Safeguards for the Protection of the Fundamental Rights of Children in Conflict with the Law

SOUTH-EAST EUROPE (NPM SEE NETWORK)

Sofia 10-11 NOV 2026

The legislation governing Rights of Children in Conflict with the Law

- Law No. 7895, dated 27 January 1995 CRIMINAL CODE OF THE REPUBLIC OF ALBANIA (as ammended)

Article 1/c Principles of the Criminal Code

The Criminal Code is based on the constitutional principles of rule of law, equality under the law, fairness in determining the guilt and sentence, **protecting the highest interest of children**, and the humanism. The implementation of the criminal law by analogy shall not be allowed.

Article 51 Imprisonment sentence for minors

For minors, who at the time they committed the criminal offence were under eighteen years old, the imprisonment sentence may not exceed half of the term of punishment provided for by law for the criminal offence committed.

Article 52 Excluding minors from punishment

The court, considering the low dangerousness of the criminal offence, the specific circumstances under which it was committed, and the previous behavior of the minor, may exclude him from punishment. In this cases, the court may decide to place the minor to an educational institution.

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- Law No. 7905, dated 21.3.1995 CRIMINAL PROCEDURE CODE OF THE REPUBLIC OF ALBANIA (as ammended)

Article 41 Verification of the Defendant's Age

1. At any stage and instance of the proceedings, where there are grounds to believe that the defendant is a minor, the proceeding authority shall carry out the necessary verifications and, where appropriate, shall order an expert examination.

2. When, even after verifications and expert examination, doubts remain as to the defendant's age, it shall be presumed that he or she is a minor.

Article 103 Prohibition of Publication of Documents

.. 4. The publication of the personal details and photographs of defendants and witnesses who are minors, accused, or victims of the criminal offense, is prohibited. The court may authorize publication only when it is required in the interest of the minor, or when the minor has reached the age of sixteen years.

Article 140 First Notification of the Defendant at Liberty

..4. If the defendant is a minor, as a rule, he or she shall be notified through his/her parents or guardian, as well as in accordance with the special legislation on minors

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Article 229 Criteria for the Imposition of Personal Precautionary Measures

.. 3. When the defendant is a minor, the court shall take into account his or her best interests and the requirement not to interrupt ongoing educational processes.

Article 230 Special Criteria for the Imposition of Pre-trial Detention.

.. 4. Minors may not be detained when charged with criminal misdemeanors.

Article 255 Duties of the Judicial Police in Cases of Arrest or Detention

.. 3. When the arrested or detained person is ill or a minor, the prosecutor may order that he/she be kept under guard at his/her residence or in another secured place. When the arrested or detained person has not been given the letter of rights, it shall be delivered immediately upon his/her arrival at the pre-trial detention premises. If the arrested or detained person cannot read, the letter of rights shall be read aloud by one of those present. This fact shall be reflected in the report, against signature.

The legislation governing Rights of Children in Conflict with the Law

- LAW No. 37/2017 CRIMINAL JUSTICE FOR CHILDREN CODE (CHAPTER III

Procedural rights and guarantees of the child in conflict with the law (articles 19-24)

Article 19 Rights of the child in conflict with the law

1. The child in conflict with the law enjoys the rights foreseen in the Criminal Procedure Code and the special rights foreseen in this Code.

2. The child has the right to protection and special procedures at all stages of the criminal justice for children process.

3. At any stage of criminal proceedings the child enjoys the following rights:

a) the right to free legal aid and psychological assistance or any other appropriate assistance that is necessary to prepare and file the defence;

b) the right to be informed promptly in a way that is appropriate to his/her individual development;

c) the right to be provided with a free of charge translator/ interpreter if s/he does not understand or speak the language used or if s/he uses the sign language;

d) the right to have the parents present and/or the right to be accompanied by a trustworthy person;

e) the right not to be forced to give testimony or to plead guilty;

f) the right to cross-examine the prosecution witnesses and ensure appearance and examination of the defence witnesses, under equal terms;

g) the right to assistance from the consular service;

h) the right to appeal, at any stage of criminal proceedings or during execution of the criminal sentence;

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Procedural rights and guarantees of the child in conflict with the law (articles 19-24)

Article 20 Legal aid and psychological assistance to the child

1. At any stage of the criminal justice for children process, the child in conflict with the law or the child victim is entitled to free state legal aid and psychological assistance according to the respective legislation.

2. The child witness is provided with free psychological assistance where it is needed by the child.

Article 21 Protection of child's privacy

1. The right of the child to privacy shall be fully respected, at any stage of criminal justice for children proceedings, in order to avoid causing harm to the child.

2. No information that may disclose the identity of the child in conflict with the law, the child victim or witness of a criminal offence shall be published.

3. Records on past sentences against the child shall not be made public.

4. Identification or publication, in any form, of personal data of the child, unless foreseen by the law on the personal data protection, shall be prohibited.

5. Personal data of the child who was under 18 years of age at the time of commission of the criminal offence may be identified or published only upon the consent of the child unless otherwise foreseen by the law on personal data protection.

6. Juvenile-related information shall be processed in accordance with the legislation on personal data protection.

7. Violation of paragraph 4 of this Article shall constitute a criminal offence according to the provisions of the Criminal Code.

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Article 22 Individual assessment of the child

1. The body administering the process, at any stage of juvenile justice, shall treat the child with special attention and care.

2. In any decision concerning a child, account shall be taken of individual circumstances including: age, level of development, living conditions, upbringing and development, education, health conditions, family situation, and other circumstances which allow for the individual assessment to be made.

3. The court/the prosecutor, before taking any decision about a child, shall summon, as appropriate, an expert or group of experts of various disciplines to assess the individual, health, family, social and environmental circumstances of the child, in order to understand the personality, accountability and the level of responsibility of the child.

4. If the court/prosecutor, once the individual assessment is done, finds that the child suffers mental health disorders which make him irresponsible, the child is exempted from criminal responsibility and, if necessary, the child is placed in a specialized and independent medical institution according to the provisions of the Criminal Procedure Code.

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Article 23 Free of charge services to children in the juvenile justice system

1. Children in conflict with the law or victims are provided with free of charge services according to this Code and the legislation in force.

2. The fees for such services are covered by the budget of institutions and they are paid for by the respective institutions where services are provided, in accordance with the legislation in force.

3. The service delivery to children in the juvenile justice system is regulated by the provisions of this Code and the legislation in force, unless otherwise foreseen by this Code.

Article 24 The rights of the child victim and/or witness of the criminal offence

- The child victim and/or witness of the criminal offence enjoys, to the extent possible, the same rights foreseen for the child in conflict with the law under this Chapter and the rights foreseen in Chapter V of this Code.

The role of the NPM in monitoring and oversight

LAW No. 8454, dated 4.2.1999, “On the People's Advocate”, as amended

Article 19/1

The Ombudsman or persons authorized by him have the right to enter at any time, without restriction or prior authorization, but by notifying the head of the institution, all public administration institutions, **prisons**, **places where the police or the prosecution hold escorted**, **detained or arrested persons (pre-trial detainees**), state wards or institutions, psychiatric hospitals , asylums, children's homes, as well as any other place where there is information and he considers that there is a possibility of violation of human rights and freedoms. Entry into all the above premises may be made both to investigate a complaint, a request or a specific notification, as well as at the initiative of the Ombudsman for inspection or study purposes. In these cases, the Ombudsman may meet and talk confidentially and without the presence of official persons with any person who is present or held in these premises. Any correspondence between these persons and the Ombudsman should not be obstructed or controlled.

NPM Albania Methodology

- **Unannounced Monitoring Visits:** As NPM distinct power to conduct inspections of police stations and juvenile prison.
- **Private Interviews:** Conducting confidential and child-friendly interviews.
- Collecting data and information.

NPM Albania Methodology: Safeguards Upon Arrest and During Police Custody

- **Immediate Notification:** Verifying that parents, legal guardians are notified immediately upon a child's detention;
- **Access to Specialized Legal Aid:** Evaluating the quality and availability of state-funded, child-friendly legal assistance from the moment of arrest.
- **The Right to Psychosocial Support:** Assessing whether psychologists are consistently present during police interrogations.
- **Physical Conditions:** Reviewing whether police stations have dedicated, non-intimidating "Child-Friendly Interview Units" completely separated from adult detention

NPM Albania Methodology: Safeguards Upon Arrest and imprisonment

- **Total Separation from Adults;**
- **Access to Education and Development;**
- Monitoring whether children in detention have uninterrupted access to the national school and recreational activities.
- **Healthcare and Mental Well-being:** Reviewing trauma-informed psychological counseling, and addiction services.
- **Disciplinary Procedures:** Ensuring that isolation, solitary confinement, or any form of corporal or degrading punishment is strictly prohibited in practice, per law. No. 37/2017.
- **Individual Protection and Reintegration Plans:** Tracking the continuity of care from the institution back into the municipality. (reintegration and prevention of recidivism)

Issues raised during monitoring/inspections

Initial Arrest Protocols and Police Custody Safeguards

- **Mandatory Presence Tracking:** The NPM must require State Police to maintain time-stamped logs documenting the exact arrival times of parents/guardians, defense lawyers, and psychologist before any procedural interaction occurs.
- **Child-Friendly Infrastructure:** Standardize the immediate transfer of juveniles to dedicated, non-intimidating "Child-Friendly Interview Units" distinct from the primary adult security wings.
- Increase unannounced late-night and early-morning visits to local police commissariats/Security Block, shifting focal attention toward structural records and logs. (protests)

Issues raised during monitoring/inspections People's Advocate Report 2025

- Among the most prominent issues identified are allegations of the use of violence, improper documentation of procedural actions, as well as the conduct of investigative proceedings in the absence of the legal guardian or psychologist, in violation of the special protection due to the minor. These issues were also identified during inspections of police units by the National Mechanism for the Prevention of Torture (NPM). In this regard, insufficient health and psychosocial care for minors deprived of liberty has also been identified, which indicates that the standard of their treatment has not yet been consolidated to the level required by the legal framework.
- The Ombudsman has conducted administrative investigations into reported cases of violations of the procedural rights of minors, treating these issues not only as individual incidents, but also as indicators of shortcomings in the practical functioning of protective mechanisms. In this context, the institution has addressed recommendations to the General Directorate of Police, the Police Supervision Agency and the Prosecutor's Office, with the aim of strengthening the respect for procedural guarantees, the correct documentation of procedural actions and the effective investigation of allegations of rights violations.

Issues raised during monitoring/inspections

- At the same time, the Ombudsman has conducted monitoring and inspections in police stations, to verify the manner in which procedural actions are carried out against minors and to assess whether institutional practice complies with legal standards for the protection of children in conflict with the law. This approach has aimed to strengthen the preventive dimension of the institution's intervention and to promote the immediate correction of inappropriate practices.
- The Ombudsman's recommendations have focused mainly on the full respect of procedural guarantees for minors, ensuring the presence of the guardian during questioning, correct documentation of cases and thorough investigation of allegations of rights violations. In this regard, the General Directorate of Police has reflected a cooperative approach and has taken administrative actions, but the level of implementation remains partial. Likewise, the Police Supervision Agency has taken steps to launch investigations and improve the documentation of reported cases, while the Prosecutor's Office of the Republic of Albania is engaged in criminal prosecution and documentation, although the relevant processes are still ongoing.
- In the assessment of the Ombudsman, the institutions have reacted in a formally cooperative manner and have undertaken administrative and criminal actions, but the implementation of the recommendations still remains partial, so further monitoring remains necessary to guarantee the effective respect of the rights of minors and their treatment with dignity at every stage of the proceedings.

Key findings and challenges identified by the NPM in Kavaja Juvenile Institute

- reconstruction of the building and the installation of air conditioning and ventilation systems in all rooms, common areas and sanitary areas.
- to support the doctor in cooperation with the psychosocial staff working as a multidisciplinary team to organize a joint card for the imprisoned minor to make it possible to assess the state of physical and mental health by the psychiatrist
- to equip the measures with an ambulance for emergency cases of illness and accompaniment at the University Hospital Center "*Mother Teresa*" Tirana
- to install cameras in areas frequented by minors that will cover the entire environment of the Penitentiary Institution with the aim of preventing illegal acts, those areas where privacy is compromised

Key findings and challenges identified by the NPM in Prison of Kavaja

- to fill the staffing in the police sector for 5 (five) vacant positions of specialists in the basic role, who are not on standby and of juvenile people who are not in this institution.
- to work of a woodworking instructor to organize a professional training course in woodworking
- to effectively organize the work of professional courses, as well as the opening of new professional programs of professional training courses for waiters and cooks in the Institution for the Execution of Penal Decisions
- To increase the number of hours from 6 to 10 hours for outside activities according to the adaptation and climate conditions.

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From National Preventive Mechanism Albania

THANK YOU!

DR. G. ÇARKAXHIU