

# **ACCESS TO JUSTICE FOR CHILDREN: ALBANIA**

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## **I. What is the legal status of the Convention on the Rights of the Child (CRC)?**

### **A. What is the status of the CRC and other relevant ratified international instruments in the national legal system?**

The Republic of Albania<sup>1</sup> ratified the CRC in February 1992 through Law No. 7531 dated 11 December 1991.<sup>2</sup> The CRC entered into force on 28 March 1992. Article 122 of the Constitution of Albania provides that ratified international agreements, such as the CRC, constitute part of domestic law after they are published in the Official Gazette of the Republic of Albania.<sup>3</sup>

Albania has also signed and ratified the Optional Protocols to the CRC on the Involvement of Children in Armed Conflict, on the Sale of Children, Child Prostitution and Child Pornography, and on a Communications Procedure (see part III.A below).<sup>4</sup>

### **B. Does the CRC take precedence over national law?**

The CRC takes precedence over national law. According to Albanian law, an international agreement ratified by law, such as the CRC, overrides the national laws that are not compatible with it.<sup>5</sup>

### **C. Has the CRC been incorporated into national law?**

The CRC was incorporated into national law following ratification.<sup>6</sup>

Furthermore, Albania has specifically incorporated various provisions of the CRC into

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<sup>1</sup> Comments on this report provided by UNICEF Albania, September 2015.

<sup>2</sup> *Combined second, third and fourth periodic report of Albania to the UN Committee on the Rights of the Child*, CRC/C/ALB/2-4, 8 December 2011, para. 1. Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fALB%2f2-4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fALB%2f2-4&Lang=en).

<sup>3</sup> *Initial report of Albania to the UN Committee on the Rights of the Child*, CRC/C/11/Add.27, 5 July 2004, para. 2. Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f11%2fAdd.27&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f11%2fAdd.27&Lang=en).

<sup>4</sup> See UN Committee on the Rights of the Child, *Concluding Observations on Albania's Initial Report*, CRC/C/15/Add.249, 31 March 2005. Available at <http://crin.org/docs/Albania%20COs.doc>; UN Committee on the Rights of the Child, *Concluding Observations on Albania's 2nd to 4th Periodic Report*, CRC/C/ALB/CO/2-4, 5 October 2012. Available at: [http://crin.org/docs/CRC-C-ALB-CO-2-4\\_en.pdf](http://crin.org/docs/CRC-C-ALB-CO-2-4_en.pdf).

<sup>5</sup> *Ibid.*

<sup>6</sup> *Combined second, third and fourth periodic report of Albania to the UN Committee on the Rights of the Child*, para. 8.

national law, including with respect to the best interests of the child in matters of family law.<sup>7</sup> In addition, to ensure compliance of the national legislation with the CRC, Albania has adopted a number of individual laws directly or indirectly affecting the improvement of the implementation of the rights of the child.<sup>8</sup>

D. Can the CRC be directly enforced in the courts?

Directly applicable treaties can be applied by the courts, but international agreements that are not self-executing require national legislation to be passed to give them effect. Only certain provisions of the CRC are considered to be sufficiently defined to be applied directly.<sup>9</sup> However, due to major enforcement problems within the Albanian legal system and the lack of training on the implementation of these rights, it is unlikely that a court will directly enforce the CRC (see part V below).

E. Are there examples of domestic courts using or applying the CRC or other relevant international instruments?

There is no publicly available Albanian case law applying the CRC or other relevant international instruments.

## II. What is the legal status of the child?

A. Can children and/or their representatives bring cases in domestic courts to challenge violations of children's rights?

Children through their representatives can bring cases to court challenging violations of their rights in a number of different settings. For example, acts and omissions by public administrative bodies, as well as private bodies exercising functions serving the public interests, can be subject to internal administrative review and judicial review in order to protect the constitutional and legal rights of individuals (see part III.A). Albanian jurists indicate that they place a special emphasis on the best interests of the child in every case challenging a violation of the rights of a child.<sup>10</sup>

Furthermore, children can make complaints about violations of their rights by the unlawful or improper actions or failures to act of public administrative bodies to the Sub-Section for Children's Rights at the People's Advocate (Ombudsperson) of Albania.<sup>11</sup> The mandate of the Sub-Section for Children's Rights is "to serve as an advocate, catalyst and monitoring entity of children's rights as prescribed in the Convention on the Rights of the Child".<sup>12</sup> Its

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<sup>7</sup> Ibid.

<sup>8</sup> See *Initial report of Albania to the UN Committee on the Rights of the Child*, para. 7.

<sup>9</sup> Children's Human Rights Centre of Albania—CRCA's Alternative Report, August 2004, available at: [http://crin.org/docs/resources/treaties/crc.38/Albania\\_ngo\\_report.pdf](http://crin.org/docs/resources/treaties/crc.38/Albania_ngo_report.pdf).

<sup>10</sup> Ibid.

<sup>11</sup> Albanian Constitution, Article 60, available at: [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=224105](http://www.wipo.int/wipolex/en/text.jsp?file_id=224105); The Law on the People's Advocate, Article 12, available at: <http://www.avokatipopullit.gov.al/en/ligji-p%C3%ABr-avokatin-e-popullit-0>.

<sup>12</sup> *Combined second, third and fourth periodic report of Albania to the UN Committee on the Rights of the Child*.

functions include: (1) monitoring the actions of the public administration and other organisations; (2) reviewing and investigating complaints and claims related to violations of children's rights; (3) initiating proceedings on behalf of a person whose rights have been violated; and (4) submitting recommendations to improve existing legislation on children's rights.<sup>13</sup> The People's Advocate may also present a case to the Constitutional Court on issues related to its own interests.<sup>14</sup>

**B. If so, are children of any age permitted to bring these cases by themselves in their own names/on their own behalf, or must the case be brought by or with the assistance of a representative?**

A child is considered to have limited legal capacity, and is generally therefore not permitted to bring a case to challenge a violation of his or her rights without an adult legal representative. The Albanian Civil Code provides that citizens do not attain the full legal capacity to act independently until they reach the age of 18.<sup>15</sup> The Albanian Code of Civil Procedure provides that persons who have the capacity to act in a civil trial may perform all procedural actions themselves and those who do not have the capacity must be represented according to the provisions of their ability.<sup>16</sup>

There are, however, certain exceptions:

- A child under the age of 14 must be represented by their legal representative (i.e. their parent or guardian) in all legal actions, except for those that, according to the law, can be performed by the child themselves.<sup>17</sup> For example, a child under 14 may perform legal transactions that are suitable to their age and are fulfilled at instance, as well as legal transactions that bring benefits without any compensation.<sup>18</sup>
- A child aged 14 or over may perform all legal actions personally only with the previous consent of their legal representative (i.e. their parent or guardian), with the exception of those that, according to the law, can be performed by the child themselves.<sup>19</sup> For example, a child aged 14 or over may be a member of social organisations, dispose of earnings from their work, deposit savings, and dispose and control these deposits themselves.<sup>20</sup>
- A child aged 16 or over has the right to petition the court in relation to procedures on their custody.<sup>21</sup>

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<sup>13</sup> Ibid.; People's Advocate in Albania, 10 Years Activity, available at: <http://www.avokatipopullit.gov.al/English/AP2009En.pdf>. Following recent amendments to the law, there will be a Commissioner for the Protection and Promotion of Children's Rights, elected by parliamentary voting, however the process of appointment has been unsuccessful so far. Therefore, although the Child Rights Section at the People's Advocate exists, it still lacks the guidance and competence of a Commissioner.

<sup>14</sup> Constitution, Article 134.

<sup>15</sup> Albanian Civil Code, Article 6, available at: <http://www.celibashiconsulting.com/wp-content/uploads/law/The-Albanian-Civil-Code.pdf>.

<sup>16</sup> Albanian Code of Civil Procedure, Articles 90-92, available at: [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=224039#LinkTarget\\_1487](http://www.wipo.int/wipolex/en/text.jsp?file_id=224039#LinkTarget_1487).

<sup>17</sup> Family Code, Article 232.

<sup>18</sup> Civil Code, Article 8.

<sup>19</sup> Family Code, Article 232; Ibid., Article 7.

<sup>20</sup> Civil Code, Article 7.

<sup>21</sup> Code of Civil Procedure. *Combined second, third and fourth periodic report of Albania to the UN*

- A child aged 14 or over has the right to petition the court in relation to their guardianship.<sup>22</sup>

C. In the case of infants and young children, how would cases typically be brought?

For infants and children under 14, while the exact handling of such cases is unclear, cases would be brought on their behalf by their legal representative.<sup>23</sup>

D. Would children or their representatives be eligible to receive free or subsidised legal assistance in bringing these kinds of cases?

Children or their representatives may be eligible for free legal assistance through the Law on Legal Aid,<sup>24</sup> which entered into force in April 2009. The Law on Legal Aid provides eligibility criteria for free legal aid in civil and administrative cases (see part IV.B below). Under the Law on Legal Aid and the Code of Penal Procedure, children in conflict with the law are entitled to free legal aid in every stage of criminal proceedings (investigation, adjudication, execution of the sentence) when they or their relatives cannot afford to pay for legal defence.<sup>25</sup>

The Legal Aid Commission, which was established under the Law on Legal Aid, is responsible for implementing the state-funded legal aid system, and has called on lawyers to apply to be listed as free legal aid lawyers.<sup>26</sup> An advocate of the Albanian Bar Association, which was established on the basis of a 1990 reform,<sup>27</sup> must assist a defendant who is a child or is incapable of defending themselves because of physical or mental disabilities.<sup>28</sup>

Some recent efforts have been made to increase access to free legal assistance to certain vulnerable groups. In May 2013, the Law on Legal Aid was amended to introduce possible exemptions from judicial fees for victims of trafficking and domestic violence. The Domestic Violence Law guarantees free legal aid for victims of domestic violence, but there are only a very few lawyers with knowledge in this field and the quality of their services are poor. The Legal Aid Commission and the Commissioner for Protection against Discrimination have signed an agreement on providing legal aid and assistance to people who have suffered discrimination.<sup>29</sup> Furthermore, in 2014 the Albanian government

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*Committee on the Rights of the Child*, para. 157.

<sup>22</sup> Family Code, Article 264. *Ibid.*, paras 154, 349.

<sup>23</sup> *Ibid.*

<sup>24</sup> Available at:

<http://www.tlas.org.al/sites/default/files/file/Ligji%20Ndihmes%20Juridike-Versioni%20i%20miratuar%20nga%20Parlamenti.pdf>.

<sup>25</sup> Law on Legal Aid, Article 13; Code of Penal Procedure, Article 35; *Combined second to fourth periodic report of Albania to the UN Committee on the Rights of the Child*, paras 648-9.

<sup>26</sup> European Commission, 'Albania: 2013 progress report', available at:

[http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/brochures/albania\\_2013.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/brochures/albania_2013.pdf)

<sup>27</sup> Law no. 7382, date 8.5.1990 For the Advocacy in the People's Socialist Republic of Albania, and amendment of article 9, 10 and 14 of the Code of Penal Procedure, by law no. 7387, 8.5.1990.

<sup>28</sup> HG, 'Albanian Bar Associations', available at: <http://www.hg.org/bar-associations-albania.asp>.

<sup>29</sup> Civil Rights Defenders, 'Human rights in Albania', October 2012, available at:

<http://www.civilrightsdefenders.org/country-reports/human-rights-in-albania/>.

promised to provide free civil legal assistance to individuals with disabilities.<sup>30</sup>

Despite these efforts, implementation of the Law on Legal Aid has been slow, and the overall enforcement of the legal aid system remains weak. The functionality of the Legal Aid Commission remains questionable, since no subsidiary legislation has been adopted and the allocated budget is insufficient for the establishment of local legal aid offices and the proper implementation and functioning of legal aid and assistance. Access to justice remains hampered by high judicial fees. Applicants requesting free legal aid still need to submit many documents from various state institutions.<sup>31</sup>

E. Are there any other conditions or limits on children or chosen legal representatives bringing cases (e.g., would a child's parents or guardian have to agree to a case being brought)?

As stated in part II.B above, the Civil Code provides that a child over the age of 14 can only perform legal actions with the previous consent of their legal representative.<sup>32</sup> No other such conditions or limits on children or their representatives bringing cases could be found.

### III. How can children's rights violations be challenged before national courts?

A. If there is a potential violation of the Constitution or other principles established in domestic law, or with the CRC or other relevant ratified international/regional instruments, how can a legal challenge be brought?

Issues of domestic law, all ratified international instruments, and most civil cases must be brought in the first instance in a District Court within Albania's general courts (see part IV.A below).

Under the Administrative Procedure Code, a child through their representative has the right to submit an appeal against an administrative act or omission.<sup>33</sup> Administrative appeal suspends the implementation of the administrative act, and allows for the legitimacy of the administrative act to be reviewed, and revoked, repealed or amended as necessary.<sup>34</sup>

Under the Law on Administrative Justice, a child whose rights or lawful interests are affected by an administrative act can lodge an appeal with the administrative court for judicial review. The Law provides for a wide scope of judicial review including administrative acts, other administrative actions (real acts) and normative acts (excluding statutory laws).<sup>35</sup> The plaintiff must exhaust all administrative legal remedies before going to the court.

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<sup>30</sup> Business Standard, 'Albania offers free legal aid for disabled', February 2014, available at: [http://www.business-standard.com/article/news-ians/albania-offers-free-legal-aid-for-disabled-114021800042\\_1.htm](http://www.business-standard.com/article/news-ians/albania-offers-free-legal-aid-for-disabled-114021800042_1.htm).

<sup>31</sup> Civil Rights Defenders, 'Human rights in Albania'; European Commission.

<sup>32</sup> Civil Code, Article 7.

<sup>33</sup> Administrative Procedure Code Art. 137.

<sup>34</sup> Ibid.

<sup>35</sup> Sigma, 'Assessment: Albania April 2013', available at: [www.sigmaxweb.org/publicationsdocuments/AlbaniaAssessment\\_2013.pdf](http://www.sigmaxweb.org/publicationsdocuments/AlbaniaAssessment_2013.pdf).

An individual can also request review by the Constitutional Court of a law or act that violates their rights. The Constitutional Court has the power to decide on, amongst other things: the compatibility of a law with the Constitution or with international agreements; the compatibility of normative acts of the central and local organs with the Constitution and international agreements; and the final adjudication of the complaints of individuals for the violation of their constitutional rights to due process of law, after all legal remedies for the protection of those rights have been exhausted.<sup>36</sup> When constitutional issues arise during lower court proceedings, the Constitutional Court accepts interlocutory appeals to determine the constitutionality of that issue.

The domestic violence law provides that a petition to the court for protection orders or emergency protection orders on behalf of minors (of any age) may be presented by the minor's parent or guardian; the minor's legal representative or attorney; relatives of the minor; representatives of the social services office at the municipality or commune, where the minor resides temporarily or permanently, when they have knowledge of the violence committed; domestic violence victim protection and rehabilitation centres and services recognised/licensed by the Ministry of Labour, Social Affairs and Equal Opportunities; the police/prosecutor; or persons legally responsible for children. Violence against children, particularly by the persons who take care of them, is an offence punishable by imprisonment of up to three years.<sup>37</sup> In this occurrence, the public prosecutor initiates the criminal process against the perpetrator.

### *Regional and international mechanisms*

The European Court of Human Rights decides cases concerning alleged violations of any of the rights contained in the European Convention on Human Rights.<sup>38</sup> Any individual, group of individuals or an NGO who is a victim of a violation of one of these rights may submit a complaint to the Court,<sup>39</sup> but the complaint will be admissible only if all domestic remedies have been exhausted.<sup>40</sup> Anonymous complaints are not permitted.<sup>41</sup> The procedural rules for the Court do not make any child-specific provisions. Persons may initially present an application themselves or through a representative, however, all applicants must be represented at hearings thereafter.<sup>42</sup> After examining the case, the Court renders a judgment which is binding on the State<sup>43</sup> and also has powers to award monetary compensation to the victims of human rights abuses.<sup>44</sup> It is also worth noting that the Court has an established practice of referring to other international human rights instruments, including the CRC, as

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<sup>36</sup> Constitution, Article 131.

<sup>37</sup> See Criminal Code.

<sup>38</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms ("European Convention on Human Rights"), 1950, Articles 19 and 32, available at:

<https://www.crin.org/en/library/legal-database/european-convention-protection-human-rights-and-fundamental-freedoms>.

<sup>39</sup> Ibid., Article 34.

<sup>40</sup> Ibid., Article 35.

<sup>41</sup> Ibid.

<sup>42</sup> Rules of Court, July 2014, Rule 36, available at: [http://www.echr.coe.int/documents/rules\\_court\\_eng.pdf](http://www.echr.coe.int/documents/rules_court_eng.pdf).

<sup>43</sup> European Convention on Human Rights, Article 46.

<sup>44</sup> Ibid., Article 41.



guides to interpretation of the European Convention.

Finally, once all domestic remedies have been exhausted, complaints against violations of children's rights may be submitted to the UN Committee on the Rights of the Child under the third Optional Protocol to the CRC,<sup>45</sup> which Albania has ratified. Complaints can be made directly by both an individual child or a group of children, or indirectly, on their behalf by an adult or an organisation.<sup>46</sup> The violations must concern a right granted by either the CRC, the Optional Protocol on the sale of children or the Optional Protocol on the involvement of children in armed conflict<sup>47</sup> and must have occurred after the entry into force of the Protocol on 14 April 2014.<sup>48</sup> Anonymous complaints are inadmissible and so are complaints not made in writing.<sup>49</sup> In addition, only complaints made in one of the working languages of the UN will be accepted.<sup>50</sup> After examining the complaint, the Committee can make recommendations to the State, which are not legally binding.<sup>51</sup>

**B. What powers would courts have to review these violations, and what remedies could they offer?**

District Courts have the power to review disputes related to the CRC in the first instance. This includes the removal of custody of children where their rights are violated.<sup>52</sup>

The Constitution provides that everyone has the right to be rehabilitated and/or indemnified in compliance with law if they have been damaged because of an unlawful act or omission of the state organs.<sup>53</sup>

Following administrative review, an administrative body has the power to abrogate, revoke or modify the administrative act.<sup>54</sup> Following judicial review, an administrative court can annul or confirm the administrative act, or impose certain actions on the administrative body. It can also issue injunctions or other provisional remedies preventing potentially harmful administrative acts. The court's decision is binding on the administrative body.<sup>55</sup>

The Constitutional Court has the power to invalidate the acts it reviews.<sup>56</sup>

**C. Would such a challenge have to directly involve one or more individual child victims, or is it possible to challenge a law or action without naming a specific victim?**

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<sup>45</sup> Optional Protocol to the Convention on the Rights of the Child on a communications procedure, 2013, available at:

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=A/RES/66/138&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A/RES/66/138&Lang=en).

<sup>46</sup> Ibid., Article 5.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid., Article 7(g).

<sup>49</sup> Ibid.

<sup>50</sup> Office of the United Nations High Commissioner for Human Rights, '23 FAQ about Treaty Body complaints procedures', available at: <http://www2.ohchr.org/english/bodies/petitions/individual.htm#contact>.

<sup>51</sup> Optional Protocol to the Convention on the Rights of the Child on a communications procedure, Article 10.

<sup>52</sup> Code of Civil Procedure, Article 349.

<sup>53</sup> Constitution, Article 44.

<sup>54</sup> Administrative Procedure Code, Article 146.

<sup>55</sup> Law on Administrative Justice; Sigma, p. 6.

<sup>56</sup> Constitution, Article 132.

Based on the Code of Civil Procedure, in civil cases, proceedings must commence on a petition that, amongst other requirements, must give the names of the parties.<sup>57</sup> Constitutional petitions must also include the names of the petitioner and the interested parties, without which the petition will not be reviewed by the court.<sup>58</sup> The petitioner or their lawyer must also be present during the proceedings.<sup>59</sup>

D. Is any form of collective action or group litigation possible, with or without naming individual victims?

Civil proceedings may be jointly instituted by multiple claimants if they have common rights or obligations on the subject of the claim, and the rights and obligations in terms of fact or of law have the same basis.<sup>60</sup> It is possible for the court to consolidate two sets of proceedings when they have connected subjects.<sup>61</sup>

E. Are non-governmental organisations permitted to file challenges to potential children's rights violations or to intervene in cases that have already been filed?

Article 48 of the Albanian Constitution provides: “Everyone, by himself *or together with others* may direct requests, complaints or comments to the public organs, which are obliged to answer in the time periods and conditions set by law” (emphasis added).

Under the Law on Administrative Justice, any association and/or interest group whose collective or diffused interests are affected by an administrative act can lodge an appeal with the administrative court for judicial review.<sup>62</sup>

The Law on Environmental Protection ensures that any organisation may initiate legal proceedings in a court for environment-related cases.<sup>63</sup> Specifically, Article 81 provides: “In case of a threat to, or damage or pollution of the environment, individuals, the general public and non-profit organisations are entitled to: (a) the right to make an administrative complaint, (b) start legal proceedings in a court of law.” At least one NGO has initiated legal proceedings in a court of law for an environment-related matter.<sup>64</sup>

Under the Code of Civil Procedure, any person who has a legal, actual and direct interest may file a lawsuit with the court.<sup>65</sup> Anyone can intervene in legal proceedings as a third

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<sup>57</sup> Code of Civil Procedure, Article 154.

<sup>58</sup> Law no. 8577 of 10.2.2000 on the organisation and functioning of the Constitutional Court of the Republic of Albania, Articles 28 and 31.

<sup>59</sup> Ibid., Article 34.

<sup>60</sup> Ibid., Article 161.

<sup>61</sup> Code of Civil Procedure, Article 57.

<sup>62</sup> Sigma.

<sup>63</sup> Republic of Albania, Council of Ministers, ‘Albania’s answers to EC questionnaire’, April 2010, available at: [http://arkiva.mash.gov.al/File/Integrimi/ALBANIA-ANSWERS\\_TO\\_EC\\_QUESTIONNAIRE.pdf](http://arkiva.mash.gov.al/File/Integrimi/ALBANIA-ANSWERS_TO_EC_QUESTIONNAIRE.pdf).

<sup>64</sup> Ibid.

<sup>65</sup> Boga & Associates, ‘Albania chapter: litigation and dispute resolution 2014’, International Comparative Legal Guides, available at: <http://www.iclg.co.uk/practice-areas/litigation-and-dispute-resolution/litigation-and-dispute-resolution-2014/albania>



party when they have an interest in supporting one of the parties and joins the proceedings to support them.<sup>66</sup> It is unclear whether these provisions grant legal standing to NGOs. According to Albania's response to the 2009 European Commission Questionnaire, the Code of Civil Procedure is currently under revision to add amendments to facilitate organisations' participation in the court system.<sup>67</sup>

Under the Constitution, in addition to individuals, organisations may present a case to the Constitutional Court on issues related to their own interests.<sup>68</sup> The criteria for an organisation's eligibility to petition the Constitutional Court was explained by the Court in its decision concerning a petition brought by the Centre for Civil Legal Initiatives (CCLI). This petition alleged that the normative act of the Ministry of Finances establishing increased amounts and payment upfront of court expenses and tariffs constituted an obstacle to access to justice for poor and vulnerable women (as well as other vulnerable citizens), and was therefore incompatible with the Constitution and international agreements ratified by Albania.

According to the Constitutional Court, the petitioners "need to prove a necessary connection between their activity and the case they have brought to the Constitutional Court". The Court stated that:

"The petitioning organisation must prove how the matter affects its own activity; must prove the direct and individualised connection between their activity and the normative act it is challenging. Its interest to act must be certain, direct and personal; it has to do with a right being violated, to real or potential damage it may suffer and not with the theoretical anticipated issues on the non-constitutionality of the norm and how it may have affected interests... It is necessary to prove that the normative act in question in fact regulates aspects that constitute the objective of the activity of the petitioner, as established in the Constitution, laws or in the case of private entities, in their statute."

In that case, the Court decided that CCLI, which was an entity/centre without membership that provided free legal assistance to poor persons and vulnerable women, was not eligible to petition the Court on "this abstract constitutional matter", because it had "failed to prove the direct link between its mission and activity on the one hand and the consequences that may derive from the challenged normative act".<sup>69</sup>

**IV. Practical considerations.** Please detail some of the practical issues, risks and uncertainties that might be involved in bringing a case to challenge a violation of children's rights, such as:

A. Venue. In what courts could a case be filed (e.g., civil, criminal, administrative, etc.)? What would the initial filing process entail?

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<sup>66</sup> Code of Civil Procedure, Article 191.

<sup>67</sup> Republic of Albania, Council of Ministers.

<sup>68</sup> Constitution, Article 134.

<sup>69</sup> See Constitutional Court, decision no. 7, 27.02.2013.

Issues of domestic law, all ratified international instruments, and most civil cases must be brought in the first instance in a District Court within Albania's general courts. The court with proper jurisdiction to hear such cases is the court in whose area of jurisdiction the child or the child's legal representative has permanent residence.<sup>70</sup>

The Code of Civil Procedure sets forth the guidelines to file a case in Albania. The initial application to an Albanian court must be made in writing in the Albanian language.<sup>71</sup> A civil complaint must generally state the following: (1) the parties and their contact information; (2) the scope of the claim; (3) the facts, circumstances, and documents upon which the claim is based; (4) the plaintiff's legal demands and conclusions; (5) the value of the claim; and (6) the date of preparation.<sup>72</sup>

An individual can initiate an administrative appeal in writing to the body which issued the administrative act. The appeal must include the following details: (1) the name and address of the appellant; (2) the administrative act or omission which is contested; (3) the causes of appeal; and (4) any other document deemed important by the appellant.<sup>73</sup>

Administrative courts dealing only with administrative disputes have recently been established by law. Under the new law, administrative cases for judicial review can be initiated in one of six administrative courts of first instance (Tirana, Durrës, Shkodër, Vlora, Korça and Gjirokastra).<sup>74</sup> The administrative courts started operating in November 2013.<sup>75</sup>

- B. Legal aid / Court costs. Under what conditions would free or subsidised legal aid be available to child complainants or their representatives through the court system (i.e., would the case have to present an important legal question or demonstrate a likelihood of success)? Would child complainants or their representatives be expected to pay court costs or cover other expenses?

See part II.D above.

Under the Law on Legal Aid, a person may be eligible for legal aid: (1) in criminal proceedings in all its phases if they lack financial resources; (2) if they need legal assistance in civil or administrative matters but do not have sufficient means to pay for it; and (3) if they are a child for whom protection in criminal proceedings and the trial is required by law.<sup>76</sup>

The provision of legal aid in civil and administrative matters must take into account: (1) the

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<sup>70</sup> Code of Civil Procedure, Articles 43-44.

<sup>71</sup> Ibid., Article 154.

<sup>72</sup> Ibid., Articles 117 and 156.

<sup>73</sup> Administrative Procedure Code, Article 143.

<sup>74</sup> Law No. 49/2012 on the organisation and functioning of administrative courts and adjudication of administrative dispute; Decree No. 7878 of 16 November 2012; Sigma.

<sup>75</sup> KPMG, 'Administrative courts become operational', November 2013, available at: <http://www.kpmg.com/AL/en/IssuesAndInsights/ArticlesPublications/Newsletters/Legal/Documents/2013-11-04-Administrative-courts.htm>.

<sup>76</sup> Law on Legal Aid, Article 13.

relative value of the appeal or property involved; (2) the merits of the claim and the legal arguments; (3) the probability of success of the appeal or defence; (4) the complexity of the case; and (5) the capacity of the applicant or recipient to be self-represented.<sup>77</sup>

If, at the end of the hearing, the recipient of legal aid receives reimbursement of the court costs, they must return these costs to the Legal Aid Commission for providing legal assistance in the matter.<sup>78</sup>

- C. Pro bono / Financing. If legal aid is not available, would it be possible for child complainants or their representatives to obtain legal assistance from practicing lawyers on a pro bono basis, through a children's rights organisation, or under an agreement that does not require the payment of legal fees up front?

It is reported that most free legal aid in Albania is provided by civil society.<sup>79</sup> For example, organisations such as the Tirana Legal Aid Society, Civil Rights Defenders, the Albanian Disability Rights Foundation, and the Albanian Helsinki Committee provide free legal services to individuals belonging to vulnerable and marginalised groups including children,<sup>80</sup> persons with disabilities,<sup>81</sup> arrested, pre-trial detained and convicted persons,<sup>82</sup> the Roma,<sup>83</sup> and other minorities.<sup>84</sup>

However, these organisations' activities are not guaranteed as they can only take up cases for as long as they have secured funding by foreign donors. Organisations do not enjoy any financial support by the government. This in practice means that an organisation may close its offices and cease to offer this much needed assistance.

The law does not specifically regulate contingency or conditional fees, but permits the lawyer and the client to define the fee in mutual agreement. Under the provisions of Law No. 9109 dated 17 July 2003, "On the Attorney profession in the Republic of Albania", remuneration for legal services is defined: in an agreement between the client and the lawyer; by the court and the prosecutor's office when the lawyer is nominated *ex officio*; and by law.<sup>85</sup>

There is no legal provision requiring lawyers to offer services on a pro bono basis.

- D. Timing. How soon after a violation would a case have to be brought? Are there any

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<sup>77</sup> Ibid., Article 15(1).

<sup>78</sup> Ibid., Article 14.

<sup>79</sup> European Commission.

<sup>80</sup> TLAS, 'Projects', available at: <http://www.tlas.org.al/en/node/65>.

<sup>81</sup> Civil Rights Defenders, 'Strengthening the rights of people with disabilities in Albania', February 2010, available at:

<https://www.civilrightsdefenders.org/news/strengthening-the-rights-of-people-with-disabilities-in-albania/>.

<sup>82</sup> Civil Rights Defenders, 'Legal clinic supports the most disadvantaged', April 2011, available at:

<http://www.civilrightsdefenders.org/news/legal-clinic-supports-the-most-disadvantaged/>.

<sup>83</sup> Ibid.

<sup>84</sup> Civil Rights Defenders, 'Legal services for marginalised groups', July 2011, available at:

<http://www.civilrightsdefenders.org/news/legal-services-for-marginalized-groups/>.

<sup>85</sup> Boga & Associates.

special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children?

The Civil Code provides various limitation terms according to the types of claims, and a general limitation term of 10 years for claims. Under the Civil Code the limitation term starts from the day when the subject acquires the right to file the claim.<sup>86</sup>

Administrative appeals must be submitted: (a) within one month from the day the appellant was notified of the act or non-issuance of it or the act was published; or (b) in case of omission, within three months from the day the initial request concerning the issuance of the administrative act is submitted.<sup>87</sup>

Under the Code of Civil Procedure, the deadline for filing a lawsuit for judicial review of an administrative act is 30 days from the date of declaration or notice of the decision of the highest administrative body.<sup>88</sup> Deadlines for filing in the new administrative courts could not be located.

The Constitutional Court has an even stricter time limit of two to three years.

- E. Evidence. What sort of evidence is admissible/required to prove a violation? Are there particular rules, procedures or practices for dealing with evidence that is produced or presented by children?

The Albanian Code of Civil Procedure generally allows parties to prove the facts on which they base their claims by presenting evidence necessary and related to matters at issue in trial.<sup>89</sup>

Under the Criminal Procedure Code, any person has the ability to testify in court, unless due to their mental or physical disability they are unable to do so. The court can examine and verify a person's physical or mental ability to testify in case this is necessary to assess the person's testimony.<sup>90</sup>

Before interrogation commences, the court chairperson warns the witness of their obligation and legal responsibility to tell the truth, except when the witness is a child under 14. In addition, the child may be questioned by the chair judge with regard to the claims and allegations of the parties. The chair judge may be assisted by a relative of the child, or by a specialist in the field of children's education. When it is deemed that direct questioning would not harm the child's psychological state, the judge may order the continuation of the questioning. This order may, however, be revoked during the session.<sup>91</sup>

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<sup>86</sup> Ibid.

<sup>87</sup> Administrative Procedure Code, Article 140.

<sup>88</sup> Code of Civil Procedure, Article 328.

<sup>89</sup> Ibid., Article 213.

<sup>90</sup> Criminal Procedure Code, Article 155.

<sup>91</sup> *Combined second to fourth periodic report of Albania to the UN Committee on the Rights of the Child*, paras 652, 654.

Special privacy provisions exist to protect the identities of children involved in court proceedings. The law forbids the publication of personal data or pictures of child defendants, witnesses, or victims. The court may allow publication only when it is in the best interest of the child, or when the child has attained 16 years. The court may decide that proceedings should take place behind closed doors when this is in the best interest of the child.<sup>92</sup>

Article 6 of the Family Code provides that in all proceedings concerning children, they have the right to be heard, in accordance with their age and capacity to understand, and the right to the protection of their rights as granted in particular provisions which guarantee their intervention and consent. The Family Code sets the minimum threshold of the age of 10 for when a child's opinion is sought and the age of 12 for having the right to give consent to certain procedures such as adoption or placement in custody.<sup>93</sup> In cases when a child requests to be heard, their request cannot be rejected, except for serious reasons that are based on a well founded decision of the court. The child can be heard alone, through a lawyer, or through another person chosen by the child. In every procedure concerning a child, the presence of a psychologist is mandatory to assess their expressions, in accordance with their mental development and social situation.<sup>94</sup>

However, the right of the child to be heard is not guaranteed in all laws concerning all sorts of proceedings that may affect or involve a child; it is only explicitly guaranteed in the Family Code and family law-related proceedings. Furthermore, it is reported that the right of the child to be heard in all proceedings concerning them is rarely respected in practice. Indeed, certain traditional and cultural attitudes about children limit the full implementation of rights guaranteed by the CRC, and children generally feel that their views are not taken into account in courts, schools, alternative care institutions, and at home.<sup>95</sup>

F. Resolution. How long might it take to get a decision from the court as to whether there has been a violation?

Trials are required to be concluded within a reasonable period of time, in accordance with Articles 41 and 42 of the Constitution on the right to fair trial, and Article 6 of the European Convention of Human Rights.

Decisions in administrative appeals must be issued within a month from the date the appeal is submitted.<sup>96</sup> Judicial review of lawsuits against administrative decisions must be completed within 30 days from the date of filing in court.<sup>97</sup> Time limits for the new administrative courts could not be located.

According to a 2015 analysis of the justice system in Albania, the “large number of issues

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<sup>92</sup> Ibid., para. 651.

<sup>93</sup> Children's Alliance Alternative Report.

<sup>94</sup> Ibid.

<sup>95</sup> UN Committee on the Rights of the Child, *Concluding Observations on Albania's 2nd to 4th Periodic Report*.

<sup>96</sup> Administrative Procedure Code, Article 141.

<sup>97</sup> Code of Civil Procedure, Article 327.

for consideration (backlog) and the insufficient number of judges causes excessive length of judicial processes that cause delays of up to several years in the adjudication of cases.” The average duration of criminal cases adjudicated by the High Court (or Supreme Court) ranges from 0.9 years (shortest time recorded in 2014) to 1.2 years (longest time recorded in 2012 and 2013). For civil cases, including administrative cases, cases take longer to be adjudicated - specifically from 2.1 years (recorded in 2014) to 3.5 years (recorded in 2013). According to the report, 24% of criminal cases take more than 6 months in the Court of Appeal, whereas 73% of civil cases take more than six months.<sup>98</sup>

G. Appeal. What are the possibilities for appealing a decision to a higher court?

There are three levels of courts in Albania: the Courts of First Instance (District Courts), the Court of Appeals, and the Supreme Court. Matters can be appealed to higher courts for review.<sup>99</sup> As a general principle, all decisions issued by a District Court may be challenged in the Courts of Appeal. An appeal request may only be denied when the appeal is presented after the deadline provided by law, the appeal is made against a decision where an appeal is not permitted, or the appeal is made by a party that is not legally entitled to file an appeal.<sup>100</sup> The Albanian Code of Civil Procedure requires a party to file an appeal within 30 days of the District Court’s decision.<sup>101</sup>

In judicial review cases, based on the new law on administrative courts, decisions of administrative courts of first instance can be appealed to a court of second instance - the Administrative Court of Appeal in Tirana. Final decisions will rest with the administrative chamber of the Supreme Court.<sup>102</sup>

When constitutional issues arise during lower court proceedings, the Constitutional Court can accept interlocutory appeals to determine the constitutionality of those issues. The Constitutional Court is the final court of appeal for individual complaints of violations of constitutional rights to due process of law, after all legal remedies for the protection of those rights have been exhausted. The Court’s decisions are final and binding.<sup>103</sup>

H. Impact. What are the potential short-term and long-term impacts of a negative decision? Is there a possibility for political backlash or repercussions from a positive decision?

The Albanian legal system is based on codified principles of civil law. Judicial precedents

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<sup>98</sup> Republic of Albania Assembly, Special Parliamentary Committee on Justice Reform, ‘Analysis of the justice system in Albania’, March 2015.

<sup>99</sup> Ibid.; see also Mbaresha Veleshnja Gentry, ‘A Guide to Researching the Albanian Legal System’, Hauser Global Law School Program, available at: [http://www.nyulawglobal.org/globalex/albania.htm#\\_Albanian\\_Body\\_of\\_Law](http://www.nyulawglobal.org/globalex/albania.htm#_Albanian_Body_of_Law).

<sup>100</sup> Wolf Theiss, ‘The Wolf Theiss Guide to: Dispute Resolution in Central, Eastern & Southeastern Europe’, January 2011, available at: [http://www.wolftheiss.com/tl\\_files/wolftheiss/CSC/Guides/The\\_Wolf\\_Theiss\\_Guide\\_to\\_Dispute\\_Resolution\\_in\\_Central\\_Eastern\\_and\\_Southeastern\\_Europe\\_edition2.pdf](http://www.wolftheiss.com/tl_files/wolftheiss/CSC/Guides/The_Wolf_Theiss_Guide_to_Dispute_Resolution_in_Central_Eastern_and_Southeastern_Europe_edition2.pdf).

<sup>101</sup> Code of Civil Procedure, Article 443.

<sup>102</sup> Hoxha Memi Hoxha, ‘Albania new courts’, December 2013, available at: <http://www.legal500.com/developments/24382>.

<sup>103</sup> Constitution, Article 131.



are taken into consideration by courts, but without having a binding effect, except for unifying decisions issued by the Joint Colleges of the Supreme Court<sup>104</sup> and the Constitutional Court.

- I. Follow up. What other concerns or challenges might be anticipated in enforcing a positive decision?

According to a 2015 analysis of the justice system in Albania, “[i]t is a fact that, despite positive developments, the judicial power faces numerous and serious problems in terms of independence, impartiality, accountability, professionalism, efficiency, transparency and its management. There is a widespread public perception that the system suffers from the phenomenon of corruption and outside influence in delivering justice.”<sup>105</sup>

A significant challenge to a positive decision is the lack of training and knowledge about children’s rights among the Albanian police and other enforcement authorities. In addition, the lack of a clear legal framework to properly challenge a potential violation coupled with the overall fears children have of repercussions relating to complaints prevents violations from being reported in the first instance.

Non-enforcement of many decisions, particularly child support decisions (following parents’ divorce), is quite problematic. Bailiffs lack skills and sensitivity to handle enforcement of court decisions involving minors. Procedures and sanctions in case of non-enforcement of court decisions are not regulated in a resolute fashion that would provide a quick and effective resolution for concerned parties. Many cases from Albania have ended up in the European Court of Human Rights regarding non-execution of court decisions.

- V. Additional factors.** Please list any other national laws, policies or practices you believe would be relevant to consider when contemplating legal action to challenge a violation of children's rights.

Although Albania has ratified the CRC and its Optional Protocols, the government has been criticised for not properly publicising the rights and legal guarantees of these treaties for its citizens.<sup>106</sup> Furthermore, although some authorities have been trained on the implementation and protection of children’s rights, the Committee on the Rights of the Child has expressed concern about the general implementation of the legal guarantees of these treaties.<sup>107</sup>

After ratification of the CRC, Albania passed many laws and resolutions on the protection of children’s rights to bring national laws into greater conformity with human rights treaties. However, many of these are not implemented, are not accepted by Albanian

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<sup>104</sup> Wolf Theiss.

<sup>105</sup> Republic of Albania Assembly, Special Parliamentary Committee on Justice Reform.

<sup>106</sup> See UN Committee on the Rights of the Child, *Concluding Observations on Albania’s 2nd to 4th Periodic Report*.

<sup>107</sup> Ibid.

society, and are unknown to the Albanian police, creating an enforcement problem.<sup>108</sup> For example, under the Albanian Constitution, children enjoy special protection from violence, abuse, exploitation, and hard labor. They are entitled to protection of their health, morale, and normal development.<sup>109</sup> However, numerous reports indicate that a culture of violence against children is largely accepted within Albanian families, schools, and society.<sup>110</sup>

In its 2012 report, the Children's Human Rights Centre of Albania stated that the Albanian government lacked a legal framework to address children's rights violations,<sup>111</sup> and reiterated the need to fully adopt mechanisms to report all forms of violence against children. Suggested mechanisms included: (1) providing appropriate information to facilitate the making of complaints; (2) the Albanian government's active participation in investigations and court proceedings; (3) developing protocols which are appropriate for different circumstances and made widely known to children and the general public; (4) establishing related support services for children and families; and (5) training and providing ongoing support for personnel to receive and advance the information received through reporting systems.<sup>112</sup>

Access to justice for vulnerable groups is a big problem due to weaknesses in the judiciary, the poor implementation of the national free legal aid system, and a generally low understanding of what constitute human rights violations among Albanian citizens.<sup>113</sup>

*This report is provided for educational and informational purposes only and should not be construed as legal advice.*

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<sup>108</sup> CRCA's Alternative Report; see also CRIN, 'Children's Rights Wiki: Albania', available at: <http://wiki.crin.org/mediawiki/index.php?title=Albania>.

<sup>109</sup> Children's Alliance Alternative Report on the UN Convention on the Rights of a Child, April 2009, available at: [http://www.crin.org/docs/Albania\\_ACA\\_CRC%20Report.doc](http://www.crin.org/docs/Albania_ACA_CRC%20Report.doc).

<sup>110</sup> Children Human Rights Centre of Albania Alternative Report to the Convention on the Rights of the Child, 17 January 2012, available at: [http://www2.ohchr.org/english/bodies/crc/docs/ngos/Albania\\_ChildrensHumanRightsCentreofAlbania\\_CRC.docx](http://www2.ohchr.org/english/bodies/crc/docs/ngos/Albania_ChildrensHumanRightsCentreofAlbania_CRC.docx).

<sup>111</sup> Ibid.

<sup>112</sup> Ibid.

<sup>113</sup> Ibid.