



**PILLAR III  
HUMAN RIGHTS**

*Sexual abuse of children, international protection and the Albanian legal order*  
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**I. ABSTRACT**

This article deals with a very serious human right violation, sexual abuse, committed against a particularly vulnerable category of our society: children. The article intends to treat in a comprehensive way the phenomenon of sexual abuse of children and its consequences as well as the measures taken to prevent it at international level and within the Albanian legal order. Thus paragraph II provides an overview of the phenomenon, the collected data and the expert opinion of a psychologist in relation to the consequences of sexual abuse. The following paragraphs provide the detailed analysis of the legislative and administrative measures taken at international and Albanian levels. More specifically paragraph III is dedicated to the existing international documents regulating the matter, while paragraph IV provides the overview of the Albanian legal and institutional framework. Conclusions and recommendations developed in paragraph V provide the comparative analysis of the Albanian legislation compared to the international legislation and contain specific recommendations for legal amendments.

**KEY WORDS:** children; sexual abuse; Lanzarote Convention; ECHR; protection; EU; Albanian legislation.

**ABBREVIATIONS:**

<b>CC</b>	Criminal Code
<b>CCJM</b>	Code of Criminal Justice for Minors
<b>CoE</b>	Council of Europe
<b>CPC</b>	Criminal Procedure Code
<b>CRC</b>	UN Convention on the Rights of the Child
<b>ECHR</b>	European Convention on Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>EU</b>	European Union
<b>Lanzarote Convention</b>	Council of Europe's Convention for the Protection of Children Against Sexual Exploitation and Sexual Abuse
<b>Law 18/2017</b>	Law no. 18/2017 dated 23.02.2017 " <i>On the rights and protection of children</i> "
<b>NCRPC</b>	National Council for the Rights and Protection of Children
<b>TEU</b>	Treaty on European Union
<b>UDHR</b>	Universal Declaration of Human Rights



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## II. CHILD SEXUAL ABUSE, ITS EXTENT AND CONSEQUENCES

According to the (1999) Council of the World Health Organization: *“Child sexual abuse is the involvement of a child in sexual activity that he or she does not fully physically comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that violates the law or social taboos of society. Child sexual abuse is evidenced by this activity between a child and an adult or another child who by age or development is in a relationship of responsibility, trust or power, the activity being intended to gratify or satisfy the needs of the other person. This may include (but is not limited to): the inducement or coercion of a child to engage in any unlawful sexual activity; the exploitative use of a child in prostitution or other unlawful sexual practices; the exploitative use of children in pornographic performance and materials.”*<sup>1</sup>

The involvement of a child in sexual activities may be achieved through coercion/voilence or seduction (providing gifts, money, special attention toward the child). The sexual abuse, often, involves, the direct physical contact, touching, kissing, fondling, rubbing, oral sex, or vaginal or anal penetration or the child’s coercion to touch the abuser's genital organs. Sometimes a sexual abuser can also gain satisfaction by simply exposing himself or herself to a child or observing him/her while in the toilet or by filming a child taking off his/her clothes. Abusers, often, don’t use physical strength, but they may use games, threats, flattery, or other methods that persuade and engage a young child in order not to tell adults about the abuse. Sexual harassment/abuse also involves indirect contact for example: inappropriate phone calls/texts with sexual content on the computer or handwriting, sexual questions or comments, virtual sex or online sexual harassment, exposure of inappropriate photos of naked child or adults. Child sexual exploitation based on monetary compensation is also sexual abuse.

The phenomenon of child sexual abuse is a global phenomenon. It’s extent is not exactly known due to the difficulty of children to report and denounce the abuse they have suffered. The same difficulty is encountered in Albania, where official statistics are missing and the data are often collected from non-governmental organizations studies and reports who have as their object of activity the protection of child's rights or from sporadic and limited reporting of state institutions which are in contact with this phenomenon during the exercise of their duties. However, there is a lack of a nationallay coordinated data base, which collects and processes data for the entire territory of the Republic of Albania. The data collected from existing studies and reports over the years are mentioned below:

- i. According to a study of the Multidisciplinary Treatment Center for Child Behavioral Problems of 2003, involving child of ages 6-12 and 13-18, 11% of them had suffered

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<sup>1</sup>1999 WHO Consultation on Child Abuse Prevention:

[http://www.who.int/violence\\_injury\\_prevention/resources/publications/en/guidelines\\_chap7.pdf](http://www.who.int/violence_injury_prevention/resources/publications/en/guidelines_chap7.pdf)



- sexual harassment and 4% of them had experienced it in the family environment. Overall, 4% of involved child in this study accepted experiencing sexual violence<sup>2</sup>.
- ii. In another study, "*Violence against Children in Albania*", of 2006 supported by UNICEF, it was found that except rape cases performed by unknown persons, there were also sexual abuse cases within the circle of child's beliefs. Studied subjects reported that 13.3% of them were sexually harassed. According to this study, school is an environment where sexual abuse can occur. Also, according to this study, one in five child sexual harassment authors was a teacher (22.5%). It draws attention the fact that the sexual harassment reported by children in the social care system (15%) was higher than in other environments. In this study, child of the social care system reported sexual harassment abusers as follows: 55.6% by other children, 22.2% by teachers and 22.3% by other persons<sup>3</sup>.
  - iii. The Study on "*Prevalence of Negative Experiences during Childhood*" conducted in 2012 in Albania, provides data on sexual abuse during the childhood of albanian youth. Thus, from 1437 students asked on negative experiences during childhood (during the first 18 years of life), 6% of them reported that they were sexually abused during this period. The boys reported higher sexual abuse cases than girls during their childhood period (respectively, 8.8% vs. 4.7%),<sup>4</sup>.
  - iv. Whereas, according to a study on the profile of the albanian abused children based on reported cases, conducted by the Center for the Protection of Child's Rights in Albania (CRCA) was found that 23% (28 cases from 120 reported) of children had suffered sexual violence. From this study, it was found that 75% of sexually abused children were female<sup>5</sup>.
  - v. Also, from institutions that have reported in recent years all kinds of child abuse cases, the General Directorate of Police in Tirana reported the largest number of child abuse cases (790 cases). Child sexual abuse cases, was reported in the largest number by the General Directorate of Police in Tirana again, which recorded 46 cases during 2014-2015. With regards to the punishment provided to child sexual abusers, only the General Directorate of Police in Tirana reported that in 54% of cases (25 out of 46 cases of sexual abuse against children) severe punitive measures were taken against the perpetrators
  - vi. Psycho-Social Center "Vatra" in Vlora reported a total of 24 cases of sexual abuse against child for the 2014-2015 period<sup>6</sup>.
  - vii. ARSIS reported 13 cases of sexual abuse against children for the 2014-2015 period<sup>7</sup>.

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<sup>2</sup> Referred in the publication of Terre des homes, "Child sexual abuse within the circle of beliefs in Albania : A qualitative study on the prospects and perceptions of professionals, parents and children », 2015, pg.17.

<sup>3</sup> Ibid.

<sup>4</sup> Gentiana Qirjako, Genc Burazeri, Dinesh Sethi, and Vasil Miho, World Health Organization, Regional Office for Europe, Report on Community Survey on Prevalence of Adverse Childhood Experiences in Albania, 2012. [http://www.euro.who.int/\\_data/assets/pdf\\_file/0016/181042/e96750.pdf](http://www.euro.who.int/_data/assets/pdf_file/0016/181042/e96750.pdf)

<sup>5</sup> Hazizaj, A., Coku, B., Cenko, E., Haxhiymeri, E., Case-based surveillance study on violence against children in Albania, CRCA Albania, Tirana 2013.

<sup>6</sup> Referred in the publication of Terre des hommes "Child sexual abuse within the circle of beliefs in Albania : A qualitative study on the prospects and perceptions of professionals, parents and children », 2015, pg.21-22.



**But which are the consequences of sexual harassment/abuse to children and teenagers?**

Consequences in young children, of preschool age, might be noticed due to traumatic games played by children in which the child acts out or re-enacts some aspect of the traumatic experience. For example, a child may constantly play the same game of running away or escaping from the “bad man”. Other stress signs may be noticeable such as an increase of conflict or rejection behaviors, an increase of anger bursts or nightmares. The child might engage in inappropriate sexual behaviors for his/her age such as trying to engage another child in oral-genital contact or simulate intercourse. The child might talk about his/her body as being “hurt” or “dirty.”<sup>8</sup>.

As regards the consequences to teenagers, the basic symptoms of post-traumatic stress are similar, but as children grow up and develop more autonomy, the difficulties they can get into may be more serious. They have more access to narcotic substances, therefore in order to cope with hyper-alert and re-experiencing of traumatic symptoms, they might be more likely and more willing to abuse narcotic substances. A teenager avoids traumatic memories through social withdrawal. Inflicting self damages through self-cutting the skin or body parts and suicidal behaviors are also more common among adolescents than children.<sup>9</sup>

Numerous research have identified mental health problems that include fear, anxiety, post-traumatic stress symptoms, depression, sexual difficulties, low self-esteem, stigmatization, difficulties in trusting others, cognitive distortion, difficulties with prosocial behavior, aggressiveness, inappropriate behavior, deficiency in social relation with their peers, and other problems<sup>10</sup>. If these problems remain untreated by the professional staffs of mental and social health, the consequences for abused child and teenagers would last in time.

**III. SEXUAL ABUSE OF CHILDREN IN INTERNATIONAL LEGISLATION**

There is an increasing attention to children’s rights in the last decades, demonstrated by the adoption of a series of international conventions establishing principles and standards that States should follow and respect, when dealing with that vulnerable category of the society named children. The first international document recognizing the importance of the status of the child is the Universal Declaration of Human Rights (UDHR) proclaimed in 1948<sup>11</sup>, which in its article 25 (2) provides that: “*motherhood and childhood are entitled to special care and assistance*”.

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<sup>7</sup> Referred in the publication of Terre des hommes “Child sexual abuse within the circle of beliefs in Albania : A qualitative study on the prospects and perceptions of professionals, parents and children », 2015, pg.22.

<sup>8</sup> “Questions and answers about sexual abuse: An interview with Esther Deblinger, PH.D.”, The National Traumatic Stress Child Network. [http://www.nctsn.org/sites/default/files/assets/pdfs/ChildSexualAbuse\\_QA.pdf](http://www.nctsn.org/sites/default/files/assets/pdfs/ChildSexualAbuse_QA.pdf).

<sup>9</sup> “Questions and answers about sexual abuse: An interview with Esther Deblinger, PH.D.”, The National Traumatic Stress Child Network. [http://www.nctsn.org/sites/default/files/assets/pdfs/ChildSexualAbuse\\_QA.pdf](http://www.nctsn.org/sites/default/files/assets/pdfs/ChildSexualAbuse_QA.pdf).

<sup>10</sup> Johnson, L. Sharon, (2004) “Therapist's Guide to Clinical Intervention” Academic Press, Elsevier Science.

<sup>11</sup> The Universal Declaration of Human Rights (UDHR), proclaimed by the United Nations General Assembly in Paris on December 10, 1948, through General Assembly Resolution 217 A of the United Nations.



Since then, the number of international documents dealing with children's rights, and establishing standards and principles protecting those rights, has been on the rise.

It is important to mention that international protection of children's rights it is provided through a variety of international legal instruments such as: conventions<sup>12</sup>; soft-law policies<sup>13</sup> and recommendations; binding decisions and regulations<sup>14</sup> courts<sup>15</sup>; committees<sup>16</sup>. The international conventions, may be categorized as following: (i) general international conventions on the protection of human rights which include specific children's rights dispositions<sup>17</sup>; (ii) general international conventions on the protection of human rights which indirectly protect children's rights<sup>18</sup>; (iii) specific international conventions on the protection of children's rights. The below paragraphs provide a summary of the most important international conventions and binding instruments which have a significant impact on the protection of children's right in general and on the protection of children from sexual abuse in particular.

### 3.1. Convention on the Rights of the Child (CRC)

The first international convention dedicated to the specific protection of children's right is the UN Convention on the Rights of the Child (CRC), which was adopted in 1989 and entered into force in 1990. This convention provides and establishes an important set of legal principles and standards on children's rights. It starts by determining in its Article 1 that "*a child means every human being below the age of eighteen year*" unless the member states legislation provides that "*majority is attained earlier*". In its Part I, composed of 41 Articles, the CRC extends to children the general human rights and adapts those to the particular condition of the child. The specificity of the CRC is that it introduces at its very beginning a guiding principle which should always be applied when dealing with situations impacting children: that of the "*best interest of the child*"<sup>19</sup>. The idea under this principle is that all actions impacting children, whether exercised by public or private entities and institutions, should put in first place the best interest of the child, meaning that when there is the necessity to balance between the rights/interests of other subjects (for instance the parents of children) and the rights of children, the latter, shall prevail in any decision making impacting them. Other important children's rights established by the CRC are: (i) the

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<sup>12</sup> For instance the Convention on the Rights of the Child (CRC), approved by the General Assembly resolution 44/25 of November 20, 1959 of the United Nations.

<sup>13</sup> Council of Europe Strategy for the Rights of the Child, 2016-2020.

<sup>14</sup> EU DIRECTIVE 2011/92/EU.

<sup>15</sup> The European Court of Human Rights (ECtHR).

<sup>16</sup> The Committee of the Parties to the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, (Lanzarote Committee).

[www.coe.int/en/web/cjildren/lanzarote-convention](http://www.coe.int/en/web/cjildren/lanzarote-convention)

<sup>17</sup> As it is the case of Article 10 of the International Convention on Economic, Social and Cultural Rights – ICESCR, approved through the General Assembly Resolution 2200 A (XXI) of December 16, 1966 of the United Nations.

<sup>18</sup> As it is the case of the European Convention on Human Rights (ECHR).

<sup>19</sup> Article 3 (1), CRC.



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right to be heard<sup>20</sup> in any judicial and administrative proceedings affecting the child; (ii) the right to benefit from child-care services<sup>21</sup> in particular circumstances; (iii) the right to be protected<sup>22</sup> from all forms of physical or mental violence, including sexual abuse. Due to its importance, sexual abuse is also regulated by a specific provision of the CRC, Article 34 which initially establishes the principle that “*States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse*”. This principle is backed up by positive actions of the state to “*take all appropriate national, bilateral and multilateral measures to prevent: (a) the inducement or coercion of a child to engage in any unlawful sexual activity; (b) the exploitative use of children in prostitution or other unlawful sexual practices; (c) the exploitative use of children in pornographic performances and materials*”.

### 3.2. Lanzarote Convention

Due to the significant detrimental impact on children’s development, sexual abuse of children has been the subject of specific international instruments. The Council of Europe’s Convention for the Protection of Children Against Sexual Exploitation and Sexual Abuse, was adopted in October 2007 in Lanzarote, Spain and entered into force on July 1, 2010. The Lanzarote Convention is signed by all 47 CoE members and ratified by 41 of them. It is also opened to accession for any non-member state of the CoE<sup>23</sup>. It starts by establishing in its Preamble that sexual exploitation of children and all forms of sexual abuse are “*destructive to children’s health and psycho-social development*”<sup>24</sup> and that it has “*grown to worrying proportions at both national and international level*”<sup>25</sup>. It goes on by establishing that “*child*” shall be considered any person under the age of 18 years<sup>26</sup>. The body of norms of the Lanzarote Convention is a comprehensive and detailed set of articles which intends to cover and regulate all aspects of the phenomenon of sexual abuse of children. It can be generally said that it is organized in three main pillars: (i) preventive measures; (ii) protective and assistance measures and finally (iv) prosecution measures.

- i. **Preventive Measures:** pursuant to Article 4 of the Lanzarote Convention, each party shall adopt the necessary legislative or other measures to prevent all forms of sexual abuse of children. But which are these measures and what is their nature? The question is fast answered in the following convention articles which provides for a wide variety of measures of different application and legal nature. They may be policy measures, administrative measures, or criminal measures, each designed to put in place a system of prevention able to intervene at particular stages of sexual abuse of children. There are the **awareness raising/education policies** designed for a wide category of subjects (children;

<sup>20</sup> Article 12 (2), CRC.

<sup>21</sup> Article 18, 19, 20 etc. CRC.

<sup>22</sup> Article 19 (1). CRC.

<sup>23</sup> Information document prepared by the secretariat of the lanzarote Committee, ip-dated on 26 May 2016, pg.1.

<sup>24</sup> Paragraph 4, Preamble, Lanzarote Convention.

<sup>25</sup> Paragraph 5, Preamble, Ibid.

<sup>26</sup> Article 3 letter (a), Ibid.



persons working in contact with children; the general public) aiming at providing knowledge on the phenomenon of sexual abuse of children in a way appropriate and useful to the addressed category<sup>27</sup>. There are the **training policies** to be provided to persons working with children in different sectors, such as education, health, social protection, judicial, law-enforcement, sport and leisure<sup>28</sup>. There are the **restrictive measures** such as the very effective prevention measure included in Article 5 (3) of the Lanzarote Convention pursuant to which, persons who have been convicted of acts of sexual exploitation or sexual abuse of children shall be excluded by professions which implies regular contact with children. There are the **coordination measures**<sup>29</sup> which require from national and local agencies and institutions operating in sensitive sectors in contact with children (education; health; social services; law enforcement; judiciary) to coordinate their activities in order to construe an effective system of prevention. Finally, there are **criminal law measures**, which are preventive measures due to the deterrent effect criminal law it is believed to have on the criminal activity of individuals. In fact the Lanzarote Convention establishes a set of detailed substantial criminal law provisions, criminalizing certain sexual activities with children. The most important of which, for the purpose of this work, are: **Article 18 – Sexual abuse** - which determines that convention parties should criminalize the intentional conduct of: *‘(a) engaging in sexual activities with a child who, according to provisions of national law has not reached the legal age for sexual activities; (b) engaging in sexual activities with a child with use of coercion, force, threats; abuse made of recognized position of trust, authority or influence over the child, including within family; abuse made of particular vulnerable situation because of physical or mental disability or a situation of dependence’*. **Article 22- Corruption of Children** – pursuant to which convention parties should criminalize the *‘intentional causing, for sexual purposes, of a child...to witness sexual abuse or sexual activities even without having to participate’*. **Article 24** which provides for the criminalization of aiding or abetting and attempt and **Article 28** which identifies some aggravating circumstances. It is interesting to note, that the Convention leaves it open for the states to decide which is **the age below which it is prohibited to engage in sexual activities with a child**<sup>30</sup> - meaning it may be lower than 18. This despite the provision in its Article 3 establishing that it is a child every person below the age of 18. This shall be due to the fact that different legal order establishes different age of sexual consent for minors, even at 14<sup>31</sup> as it is the case of Albania.

- ii. **Protective and Assistance Measures:** protective and assistance measures are provided in Chapter IV of the Lanzarote Convention. They include a variety of measures such as: establishing **multidisciplinary structures** to provide necessary support to victims of

<sup>27</sup> Articles 5,6 and 8, Lanzarote Convention.

<sup>28</sup> Article 5 (1) and (2), Ibid.

<sup>29</sup> Article 10, Ibid.

<sup>30</sup> Article 18 (2), Lanzarote Convention.

<sup>31</sup> Article 100, Albanian criminal code.

sexual abuse and their close relatives<sup>32</sup>; **reporting suspicion** of sexual abuse by professionals working in contact with children<sup>33</sup>; establishing telephone or internet **help-lines**<sup>34</sup>; **assisting victims** in the **short and long term** during their physical and psycho-social recovery<sup>35</sup>; **co-operating** with NGOs and/or civil society engaged in assistance to victims<sup>36</sup>; **removing** the perpetrator or removing the victim from the family environment when sexual abuse of children occurs within the family<sup>37</sup>.

- iii. **Prosecution Measures:** what is identified herewith as prosecution measures includes criminal investigation and judicial proceedings of cases of sexual abuse of children as established in Chapter VII of the Lanzarote Convention. Due to the sensitivity of these procedures the convention starts by stressing that investigations and criminal proceedings shall be carried out pursuant to the principle of the '*best interest of the child*'<sup>38</sup>, by adopting a "*protective approach toward the victims*" in order to ensure that criminal investigation and trial "*do not aggravate the trauma experienced by the child*"<sup>39</sup>. Thus there are some standards to be followed: **investigation units** shall be composed by officials **trained** to deal with abused children<sup>40</sup>; **interviews** with children shall be conducted by trained officials, in **suitable premises**, when possible by the same person/official and in a limited number in order not to expose the child, over and over again to the same traumatic experience<sup>41</sup>. Similarly, during the judicial proceedings the judge may order **closed hearings** and the victim may be heard **without being present** in the courtroom through the use of IT technology<sup>42</sup>. The convention also establishes some important principles regarding the **standards of investigation and prosecution:** treat this type of cases as a **priority** for investigation and prosecution<sup>43</sup>; ensure an effective investigation and prosecution by **allowing covert operations**<sup>44</sup>; start investigation of this type of offences *ex officio*, without the need of a report or accusation made by the victim<sup>45</sup>; **continue criminal proceedings** even if the victim withdraws his/her statements<sup>46</sup>; provide a **sufficient statute of limitation** for initiating proceedings after the victim reaches the majority age<sup>47</sup>;

<sup>32</sup> Article 11, Lanzarote Convention.

<sup>33</sup> Article 12 (1), Ibid.

<sup>34</sup> Article 13, Ibid.

<sup>35</sup> Article 14 (1), Ibid.

<sup>36</sup> Article 14 (2), Ibid.

<sup>37</sup> Article 14 (3), Ibid.

<sup>38</sup> Article 30 (1) Lanzarote Convention.

<sup>39</sup> Article 30 (2) Ibid.

<sup>40</sup> Article 34 (1) Ibid.

<sup>41</sup> Article 35 (1) Ibid.

<sup>42</sup> Article 36 (1) Ibid.

<sup>43</sup> Article 30 (3) Ibid.

<sup>44</sup> Article 30 (5) Ibid.

<sup>45</sup> Article 32, Ibid.

<sup>46</sup> Ibid.

<sup>47</sup> Article 33, Ibid.



Another important novelty and tool brought about by the Lanzarote Convention, is the obligation on data collection and storage. In fact it is required by the convention parties to collect and store data relating the identity and the genetic profile (DNA) of the persons convicted for sexual abuse of children<sup>48</sup>. This data should be under the control of a single national authority, which shall be established and communicated by each state party to the Secretary General of the CoE.

The implementation of all the above dispositions of the Lanzarote Convention is monitored by the Committee of the Parties to the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, (the “Lanzarote Committee”). The Lanzarote Committee has monitoring functions<sup>49</sup>, meaning it assesses the implementation of the convention’s principles and standards by the convention parties. It does so by addressing a questionnaire to the monitored convention parties and civil society organizations, NGOs and other relevant bodies operating in those convention parties. Based upon the collected information the Lanzarote Committee drafts the implementation report which contains the assessment and relevant recommendations to convention parties. The first implementation report was adopted by the Lanzarote Committee in 2015 and was focused on a special type of abuse, specifically the sexual abuse of children in the circle of trust<sup>50</sup>.

### 3.3. European Convention Of Human Rights (ECHR)

The European Convention on Human Rights (ECHR), which entered into force on September 3, 1953 is one of the most active international instrument for human rights protection operating under the framework of the Council of Europe. Its peculiarity and success lays with the establishment of the most effective international monitoring mechanism: the European Court on Human Rights (ECtHR). Through the ECtHR judgments, which are binding for the Convention parties the ECHR has become one of the most effective instruments of international control on human rights protection in its area of operation. Being a general convention on human rights, the ECHR does not specifically deal with children’s rights or with the protection of children from sexual abuse. Nevertheless, children’s rights are protected by the convention indirectly, through the protection of other general human rights, which naturally apply to children as well.

There are two ECHR rights which have had a profound impact on cases dealing with sexual abuse of children. These are: **Article 3 – Prohibition of torture** which provides that “*No one shall be subject of inhuman or degrading treatment or punishment*” and **Article 8 – Right to respect for private and family life** pursuant to which “*Everyone has the right to respect for his private and family life, his home and his correspondence*”. Through both these dispositions, the ECtHR since the early 1985 onward has developed a consistent body of principles and standards

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<sup>48</sup> Article 37, Ibid.

<sup>49</sup> Article 41, Lanzarote Convention.

<sup>50</sup> Lanzarote Committee, 1st Implementation Report, “*Protection of Children against sexual abuse in the circle of trust: The framework*”, December 4, 2015.



applicable to cases of sexual abuse of children. In fact, several of the principles and measures which were codified by the Lanzarote Convention in 2007, have been previously identified through the ECtHR case-law.

### **But how do these rights apply to cases of sexual abuse of children?**

Sexual abuse cases are filed to the ECtHR usually complaining the joint violation of Article 3 and Article 8. There are no doubts in the ECtHR case-law that sexual abuse of children qualifies as inhuman or degrading treatment under Article 3. Thus, when there is sufficient evidence of such sexual behaviors against children the ECtHR will assess the case at its scrutiny under this article. Article 8 will be especially invoked in cases when sexual abuse of children occurs within the family home or within the structures where children live (within the circle of trust). Through its case law based mainly of these two articles, the ECtHR has established during the years an important set of principles the most important of which are summarized below, chronologically:

- i. **Case of X and Y v. the Netherlands (1985)**<sup>51</sup>: through this case the ECtHR has identified since 1985 important principles applicable to **prosecution measures** in cases of sexual abuse of disabled children. Specifically, a mentally disabled girl living in a private structure was sexually abused when she was 16 years old, by a relative of the directress of the structure. Due to her mental problems, the girl was unable to file a criminal complaint herself which was filed by her father. Following the dismissal of the appeal by the Public Prosecutor, the father appealed the dismissal and the Court of Appeal dismissed the father's appeal under the reasoning that only the victim herself could take action<sup>52</sup>. The ECtHR starts by pointing out its fundamental principle that in relation to all ECHR rights, Article 8 included, the state has not only an obligation to abstain from interference on the exercise of the rights (negative obligation) but also an obligation to adopt measures as to ensure the enjoyment of those rights even in the sphere of individual relations (**positive obligation**)<sup>53</sup>. Under this light the ECtHR goes on reviewing whether the legislation in place in the Netherlands violates the positive duty of the state to adopt measures so as to ensure the right to respect for private and family life. It establishes two important principles regarding prosecution measures. First of all that cases of sexual abuse of minors are cases "*where fundamental values and essential aspects of private life are at stake*"<sup>54</sup>, thus effective deterrence is indispensable and can only be achieved by criminal law provisions<sup>55</sup>. Secondly that the impossibility of initiating criminal proceedings due to the lack of ability of the victim to file a complaint, does not offer a practical and effective protection thus violating Article 8 of the ECHR<sup>56</sup>.

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<sup>51</sup> X and Y v. the Netherlands, Application no. 8978/80, Judgment of 26 March 1985.

<sup>52</sup> Ibid, §12.

<sup>53</sup> Ibid, §23.

<sup>54</sup> Ibid, §27.

<sup>55</sup> Ibid,

<sup>56</sup> Ibid, §29.



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- ii. **Case of Scozzari and Giunta v. Italy (2000)**<sup>57</sup>: the case originated due to the complaint filed to the ECtHR by the mother of two children who were removed by her custody and placed into a children's community named "Il Forteto". Despite the fact that this case deals with the contrary situation of parents invoking violation of their right to respect for family life, it contains an important set of principles related to the social care provided to sexually abused and/or neglected children. One of the issues at the present case was that "Il Forteto" Community had been subject to criminal investigation for pedophilia and two of its founding members were convicted for ill-treatment and sexual abuse of children within the community<sup>58</sup>. Nevertheless these two founding members continued to work within the community and had very active role on it. The ECtHR first of all established that in removal cases, when balancing the right of the parents to family life and the rights of the children, **the best interest** of the child should be provided with particular importance and may prevail<sup>59</sup>. Secondly it established that it had strong reservations about the fact that public authorities let the children be taken care of by two people who were convicted of ill-treatment and abuse of children entrusted under their care<sup>60</sup>. Due to this and other circumstances of the case, the ECtHR decided that "authorities have failed to show the **degree of prudence and vigilance** required in such a delicate and sensitive situation, and have done so to the detriment ... of the **superior interests of the children**"<sup>61</sup> and there had been as a result a violation of Article 8 of the ECHR.
- iii. **Case of E. and Others v. the United Kingdom (2002)**<sup>62</sup>: the case originated due to the complaint filed to the ECtHR by four citizens who claimed that they had suffered sexual and physical abuse by their mother's cohabitant partner when they were children, abuse which consisted in inhuman and degrading treatment pursuant to Article 3 of the ECHR. Through this judgment the ECtHR established and put together some important principles regarding the state's positive obligations in these kind of cases. First of all it established that the State is under the positive obligation to take measures insuring that subjects under its jurisdiction are not subject to inhuman or degrading treatment<sup>63</sup>. These measures should provide effective protection especially when there are children involved and should include reasonable steps to prevent ill-treatment which **the authorities knew or ought to have known**<sup>64</sup>. It found that failure of the local authority to protect children from abuse they were aware of, for a long period of time, was in breach of Article 3 obligations<sup>65</sup>. This

<sup>57</sup> Scozzari and Giunta v. Italy, Applications nos. 39221/98 and 41963/98, Judgment of 13 July, 2000.

<sup>58</sup> Ibid, §31 and 32.

<sup>59</sup> Ibid, §31

<sup>60</sup> Scozzari and Giunta v. Italy, Applications nos. 39221/98 and 41963/98, §206, Judgment of 13 July, 2000. §206.

<sup>61</sup> Ibid, §216.

<sup>62</sup> E and Others v. the United Kingdom, Application no. 33218/96, Final Judgment of 15 January 2003,.

<sup>63</sup> Ibid, §88.

<sup>64</sup> Ibid.

<sup>65</sup> Ibid.

failure was due to the lack of investigation, lack of cooperation and communication among involved authorities in the present case, thus the failure to take appropriate steps<sup>66</sup>.

- iv. **Case of E. S, and Others v. Slovakia (2009)**<sup>67</sup>: the case originated due to the sexual abuse of a father on his children and physical abuse on his wife. The applicants complained to the ECtHR that the Slovak state had failed to provide them the necessary protection against abuse consisting in inhuman and degrading treatment pursuant to Article 3 of the ECHR and to guarantee respect to their private and family life pursuant to Article 8 of the ECHR<sup>68</sup>, because of failing to approve an interim order removing the abuser from the family home. Having assessed the Slovak legislation and the case before it the ECtHR found that the failure to issue the interim measure of removal indicated that the state failed to discharge its positive obligations to protect the rights of the applicants under Article 3 and Article 8, consisting in a violation of these rights<sup>69</sup>.

### 3.4. European Union Legislation

The European Union is another international organization which is very active in several fields of activity and produces a consistent body of binding legislation upon its member states. Apart from the internal market legislation, with the adoption of the EU Charter of Fundamental Rights (EU Charter) the EU officially introduced within its legislation a human rights approach. The way toward the adoption of the EU Charter started in 2007, by its proclamation at the Nice European Council on 7 December 2000 having no binding legal effect and was concluded in 2009 with the entry into force of the Treaty of Lisbon on 1 December 2009 when it gained the same legal value of the EU Treaties themselves as established in Article 6 (1) of the TEU<sup>70</sup>. As a result, human rights included and recognized in the EU Charter are binding both for EU institutions and bodies and for the national authorities of EU member states when they implement EU law. The EU Charter recognizes the rights of the child and regulates them in a specific disposition, its Article 24 which recalls the principles of **protection and care of children and their well-being**<sup>71</sup> and consideration of the **best interest of the child**<sup>72</sup> by all public or private institutions.

But the EU has not satisfied itself only with including the right of the child in the EU Charter. It has made use of its peculiar legislative function, that of adopting binding legislation in the very delicate area of criminal law, and has adopted a directive regulating sexual abuse of children. This is Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 “*on combating the sexual abuse and sexual exploitation of children and child pornography...*”

<sup>66</sup> Ibid, §100.

<sup>67</sup> E.S. and Others v. Slovakia, Application no. 8227/04, Final Judgment of 15 December 2009.

<sup>68</sup> Ibid, §25.

<sup>69</sup> Ibid, §44.

<sup>70</sup> [ec.europa.eu/justice/fundamental-rights/charter/index\\_en.htm](http://ec.europa.eu/justice/fundamental-rights/charter/index_en.htm)

<sup>71</sup> Article 24 (1) EU Charter.

<sup>72</sup> Article 24 (2), Ibid.



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(Directive 2011/92), which contains minimum rules on the definition of criminal offences and sanctions in the area of sexual abuse and sexual exploitation of children and introduces provisions to strengthen the prevention of sexual crimes against children and their protection. Similarly to the Lanzarote Convention, Directive 2011/92 establishes a set of preventive, protective, assistance, support and prosecution measures and principles in cases of sexual abuse of children. The novelty brought about is that when establishing substantive criminal law provisions it also establishes the minimum terms of imprisonment for each offence. For instance Article 3 (2) provides a minimum term of 1 year imprisonment, for causing a child to witness sexual activities; Article 3 (4) provides for a minimum term of 5 years imprisonment for engaging in sexual activities with children who have not reached the age of sexual consent, and so on. Another novelty brought by Directive 2011/92 is the effective restrictive measure, already established in the Lanzarote Convention, of disqualifying temporarily or permanently persons convicted of offences related to sexual abuse and sexual exploitation of children, from activities involving direct and regular contacts with children<sup>73</sup>. This includes the possibility of employers to request and obtain criminal records on these type of offences against children from the persons applying to jobs in direct and regular contact with children<sup>74</sup>. Finally it should be mentioned the importance of having an EU directive on this matter which derives by the fact that the EU member states are obliged to transpose within their internal legislation the minimum criminal rules adopted by Directive 2011/92 as well as the prevention, protection, assistance, support and prosecution measures and principles mentioned therewith. This combined to the fact that monitor and control mechanisms under the EU framework are stronger and more incisive than any other international piece of legislation, makes Directive 2011/92 a fundamental piece of international legislation on the protection of children against sexual abuse and sexual exploitation.

#### IV. ALBANIAN LEGAL AND INSTITUTIONAL FRAMEWORK

The Albanian legal framework on protection of children from sexual abuse is composed of constitutional provisions, ratification of the international instruments, domestic law, sub-legal acts and administrative procedures. The Constitution of the Republic of Albania deals with the right of the child in its Article 54 and provides, among others the principle that every child has the right to be protected from violence, ill-treatment and exploitation which may damage his/her health, moral or endanger his/her life and normal development<sup>75</sup>. In addition to constitutional provisions, Albania has also ratified the abovementioned international conventions on the right of the child, and specifically: (i) it ratified the CRC Convention through Law no. 7531, dated 11.12.1991 "*On the ratification of the Convention on the Rights of the Child*"; (ii) it ratified the ECHR Convention through Law no. 8137, dated 31.7.1996 "*On the ratification of the European Convention on the protection of human rights and fundamental freedoms*" becoming a state party

<sup>73</sup> Article 10 (1), Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 "*on combating the sexual abuse and sexual exploitation of children and child pornography and replacing Council Framework Decision 2004/68/JHA*"

<sup>74</sup> Article 10 (2), Ibid.

<sup>75</sup> Article 54 (3), of the Constitution of the Republic of Albania.



of the ECHR; (iii) it ratified the Lanzarote Convention through Law no. 10 071, dated 9.2.2009 “*On the ratification of the European Council on the protection of children from sexual abuse and exploitation*”. As a result, the provisions of the abovementioned ratified international conventions are now part of the Albanian domestic legislation. It should be noted, with regards to the EU, that Albania is a Candidate country thus not yet obliged to transpose EU directives. Nevertheless due to its commitment toward EU integration it is on the process of approximating its legislation with EU law in various fields of activities.

Constitutional provisions and ratified international conventions need specific national laws, sub-legal acts, administrative procedures and institutions in order to be implemented. As a result, throughout the years, the Albanian legislator has drafted and approved a series of national laws regulating different aspects of children’s rights. This legislative corpus is composed of the specific organic law on the right of the child, the criminal code, the criminal procedure code and the most recent legislative novelty, the code of criminal justice for minors.

#### 4.1. Law on the rights and protection of children

Law no. 18/2017 dated 23.02.2017 “*On the rights and protection of children*” (Law 18/2017) is the organic law which provides the overall principles, measures, standards of protection and the institutional framework on children’s rights. It should be immediately pointed out that this recently approved law, which repeals and replaces the 2010 law regulating the same matter, constitutes a significant improvement of the Albanian legislation on this matter. This is due to the fact that it has introduced and regulated in a detailed and systematic way the principles, standards and measures provided for in the Lanzarote Convention and in the other above mentioned international instruments. Having established that ‘child’ is considered every person under the age of 18<sup>76</sup> and having established the well-known principle of the best interest of the child<sup>77</sup>, Law 18/2017 provides for: (i) **preventive measures** such as: trainings, awareness raising and education campaigns on the protection of children from abuse addressed to persons working with children, public administration officials and citizens<sup>78</sup>; **employment restrictions** for citizens convicted with a final court decisions for crimes against persons, or against whom a protection order in family violence cases had been issued by the court, to work in contact with children<sup>79</sup>; **employment suspension measures** for citizens working with children against whom a criminal investigation related to child violence is initiated<sup>80</sup>; (ii) **assistance and support measures** such as: free legal and psychological aid during each administrative or judicial process involving children<sup>81</sup>; **coordination measures** among the several involved institutions and the creation of

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<sup>76</sup> Article 3 (4), Law no. 18/2017 dated 23.02.2017 “*On the rights and protection of children*”.

<sup>77</sup> Article 5(2), Ibid.

<sup>78</sup> Article 43 (2), Ibid.

<sup>79</sup> Article 45 (1), Ibid

<sup>80</sup> Article 45 (2), Ibid.

<sup>81</sup> Article 29 (1),

technical cross-sectoral group in each local unit with more than 3.000 children<sup>82</sup>; creation of children telephone **help-lines**<sup>83</sup>; extensive **reporting obligations** for every person who has knowledge of child abuse, every person working in contact with children including, a specific reporting obligation for teachers and health personnel<sup>84</sup> (iii) **protection measures** such as: alternative care measures<sup>85</sup> consisting in placing the child with another family member, with a foster family or with a care institution for a short period of time, under the principle that priority should be given to placing the child in a family environment; emergency protection measures<sup>86</sup> consisting in the removal of the child from the family home and placement in alternative care; measures of specialized supervision within the family environment<sup>87</sup>; drafting of the Individual Protection Plan for each child which contains the overall set of measures for a child, including measure for immediate intervention and investigation, health care measures, psychological and legal support, social support and any other necessary service for the rehabilitation and re-integration of the abused child.

It is worth mentioning that a novelty of Law 18/2017 is the establishment of the national electronic register<sup>88</sup> containing the cases of children in need of protection. This data will be collected and managed at the national level by the State Agency for the Rights and Protection of Children (SARPC). The law does not introduce any substantial criminal law provision or any prosecution measures because both are regulated under the Criminal Code and the new code of criminal justice for minors. In addition to the abovementioned novelties, Law 18/2017 sets up a well organized institutional framework, with various bodies exercising different functions at the central and local level. What is most welcomed is that the functions of each body are described in a detailed and structured way, as summarized below:

- i. **The National Council for the Rights and Protection of Children (NCRPC):** it is a consultative body which has as its main functions to provide consultancy and to coordinate state policies for children's rights<sup>89</sup>. An important function is that of assessing the planned budget from the children's rights approach<sup>90</sup> and providing special recommendations to the central government and agencies dealing with children's rights.
- ii. **The Minister coordinating protection of children's rights**<sup>91</sup>: it's the main responsible authority on this matter. It has coordination functions on children's rights policies; monitoring functions regarding the implementation of policies and measures; controlling

<sup>82</sup> Article 52 (1)

<sup>83</sup> Article 68, Ibid.

<sup>84</sup> Article 67 (1), (2), (3) and (4), Ibid.

<sup>85</sup> Article 31 (1) and (2), Ibid.

<sup>86</sup> Article 55 (1) (a), Ibid.

<sup>87</sup> Article 55 (1) (c), Ibid.

<sup>88</sup> Article 38 (2) (ë), Ibid, Law no. 18/2017 dated 23.02.2017 "On the rights and protection of children".

<sup>89</sup> Article 35 (1) and (2), Ibid,

<sup>90</sup> Article 36 (b) and (2), Ibid,

<sup>91</sup> Article 38, Ibid,

functions over the SARPC; supporting functions for NGOs dealing with children's rights; it adopts measures in cooperation with the other ministers for the establishment of an integrated system for the protection of the child through multidisciplinary services; it establishes an accreditation system for the control and quality of child protection structures; it creates and establishes the National Electronic Register of the cases of children in need of protection.

- iii. **Other Ministers:** other line Ministers, within their fields of competences have policy functions related to children's rights. One important function is that of forecasting in annual or multi annual budget plans the necessary funds for implementing children's rights and children's protection<sup>92</sup>;
- iv. **State Agency for the Rights and Protection of Children (SARPC)**<sup>93</sup>: is the national central agency exercising a series of important competences and functions related to children's rights in Albania, such as: organization and coordination of the integrated system of child protection<sup>94</sup>; direct support to local structures for child protection including trainings, assistance in case management, supervision of specific cases, consultancy etc.<sup>95</sup>; collect data at national level and manage the National Electronic Register of children in need of protection<sup>96</sup>; coordinate works with the ministry in charge of children protection; organize awareness raising and education campaigns<sup>97</sup>, etc.
- v. **Municipalities:** are responsible for establishing at municipality level and administrative unit level the integrated system of child protection by ensuring among others<sup>98</sup>: implementation of programs and projects<sup>99</sup>; collection, assessment and reporting of data in cooperation with other institutions; establishment of the structures for children protection<sup>100</sup>; implementation of the procedure for case-management of children in need of protection; establishment and coordination of the referral, reporting, protection and follow up system<sup>101</sup>; organization and provision of services for children in need of protection as well as supporting services for families and services for alternative care<sup>102</sup>; establishment of rehabilitation and re-integration programs and services for children in need of protection, especially children victim of violence<sup>103</sup>; etc.
- vi. **Social Services Structure within the Municipality:** these structures are in general responsible for child protection matters and also for specific child protection issues such as:

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<sup>92</sup> Article 39, (ç) Ibid,

<sup>93</sup> Article 40, Ibid,

<sup>94</sup> Article 41, (1) Ibid,

<sup>95</sup> Article 41, (2) Ibid.

<sup>96</sup> Article 41, (3) (a) Ibid, Law no. 18/2017 dated 23.02.2017 "On the rights and protection of children".

<sup>97</sup> Article 43, (3), Ibid,

<sup>98</sup> Article 46, Ibid,

<sup>99</sup> Article 46, (c), Ibid,

<sup>100</sup> Article 46, (dh), Ibid,

<sup>101</sup> Article 46, (e), Ibid,

<sup>102</sup> Article 46, (ë), Ibid,

<sup>103</sup> Article 46, (f), Ibid,

to report to the Mayor and to the Municipality Council the progress of child protection cases within the territory of the municipality<sup>104</sup>; to establish the cross-sectoral technical group at the municipality or administrative unit level and to coordinate and supervise its works and activities<sup>105</sup>. It should be mentioned that these structures hold also very important functions related to the **approval of protection measures** since it is the **Director of the Social Services Structures** who decides on protection measures, approves and coordinates the implementation of the Individual Protection Plan, and adopts 24 hours emergency measures which are then notified to the State Police<sup>106</sup>. In addition all the functions related to micro management of individual cases<sup>107</sup> of children are exercised by the special **Child Protection Unit**, situated within this structure. The Child Protection Unit, is composed of social workers, named **child protection workers**, who follow up the cases of child victims from its origination/identification up to the adoption of measures and their implementation. Child protection workers have, among others, some significant functions such as: to propose protection measures<sup>108</sup>; to propose the Individual Protection Plan its amendment or removal<sup>109</sup>; to take part in judicial processes reviewing protection measures proposed in Individual Protection Plans<sup>110</sup>; to address the public prosecutor for the removal of parental rights<sup>111</sup>; to assist the child or his/her family in drafting and submitting of complaints to the People's Advocate or other authorities<sup>112</sup>.

- vii. **Technical Cross Sectoral Group**: in each municipality and administrative unit with more than 3.000 children it is established the *ad hoc* Technical Cross Sectoral Group dealing with cases of children in need of protection<sup>113</sup>. It is composed of representatives of the state police, social services structures, education, health, justice structures, NGOs as well as any other specialist who has knowledge on the particular case of the abused child<sup>114</sup>. The Technical Cross Sectoral Group supports child protection workers and facilitates the referral and management of the case, and the implementation of the specific measures<sup>115</sup>.

#### 4.2. Criminal Code

The substantive criminal law provisions regarding sexual abuse of children are enclosed and determined within the Albanian Criminal Code. As a general remark it can be noted that the CC provides for high penalties for sexual abuse offences consisting in multiple years of

<sup>104</sup> Article 47, (2), Ibid,

<sup>105</sup> Article 47, (3), Ibid,

<sup>106</sup> Article 48, Ibid,

<sup>107</sup> Article 49, Ibid,

<sup>108</sup> Article 59, (2), Ibid

<sup>109</sup> Article 51, (e), Ibid,

<sup>110</sup> Article 51, (f), Ibid,

<sup>111</sup> Article 51, (g), Ibid, Law no. 18/2017 dated 23.02.2017 "On the rights and protection of children".

<sup>112</sup> Article 51, (gj), Ibid,

<sup>113</sup> Article 52, (1), Ibid,

<sup>114</sup> Article 52, (2), Ibid,

<sup>115</sup> Article 52, (5), Ibid,



imprisonment. At least some of them are consistently higher than the minimum penalties provided for similar offences by Directive 2011/92/EU. There are three articles which specifically deal with sexual abuse of children, Articles 100, 101 and 108. The other articles, regulating different aspects of sexual abuse are general clauses, which include acts of the punishable type against children as an aggravating circumstance. More specifically the following substantive criminal law provisions address the different types of sexual abuse including sexual abuse against children:

- i. **Article 100 – Sexual or homosexual activities with minors:** engaging in sexual or homosexual activities with minor children who have not reached the age of 14 or with an infant female who has not reached sexual maturity, it is punishable by imprisonment from 7 to 15 years<sup>116</sup>. This article provides for the following aggravating circumstances: for sexual activities performed in complicity with others, more than once or with violence, or when it causes grave consequences to the child's health, imprisonment of not less than 25 years<sup>117</sup>; when it causes the death or suicide of the infant imprisonment of not less than 30 years or life sentence<sup>118</sup>.
- ii. **Article 101 – Sexual or homosexual activities with violence with minors aged 14-18 years:** engaging in sexual or homosexual activities with violence with minors from 14-18 years old who have reached sexual maturity it is punishable by imprisonment from 5 to 15 years<sup>119</sup>. This article provides for the following aggravating circumstances: for sexual activities performed in complicity with others, more than once, or when it causes grave consequences to the minor's health imprisonment from 10 to 20 years<sup>120</sup>; when it causes the death or suicide of the minor imprisonment of not less than 20 years<sup>121</sup>.
- iii. **Article 106 – Sexual or homosexual activities with persons related or under custody:** engaging in sexual or homosexual activities among parents and children, brothers and sisters, among other related persons or with persons under custody or adoption relations, is punishable by imprisonment up to 7 years.
- iv. **Article 107/a – Sexual violence:** exercising sexual violence by performing of sexual nature activities on the body of another person through objects its a criminal offence punishable by imprisonment from 3 to 7 years<sup>122</sup>. Aggravating circumstances include: directing this offence to **children from 14 to 18 years** (punishable by imprisonment from 5 to 15 years)<sup>123</sup> and directing this offence to **infants of less than 14 years**, or who has not reached sexual maturity even if not performed by violence (punishable by imprisonment of not less than 20 years)<sup>124</sup>.

<sup>116</sup> Article 100, par (1), Criminal Code.

<sup>117</sup> Article 100, par (2), Criminal Code.

<sup>118</sup> Article 100, par (3), Criminal Code.

<sup>119</sup> Article 101, par 1, Criminal Code.

<sup>120</sup> Article 101, par (2), Criminal Code.

<sup>121</sup> Article 101, par (3), Criminal Code.

<sup>122</sup> Article 107/a, par (1), Criminal Code.

<sup>123</sup> Article 107/a, par (2), Criminal Code.

<sup>124</sup> Article 107/a, par (3), Criminal Code.

- v. **Article 108 – Indecent acts:** performing indecent acts with infants who has not reached 14 years is punishable by imprisonment from 3 to 7 years<sup>125</sup>. The same offence performed against an infant who has not reached 14 years with whom the author is in family relations is punishable by imprisonment from 5 to 10 years<sup>126</sup>. The intentional involvement as a witness of an infant of less than 14 years or of a minor who has not reached sexual maturity, in activities of a sexual nature it's a criminal offence punishable by imprisonment from 1 to 5 years<sup>127</sup>;
- vi. **Article 108/a – Sexual harassment:** sexual behaviors which violate the persons dignity, with every mean or in any form, which create a threatening, hostile, degrading, humiliating, or offensive environment is a criminal offence punishable by imprisonment from 1 to 5 years<sup>128</sup>. It is an aggravating circumstance when the offence is performed against children, in this case the punishment is imprisonment from 3 to 7 years<sup>129</sup>.

It is interesting to note that the CC also provides in its Article 104 for Sexual or homosexual activities with the threat of arms and in Article 105 for Sexual or homosexual activities with abuse of duty. These articles have a general application and there are no specific aggravating circumstances when the abuse is directed at children as it was the case for some of the abovementioned articles. Also, it should be pointed out that there are other parts of the Criminal Code dealing with criminal offences against children, which may be of a sexual nature or of another nature. For instance under Section VIII of the CC named 'Criminal offences against moral and dignity' it is provided in Article 117 for the criminal offence of **pornography**. Despite the general wording of the title of Article 117 - which leads you to believe that pornography as such constitutes a criminal offence in Albania - that offence is in fact related only to **child pornography** and does not punish pornography as such, or pornography among adult people. In addition Section IX of the CC named 'Criminal offences against children, marriage and family' provides for a bunch of offences against children related to of abuse or neglect other than sexual violence.

The CC also regulates the statute of limitation for criminal offences in its Article 66 where it is provided that criminal prosecution cannot start when a specific period of time has elapsed from the commitment of the criminal offence to the declaring of a person as an accused. The terms of the statute of limitation are related to the terms of imprisonment provided for the criminal offences and more specifically: (a) 40 years statute of limitation for offences punishable by life imprisonment; (b) 20 years statute of limitation for offences punishable by imprisonment of not less than 10 years or higher; (c) 10 years statute of limitation for offences punishable by imprisonment of 5-10 years imprisonment; (ç) 5 years statute of limitation for offences punishable by imprisonment of up to 5 years; (d) 3years statute of limitation for offences

<sup>125</sup> Article 108, par (1), Criminal Code.

<sup>126</sup> Article 108, par (2), Criminal Code.

<sup>127</sup> Article 108, par (3), Criminal Code.

<sup>128</sup> Article 108/a, par (1), Criminal Code.

<sup>129</sup> Article 108/a, par (2), Criminal Code.



punishable by imprisonment of up to 2 years; (dh) 2 years statute of limitation for offences punishable by fines. There is no specific statute of limitation for criminal offences related to sexual abuse of children as a result those are subject to the general statute of limitation terms provided for in Article 66 of the CC.

#### 4.3. Code of Criminal Justice for Minors

An important development in the Albanian children's rights legislation is the approval in March 2017 of the CCJM which will enter into force on January 1, 2018. It is for the first time that Albania develops a full set of norms to regulate the position of children within the criminal justice sector and to approve specific rules and procedures needed to treat this delicate category. The CCJM it is mainly focused on regulating aspects of the criminal liability of children who commit criminal offences but it provides also important dispositions in relation to children victims of crimes, including sexual abuse. In fact, the CCJM regulates issues such as: the position of the child victim during investigation and prosecution; interviews with children; protection measures throughout the process in order not to aggravate their trauma; protection of personal data of child victims and similar issues. Thus, all the aspects which were mentioned and called for regulation by the several international instruments which were explained in the previous paragraphs of this article. The CCJM starts by enunciating the principle of protection of minors and their highest interest<sup>130</sup> and by determining that 'minor' is every person below 18 years of age<sup>131</sup>. Through its following detailed dispositions it regulates the position of the child within the criminal justice system, under the different status of accused, convicted or victim. For the purpose of this article, below will be provided only the main dispositions of the CCJM applicable to child victims of sexual abuse :

- i. **Article 17 – Prompt and priority review:** establishes the principle that each competent authority shall review quickly and with priority cases of victim children, by guaranteeing that no stage of the criminal process aggravates the caused trauma<sup>132</sup>. To be noted that with competent authority<sup>133</sup>, CCJM intends all officials dealing with victim children including: judges, prosecutors, state police officials, social worker, employers of the Child Protection Unit, etc.
- ii. **Article 18 – Obligatory participation of the psychologist:** establishes that in order to protect children from trauma, the presence of the psychologist is compulsory throughout the criminal prosecution procedures (investigation and trial). The presence of the psychologist is also necessary to ensure that interviews with children are done properly. In addition, it is provided that where possible, the same psychologist is assigned to the same child victim throughout the whole process.

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<sup>130</sup> Article 2 (2), Law no. 37/2017 "Code of criminal justice for minors".

<sup>131</sup> Article 3 (3), Ibid.

<sup>132</sup> Article 17 (2), Ibid.

<sup>133</sup> Article 3 (15), Ibid.



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- iii. **Article 20 - Free Legal and Psychological aid to the minor:** establishes that legal and psychological aid provided to victim children in each phase of criminal prosecution will be free of charge and guaranteed by the state.
- iv. **Article 21 – Protection of private life of the minor:** establishes that in all phases of criminal prosecution the privacy of children should be respected and all information that may lead to identification of children victim is not allowed to be published.
- v. **Articles 25-29-30-31-32 - Trainings and specialization of competent authorities:** establish that competent organs dealing with minors have the necessary expertise<sup>134</sup> and that persons administering the criminal justice process are specialized and trained in protection of children's rights<sup>135</sup>. This obligation includes several officials and professionals such as: prosecutors; judicial police officers; state police officers; lawyers; psychologists; child protection unit employees, etc.
- vi. **Article 25 – Specialization of persons administering and assisting in the process of criminal justice for minors:** establishes among other things restrictions for persons working with minors and specifically in its paragraph (2) it establishes that competent authorities ensure that every person who has been convicted with a final decisions for an intentional criminal offence against children or for family violence it is prohibited to work with children.
- vii. **Article 27 – Competence for judgment of minors' cases:** provides the establishment within the district courts of special sections dealing with minors issues. These sections will also review cases of offences of adults against minor/children victims.
- viii. **Article 37 – Protection measures for victim or witness children r :** it establishes that during each phase of the criminal process special protection measures for victim children may be adopted when the safety of the child is at stake. Depending on the circumstances these measures may be adopted by the judge *ex-officio*, by the public prosecutor, the judicial police, the Child Protection Unit. Protection measures consist of avoiding contact between the child victim and the perpetrator throughout the process; requesting the issuance of a restriction order from the court; requesting pre-trial detention measure for the perpetrator; requesting police protection of the child; other appropriate measures.
- ix. **Article 41 – Special interview rules for children victims/witness of sexual exploitation or sexual violence:** provides special interview rules that are applicable to children victim of sexual abuse, which apply in addition to the other interviewing rules for children as established in articles 39 and 40 of CCJM. More specifically interviews of sexually abused children are compulsorily conducted through video and audio registration; video-audio registrations may be heard at the court session; the testimony of the child may be heard without him/her being present using IT tools; it is forbidden to interview the child victim of abuse within the family in the presence of the parent or the abusive family member during the issuance of protection orders; the trial reviewing sexual abuse of children is held with closed doors.

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<sup>134</sup> Article 25 (1), CCJM.

<sup>135</sup> Article 25 (4), Ibid.



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- x. **Article 136 – Criminal justice database for minors:** provides for the creation of the database with the aim of establishing an integrated system of data collection for minors. The database will enclose data on every stage of criminal proceedings involving minors, being those perpetrators, victims or witnesses of crimes. The system is managed by the Ministry of Justice<sup>136</sup> and all officials who have a role during criminal proceedings (prosecutors, judicial police etc.) have the right to access the system and insert data in their possession.

#### 4.4. Criminal Procedure Code

Before adoption of the CCJM, it was the criminal procedure code which regulated some aspects of the standing of victim children within the criminal process. Nevertheless those dispositions were limited as to the content and extension and did not offer the degree of protection as now provided by the CCJM. Yet two important matters affecting the system of protection of children victims of sexual abuse are still regulated under the CPC. These are the rules on the initiation and following up of criminal prosecution in cases of lack and/or of withdrawal of the complaint from the victim and the rules on the collection and processing of criminal data, which is important with regards to the restrictions imposed on persons disqualified from working in contact with children.

Article 24 (6) of the CPC establishes that initiation of criminal proceedings in Albania may start *ex officio* – meaning with the own initiative of the Public Prosecutor - when the complaint of the victim/damaged party it is not necessary. Cases where the victim's complaint is necessary are provided for in Article 284 (1) and include among others, the offences of Articles 105 and 106 of the CC. For these offences criminal prosecution may only start after the victim files a complaint. In addition, Article 290 (1) (c) of the CPC establishes that when a complaint is necessary to start criminal prosecution, the withdrawal of such complaint by the victim causes the cease of the criminal prosecution. .

In relation to the collection and processing of criminal data, there is a judicial register where criminal data on individuals are collected and processed. This register is regulated by Articles 481-484 of the CPC and it is administered by the Ministry of Justice. It contains data on final convictions, execution of convictions, supplementary decisions, innocence decisions, acquittals. What is important for the purpose of this work is Article 484 (1) which provides that some authorities/entities have the right to obtain attestations issued from this register. These are judicial organs, public administration organs and entities charged with performing public services. These authorities/entities may obtain attestation of the criminal records of a person when such attestations is necessary for the performance of that person's duties. Therefore this registry is useful for exercising control on employees working in direct contact with children.

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<sup>136</sup> Article 137, Ibid.



## V. CONCLUSIONS AND RECOMMENDATIONS

It is noticeable that during 2017 Albania has significantly improved its domestic legislation related to the protection of the rights of the child. Law no. 18/2017 and the CCJM are an important step forward in aligning the Albanian system of protection of children to international standards and principles which were mentioned above. Nevertheless the road to ensure effective protection is difficult and goes beyond the written letter of laws. The newly approved legislation is pretty ambitious and it provides for the establishment of a series of new structures and new procedures. These should be backed up by appropriate budgetary and human resources assigned to social and judiciary services for sexually abused children, both elements which have been lacking in the past years.

It often happens that Albania adopts legislation which is conform to the best international standards - so as to tick the box of its international obligations - but which in fact lacks of administrative procedures, human resources and enforcement will needed for its implementation. As a result there is a general disillusion among lawyers and human rights operators toward 'good laws'. In the present case, for these 'good laws' to be effective there is a series of sub-legal acts needed to be approved. These are not yet approved despite the fact that the time-limit of 6 month established for some of them, has already passed. Nevertheless the very existence of the principles and procedures established in the new laws is a positive step forward which provides us with useful tools to ask from the Albanian state to implement its positive obligation to protect children from all types of sexual abuse. Despite the above general comment, the question is: at what extent the current Albanian legislation on protection of children from sexual abuse is conform to the international legislation analyzed above? Are there inconsistencies and do we still need improvements?

**With regard to Law no. 18/2017** it can be generally concluded that it has adopted almost all measures and principles established by the Lanzarote Convention and the other above mentioned international instruments. These measures consist in assistance and support measures, coordination measures, help-lines, reporting obligations, training and awareness raising measures, restrictive measure for persons working with children and protection measures for children. In relation to protection measures Law 18/2017 has vested with significant responsibility the social structures within the Municipality (child protection units) to decide on the adoption of protection measures for endangered children. Such protection measures are adopted and implemented by the own decision of the Municipality structures dealing with children, previously to addressing the court. In this sense it is positive to have in place structures able to intervene and have the possibility to take relevant decisions for children before addressing the court. On the other hand this is also a very delicate decision making which should be trusted only to highly specialized and well-trained social workers who are really able to identify the gravity of the circumstances and make the right decision considering the high interest at stake. In addition in order to make all the structures effectively function, necessary



budgetary and human resources should be provided to Child Protection Units within the Municipalities and to the SARPC.

**With regard to the CCJM** it may be concluded that it adopts the international principles and standards required when dealing with children victims of abuse, sexual abuse included. As a result its adoption is a step forward and it is most welcomed. Nevertheless having regard of the challenging process of building a new criminal justice system for the protection of children it is recommended that all involved institutions activate in order to establish and make it effective by putting in place the necessary financial and human resources and by approving the implementing sub-legal acts.

**With regard to the CC** it may be generally concluded that, after the improvement of the Albanian legislation through the introduction of the abovementioned novelties, the CC remains the weakest part of the children protection system in Albania. This because criminal offences related to sexual abuse of children are not formulated in line with the international requirements. First of all it should be pointed out that the Albanian criminal code makes an incomprehensible distinction between sexual and homosexual abuse. The distinction consists only in indicating these abuses as being of two different forms, and not in the degree of punishment which is the same for both. Despite the fact that this part of the CC has been amended in 2013 the legislator did not change this distinction thus maintaining this discriminatory provision enshrined in the criminal code. This was also pointed out by the Lanzarote Committee in its 1<sup>st</sup> implementation report of 2015<sup>137</sup>, holding that the same fact that the CC considers sexual abuse and homosexual abuse as two different offences is stigmatizing. It is thus recommendable that all articles of the CC containing this distinction be immediately modified.

Secondly the substantive provisions of the CC related to sexual abuse of children are incomplete, do not have the extent required by international instruments and are provided in a disorganized way which may lead to confusion. The only article perfectly in line with the Lanzarote Convention and Directive 2011/92/EU requirements is Article 100 of the CC that punishes sexual activities with minors of 14 years old. Moreover it goes beyond international requirements by providing that it is punishable also the sexual activity with a minor which has not reached sexual maturity, despite the age. Yet, by the wording of the article it is understandable that this extension is applicable only to female children, which is again a discrimination of the abovementioned type which should be immediately removed.

Sexual activities against children through the abuse of a position of trust, authority or influence it is not expressly regulated. There is Article 106 CC which punishes sexual activities among related persons such as parents and children, brothers and sisters, or adoptive parents and

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<sup>137</sup> Lanzarote Committee, 1<sup>st</sup> Implementation report, “*Protection of children against sexual abuse in the circle of trust: The framework*”, Pg.15.



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guardians. Nevertheless this article seems much more oriented at preventing sexual relations among family members (incest), whether biological or acquired than of specifically protecting children from abusers they trust, they are influenced from or that exercise authority on them. In addition, despite the fact that this article may be used, as it is now, to punish sexual offences of parents and guardians against children, it leaves out a wide range of other persons who due to their position may abuse their authority on children or exert improper influence on them such as: teachers; extended family; family friends; neighbors and similar persons which are considered as the 'circle of trust' which goes beyond the categories enumerated in Article 106. As a result it is recommended that such a specific provision be introduced in the criminal code and be worded as provided for in the Lanzarote Convention.

Sexual activities against children through the abuse of coercion, force or threats it is not fully regulated. Article 101 punishes sexual abuse by the use of force against minors from 14-18. It does not mention coercion or threats as required by the Lanzarote Convention. As a result the Albanian provision narrows the range of criminal behaviors punishable by Article 101 and its amendment is required by introducing threat and coercion in the wording of this article.

Sexual activities against children through the abuse of a particularly vulnerable situation of the child, because of mental or physical disability or a situation of dependence, it is not fully regulated. Article 103 provides for the offence of sexual abuse against persons unable to defend themselves. It applies in general to physically or mentally disabled persons, without age limits. Being a child does not constitute a special aggravating circumstance. In addition the situation of dependence, as required by the Lanzarote Convention is not even mentioned. As a result there should be introduced a specific article which punishes the sexual abuse of children in these vulnerable circumstances, or introduce these type of abuses against children as an aggravating circumstances of Article 103 of the CC.

Another amendment of the CC deemed necessary for it to conform to international requirements are the rules on the statute of limitation regulated by Article 66 CC. Lanzarote Convention in its Article 33 requires that the statute of limitation for initiating proceedings regarding sexual abuse of children shall be sufficient to allow the victim to start proceedings after it has reached majority age. Through the joint interpretation of Article 66 CC with the specific articles on sexual abuse of children it can be calculated that the statute of limitation for the basic offences is 10 years after committing the offence (20 years when aggravating circumstances apply: severe damage to the child; death; suicide etc). Logically 10 years is too short of a term for children to recover from the traumatic experience and take the courage to denounce the abuse, especially when that has happened within the circle of trust. Considering the gravity of the offences at stake it is recommendable to exempt these types of offences from statute of limitation terms as it is already done for some type of murders. It should be kept in mind that sexual abuse does not only harm the child of the present but it harms the adult of the future thus causing a huge damage to the individual and to the society as a whole. As an option, statute of limitation should be linked



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with reaching the majority age of the child and providing sufficient time as asked for by the Lanzarote Convention. Lastly it would be advisable that all offences related to sexual abuse of children be regulated in a harmonized and coordinated way in a specific part of the Albanian criminal code, by adopting a clear and non-discriminatory wording which includes all the variety of sexual behaviors which may harm children, at least those which are already provided for in international conventions ratified by Albania.

**With regard to the CPC** provisions it is necessary the amendment of Article 284 (1) in relation to initiation of criminal proceedings. Specifically Articles 105 and 106 of the CC should be removed from the requirement of starting criminal prosecution after the victim's complaint. As regards the criminal records register regulated by Articles 481-484 of the CPC, a special section of it should be dedicated to persons convicted for offences related to sexual abuse of children. This way a more complete and organized data base would be in place and would facilitate the job of authorities when checking the integrity of persons working with children. Moreover this is a requirement of the Lanzarote Convention which provides not only for the collection of identity data on these sexual offenders but also the collection of their genetic profile (DNA)<sup>138</sup>. By far there is no trace of the existence of the DNA registry of sexual offenders nor of any plans to put in place such a registry in Albania.

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<sup>138</sup> Article 37 (1), Lanzarote Convention.