage the cases of children who are victims of abuse and exploitation. Children and parents are always informed about the procedure that follows and the consequences that come after breaking or being in conflict with the law.

The majority of the professionals involved in this study did not report having cases of urgent protection measures for children below MACR in conflict with the law, except one case in Korça where the case was followed at the court. In these cases the psychologist met the child at the police station or at the Prosecutor's Office and the case management steps included:

- informing the child of their rights and the procedure that would follow
- offering psychological support
- including a holistic evaluation of the child's mental development stage
- conducting the questioning process 'in the right way' to make sure the child is not intimidated or terrified by the entire judicial process
- assisting the child to testify

In contrast to professionals who are familiar and experienced with the judicial process for children under 14 years of age some professionals stated that “if encountered with a case of a minor in conflict with the law, I would not know how to manage the case or deal with it”. This is a need that is evidenced a lot when it comes to working with children under 14 years old that have been, are or are prone to being in conflict with the law.

In relation to the child protection system in Albania professionals stated that there were still improvements to be done, especially with targeting children below MACR. There are cases where the collaboration between different sectors, institutions and actors has made a positive difference in the life of a child who broke the law.

Last year we had a case of a child who was driving without a driving license and left school. He was caught by the police and was taken to a probation service where he was rehabilitated through work and while he continued working in the afternoon he started attending school again. He did not miss that school year, as all his classmates were engaged to help him pass the class and helped him with homework since it was the end of the school year.

Director of Psycho-Social Services, Elbasan.

The right of children to participate in matters that concern them during the case management and their right to be heard and have their views taken into account does not always happen in practice. Decisions are based mostly on the service providers report, and in some cases taking in consideration and the parents’ views.

In terms of practical implementation of the law, after that the case has been referred from the police to the CPU, they try to gather the intersectional group, conduct the evaluation, plan of intervention and implement the intervention. This generally goes on for three months, but it can last longer depending on the needs of the case. It needs to be stressed that there are very few referrals of children below MACR in conflict with the law to CPUs. The procedure these workers follow is the same with any other case because there are no instructions or different templates/procedures to work with children in conflict with the law under or over the age of 14. Child protection workers state that the process is less formal than the procedure has foreseen because of the low level of education of the families. Child protection workers have to explain terms such as plan of family in simple words due to the limited ability to understand different concepts.

School psychosocial staff states that they manage a case within school if the risk is low, but when the risk is higher they refer the case to their director who contacts the CPU.

The mediation service seems not to have been consolidated yet. This seems to be because of the lack of referrals and the lack of information among the general public about it. Very few cases targeting children in conflict with the law had been treated by a mediator. The main sources of referral had been the parents who had information on this service. State institutions such as police stations and specially the courts seem sceptic about mediation practices. In Vlora, there is no local office of mediators because according to the law they do not have the necessary number of five mediators in the city to create an office. The lack of coordination

between institutions is another reason of the lack of referrals and the non-functioning of this service. A police officer in Vlora confirmed he needed this service and it would help him a lot but he does not know any contacts for mediators. Mediators in Vlora complain that the police do not refer cases.

A database of all professionals who work in the city would help us here in the police station very much. So, if for example mediation is needed or I need a psychologist, I have a list of contacts

Police Officer, Vlora

The mediator conducts individual meetings with the juvenile offender and the victim, and then if an agreement is reached, the mediator meets all parties together. After the agreement is reached, the mediator informs the responsible institution, the police and the Prosecutor's Office about this especially for cases over 14.

All professionals agreed that meetings, workshops, trainings or any activity should be conducted with all professionals together so that they can share the information about the role of each one. There is no single profile or adequate characterisation of diverse group of youth who come to be identified as juvenile offenders. Most children who commit crimes as juveniles desist in early adulthood, and most children who go through the judicial process never come back. However a small group of juveniles is prone to continue offending.

Children below MACR generally come from families living in poverty and suffer from social exclusion. Many have moved from one city to another and face a different set of values and social norms and other adaption problems. Psychosocial factors like a lack of parenting, poor social support, financial problems, peer pressure, lack of supervision in school, environmental issues, divorce in the family, poor academic performance, substance use in the family and other factors may contribute to the children getting involved in legal issues. Individual factors like personality traits such as submissiveness, defiance, hostility, impulsiveness, feeling of insecurity, fear, lack of self-control may also contribute to the children involvement in deviant behaviour.

Generally they come for simple theft, mainly food theft. The problem is that the behaviour gradually worsens into other more serious violations of law such as burglary or armed robbery. We had a case of a boy who had committed 30 proceeding offences. I felt bad because nothing had been done to help him. The child was 15 years old, which means most of these acts were done when he was under 14. There are no services, no institutions for these children. We still don't know who is going to implement measures like a 'verbal warning' etc. The treatment plan crafted by the probation service should be individualised, not formal and the same for all cases.

Judge in Vlora District Court

Despite the remarkable improvements in the legal framework, in establishing new institutions and structures over the years, the main challenge when all these professionals are involved in a case of a child in conflict with the law, is the lack of professional services. Most CPUs felt the lack of support when it comes to referring a child to specialised services.

Little or no referrals of children below MACR in conflict with the law was done in the six districts where interviews were conducted. The reason for this underreporting are referred to be: ignoring of the problems of this target group, or efforts are done to manage the problem without involving other actors in the process.

Up until now the capacity building activities which has been conducted has focused on Law on Children Right's, more specifically on referral coordination efforts between actors involved in this process. There has been very few or no training organised on the technical aspects of the work of different professionals such as on child evaluation and child and family treatment.

Most of the service providers who were interviewed thought that the interventions provided do not address the real causes of the children's behaviour problems and this is because of the lack of comprehensive interventions. These interventions should address different aspects which cause or precipitate in the antisocial behaviour which may have an early onset. No one is informed if any intervention focused in early identification of children behaviour problems and addressing properly the challenges they have is provided.

In terms of professional approach, all cases receive the same treatment, it results there is no different treatment for marginalised categories. Service providers think that children and families are often deprived of getting services because the location of their residence, which is a long distance from the centres which provide services. People living in peripheral areas encounter different difficulties receiving services due to the factors related to the infrastructure. Lack of information is another cause of preventing disadvantaged groups from getting services. Legal education is lacking especially in remote areas of the country.

Regarding prevention, the most common activities are 'prevention sessions' that police directories organise in collaboration with schools. These are focused on bullying in schools and risk of involvement in antisocial behaviour.

The CPU in Elbasan seem to have another approach and is also considers to have had remarkable results regarding prevention activities. The creation and functioning of two community centres in neighbourhoods with high risk of involvement in deviant behaviour has had positive results and has impacted on community in terms of involving children in education activities and families in awareness sessions.

The creation of community centres is made possible by the collaboration of two NGOs with the Municipality. It has been a success since it has involved many children in risk, because this is an area with high risk of being involved in committing crimes, it is a real ghetto. We conduct awareness campaign sensitising the community on different issues.

CPU worker, Elbasan

In Elbasan monthly round tables with professionals groups are organised by the Municipality according to the target groups they represent such as a women group, and a children's group. Based on the interviews, the actors involved in the network of services are:

- Police station
- CPU
- Schools
- Health centres
- Pediatrician
- Local NGOs providing legal, psycho-social services,
- Daily and residential centres

Generally police officers stated that they had very good relations and communication with the Prosecutor's Office in terms of efficiency and exchange of information. The police send the materials for evaluation in these cases and the Prosecutor's Office decides to not open an investigation. The mediators also notify the Prosecutor's Office with a written document when an agreement is reached between parties. Besides the CPUs, no contacts and no referral have been kept between State Agency on Child Protection and other institutions.

Asked about the **best interest of the child**, most of the interviewees perceive it as the realisation of all children's rights in terms of basic needs such as the provision of food, shelter and water, and education and other activities. Some of the interviewees mentioned the child's opinion in the process of decision making for them or provision of psychosocial intervention in case of behaviour problems. Few of the interviewees, representatives of NGOs, when giving a description of this concept referred to the new laws related to this term:

Article 3 of the Juvenile Justice Code and Article 6 in the Law on Children's Rights give a definition of the best interest of the child as the right to have a healthy development in physical, moral, spiritual and social aspect.

NGO lawyer

No complaints are referred by service provider interviewees. They do not have forms or templates of measuring the satisfaction of services, despite the verbal expression of clients regarding the service they received.

Most of the service providers were not very familiar with the concept of '**protective measures for juveniles in conflict with the law**'. In their opinion there was need for training and activities explaining these new terms, because they were not clear and had many questions related to these concepts. Most of the workers mentioned the displacement from family, the counselling process, ensuring the following the process of education. A lawyer from an NGO referred to Article 55 of the Law on Children's Rights when he is asked about protection measures.

CPUs try to refer cases for **psycho-social specialised treatment** to:

- a) Community centres in the district
- b) School psychologists
- c) NGOs who provide specialist services

Most NGOs who provide these services are limited in provision time, in location and mostly based on their donor's focus. Most NGOs provide legal services, psychological services, accommodation through residential centres and capacity building activities for police officers, child protection workers and school psychologists.

In theory school psychologists are meant to provide counselling process for children and their parents, but in practice as each school psychologist cover two schools so they do not have the physical time to meet every child in two schools.

4.5 Case studies

In order to give a full overview of the situation of children below MACR in conflict with the law and also of the response of the child protection system to them, this research study has included two case studies. The first case refers to the interview with the father of a 14 year old child. It was not possible to interview the child because he used to run away from home very often and he was not available in this process. The second case refers to the interviews with the father and his two juvenile sons.

Case study E. Xh

E. Xh is 14 years old boy and he lives with his father and grandfather in Durres. His mother left when he was six years old and she did not keep contact with him anymore. His father, Q. Xh explained that the boy suffered a lot because of his mother departure. The child had continued to look for his mother for some time, and he cried and complained about her absence.

The family lived in poverty. His father is an invalid and had a monthly pension for this. This was the only income of the family.

The boy demonstrated early problems in following rules and social norms. He showed difficulties in following classes and he interrupted classes despite the school efforts to engage him in education process. When he was at school, the psychologist tried to conduct some sessions with him, but she worked for several schools and it was impossible for her to dedicate the necessary time to each case. The boy started to associate with peers with similar conduct and also adults, members of his community who were engaged in antisocial behaviour. His father tried to attribute the reason of his son's behaviour problems to his child's friendships. He also blamed his ex-wife, explaining that the boy behaviour and emotional state only got worse after she abandoned the family.

The child's first contact with the police was when he was nearly 13 years old. The father stated that the police notified him immediately. The interrogation process was made in his presence and that the psychologist was present as well.

E. Xh has continued to engage in antisocial behaviour and to be stopped by the police. Several times the police officers had notified the father to be present at the police station for the interrogation of the child. He had a very good impression of the police approach

and also their efforts for the boy. The father suspected that the boy also now used illicit drugs.

The child had been also violent against the father, who had twice asked for a protection order. The father cannot manage the boy due to his physical disability.

After that the police had repeated incidents of the child being involved in committing criminal offences, they tried at first to refer him to the CPU. The father started to have regular contacts with CPU. The child was referred for diagnosis in specialised centres. Initially he was diagnosed with special needs and with behaviour disorder. He spent three months in a centre for people with different disabilities. He could not remain there because of he repeated ran away.

Afterwards the father said that the child was evaluated again in Tirana. After this evaluation it was concluded that the diagnosis of special needs was not valid, but the behaviour disorder was reconfirmed.

The Development Centre of Durrës contacted the Papa Giovanni Centre in Shkoder to ask for support and to accommodate the child there. He stayed several months at the centre in Shkoder. Initially improvement was noticed but then the behaviour problems exhibited themselves again. Currently a judicial proceeding is underway to take a 'protection measure' with the possible placement in alternative care service.

Observations about the case

- Lack of specialised treatment centres especially near the location of the family's residence.
- Confusion in determining the proper diagnosis was a deficit in the specialised services provided for this child.
- Lack of referral to specialised services due to their being either costly or not provided at all.
- Lack of specialised support for the father to support him in this situation by improving his parenting skills and communication with the child.
- Lack of social activities which would include the child.

Case study of Family S

R.S is a 15 years old boy and D.S is a 14 years old boy who are the two sons of a Roma family composed by eight members. Mr and Mrs S say have six children. All the family lived in one room in extreme poverty. During a family visit, there was evidence that hygiene was very poor. There were only two beds and a cabinet for dishes.

The family incomes are very low. Mr S is the only person in the family who works but only when he finds a job to do. Mrs S has never worked due to her engagement in raising six kids. Both parents had never been to school.

The two boys had abandoned school a year ago. One of them has had very good results in school while the other one has had difficulties related to attention and also had behaviour problems. The boys have been stopped by the police three times when they were under 14 years old. After these incidents they had been called by the police several times for verification procedures.

R.S explained his "If I had better opportunities to live, to learn maybe I would still follow school and football also. If I had a room would be great for me. If our parents would have a job also would help us ensuring food for all of us"

The two brothers have been stopped because they had stolen some bicycles and afterwards they panicked and had thrown them away. The boys said that they had liked having a bicycle but were afraid of being caught. Then they said that they did not dare to carry out similar acts because they knew they could be arrested.

They have been interrogated in the presence of their parents who had notified immediately and in the presence of a psychologist as well. In the final incident a CPU representative had been called. The boys said that they have been interrogated without anyone present when called in police station for verification.

The boys' parents are immediately notified and were also present when the boys were interviewed by the psychologist. The police gave food to the children and asked them about their basic needs.

The boys spoke about incidents when they were held in police station for ten hours only for verifications. No food was offered, they were unable to sleep, and there was no psychologist present during the verification procedures. They were not properly informed about their rights. The lawyer was not notified in these cases. The boys were not told about medical services.

The family remained in contact with the CPU. The father said that the only thing they received were food packages and registration of one of the children in kindergarten.

The situation in the past was the same. One of the boys said he had very occasionally participated in psychological sessions at school, where he was counselled to stay in school but nothing else.

The boy's explained "Our needs are many. We don't know what to do. We need food, shelter, education opportunities for children. My son has wounds on his legs. We don't know where to go. In the hospital we need money and we don't have it. There are no activities for children everything costs money".

Observations about the case

- There was evidence of the CPUs efforts but the CPU needed more support in terms of capacity building.
- Lack of other support services made the CPU helpless in this situation.
- The interrogation process in the police station seemed to be regular in most of cases, but the processes were not always conducted properly according the rules.
- There are no psychosocial services or courses or other activities for teenage children.
- Family members were not referred for employment possibilities.
- No medical services had accessed especially for one of the boys who had an open wound on his leg and nothing was received.

4.6 Data systems, monitoring and evaluation

The Committee on the Rights of the Child stresses, in General Comment No. 5 (2003) that “Collection of sufficient and reliable data on children, disaggregated to enable identification of discrimination and/or disparities in the realisation of rights, is an essential part of implementation. Further, the Committee reminds States parties that data needs to extend over the whole period of childhood, up to the age of 18, and that it has to be coordinated throughout the jurisdiction, ensuring nationally applicable indicators. It is primarily a State responsibility to develop indicators, conduct research and collect data.”¹¹⁷

Data systems help to strengthen the protective environment for the child below MACR in conflict with the law. They allow for the better collection, analysis and use of data on the situation of such children. The Beijing Rules paid special attention to the use of research as a basis for planning, policy formulation and evaluations of services in juvenile justice administration. For this purpose the collection and analysis of relevant data and information is needed to assess properly the administration and, if needed, to future improve and reform it.¹¹⁸

The Law on Children’s Rights provides that the Minister coordinating action on issues of the rights and protection of the child, in the capacity of the main responsible state authority, is in charge with the creation of a national electronic database of cases of children in need of protection and for taking measures for the approval of sub-legal acts to make mandatory the use of the database (Article 38). The child protection worker in the CPU is responsible for and has the duty to enter information on children in need of protection, protection measures and Individual Protection Plans onto the database at the municipality and administrative unit level (Article 49).

¹¹⁷ See General comment no. 5 (2003): General measures of implementation of the Convention on the Rights of the Child, Paragraph 48, at www.refworld.org/docid/4538834f11.html, last visited on 27 October 2018

¹¹⁸ UN General Assembly, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules): resolution/ adopted by the General Assembly, 29 November 1985, A/RES/40/33, Rule 30, available at: www.refworld.org/docid/3b00f2203c.html, last visited on 27 October 2018

Meanwhile, the State Agency on Child Protection has the duty to collect data on child protection at the national level and administer the national electronic database for cases of the child in need of protection (Article 41). Moreover the Agency collects and analyses data and reports on the implementation of child-focused strategic documents as well as on the situation of the rights of the child. It develops and maintains an information system focused on institutions specialised on children, non-profit organisations working in the field of protection of rights of the child and other data related to child protection (Article 43).

The responsible state authorities at central and local level are legally bound to cooperate with the Agency to exchange information, statistics and other data required in the context of its activity. The types, manner of exchange and processing of information and statistical data to be exchanged, are determined by CMD No 636, dated on 26 October 2018.¹¹⁹

At the local level the Municipality has the responsibility to collect, analyse and report the data in cooperation with other local institutions. The data is on the situation of the rights of the child and families, with a view to developing programmes that create an enabling environment for the optimal development of the child (Article 46). The child protection worker in the CPU is specifically responsible for and has the duty to report periodically to the State Agency on Child Protection, statistical data processed for the children in need of protection in the territory of the municipality and of the respective administrative units (Article 49).

Even the Criminal Code of Juvenile Justice emphasises data collection. It creates a Data System of Criminal Justice for Children, which is to be administered by the MoJ. The Data System shall include entry and update of data related to criminal justice for children and its aim is to:

- a) collect data and arrange them as well as follow them on real time basis
- b) improve justice access to children subjects of this Code and ensure good-administration of justice for children
- c) coordinate inter-institutional efforts in order to enable provision of quick solutions when the child is denied justice access, is subject to abuse or violation of rights, or the procedural guarantees foreseen by the legislation in force are not observed
- d) unify and digitalise data collection in order to create a statistical database that will be useful for the analysis and direction of improvement of policy related to criminal justice for children

The system shall contain updated electronic data on each stage of criminal proceedings including the enforcement of the criminal decision involving children subjects of this Code (Articles 136-137). The MoJ informed the research study that they were cooperating with UNICEF to build such a system and so far they have prepared the prototype. It is expected this system to interact with the electronic case management system of the justice system, the courts and the Prosecutor's Office. They expect the system to be functional as soon as possible.

Regarding monitoring and evaluation, child protection workers working directly with children had standardised evaluation formats even though they were not specified for children below MACR in conflict with the law. Professionals said that there was a lack of monitoring and this made their work harder especially in terms of prevention. Professionals working at schools, such

¹¹⁹ It should be noted again the delay in approval of the sublegal acts of the Law on Children's Rights

as psychologists and social workers, collected data by interviewing the child, keeping service reports, counselling teachers and parents as well as by observing children. There is an inability to plan or develop strategies based on the actual needs of the population and data collected from the minor monitoring system developed by some professionals. These are not enough to make the prevention process easier since all professionals reported being overloaded with duties in their daily work, especially school psychosocial staff and child protection workers. The same report it is done by the lawyers who express that *“statistics does not help us to understand the real situation. Data accuracy it is limited”* and accordingly the Court of Appeals did not explore the case in its roots since it is based on the documents sending these children in jail, as prosecution demands this action.

The data gathered from some professionals were not used at institutional level and not used by them. There is a lack of capacity and infrastructure for data collection and management at local levels due to leadership and coordination, partnership and technical capacities. The difficulties of staff to have a common understanding about the data and information were reflected in their ability to make it understandable to others and serve as accessible resources and to inform local plans. A lack of data at the beginning of strategic interventions could result in poor planning, inadequate resource use, and an inability to adapt to a changing context.

There is a need for better coordination among national and local level. The data may be aggregated at local level to inform national level strategies and plans. The national data system does not reflecting the problems and issues found at local level.

There is no interagency communication. Each of the institutions remains only within the scope of their action and there is little or no information about the roles and responsibilities of other institutions and the processes they follow for data collection.

Professionals identified gaps in the monitoring and evaluation processes and stressed the importance of collaboration within and between institutions in order to improve the system. Monitoring it was often identified as a responsibility of State Agency on Child Protection and it is emphasised that the children under 14 years old were not a specific target required to be reported on. Reports were only done in emergency cases and not done on a regular basis and this for several reasons.

In order to promote sustainability, indicators representing common and persistent bottlenecks should be integrated fully in the existing information management systems. The analysis and study based on the appropriateness and efficiency of existing data collection is important.

Overall Albanian legislation pays attention to data collection and analysis. If data systems work effectively, it is expected that the situation of the child below MACR in conflict with the law will be strengthened. In practical terms there is a strong need to standardise data collection, to improve monitoring and evaluation with a special attention to enhancing inter-institutional cooperation and coordination.

4.7 Summary of Case Management

In summary Albanian legislation provides for a Child Integrated Protection System, as a set of protection measures and interventions for respecting the rights of the child below MACR in conflict with the law. Child protection established by the law is aimed at the development and well-being of the child and to considering the best interest of the child. The concrete needs of the child are evaluated in order for the response to be tailor made. There are rules to:

- assess and monitor the situation of children and their families
- coordinate local level protection referral and response
- conduct identification and multi-disciplinary case management

Services offered are free. However the approval of the necessary bylaws was delayed.

Legislation on social care services in Albania offer a variety of services to children below MACR based on the specific need of the child. The Individual Protection Plan should contain the specific measure considered appropriate for the child below MACR and their family in order to have the best possible case management for the child. Social care services offer shelters, community services, family services, foster family and specialised services based on the child's needs. The social care services are based on the principles of universality, social justice, subsidiarity, deinstitutionalisation and collaboration, respect of human rights, non-discrimination and confidentiality.

In terms of the practical implementation of the law there are several shortcomings. The reporting mechanism is not effective due to the poor cooperation of stakeholders and their lack of professionalism. The range of services needs to be enriched and public authorities should take over their ownership and responsibility, understanding that the role of civil society is supportive. The quality of services and the procedures in practice need to be improved through enhancing capacity building, proper funding and coordination. There is a strong need to standardise data collection, to improve monitoring and evaluation with a special attention to enhancing inter-institutional cooperation and coordination.

5. Conclusions

5.1 Main findings

Albanian legislation

The main findings of the research study regarding the current legislation in force protecting children below MACR in conflict with the law can be summarised as follows:

- From a children’s rights perspective it is very positive that the Albanian legal framework, in line with international standards, provides for a multidisciplinary approach to children in need of protection and obliges the professionals involved to take concrete measures in order to prevent and respond to risks posed to such children.
- The Albanian legislation is fully in line with the international standard on establishing MACR. It has been many years since the Criminal Code established the minimum age at 14 years old.
- Children below MACR who come into conflict with the law cannot formally be charged or held responsible in a penal law procedure. Criminal proceedings against children below MACR may not be initiated and if they are initiated, they should be dismissed immediately once the age of the child is established.
- In such cases the child protection structures shall act and all the measures foreseen by the law on the rights and protection of children shall apply in order to provide the child with procedural rights, assistance and services similar to the child victim or witness concerning the cross-examination process and contact with the police and prosecution bodies.
- Children who commit an offence at an age below the MACR should in their best interests receive, if necessary, appropriate interventions that address their behaviour. Such interventions may include:
 - educational measures
 - supervision by social workers
 - other alternatives to institutional care
- Different laws use different definitions, leaving room for misinterpretation in practice. Even the procedural rules on imposing such measures are found in different pieces of legislation, which hinder public authorities’ abilities to act promptly and efficiently. The procedural rules of criminal justice to impose educational measures are not clear and relevant educational institutions have still not been established. The Law on Children’s Rights considers such children as ‘children in need of protection’ and thus, the child protection rules should be applied, taking into consideration the best interest of the child and the other core principles.

Child protection structures

The main findings of the research study regarding the child protection structures protecting children below MACR in conflict with the law can be summarised as follows:

- The Albanian child protection system is made up of a number of organisations, which according to the law should be working together. The child protection system aims to protect any child, including children below MACR in conflict with the law.
- The role of the family in the upbringing and development of the child is recognised as crucial by the law.
- Albanian legislation also contains some basic rules which allows the supportive role of the civil society in the child protection system to promote the rights of the child.
- Albanian legislation emphasises the coordination of structures, which are supposed to work together on divided roles and responsibilities, based on the fundamental principles of child protection. Cooperation between institutions is crucial in order to ensure a holistic approach to the issue. Several factors were found to hinder the cooperation among the public authorities, which include:
 - i) lack of human resources
 - ii) continuous structural changes at governmental level
 - iii) frequent changes of legislation which challenges capacity building and the establishment of traditions and good practice
 - iv) the workload for professionals in the juvenile justice system leaves little to no time for training, reduces personal motivation, and leads quickly to burn-out
 - v) limited financial resources that impedes the undertaking of new services in following the dynamics of child's needs
 - vi) lack of proper training
- Furthermore it is also noted a lack of coordination and institutionalisation of the cooperation among local government, NGOs and other state structures that should be properly addressed in the future.

Case management

The main findings of the research study regarding case management for children below MACR in conflict with the law can be summarised as follows:

- Albanian legislation provides for a Child Integrated Protection System, as a set of protection measures and interventions for respecting the rights of the child below MACR in conflict with the law. Child protection established by the law aims to support the development and well-being of the child while simultaneously considering the best interest of the child. The concrete needs of the child are evaluated in order to develop a tailor made response. There are rules:
 - to assess and monitor the situation of children and their families
 - to coordinate local level protection referral and response
 - to conduct identification and multi-disciplinary case management

- Services offered are free.
- The approval of the necessary bylaws, which according to the Law on Children’s Rights are supposed to offer the detailed rules for practitioners and thus ensure successful case management, were delayed and some bylaws are still going through the approval process.
- Legislation on social care services in Albania offer a variety of services to children below MACR based on the specific need of the child. Individual Protection Plans should contain the specific measure considered appropriate for the child below MACR and their family in order to have the best possible case management outcome for the child. This plan should fit with the concrete needs of the child and their family¹²⁰.
- Social care services offer shelters, community services, family services, foster family and specialised services based on the child’s needs. The social care services are based on the principles of universality, social justice, subsidiarity, deinstitutionalisation and collaboration, respect of human rights, non-discrimination and confidentiality.
- In terms of practical implementation of the law there are several shortcomings:
 - Generally schools and families in try to manage the case silently and police officers report that they usually do not refer cases to the child protection workers but try to manage the case in collaboration with the family and school.
 - The referral mechanism is not effective due to the poor cooperation of stakeholders and their lack of professionalism.
 - The range of services needs to be enriched and public authorities should take over their ownership and responsibility, understanding that the role of civil society is supportive, because currently it seems that the system is dependent on civil society.
 - The quality of services and the procedures in practice need to be improved through enhancing capacity building, proper financing and coordination.
 - No protocols and manuals are in place for stakeholders working within the system.
 - No standardised instruments of evaluation are produced yet. There is a strong need to standardise data collection, to improve monitoring and evaluation with a special attention to enhancing inter-institutional cooperation and coordination.
- All the persons interviewed for the research study considered the need for adequate training of all actors participating in the process as very important for the capacity building. This training should not only address the legal framework but also cover the specific functions and duties of each actor. They also believed training was necessary for each actor to understand liability and the importance of cooperation and referral. The interviewees also stated that the training priorities included conducting interviews, communicating with the child, referral procedures and follow-up.

¹²⁰ For details on the Individual Protection Plan, please refer to 4.4.1. The legal framework on case management.

5.2 Recommendations

Based upon the main findings a set of recommendations have been developed to improve the child protection system in Albania for children below MACR in conflict with the law. These recommendations are summarised as follows:

1. It is recommended that new rules related to children below MACR in conflict with the law are approved and the rules in different laws are harmonised.

While it is recognised that the relevant Albanian legislation is in line with international standards, most of this legislation is quite new and there is a need for further clarification. For example the law is not clear on the use of educational measures for children below MACR in conflict with the law. There is also a need for detailed rules for the police on how and when to refer cases involving children in conflict with the law is below MACR to the CPUs. It is also important that all the bylaws foreseen by the Law on Children's Rights are approved without any further delay.

2. It is recommended that the implementation of the legislation in force is monitored and periodically assessed.

The monitoring and assessment should be carried out by the Ministry in charge for child protection and the Ministry of Justice. In the future it is also important for technical staff to ensure the harmonisation of key concepts and clarity in legal texts.

3. It is recommended that the relevant infrastructure to support the child protection system for children below MACR in conflict with the law is provided by public authorities.

While the legislation seems in place the relevant infrastructure required still remains a challenge. Public authorities should take increase their efforts to provide it. For example the new Criminal Code of Juvenile Justice provides for the conduct of child interrogations in specific child-friendly environments. However these child-friendly environments do not yet exist in the Albanian institutions. This is very important for children below MACR in conflict with the law.

4. It is recommended that the capacity building for every stakeholder in the child protection system is strengthened.

There is a need to organise timely and qualitative training on recent developments in the legislation. There should be a special focus on the roles and responsibilities on each stakeholder, especially on the protection system of children below MACR in conflict with the law. It is crucial to organise joint training sessions, where participants get involved in role plays. Manuals and handbooks, which explain the process in practical terms, would be another useful additional tool. Raising awareness of families and children should also be considered.

5. It is recommended that cooperation and coordination in case management is strengthened.

The mentality of case management should change to view the child protection system as a joint process where every stakeholder is active and important. As one of the interviewed official pointed out, it is important to get rid of the 'delegate the case' mentality because in the end no institution addresses it. Local stakeholders might create a network where they communicate and exchange information in a timely and qualitative manner, i.e. multidisciplinary work.

The impact of existing Memorandums of Cooperation between the MoJ and municipalities should be monitored and assessed periodically by the MoJ and the Ministry of Health and Social Protection. If good results are achieved child protection in general should be included in these memorandums, with a special attention given to children below MACR in conflict with the law.

Other steps to strengthen cooperation and coordination could include establishing solid track records of data through an effective electronic case management system. Such a system should consider data protection and specific access levels for different users. Institutions should also have archives and specific formats for the storage of the information. The archives could enable different institutions to exchange information with each other. Dissemination of good practices among stakeholders is encouraged to build confidence and to create role models.

6. It is recommended that institutional cooperation mechanisms are established.

These mechanisms support the coordination and cooperation with the aim to increase the engagement of various stakeholders about children below MACR in conflict with the law and the social protection system (police, prosecution, judiciary and social service) in order to address their needs.

7. It is recommended that distinct roles in case management for the different actors are developed.

When different actors complement each other in case management involving a child below MACR in conflict with the law, attention should be paid to not overlap their roles, to have a clear intervention plan and to avoid the re-interrogation of the child in repeated cases. Confusion and re-victimization caused by these malpractices can harm the best interest of the child.

8. It is recommended that monitoring and evaluation systems improved.

Monitoring and evaluation should be drastically improved. Data systems should play an essential role. Data and analysis of the phenomenon children below MACR in conflict with the law can be really helpful to plan effective interventions and to monitor results achieved.

9. It is recommended that the child protection system is properly funded.

Public authorities should pay attention to the proper budgeting of the child protection system. Civil society should be considered as playing a complementary role.

10. It is recommended that as part of the strategy to reduce the number of children below MACR in conflict with the law the staffing in schools, municipalities and the police are increased.

Considering the number of children in need for protection the human resources policies of schools, municipalities and the police should be revised carefully. The number of social workers and psychologists in schools should be increased. There is a need to have a designated police officer in every the police station, who should not be assigned other additional duties. These police officers should deal with child protection cases. This recommendation should have priority. Activities to raise the awareness of policymakers and decision makers on the advantages of investing in prevention with a special attention to children below MACR in conflict with the law should be organised presently. This could be achieved through different tools such as round tables, open discussions and forums.

11. It is recommended that the capacities of CPUs are increased.

CPUs should be transformed into functional units in terms of staff and professionalism as the law provides for. It is crucial each CPU have between 4-5 employees, with at least one person who is specialised and trained in child protection. It is also helpful to develop standardised case referral forms.

12. It is recommended that relevant stakeholders in the child protection system are specialised in children's rights and child psychology.

Stakeholders in child protection system should be either be qualified or trained in human rights of the child and child psychology. This will help to ensure abuses of the legal authority are avoided and that the protective measures are appropriate in all cases.

13. It is recommended that holistic approaches are developed.

A holistic view of children and the protection of their rights should necessarily engage the full range of stakeholders including the family, the community, and the public authorities involved in providing the best interest of the child at any stage of their development, as well as children themselves, pursuant to their right to be heard and to participate.

14. It is recommended that the best interest of the child are prioritised in all preventive programmes and services.

All preventive programmes and services in the fields of education, child welfare and protection, and health, focused on children below MACR in conflict with the law, whether directed at individual families or communities more broadly, should be guided by an approach that prioritizes comprehensive protection of the best interests of the child. School programmes about criminal liability, different behaviours such as sexual intercourse, sexual abuse, bullying etc., information and community policing are of extreme importance in this regard. Special attention should be paid to strengthening parenting skills and healthy parenting practices.

Annex 1 - Summary of data collection through interviews

Purpose of data collection

Primary data were collected through interviews. The main purpose of the consultation with stakeholders was to get an overview on the opinions, strategies and programmes of the relevant institutions.

Methodology of interviews

Interview questions were designed in accordance with the study analysis objectives and topics specified in the terms of reference for the research study. The interviews were semi-structured in order to keep the scope of acquired information as wide as possible. Questions were prepared in advance and agreed with the Tdh team, but during the interview their order could be modified based upon the interviewer's perception of what seemed most appropriate. Particular questions, which seem inappropriate with one particular respondent, can be omitted, or additional ones included.

Four types of guide interviews were prepared for:

- state institutions representatives –level of directors
- direct service providers
- children
- parents

The team of experts took handwritten notes during interviews, taking into consideration the discomfort interviewees could have felt if they are tape-recorded. Some interviews were recorded with the previous approval of interviewees.

The main criteria in the selection of interviewees was their work experience. During preparatory actions to select the professionals to be interviewed, each responsible institution, police directories, schools, mediators, were oriented to select the most experienced staff in terms of working with children in conflict with the law and especially for those under the age of 14 year old.

NGOs were selected based on the same criteria. Other professionals working in the same district were a source of referrals for these selections. For example NGO lawyers operating in the district who are well informed on this issue.

There are some inexperienced professionals among those interviewed. This was due to the high staff turnover in certain workplaces. As a result some of the interviewees had only recently been appointed to their positions.

Four types of guide questionnaires were developed to gather the information from the interviewees. These included guide questionnaires for:

- Directors of institutions
- Direct service providers (which include different aspects of work)
- Parents
- Children, including important aspects of children's life.

All the questions-issues were organised in sub-sections.

Some important documents used as a reference for the guides were:

- fra.europa.eu/en/publication/2015/handbook-european-law-child-rights
- The Law on Children's Rights
- The Criminal Code of Juvenile Justice
- Gisli Gudjonsson, The Psychology of Interrogations and Confessions, a Handbook, 2003 John Wiley & Sons Ltd;
- The Manual of the psychologist of the court, QSHPLI, 2006.

Conduct of the interviews

Thirty nine interviews were conducted during this process.

Interviews were conducted in six cities in order to have as wide as possible geographical overview of the situation. The cities were Tirana, Durres, Elbasan, Korca, Shkoder, Tirana and Vlora.




Two children and two parents were interviewed during fieldwork. Interviews conducted with service providers are as following:

- Seven interviews with child protection workers and local institutions representatives
- Six interviews with police officers
- Seven interviews with school psychologists and social workers
- Four interviews with mediators
- One interview with psychologist of Police Directories
- Two interviews with psychologists from NGO (providing services in nearby police station)
- Three interviews with other NGOs
- One interview with a lawyer
- One interview with a judge
- One interview with a Ministry of Justice official
- One interview with a Ministry of Health and Social Protection official
- One interview with an official from the Office of the Ombudsman



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