Roadmap to the EU:
Membership through criminal justice reform in Albania

In partnership with :

RESPUBLICA

CIVIL RIGHTS DEFENDERS

Fair Trials

About Fair Trials

Fair Trials is a global criminal justice watchdog with offices in London, Brussels and Washington, D.C., focused on improving the right to a fair trial in accordance with international standards.

Fair Trials' work is premised on the belief that fair trials are one of the cornerstones of a just society: they prevent lives from being ruined by miscarriages of justice and make societies safer by contributing to transparent and reliable justice systems that maintain public trust. Although universally recognised in principle, in practice the basic human right to a fair trial is being routinely abused.

Its work combines: (a) helping suspects to understand and exercise their rights; (b) building an engaged and informed network of fair trial defenders (including NGOs, lawyers and academics); and (c) fighting the underlying causes of unfair trials through research, litigation, political advocacy and campaigns.

In Europe, we coordinate the Legal Experts Advisory Panel – the leading criminal justice network in Europe consisting of over 200 criminal defence law firms, academic institutions and civil society organizations. More information about this network and its work on the right to a fair trial in Europe can be found at: **www.fairtrials.org**

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Introduction

This report assesses how Albanian laws, policies, and practices, compare with the standards of EU laws relating to the procedural rights of suspects and accused people in criminal cases. It identifies key differences between Albanian and EU laws that need to be addressed through legislative changes, and highlights key barriers to practical implementation. Based on this research, this report also provides key practical recommendations for reforms.

Albania's accession to the EU

Since 2014, Albania has been an official candidate for membership to the European Union and in March 2020, the EU officially opened accession negotiations in recognition of the significant progress made by the country and its "determination to advance the EU's reform agenda" to become the EU's newest Member State.[1]

Throughout the accession process, the rule of law, fundamental rights and justice have been recognised as crucial challenges for Albania. This is reflected in the five key priorities identified by the European Commission (the '**Commission**') for the opening of negotiations, all of which related to the administration of justice, human rights, and criminal justice,[2] and continue to be monitored.[3] Although improvements made on these priorities were key to the opening of negotiations, it is clear from the Commission's 2020 enlargement report for Albania that there is still considerable room for improvement, especially with regard to fundamental rights.[4]

It is critical that Albania's compliance with international and European standards on the rule of law and human rights is subject to close and thorough scrutiny during the negotiations on accession. Threats to the rule of law and human rights in various EU Member States have become a serious and growing challenge for the EU in recent years, and they are a potent reminder that adherence to the EU's core values cannot be taken for granted. The EU must ensure that candidate countries can be trusted to not only respect those values, but also to give effect to fundamental rights in practice, as strict preconditions for joining the EU. To do so otherwise risks seriously undermining the common values that underpin the foundations of the EU, and that preserve its unity. to suspects and accused persons, but it is drafted in formal language reproducing legal provisions that most individuals are likely to have difficulties understanding. Further, the content of the Letter of Rights is limited, but there is no formal obligation on officials to inform suspects/accused persons of the additional rights not mentioned in the Letter of Rights.

Criminal justice and accession

Although criminal justice is clearly a core priority in Albania's accession process, the EU's primary focus has been on the reform of the judiciary to improve its transparency and independence, and on tackling corruption and organised crime. Meanwhile, compliance with minimum standards on defence rights has received less prominent attention.

'Legal guarantees of a fair trial' are, however, an explicit part of the EU's 'acquis'.[5] As such, they form part of laws and regulations common to all Member States that must be implemented by candidate countries in order to join the EU. In addition to the standards set out in the EU Charter of Fundamental Rights, these common rules are codified in six directives which were adopted pursuant to the EU's 2009 Roadmap to strengthen procedural rights of suspects and accused persons in criminal proceedings.

[1] Council of the European Union, 'Enlargement and Stabilisation and Association Process – the Republic of North Macedonia and the Republic of Albania – Council Conclusions' 7002/20, Brussels, 25 March 2020.
[2] European Commission, 'Communication from the Commission to the European Parliament and the Council – Enlargement Strategy and Main Challenges 2013-2014' COM (2013) 700, Brussels, 16 October 2013, p.19.
[3] European Commission, 'Commission Staff Working Document – Albania 2020 Report accompanying the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – 2020 Communication on EU Enlargement Policy', SWD (1010) 354, Brussels, 6 October 2020.
[4] Ibid.
[5] EU acquis, Chapter 23 'Judiciary and fundamental rights'.

These six **Roadmap Directives** are:

- Directive 2010/64/EU of the European parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (**'Interpretation and Translation Directive**');
- Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (**'Right to Information Directive'**);
- Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty ('**Access to a Lawyer Directive**');
- Directive 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects and accused in criminal proceedings ('**Children Directive**');
- Directive 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings ('**Presumption of Innocence Directive**'); and
- Directive 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings ('**Legal Aid Directive**').

The EU's interests in Albania's compliance with the Roadmap Directives

The effective implementation of the Roadmap Directives is crucial for Albania's membership to the EU, not just because they are part of the acquis, but also because they complement and support efforts to address the EU's priorities for the accession process highlighted above. An effective mechanism for tackling organised crime and corruption must be underpinned by a fair criminal justice system that guarantees the basic rights of defendants. Improvements on the transparency and the independence of the judiciary will have a limited impact on the fairness of judicial outcomes unless complemented by effective human rights protections in legal proceedings.

The transposition of the Roadmap Directives is also central to the effective operation of the EU's criminal justice cooperation mechanisms. In the last two decades, Member States have been cooperating closely on cross-border issues, principally through mutual recognition mechanisms such as the European Arrest Warrant ('**EAW**'). The operation of these mechanisms relies on mutual confidence between Member States' judicial authorities that each will respect the fundamental rights of the people concerned. The effectiveness of such instruments is undermined where judicial authorities do not, in reality, have full confidence in other Member States' compliance with fundamental rights.[6] A primary objective of the Roadmap Directives is to provide a stronger basis for mutual trust between Member States' legal systems and to reinforce the effective cross-border cooperation on criminal justice matters. As such, the effective implementation of these directives will help to ensure that Albania is a trusted partner on *inter alia* extraditions, evidence-sharing, and the implementation of judicial decisions.

[6] Cf. Court of Justice of the European Union, Case C-216/18 PPU Minister for Justice and Equality v LM and case C-405/15 Aranyosi and Căldăraru.

The relevance of the Roadmap Directives extends beyond the borders of the EU and its accession states. On the whole, the Roadmap Directives codify, clarify, and build on existing standards on the right to fair trial that have been set by the European Court of Human Rights ('**ECtHR**') (as well as by other international and regional human rights mechanisms). Albania ratified the European Convention of Human Rights ('**ECHR**') in 1996 and faces numerous challenges regarding the right to a fair trial in criminal cases. This is evidenced by findings by the ECtHR over recent years of violations in relation to aspects of the right to a fair trial including access to a lawyer,[7] the presumption of innocence,[8] and the right to be present at the trial/the right to a retrial following sentencing in *absentia*.[9] Greater compliance with the Roadmap Directives could help to address many of these challenges. In addition to helping to progress Albania's accession to the EU, these Directives could act as a useful yardstick that could highlight what needs to be done in order to bring local laws in Albania in line with international and European human rights standards more broadly.

Practical implementation

In recent years, Albania has embarked on a major overhaul of its laws to align them with the standards in the Roadmap Directives. There have, for example, been sweeping amendments to the Code of Criminal Procedure,[10] and in 2017, a new Criminal Justice for Children Code ('**Children Code**') was adopted to bring the country's standards in line with EU laws on juvenile justice. These are considerable achievements that represent welcome progress on the advancement of defence rights in Albania.

However, experiences of EU Member States show that the implementation of the Roadmap Directives is far from a simple question of amending domestic legislation to bring the law into line with EU standards. The mere existence of laws guaranteeing fair trial rights does not mean that those rights can be exercised in practice. The practical implementation of EU law requires a more holistic approach, ensuring not only that the wording of local laws reflects EU standards, but also that it is supported by a broader framework of measures that ensure real and effective implementation.

Methodology

Research for this report was carried out by Civil Rights Defenders and Res Publica, who undertook a combination of desk research and consultations with local experts in Albania, using a research framework developed by Fair Trials.

This research framework aimed to cover as many of the provisions in the Roadmap Directives as possible, but pays particular attention to the aspects of the directives that have been especially challenging for Member States in the transposition process. Fair Trials has been able to identify these challenges through close collaboration with the Legal Experts Advisory Panel ('**LEAP**'), a network of criminal justice experts from all 27 EU Member States that works to advance fair trial rights.

Civil Rights Defenders and Res Publica held consultations with local criminal defence lawyers and civil society activists to get a better understanding of how laws are being implemented in practice, and to identify practical challenges faced by criminal suspects and accused persons. In January 2020, they also held a meeting in Albania, bringing together LEAP members and Albanian criminal justice experts to exchange knowledge and their experiences of implementation of the Directives in different Member States. These discussions have further informed this report.

[6] Cf. Court of Justice of the European Union, Case C-216/18 PPU *Minister for Justice and Equality* v LM and case C-405/15 *Aranyosi and Căldăraru*.
[7] Laska and Lika. v. Albania, no. 12315/04 and 17605/04, judgement of 20 April 2010, K*açiu and Kotorri v. Albania*, no. 33192/07 and 33194/07, judgment of 25 June 2013.
[8] *Mulosmani v. Albania*, no. 29864/03, judgement of 8 October 2013, Haxhia v. Albania, no. 29861/03, judgement of 8 October 2013.
[9] *Shkalla v. Albania*, no. 26866/05, judgment of 10 May 2011, *Izet Haxhia v. Albania*, no. 34783/06, judgment of 5 November 2013, *Hysi v. Albania,* no. 72361/11, judgment of 22 May 2018, *Malo v. Albania*, no. 72359/11, judgment of 22 May 2018, *Muca v. Albania*, no. 57456/11, judgment of 22 May 2018, *Topi v. Albania*, no. 14816/08, judgment of 22 May 2018, *Karemani v. Albania*, no. 48717/08, judgment of 25 September 2018.
[10] Law No. 35/2017 of 30 March 2017.

Executive summary

The rule of law, fundamental rights, and justice have been recognized as key priorities for Albania in its process for joining the EU, and they are likely to continue to play an important role in the accession negotiations that began in 2020.

The effective implementation of the 'Roadmap' Directives are essential not just because they are part of the acquis (EU rules that must be incorporated into domestic laws for candidate states to join the EU), but also because they play a crucial role in strengthening Albania's criminal justice system, the rule of law, and respect for fundamental rights more broadly. Given that the Roadmap Directives are designed to underpin the effective operation of the EU's mutual recognition instruments, effective implementation will also help to ensure that Albania is a reliable and trustworthy partner in the EU's criminal justice cooperation mechanisms.

In recent years, Albania has undertaken sweeping reforms to align domestic criminal procedure laws with the Roadmap Directives, and to a large degree, these efforts appear to have been successful. These changes have, at least on paper, advanced defence rights and they are helping Albania to comply with the European Convention on Human Rights' standards on the right to a fair trial.

A closer examination of domestic laws and practices, however, reveal that there is considerable room for improvement with regard to each directive, and that further legislative changes are necessary to ensure that domestic laws are in full compliance with the EU's standards. A much greater challenge however, is to ensure that the rights contained in the Roadmap Directives can be exercised effectively by all suspects and accused persons. Transposition of EU laws must be accompanied by measures that ensure effective implementation, including through the provision adequate resources.

Interpretation and translation: The Albanian constitution, supplemented by provisions in the Criminal Procedure Code (the '*CPC*'), guarantees the right to interpretation in criminal proceedings. However, the exercise of this right is not supported by clear and transparent mechanisms for: (i) determining whether interpretation and translation are required; (ii) for appointing (or challenging a decision to refuse) interpreters and translators; and (iii) guaranteeing a level of quality in the provision of these services. The quality of language assistance is further undermined by the fact that domestic laws do not distinguish between interpretation and translation, and does not reflect the different skills and qualifications needed for each role. Laws also severely disadvantage economically disadvantaged defendants. Costs of interpretation and translation may need to be paid back by the defendant if they are found guilty, and this could discourage individuals from accessing these services, even when required to ensure the fairness of their trial.

Right to information: Albania legislation provides that suspects/accused persons have the right to be informed of their rights (including being provided with a Letter of Rights). However, it appears to be common practice for the police to interview suspects informally and without informing them of their rights as suspects, under different guises, for example, as a witness. The Letter of Rights appears to be provided, in practice, to suspects and accused persons, but it is drafted in formal language reproducing legal provisions that most individuals are likely to have difficulties understanding. Further, the content of the Letter of Rights is limited, but there is no formal obligation on officials to inform suspects/accused persons of the additional rights not mentioned in the Letter of Rights.

Access to a lawyer and legal aid: The Albanian Constitution and CPC provide that everyone who has been deprived of their liberty shall have, among other rights, the right to communicate immediately with a lawyer and the right to be defended with the assistance of a defence lawyer during criminal proceedings, including during police interviews. However, there are several practical barriers to exercising the right to access a lawyer, such as a lack of adequate facilities for private and confidential consultations between lawyer and client. It is also clear that there are inadequate systems in place to ensure that waivers of the right to legal assistance are given unequivocally and intelligently. This is of particular concern, given the reported practice of police discouraging suspects/accused persons from seeking legal advice.

A much greater threat to the effective exercise of the right to legal assistance is the unsatisfactory and confusing legal aid systems. There are two separate schemes for legal aid that partially overlap and depending on the case, the type of suspect/accused person and the type of legal assistance being sought, suspects/accused persons might be liable to pay back the costs of legal aid if they are found guilty. While this does not explicitly violate the provisions of the Legal Aid Directive, the personal financial implications of legal aid are likely to disincentivise individuals from exercising their basic right to be defended by a lawyer. It is particularly concerning that vulnerable suspects are much more likely to be required to pay back their legal costs.

Presumption of innocence: The presumption of innocence is a constitutional right in Albania, and it is also recognised in the CPC. However, the provisions regarding the prohibition of public statements of guilt by public officials do not seem to have been transposed. In practice, this prohibition is regularly violated by public officials (including the Prime Minister). There is also a need ensure compliance with the principle that suspects/accused persons should be presented in court in handcuffs or in wire or glass cages only where required as a security measure; currently these restraints appear to be used as a matter of course despite this rule.

Procedural safeguards for children: The Code of Criminal Justice for Children (the '*CCJC*') entered into force in January 2018 and it is largely based on the Children Directive. The CCJC goes beyond the requirements of the Children Directive in certain areas and it has greatly improved the situation of children in conflict with the law in Albania. However, it is clear that not all provisions of the CCJC are being fully implemented, primarily due to a lack of adequate resources and facilities. For instance, there continue to be instances where children are detained with adults, and although there have been initiatives to build child-friendly facilities for interviews and investigations, these facilities seem to be underused. It also seems clear that there is a shortage of medical and other professionals to provide support to children in conflict with the law, and there are unsatisfactory systems for training defence lawyers to ensure that they are provide effective assistance.

Part 1: Interpretation and translation directive

1 Directive 2010/64/*EU On the right to interpretation and translation in criminal proceedings* (the 'Interpretation and Translation Directive')

1.1 Directive 2010/64/EU *On the right to interpretation and translation in criminal proceedings* (the '**Interpretation and Translation Directive**') requires Member States to ensure that suspects and accused persons that do not have sufficient command of the language of the proceedings are assisted by an interpreter during their criminal proceedings, including during court hearings and in meetings with their lawyer, and that they are entitled to translations of 'essential documents'. Under the Directive, interpretation and translation should be of a sufficient quality to safeguard the fairness of the proceedings, in particular to ensure that suspects and accused persons understand the case against them, and that they can exercise their rights of defence. Interpretation and translation need to be available for free, irrespective of the outcome of the proceedings. These rights are fundamental as increasing mobility comes with increased presence of suspects who do not speak the local language, and who depend upon effective language assistance in order to be able to exercise other rights, such as that to participate in their own trial or to confer with their lawyer.

The right to interpretation and translation in Albania

2 The right to interpretation and translation in Albanian law

2.1 While the Interpretation and Translation Directive makes a clear distinction between 'interpretation' and 'translation',[11] Albanian law does not. This is due to the fact the Albanian language uses the term *'perkthyes'* to refer to both 'interpreters' and 'translators'. The term '*interpretues*' in Albanian usually refers to individuals who facilitate communication with those who have speech or hearing impediments.

Interpretation

2.2 The right to interpretation in criminal proceedings is guaranteed by the Albanian constitution, which provides that anyone who cannot speak or understand Albanian has the right to a translator free of charge.12 This provision is supplemented by provisions of the Criminal Procedure Code ('CPC'), which safeguard the rights of suspects and accused persons to use their own language, and to speak and to be informed of the evidence, contents of documents, and the state of proceedings through an interpreter.13 There are separate provisions in the CPC regarding the suspect's right to be informed of the charges (and the basis of the charges) in a language they understand,14 and the right to be questioned in their own language (or another language they prefer) if they do not speak Albanian.

[11] Articles 2 and 3, Interpretation and Translation Directive.
[12] Article 31(c), Constitution of Albania. Unless otherwise stated, all references to translations in English of Albanian legislation are derived from the unofficial but authoritative translation carried out by EURALIUS (Consolidation of the Justice System in Albania" (EURALIUS), an EU funded technical assistance project that seeks the strengthening of the Albanian Justice System) and are available here: https://www.euralius.eu/index.php/en/library/albanian-legislation.
[13] Article 9(2), CPC.
[14] Article 34a(1)(a) and (b), CPC.

2.3 The CPC also has provisions regarding the rights of suspects and accused persons with speech and hearing impediments that broadly comply with Article 2(3) of the Interpretation and Translation Directive. These include the general right of individuals with speech and hearing impediments to use sign language,[15] and to communicate with the assistance of an interpreter ('interpretues').[16] Braille is recognised as a 'language' under the CPC.4[17]

Translation

2.4 A translator can be appointed to translate written documents from Albanian into another language.[18] However, unlike Article 3(2) of the Directive,[19] Albanian law does not specify which documents need to be translated, nor does it make it clear who can request translations[20] In practice, it is the 'proceeding authority' (the competent authority conducting the relevant proceedings) that decides which documents should be translated.

2.5 According to practicing lawyers who were consulted for this report, the indictment/charges sheet, and decisions regarding deprivation of liberty are normally translated and provided to suspects/accused persons. Translations of court judgments, on the other hand, are usually (but not always) provided. Although a list of evidence is also usually provided to the suspect or accused person, the evidence itself or extracts of it are rarely translated. This is particularly the case with voluminous pieces of evidence and/or experts' opinions. The legal framework does not contain any references to remedies available in such cases, but it is presumed that the defendant can request the relative procedural acts to be held as invalid.[21]

2.6 This lack of specificity in Albanian law gives too much discretion to the competent authorities to determine what translations should be given, and it could make it more difficult for suspects and accused persons to challenge refusals to provide translations.

3 Appointment of interpreters and translators

3.1 According to the CPC, the 'proceeding authority' is responsible for assessing whether the suspect or accused person needs interpretation or translation.[22] However, contrary to Article 2(4) of the Directive, Albanian law does not define a specific procedure or mechanism for assessing the interpretation and translation needs of suspects and accused persons. Article 123(1) CPC provides that if the defendant declares they know Albanian, their right to an interpreter can be waived, suggesting that defendants can effectively 'self-assess' their language ability, and determine whether or not they need an interpreter.

3.2 There is currently no transparent mechanism of appointment of interpreters/translators by the police, the prosecutor's office and the courts, raising concerns about potential clientelism, the lack of independence/impartiality in the assessment procedure and about the quality of language assistance received by suspects and accused persons.

4 Challenging refusals to provide interpretation/translation

4.1 Albanian law does not specify how refusals to provide interpretation or translation should be challenged, but there are some provisions in the CPC that imply that the failure to provide interpretation or translation might render the proceedings invalid.

[15] Article 98(2) and Article 8(2), CPC.
[16] Article 34a(1)(b), CPC.
[17] Explanatory report to Law no. 35/2017 *On Some Additions and Changes to Law no. 7905 dated 21.3.1995 Criminal Procedure Code of the Republic of Albania*.
[18] Article 123(2), CPC.
[19] Article 3(2) of the Interpretation and Translation Directive provides that: "*[e]ssential documents shall include any decision depriving a person of his liberty, any charge or indictment, and any judgment.*"
[20] In contrast, Article 3(3) of the Interpretation and Translation Direction specifies that: "*[t]he competent authorities shall, in any given case, decide whether any other document is essential. Suspected or accused persons or their legal counsel may submit a reasoned request to that effect.*"
[21] Whereas Article 3(5) of the Interpretation and Translation Direction requires Meber States to ensure that suspects or accused persons have the right to challenge a decision finding that there is no need for translation.
[22] Article 126 CPC provides that "*the proceeding authority shall verify the identity of the interpreter/translator, inform him to respect confidentiality and then appoint him*"..

4.2 According to Article 98(2) of the CPC, a person who does not speak Albanian shall be questioned in their native language or in another language they prefer, but that the relevant minutes must be kept in Albanian. Under paragraph 3 of the same Article, if a suspect/defendant is not questioned in their language or another language they understand, the records of the questioning will be invalid.

5 Costs of interpretation/translation

5.1 Article 31(c) of the Albanian Constitution guarantees the provision of interpretation and translation 'free of charge'. Additionally, the CPC provides that the costs of interpretation and translation will be covered by the state,[23] and that suspects/accused persons have the right to be assisted by an interpreter free of charge so that they are able to understand the charges against them and follow their legal proceedings.[24]

5.2 In reality, these services are not truly provided for 'free', but they are *prepaid* by the proceeding authority, and if convicted, the defendant may be required to pay back the costs of interpretation/translation, even if they are reliant on legal aid. If a suspect or accused person is in receipt of mandatory legal assistance under Article 49 CPC,[25] they are liable to pay back all procedural expenses, including the costs of translation/interpretation, incurred during the provision of mandatory legal assistance.[26] Legal assistance is mandatory inter alia for suspects and accused persons who have disabilities, and for detained persons during questioning.

5.3 If a suspect/accused person is not entitled to mandatory defence, but is unable to pay for legal assistance privately, they might be entitled to an exemption from the payment of court costs, including for expenses for interpreters and translators. However, even in such situations, they could be required to pay back the costs of interpretation and translation incurred during the stages of the proceedings where legal assistance was mandatory (for example, during police questioning as an arrested or detained person).

5.4 This is likely to deter suspects and accused persons from requesting the appointment of an interpreter, even if it is their right to do so, and if the fairness of the criminal proceedings is likely to be seriously undermined without effective interpretation. It is especially concerning that vulnerable defendants and those facing serious charges are worse affected. It also amounts to a direct conflict with Article 4 of the Interpretation and Translation Directive, which requires relevant costs to be covered by the state "*irrespective of the outcome of the proceedings*".

6 Quality of interpretation/translation

6.1 Interpreters and translators are appointed by a competent authority from an official list, which is approved on an annual basis by the Ministry of Justice.[27] This list must contain at least three translators for each language designated as an official language in the international conventions, and in agreements to which the Republic of Albania is a party. There are currently interpreters and translators for 27 languages on this list.[28]

6.2 There is a competitive procedure for interpreters/translators to be included on the list, for which the minimum eligibility criteria for entry are: a university degree in the language studies of the relevant language; a law degree in that language; or a minimum of three-years' experience teaching in or working as a translator in that language.

[23] Article 8(3), CPC.
[24] AArticle 123(1), CPC.
[25] Article 393(1), CPC.
[26] Further, under Article 486 of the CPC, the bailiff's office is tasked with recovering any unpaid procedural expenses, and in cases of the sentenced person's insolvency, the bailiff reports this to the financial authorities with a view to carrying out an investigation as to the sentenced person's real financial situation. The prosecutor may also request the conservative seizure of the defendant's assets should he/she consider that the assets might be dissipated.
[27] Ministry of Justice and Ministry of Finance Joint Instruction No. 3165, dated 12.05.2004 On *The Criteria And Procedures For Selection Of Foreign Translators And Official Translation Fees To Be Paid by Third Parties.*
[28] English, Italian, Greek, German, French, Spanish, Turkish, Polish, Russian, Romanian, Serbo-Croat, Macedonian, Bulgarian, Dutch, Arabic, Portuguese, Hungarian, Chinese, Czech, Norwegian, Swedish, Persian, Romani, Vlach, Slovenian, Korean, and Japanese; the 2018 list with the names of the translators/interpreters, the language they can translate/interpret to and from, their contact details as well as whether they have a security clearance is available at: http://www.drejtesia.gov.al/lista-e-perkthyesve-zyrtare-2/. It is expected that a new list of translators/interpreters will be adopted by April 2020.

There are no laws or any other regulatory instruments that requires interpreters or translators to have specialised training in interpretation/translation (as opposed to experience of studying or working in the language), nor is there any requirement for specialist training on legal terminology. Apart from the Ministry of Justice's list, there is no other specialised register for interpreter/translators, and there is also no professional body that accredits them.

6.3 In other words, domestic laws and policies do not recognise the need for interpreters and translators to have special skills, training, or qualifications to act as interpreters or translators beyond their command of the language. Even though the Ministry of Justice maintains a list of 'interpreters' and 'translators', there appears to be no guarantee that they have the requisite skills and experience to provide the necessary language support to a sufficiently high standard.

6.4 In cases of emergency (for example, where an interpreter/translator included on the list does not fulfil their contractual obligations), where there is a need for translation or interpretation in a language not included in the official list, or where the number of candidates for each language is lower than three, the Ministry of Justice can enter into a special service contract with a known interpreter/translator or an interpretation/translation company.[29] Unlike interpreters/translators who are on the official list, there are no minimum eligibility requirements for interpreters/translators appointed in this way.

6.5 The CPC also does not define what qualifications an interpreter for persons with speech or hearing impediments should have.[30] Article 107(4) CPC only refers to the appointment of "one or more interpreters selected amongst persons who are used to communicate with them," and Article 124(1)(c) provides that even a family member of such persons can be appointed as an interpreter. As such, there are no legal requirements to ensure that individuals with speech or hearing impediments are assisted by a suitably qualified professional. The list of translators and interpreters drawn up by the Ministry of Justice does not contain include sign-language interpreters or Braille transcribers.

6.6 Article 124 of the CPC provides the grounds for the disqualification of an interpreter and of a translator. However, there is no reference to poor quality of interpretation or translation as a ground for replacement.

6.7 Practicing lawyers consulted for this study reported that they are often dissatisfied with the quality of interpretation and translation, and that they instead (where possible) they rely on their own languages skills to communicate directly with their clients. Satisfaction with the quality of interpretation/translation seemed to depend on the complexity of the proceedings. For example, lawyers were generally satisfied that the quality of interpretation/translation enable suspects and accused persons to understand the accusations against them, and to participate in summary trials (where the defendant neither challenges the investigative measures that have already taken place, nor requests additional investigation to be carried out). By contrast, lawyers expressed concerns about the quality of interpretation and translation in full, as well as in pretrial detention hearings.

[29] Article 8, Joint Instruction 3165/2004.
[30] Note that Article 2(3) of the Interpretation and Translation Directive requires Member States to ensure appropriate assistance for persons with hearing or speech impediments.

7 Recommendations

7.1 Laws in Albania appear to be broadly compliant with the Interpretation and Translation Directive. The Albanian Constitution, supplemented by provisions in the CPC, guarantees the right to language assistance in criminal proceedings, both for suspects and accused persons who cannot speak Albanian, and for those with speech and hearing impediments.

7.2 There are, however, major challenges that need to be addressed to ensure that the standards in the Directives are effectively in force. In particular:

1. Interpretation and translation services are not entirely free, even for those who have to rely on legal aid;
2. There are inadequate procedures and mechanisms to ensure that interpretation and translation is provided to a sufficiently high standard; and
3. There is too much discretion regarding which documents are translated for suspects and accused persons.

Legal aid

7.3 **Albanian laws should be amended to bring them in line with Article 2(4) of the Directive, and the cost of interpretation/translation should be free irrespective of the outcome of the case.**

The appointment of interpreters/translators

7.4 **There should be clearer rules, policies and/or guidance on the assessment of language assistance needs. If the defendant is a foreign national, there should be a strong presumption of appointing an interpreter/translator regardless of their level of knowledge of Albanian, and the right to an interpreter/translator should not subject to a waiver.**

7.5 **There should be a more transparent, impartial system of appointing interpreters/translators, such as a "duty" interpreter/translator or a rota system.**

Quality of interpretation and translation

7.6 **Albanian laws and policies should recognise the distinction between interpreters and translators, and the different qualifications and skills required for each, with a view to promoting more effective and reliable interpretation and translation in criminal proceedings.**

7.7 **Interpreters/translators should have specialist training or qualifications as interpreters of translators, and be required to take part in trainings on legal terminology to be included on the official register for interpreters and translators.**

7.8 **Laws should expressly recognise that interpretation/translation should be of sufficient quality, and that any failure to meet that standard should itself constitute a basis for challenging evidence, and for requesting the replacement of the interpreter/translator.**

7.9 **A more robust regulatory system for professional interpreters/translators is needed. To that end the Albanian authorities and other stakeholders should explore the possibility of establishing a self-regulatory body for professional interpreters and translators.**

7.10 **There should be stronger laws and policies to ensure that sign-language interpreters have the necessary skills to provide effective assistance to suspected and accused persons with speech or hearing impediments.**

7.11 **The official list of interpreters and translators should include sign-language interpreters and Braille transcribers.**

Translation of documents

7.12 **Laws should be amended to set out the documents that need to be translated as a minimum.**

Part 2:
Right to information directive

1 Directive 2012/13/EU *On the right to information in criminal proceedings* (the 'Right to Information Directive')

1.1 Directive 2012/13/EU On the right to information in criminal proceedings (the '***Right to Information Directive***') applies to 'suspects and accused' persons from the point that they are 'made aware' that they are suspected or accused of having committed a criminal offence. Member States are required under this Directive to ensure that suspects and accused persons are promptly informed about their rights and about the accusations against them.[31] Suspects and accused persons who are arrested or detained should also be given a written Letter of Rights, which they should be entitled to keep for the duration of their detention.[32]

1.2 The Right to Information Directive also requires Member States to ensure that suspects/accused persons are given access to the materials in possession of the state for the purpose of challenging an arrest or detention, and for making it possible for the suspect/accused person and their lawyer to defend against the accusation effectively.[33] Access to these materials should be granted promptly, so that the rights of the defence can be exercised effectively.

The Right to Information in Albania

2 Definition of the terms 'suspect'/'accused person' in Albanian criminal legislation

2.1 According to the Criminal Code, CPC and court jurisprudence,[34] there are two main categories of individuals suspected of committing a criminal offence – the '*suspect*' (usually referred to in Albanian legislation as a 'person under investigation', *person nën hetim* in Albanian) and the '*defendant*' (*pandehur* in Albanian). The CPC also uses the term suspect (*dyshuar* in Albanian) in lieu of the term person under *investigation*, suggesting that these two terms are interchangeable.

'Suspect'

2.2 The exact status of a person before they are notified of their charges is unclear under Albanian law. The first moment that a person can formally be considered a 'suspect' is when their name is recorded in the prosecutor's register of criminal offences.[35] At this point, they are referred to as 'the person to whom the criminal offence is attributed'. This is the person that a complainant or the prosecutor has identified as the potential perpetrator of a criminal offence. If the relevant conditions are met, the prosecutor launches the criminal investigation and the status of the person changes to person under *investigation*.

[31] Articles 3 and 6, Right to Information Directive.
[32] Article 4, Right to Information Directive.
[33] Article 7, Right to Information Directive.
[34] High Court Joint Benches Unifying Criminal Decision No. 3/2002.
[35] Article 287, CPC.

2.3 According to lawyers consulted for this study, it is common police practice to escort a person to the police station, not as a suspect, but as a potential witness to assist with inquiries or identification,[36] even though they have reasons to suspect that they may have committed a crime. They could then be pressurised to provide information. If self-incriminatory statements are made under these circumstances, the questioning must be interrupted, and the person must be advised of their right to a lawyer. Statements made prior to that point cannot be used against them.[37]

'Defendant'

2.4 When sufficient evidence has been collected, and there is a charge to be notified to the alleged perpetrator of the offence, that person acquires the status of a 'defendant'.[38] A person is considered de *jure* as a defendant when the charges are communicated to them. The charges should contain sufficient information on the reasons they are considered a defendant. Albanian legislation allows the prosecutor to notify the charges to the defendant at any time during the pre-trial investigation stage.

3 Notification of rights and the Letter of Rights

3.1 Suspects and accused persons, whether they are detained or at liberty, should be given a Letter of Rights in writing, which they sign to denote that they have understood its contents.[39] The police are not allowed to question a suspect or accused person before they have been informed of their rights contained in the Letter of Rights.[40] Statements made by the defendant prior to being informed of their rights cannot be admitted as evidence.[41]

3.2 In cases of in *flagrante* arrest, the police must inform the arrested person of their right to silence and their right to a lawyer.[42] The arrested person should be provided with a Letter of Rights as quickly as possible, either before or after their arrival at the place of detention.[43]

3.3 Detained/arrested persons are entitled to keep a copy of the Letter of Rights.[44] Lawyers consulted for the research confirmed that, in compliance with Article 4 of the Right to Information Directive, the Letter of Rights is usually provided to the detained/arrested persons.

Contents of the Letter of Rights

3.4 There is one Letter of Rights provided to all suspects and accused persons, irrespective of whether there are detained or at liberty,[45] ignoring the fact that there are additional rights applicable to detained or arrested persons. In particular, it does not have information on the maximum number of hours of detention before being brought before a judicial authority,[46] and there is no information regarding the right to challenge arrest/detention or having it reviewed before a judicial authority.[47] There is no legal obligation on the police or the prosecutor to provide this information to detained or arrested persons, effectively depriving them of the knowledge and information needed to exercise their right to liberty.

[36] Article 297(1) CPC.
[37] Article 37, CPC.
[38] Article 34, CPC.
[39] Article 34/a (2) and Article 34/b (2), CPC.
[40] Article 34/a (2), CPC, Article 34/b (2), CPC, in conjunction with Article 38 (3), CPC.
[41] Article 38(3), CPC.
[42] Article 255(1), CPC.
[43] Article 255(3), CPC.
[44] Article 34/(2), second sentence, CPC.
[45] Art 34/a(2), CPC, Article 34/b(2) ,CPC..
[46] Point 12 of the Letter of Rights; the inclusion of this information is not foreseen under Article 34/b (2), CPC.
[47] Last sentence of point 12 of the Letter of Rights; the inclusion of this information is not foreseen under Article 34/a, CPC.

3.5 The language of the Letter of Rights contains some verbatim reproductions of the relevant legal provisions, making it especially difficult for those with learning difficulties and/or a low level of education to understand their rights. This is contrary to the requirement of simple and accessible language in the Letter of Rights in Article 4(4) of the Right to Information Directive. The police are required to read out the Letter of Rights, but they are under no obligation to explain their rights to them orally.[48] This is incompatible with the Right to Information Directive, which requires the rights to be explained in a manner which takes account of the particular needs of vulnerable suspects / accused persons.[49]

3.6 The Letter of Rights is available in 11 foreign languages.[50] In practice, if the Letter of Rights in the relevant language is not available, an interpreter is appointed to either orally explain the contents of the Letter of Rights or provide *impromptu* translation of the document in the suspect's/accused's language on a blank sheet of paper.

4 Right to information about the accusation and related evidence

4.1 Albanian law provides that anyone who has been deprived of their liberty has the right to be notified of the grounds for the arrest, as well as of the charges against them before they are questioned.[51] In addition to the offence (including the time and place at which the offence was allegedly committed), the police and/or the prosecutor should also inform the defendant about the evidence against them and the sources of that evidence – unless disclosure of such information would undermine the investigation. [52]

4.2 According to lawyers consulted for this study, detained/arrested persons are notified only of the charges against them even though under the CPC and according to the Letter of Rights, they should also be informed about the basis of the charges. [53]

3.5 The latest stage at which the defendant can be informed of the charges against them is when the prosecutor concludes the investigation and notifies the defendant of the decision. The notice should inter *alia* contain a description of the act attributed to the defendant and its legal qualification. [54]

5 Right to access the case file

5.1 Suspects and accused persons have the right to access the case file, [55] and detained or arrested persons have the right to access evidence and the grounds for their arrest or detention,[56] with a view to challenging it. Lawyers enjoy the same rights as their clients in accessing the case file.[57]

5.2 It is not clear when detained/arrested persons are entitled to access to the case file. There is no provision requiring the granting of such access prior to questioning by the police,[58] making it difficult for suspects and accused persons to challenge their arrest and police detention.

5.3 In practice, detained or arrested persons are only granted access to their case file immediately before judicial hearings reviewing the lawfulness of detention. Where case files are made accessible before judicial hearings, it is typical for lawyers to only be given a few minutes to look through the file in court. Lawyers consulted for this study reported that they are usually allowed to review the file on the prosecutor's bench, inside the court room, whilst the hearing is briefly adjourned. This makes it impossible for the defence to gather evidence to counter arguments for pre-trial detention, meaning that suspects and accused persons are not being given meaningful access to the case file to challenge their detention.

[48] Article 255(2), CPC.
[49] Article 3(2), Right to Information Directive.
[50] The letters of rights are available: http://www.pp.gov.al/web/Akte_te_Tjera_1205_1.php#.XOP9UFIzaUk.
[51] Article 28(1) of the Albanian Constitution. Article 34/b (2) and (3), CPC, Article 255(1), CPC, Article 256, CPC.
[52] Article 39(1), CPC.
[53] Article 34b(1), CPC in conjunction with Article 34/a(1)(a), CPC; Letter of Rights, point I.
[54] Article 327(3), CPC.
[55] Article 34/a(1) (ë), CPC.
[56] Article 34/b(1) (b), CPC, point IX of the Letter of Rights.
[57] Article 50 (1), CPC.
[58] Art 34/b (1) and (2), CPC.

5.4 Access to the case file, and in particular, to the sources of evidence can be restricted if the investigation could otherwise be compromised.[59] Similarly, the prosecutor has the power to order, by means of a reasoned decision, that specific documents in the case file are 'kept secret' until the conclusion of the investigation, if their disclosure would jeopardise investigations.[60] As a general rule, defence lawyers and defendants have the right to access the entire case file following the conclusion of the preliminary investigation. [61]

5.5 Under General Prosecutor's Office Instruction No. 3, dated 26 October 2018 *On the Assessment, Administration And Preservation of Information Classified as "State Secret"*, information regarding the means and methods employed by state authorities to tackle criminal activity can be considered as a 'state secret', that can be excluded from the criminal case file. In these cases, there is no requirement for the prosecutor to produce a reasoned decision to justify their refusal to disclose information. The way that incriminating evidence is collected is crucial information for the defence, which allows suspects and accused persons to challenge the lawfulness and the reliability of evidence being used against them. The 'state secret' exemption is overly broad, and it is incompatible with the Right to Information Directive, which states that restrictions on access should be interpreted 'strictly'.[62] Further, it undermines the fairness of the proceedings, and it can allow illegal investigative activities to go undetected.

5.6 In Albanian law, there is no legal provision laying down a specific right or procedure to challenge a refusal to grant access to the case file, but suspects and accused persons can rely on a general provision in the CPC to have procedural acts or evidence declared 'invalid'.[63]

6 Practical obstacles in accessing case files

6.1 Copies of case file documents are available for a fee which is set at 200 ALL (approximately 1.6 EUR) per act or procedural document by the Minister for Justice and Minister for Finance Joint Instruction No. 33 dated 29 December 2014 *On determining the service fees for Actions performed and Services Rendered by the Courts' administrations and the Ministry of Justice, the Prosecutor's office and Notaries* ('**2014 Joint Instruction**').[64] In practice however, court clerks are often not aware of the instruction, or they refuse to be bound by it. One lawyer consulted for this study reported that in one instance, court officials refused to grant any access to the case file unless an unreasonably high "fee" of 250 EUR (for a 350 page document) was paid.

6.2 The situation seems to be better in prosecutors' offices. Despite its title, the 2014 Joint Instruction contains no provision regarding the fees to be paid for accessing files at the prosecutors' offices. As a result, the prosecutors' offices have adopted their own rules on this issue, with most charging between 5 and 10 ALL (about 0.4 – 0.8 EUR) per page. Nevertheless, according to lawyers questioned in this study, lawyers are often denied permission to make copies of the documents in the case file, and are instead only allowed either to study it on the spot or take photos of the documents in the case file with their mobile phones.

[59] rticle 39(1), CPC, Article 256(1), CPC.
[60] Article 279(1), CPC.
[61] Articles 50(2) and 327(3) CPC.
[62] Article 7(4) and Recital 32, Right to Information Directive.
[63] Article 129(3), CPC.
[64] Unofficial translation.

7 Recommendations

7.1 Albanian law complies with most of the key provisions of the Right to Information Directive. Suspects and accused persons have the right to be informed of their rights (including access to a lawyer, the entitlement to free legal aid and the means of accessing it, the right to be informed of the charge against them and the right to remain silent). All suspects and accused persons must, by law, be provided with a Letter of Rights. Similar to the provisions in the Access to Information Directive, the CPC recognises the right to access the case file to challenge arrest or detention, and to ensure the fairness of criminal proceedings.

7.2 A closer inspection of laws and practices however, highlight numerous flaws that undermine suspects' and accused persons' rights ability to understand their rights, and to make informed decisions regarding their cases. In particular, the contents of the Letter of Rights and the manner in which information about rights is provided that do not fully comply with the Access to the Information Directive.

7.3 It is also clear that there several practical challenges regarding the right of access to the case file. It does not appear that laws require sufficiently prompt and meaningful access to enable suspects and accused persons to challenge their arrest or detention. Exemptions to access to the case file are overly broad, and they could seriously damage the fairness of the proceedings.

Capacity in which suspects are questioned

7.4 **There should be clearer prohibitions on the police questioning individuals who are *de facto* suspects without informing them of their status as suspects. There should be effective remedies (including the exclusion of evidence) if these rules are violated.**

The Letter of Rights

7.5 **Letters of Rights should contain a more comprehensive list of defence rights, to ensure that suspects and accused persons are able to make better-informed decisions about exercising their rights.**

7.6 **Letters of Rights should be adapted for different categories of suspects and accused persons. In particular, there should be a separate Letter of Rights for detained persons, and one for children, to reflect that they have different rights and different needs in terms of effective communication.**

7.7 **Letters of Rights should be written, with the help of legal and linguistic experts, in plain language so that they are accessible to the majority of suspects and accused persons.**

7.8 **Police should be required assess the suspect/ accused person's capacity to understand its contents, so that additional support can be given to ensure that they understand their rights.**

Access to the case file

7.9 **The law should specify that suspects and accused persons must be granted early access to their case file so that they have sufficient time to effectively challenge their arrest or detention.**

7.10 **The refusal or failure to grant access to a case file should be subject to effective judicial review, with effective remedies.**

Part 3: Access to a lawyer and legal aid directives

Access to a Lawyer Directive

2 Directives 2013/48/EU On the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (the 'Access to a Lawyer Directive') and 2016/1919 On legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (the 'Legal Aid Directive')

1.1 Article 3 of the Access to a Lawyer Directive sets out that suspects/accused persons should have the right of access to a lawyer, at such time and in such a manner to enable them to exercise their defence rights practically and effectively. The Directive makes it clear that suspects and accused persons have the right of access to a lawyer from the very earliest stages of the criminal proceedings, and provides examples of the types of assistance the lawyer should be able to provide. The provisions of Article 3 are mirrored in Article 2 of the Legal Aid Directive, under which legal aid should be available at all stages at which a suspect/accused person has the right of access to a lawyer under the Access to a Lawyer Directive.

1.2 The right of access to a lawyer can be waived, but only if that waiver is given on an informed basis, and voluntarily. The Access to a Lawyer Directive also recognises that the right of access to a lawyer is not absolute, and that there are instances in which there are permissible derogations from this right. These derogations are permissible only at the pre-trial stage and subject to various conditions, including the requirement that the derogation is strictly limited in time.[65]

1.3 Under Article 3 of the Legal Aid Directive, 'legal aid' is loosely defined as funding by the state of legal assistance, enabling the exercise of the right of access to a lawyer. Under Article 4 of the Legal Aid Directive, Member States are required to ensure that suspects and accused persons who are unable to pay for a lawyer have the right to legal aid where interests of justice so require. Pursuant to Article 6 of the Legal Aid Directive, legal aid decisions must be made by a 'competent' authority, without undue delay, and in a diligent manner. Article 7 of the Legal Aid Directive requires Member States to take measures that will ensure that the legal aid system provides services of a sufficient quality, and that training is available for legal aid decision makers and legal aid lawyers.

[65] Article 3(5) and (6) of the Right of Access to a Lawyer Directive.

2 The right of access to a lawyer in Albanian law

2.1 Article 31(ç) of the Albanian Constitution provides that everyone has the right to be defended with the assistance of a defence lawyer during criminal proceedings. Suspects and accused persons have the right to retain a private lawyer of their choice or to request a state-appointed lawyer, to consult with their lawyer confidentially, and to have adequate time and facilities for the preparation of their defence.[66]

2.2 There are several cases where legal assistance is 'mandatory', and the state is responsible for appointing a lawyer, if the suspect or accused person has not done so already.[67] Suspects and accused persons have the right to a mandatory defence, *inter alia*, if they are under the age of 18, they have speech or hearing impediments, or they have limited capabilities that undermine their ability to defend themselves. Defence is also mandatory where the suspect or accused person is charged with a serious crime, and for detained or arrested persons when they are being questioned. Although the CPC states that assistance by a lawyer is 'mandatory' in such cases, the right to legal assistance can still be waived.[68]

2.3 Practicing lawyers consulted for the present study noted that police often undermine the right of access to a lawyer by taking a suspect to the police station supposedly to assist in the police inquiries or for identification purposes.[69] Given that in such situations, the individual is not technically considered a suspect, they are not informed of their right to a lawyer. This practice clearly undermines Article 3 of the Access to a Lawyer Directive. However statements made by individuals prior to being notified of their right of access to a lawyer cannot be used against them.[70]

2.4 It was also reported by practicing lawyers that it is not uncommon practice for the police to discourage suspects and accused persons from seeking legal assistance by informing them that the case is "open and shut". Police officers might also warn suspects and accused persons that they will be complicating matters by calling a lawyer, or that it would be better for them if they cooperated with the police. Similar concerns have been echoed by the Council of Europe's European Committee for the Prevention of Torture ('**CPT**').[71] These practices undermine the exercise of the rights set out in the Access to a Lawyer Directive.

[66] Article 34/a(1)(ç) (d) (dh) and (e), CPC.
[67] Article 49 CPC.
[68] Supreme Court Decisions No. 13/2005 and No. 42/2007.
[69] Art 295(1) and (4), CPC, Article 109(1)(dh) Law 108/2014 On State Police.
[70] Article 37, CPC.
[71] Report to the Albanian Government on the visit to Albania carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 20 to 30 November 2018, CPT/Inf (2019) 28, available in English at https://rm.coe.int/168097986b, paragraph 22.

3 Facilitating the right of access to a lawyer

3.1 The Prosecutor's Office is responsible for the appointment of legal aid lawyers on the basis of the provisions set out in the High Prosecutorial Council's ('**HPC**') *Regulation On Guaranteeing Mandatory Defence and Appointment of the Defence Lawyers from the List of Lawyers Providing Secondary Legal Aid in the Criminal Process on the Basis of the Principle of Rotation* ('**HPC Regulation**'),[72] which was adopted in 2019.

3.2 According to the HPC Regulation, the Bar Association must provide a yearly list of legal aid lawyers to the proceeding authorities (such as the police). The list is ordered alphabetically, and lawyers are appointed on the basis of a rota. If a legal aid lawyer needs to be appointed, the proceeding authorities should contact the lawyer on the rota, and enquire about their availability. If the lawyer is available, they have one hour to show up at the required place (e.g. the police station). Given that the HPC Regulation was adopted very recently, it has not been possible to ascertain its effectiveness and/or the degree of compliance so far.

3.3 Lawyers consulted for this study explained that before the adoption of the HPC Regulation it was common practice for police officers to provide a list of lawyers registered with the legal aid scheme of the Bar Association to suspects and accused persons, and to ask them to choose from that list. However, these lists were not always updated and they sometimes include lawyers who are no longer practicing law.

3.4 Following the conclusion of the investigation by the prosecutor and the filing of a request to commit the case to trial, the court must review whether the defendant has appointed a lawyer. If not, the court must assign a state-appointed one if the presence of a defence lawyer is mandatory.[73] Similarly, the court reviewing the lawfulness of the arrest or detention should also ensure the presence of a defence lawyer. If one does not appear, the court will assign a state-appointed one as the presence of a defence lawyer is also mandatory at this stage.[74]

4 Confidentiality

4.1 Suspects and accused persons at liberty are not entitled to a confidential meeting with their lawyer before being questioned for the first time, and an arrested/detained person has the right to consult with their defence lawyer immediately after the arrest,[75] and before being questioned by the police.[76] These provisions are mirrored in Law 55/2018 *On the Profession of the Advocate in the Republic of Albania*, according to which the lawyer has the right to have a confidential meeting with his client before the first questioning, and at every phase of criminal proceedings.[77] Conversations between defence lawyers, their assistants and their clients cannot be intercepted,[78] and procedural acts that took place in the absence of a lawyer where their presence was mandatory shall be absolutely invalid.[79]

4.2 On the basis of responses to questionnaires sent to practicing lawyers, the most significant challenge lawyers face when meeting and consulting with their clients is the lack of adequate facilities. With only few exceptions, communications and consultations between lawyers and their clients take place in the office of a police officer or the prosecutor, after they have vacated the room, or even in the corridors of the police station or the prosecutor's office. Lawyers reported that their clients feel uneasy discussing their case with them openly, for fear of surveillance and eavesdropping. The lack of facilities is particularly pronounced for consultations between lawyers and their clients during pre-trial detention

[72] Adopted on 12 November 2019. The Regulation came into force on 5 December 2019.
[73] Article 332(1), CPC.
[74] Article 259(1), CPC.
[75] Article 53, CPC.
[76] Article 34/b (1)(a), CPC.
[77] Article 11(c), Law 55/2018 On the Profession of the Advocate in the Republic of Albania.
[78] Article 52 paragraph 4 of the CPC.
[79] Article 128/a (1)(c), CPC, Article 151(3), CPC.

hearings. In the majority of cases, the arrested person is held in an iron cage, and the lawyer has to communicate with his client within the earshot of others. This is in contravention of Articles 3(3)(a) and 4 of the Access to a Lawyer Directive. It has also been reported, however, that in a few cases, judges granted the request of the defence lawyer to vacate the court room in order to allow the defence lawyer to confer with their client in privacy.

5 Provision of effective legal assistance during questioning/investigation

5.1 The presence of a lawyer during police questioning is 'mandatory',[80] and the proceeding authority (such as the police) must provide a state-appointed lawyer immediately to the arrested/detained person, if they have not have retained one already.[81]

5.2 Defence lawyers are allowed to take an active role during police questioning,[82] by inter alia, advising their clients on how to respond to questions, intervening during questioning in order to provide advice (and asking for short breaks to confer with their client), ensuring that their client's answers are recorded properly, and reviewing the accuracy of the interview records. Albanian law does not contain any limitations on the role of lawyers during questioning.

5.3 The CPC contains additional safeguards aimed at ensuring that a suspect or accused person has access to legal assistance throughout the criminal investigation. Questioning by the prosecutor should take place in the presence of a lawyer.[83] In compliance with Articles 3(2)(b) and 3(3) of the Access to a Lawyer Directive, all investigative acts ordered by the prosecutor should take place in the presence of a lawyer,[84] including identity parades, confrontations and crime scene reconstructions.[85] If the defendant's lawyer fails to show up without good reason, it seems that investigative acts can take place in the absence of the defence lawyer, who will be fined for failing to appear. There is no specific reference to any obligation on the proceeding authority to assign a different state-appointed lawyer in such situations.[86]

5.4 The defendant also has the right to request the presence of their defence lawyer during a house search. In such cases, the proceeding authority should postpone the house search for a maximum period of two hours from the moment that the defence lawyer is informed of the search.[87]

6 Waiving the right of access to a lawyer

6.1 Suspects and accused persons can waive their right legal assistance, even if they have the right to 'mandatory' defence. The Supreme Court held in Decisions No. 13/2005 and No. 42/2007 that a suspect/accused person could validly waive their right to a lawyer even if the CPC explicitly provides for the mandatory presence of a lawyer, unless they are a minor (or a person who has limited capacity to defend themselves on account of their a physical or mental disability), in which case the failure to appoint a lawyer to represent them would invalidate procedural acts and records of the proceedings.

6.2 The CPC has since been amended to extend mandatory defence to new categories of suspects and accused persons. However, the newly amended CPC does not address whether mandatory defence can be waived. On the other hand, Article 48(4) and (5) of the *Code of Criminal Justice For Children* explicitly provides that the appointment of a lawyer is mandatory for children in conflict with the law (in line with existing Supreme Court jurisprudence) and that failure to appoint a lawyer will render any statements given by the minor inadmissible.

[80] Article 256(1), Article 296, and Article 167 (3), CPC.
[81] Article 49(1)(e), CPC.
[82] Article 38, CPC, Article 50, CPC.
[83] Article 256(1), CPC.
[84] Article 304(2), CPC.
[85] Article 171(4), CPC, Article 304(1), CPC.
[86] Article 49 (4) and (5), CPC.
[87] Article 205(2), CPC.

6.3 There are no specific laws or official policies regarding waivers of the right of access to a lawyer (for adult suspects and accused persons). In practice, some police forces include three boxes in the record of the *in flagrante* arrest of a person. The text next to these boxes reads: (i) "*I have chosen a defence lawyer and I will notify him immediately*"; (ii) "*I do not have a privately retained lawyer but I would to have one appointed ex officio*"; and (iii) "*I do not want a lawyer*", respectively. The suspect or arrested person is asked to tick the appropriate box and sign the record. A simple 'tick-box' exercise of recording waivers is clearly not compliant with Article 9 of the Access to a Lawyer Directive, which requires that suspects and accused persons are provided information about their rights and about the possible consequences of the waiver.

7 Derogations from the right of access to a lawyer

7.1 In general, the CPC does not contain any derogations from the right of access to a lawyer. The only exception seems to be in Article 296(2) CPC, according to which the police may obtain information necessary for the continuation of the investigation from a suspect or accused person, either at the crime scene or immediately after finding out about the offence, even in the absence of a defence. In such situations, the information obtained will not be documented, and its use as evidence is prohibited.

Legal Aid Directive

8 Right to legal aid

8.1 Legal aid is available at all stages when a suspect/accused person has the right of access to a lawyer, including prior to, and during police questioning, as well as immediately following the deprivation of liberty.[88]

9 Financial contribution by suspects/accused persons towards legal aid costs

9.1 Legal aid in Albania is not entirely free for all eligible suspects and accused persons. In some cases, they could be required to pay back all or part of the costs of legal aid if they are convicted.

9.2 Legal aid can be provided through one of two legal aid schemes – the CPC, or under Law no. 111/2017 *On State Guaranteed Legal Aid* (the '**Law on Legal Aid**'). Under Article 49 of the CPC, suspects and accused persons are entitled to legal aid through mandatory defence. Suspects and accused persons who are not entitled to mandatory defence, however, can apply for legal aid Article 49/a CPC, or under the Law on Legal Aid. It is not clear when the appointment of a lawyer would take place under Art 49/a of the CPC, or under the Law on Legal Aid. The High Prosecutorial Council adopted a regulation in 2019 ('HPC Regulation 2019') to provide further guidance on the provision of legal aid and the appointment of legal aid lawyers.[89] This regulation seems to recognise the CPC and the Law on Legal Aid as distinct regimes for legal aid, but does not provide helpful clarifications on the relationship between the two regimes. Further, it contains erroneous references to provisions of the CPC, adding to the confusion regarding the scope of the two legal aid schemes.

9.3 The key difference between legal aid under the CPC and the Law on Legal Aid is the recoverability of legal aid costs from suspects and accused persons. Costs of legal aid (and other costs related to the legal proceedings) under the CPC's legal aid scheme are always recoverable if a defendant is ultimately found guilty, regardless of their financial means.[90] There is no exemption from the obligation to pay legal costs and expenses, and the bailiff's office is tasked with recovering any unpaid procedural expenses. If a sentenced person is insolvent, the bailiff should report this to the financial authorities with a view to carrying out an investigation regarding the sentenced person's real financial situation.[91]

[88] Article 34/a (1)(d), CPC Article 34b(1) and (1)(a), CPC.
[89] High Prosecutorial Council's (HPC) *Regulation On Guaranteeing Mandatory Defense and Appointment of the Defense Lawyers from the List of Lawyers Providing Secondary Legal Aid in the Criminal Process on the Basis of the Principle of Rotation*
[90] Article 393(1), CPC
[91] Article 486, CPC

9.4 On the other hand, under Article 26 of the Law on Legal Aid, beneficiaries of 'secondary' legal aid (i.e. legal representation) in criminal proceedings are entitled to an exemption from payment of court costs, including expenses for translators. Under this scheme, legal costs are pre-paid by the state,[92] and suspects/accused persons will not be required to pay in advance for legal assistance.

9.5 It is concerning that because vulnerable suspects and individuals facing serious criminal charges are entitled to a mandatory defence, they can only receive legal aid CPC, which would require them to pay back the costs of legal aid if they are convicted. While the Legal Aid does not explicitly prohibit the recovery of legal aid costs, the financial risks of retaining a legal aid lawyer must act as a significant disincentive for suspects and accused persons to seek legal assistance. The legal aid rules are also clearly discriminatory – making vulnerable suspects more susceptible to financial hardship in criminal proceedings.

9.6 Further, given that suspects and accused persons are entitled to a mandatory defence when being questioned as detained or arrested persons,[93] it is likely that for many defendants, they will receive mandatory legal assistance at some stage in the criminal proceedings. This seems to imply that some suspects might be eligible for legal aid under the Legal Aid Law at most stages of the proceedings, whilst legal assistance during police interviews is covered by the CPC's legal aid regime (the costs of which can be recovered by the state at a later date). It is unacceptable that there might be financial incentives to decline legal assistance specifically during police interviews – a stage at which suspects and accused persons are perhaps most vulnerable to human rights abuses, and legal assistance is especially crucial.

10 Challenging refusals to grant legal aid

10.1 The CPC does not explicitly provide for any remedy to challenge a refusal to appoint a legal aid lawyer, and there is no clear guidance given in the HPC Regulation 2019.

10.2 According to the Law on Legal Aid, the person whose legal aid application has been refused has the right to challenge it before the criminal court of first instance reviewing the merits of the case against them. [94] If the court refuses, the legal aid applicant can challenge it by means of a special appeal before the Appeals Court.[95]

11 Quality of legal aid assistance

11.1 The CPC does not contain any provision regarding the quality of legal aid assistance. It seems to be presumed that a lawyer who is a member of the Bar Association and has joined the legal aid scheme is qualified to provide effective legal assistance.

11.2 The Law on Legal Aid provides that it is the duty of the Minister for Justice to approve the criteria and methodology for assessing the quality of delivery of legal aid services, as well as the procedures for supervision by the Free Legal Aid Department of secondary legal aid services (i.e. court representation).[96] Under the same law, the Free Legal Aid Directorate shall be responsible for the evaluation of the quality of the legal aid provided.[97]

[92] Article 485, (CPC)
[93] Article 49, CPC.
[94] Article 21(4), Law on Legal Aid.
[95] Article 22(7), Law on Legal Aid.
[96] Article 7(f), Law on Legal Aid.
[97] Article 8(1)(l), Law on Legal Aid.

11.3 According to the HPC Regulation 2019,[98] the competent authorities (the Free Legal Aid Directorate and the Bar Association) should draw up two lists: one containing general practice lawyers and the other containing lawyers specialising in cases of juvenile delinquents, trafficking victims, domestic and sexual abuse.[99] It remains to be seen if the lawyers in the latter list will be appointed to represent both complainants and defendants in criminal proceedings. The Regulation also provides that the proceeding authority shall request that the detained/arrested person or the defendant complete a form to assess quality of the service provided by the legal aid lawyer.[100]

12 Request to replace the legal aid lawyer

12.1 Neither the CPC nor the Law on Legal Aid specifically recognises a right for suspects and accused persons to request the replacement of their legal aid lawyer. However, according to the HPC Regulation 2019, a suspect/accused person who has been granted legal aid under the Law on Legal Aid can request that his legal aid lawyer be replaced only in cases where there is a conflict of interests.[101]

13 Ensuring the continuity of legal representation

13.1 Under the recent HPC Regulation 2019, the proceeding authorities should ensure respect for the principle of continuity in legal representation, to the extent possible.[102] In practice, however, this will be possible only if the lawyer is both included in the list drawn up by the Bar Association, and participating in the legal aid scheme under the Law on Legal Aid.

14 Remuneration of legal aid lawyers

14.1 If a legal aid lawyer is appointed under the CPC (as is the case with the vast majority of criminal legal aid lawyers), they are paid in accordance with the tariff scheme for legal aid lawyers approved by the Minister of Justice and Bar Association Joint Order No. 1284/3 dated 16 March 2005 *On Approving the Remuneration and Compensation of Legal Aid Lawyers*.[103] Lawyers are remunerated on the basis of the category of the criminal case, and the stage and nature of the proceedings, irrespective of the nature of the work undertaken by the legal aid lawyer.

14.2 By way of example, remuneration for legal representation before the first instance criminal court for crimes punishable with prison sentences of up to five years is set under the Joint Order to 30,000 ALL (approx. 245 EUR), regardless of the number of hearings or the complexity of the case. This does not truly reflect the quality and quantity of work done by legal aid lawyers, and there is no possibility for legal aid lawyers to request additional payment on exceptional grounds.

Source of funding of legal aid in criminal proceedings

14.3 Under the CPC, the prosecutor's office and the courts are responsible for the payment of the legal aid lawyer out of their own budgets, depending on the stage in which the appointment of the legal aid lawyer takes place (preliminary investigation/court proceedings respectively).

14.4 If the legal aid lawyer has been appointed under the Law on Legal Aid, they are paid from the Legal Aid Budget which is proposed by the Minister of Justice to the Minister of Finance.[104] The budget is administered on a day-to-day basis by the Free Legal Aid Directorate.[105] Additionally, the Directorate is responsible for adopting a model service contract and signing the yearly service contracts with the lawyers who will be providing legal services.[106]

[98] High Prosecutorial Council's (HPC) *Regulation On Guaranteeing Mandatory Defence and Appointment of the Defence Lawyers from the List of Lawyers Providing Secondary Legal Aid in the Criminal Process on the Basis of the Principle of Rotation*.
[99] Articles 6 and 7, HPC Regulation.
[100] Article 33, HPC Regulation.
[101] Article 30(b), HPC Regulation.
[102] Article 13, HPC Regulation.
[103] Unofficial translation.
[104] Article 7(b), Law on Legal Aid.
[105] Article 8(2)(c), Law on Legal Aid.
[106] Article 8(2)(i) and (k), Law on Legal Aid.

Challenges faced by legal aid lawyers in obtaining payment for their services

11.5 The challenges encountered by lawyers in securing payment for their services are set out in the Judicial Budget Administration Office *Annual Report 2014*. According to the report, Joint Order No. 1284/3 of the Minister of Justice and the National Chamber of Advocacy dated 16 March 2005 does not contain detailed provisions regulating the calculation of the fees for state-appointed lawyers and the methods for their payment. It was also noted that many courts often award state-appointed lawyers higher fees than those set out in the Joint Order.

15 Recommendations

15.1 Albanian laws seem broadly to conform with most of the provisions of the Access to a Lawyer Directive and the Legal Aid Directive. Suspects and accused persons have the right of access to a lawyer from the earliest stages of criminal proceedings, including during questioning by the police. Legal aid is available at all stages that a suspect or accused person has the right of access to a lawyer. However, in practice, there are significant challenges that undermine the effective exercise of these rights, and it is of serious concern that vulnerable suspects and accused persons face serious disadvantages with regard to legal aid.

Effective legal assistance

15.2 **Courts, prosecuting authorities, and the police should ensure that there are adequate facilities for confidential client-lawyer consultations, including in police stations.**

15.3 **The implementation of reforms introducing a rota for the appointment of lawyers should be monitored. There should be an effective duty lawyer scheme in place to ensure that suspects and accused persons are guaranteed access to impartial legal assistance throughout criminal justice proceedings, especially at the earliest stages.**

Waivers

15.4 **There need to be better safeguards to ensure that waivers of the right of access to a lawyer are given unequivocally, knowingly, and intelligently.**

Legal aid

15.5 **Suspects and accused persons who are unable to pay for legal services privately should not be required to pay back the costs of legal aid if they are convicted.**

15.6 **The two legal aid schemes currently in operation should be simplified so that there is greater clarity and certainty for suspects and accused persons who are unable to afford private legal assistance, and to ensure that vulnerable defendants are not discriminated against.**

Quality of legal aid assistance

15.7 **All legal aid lawyers should be subject to tighter quality control.**

15.8 **The system of remunerating legal aid lawyers should be reviewed so that they are adequately and fairly compensated for their work.**

Part 4: Presumption of innocence directive

1 Directive (EU) 2016/343 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (the 'Presumption of Innocence Directive')

1.1 Directive (EU) 2016/343 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (the '**Presumption of Innocence Directive**') reaffirms that accused persons and suspects have the right to be presumed innocent. It states that the burden of proof for establishing guilt should be on the prosecution, and that any doubt as to the question of guilt should benefit the suspect/accused person. It also requires Member States to adopt measures that prevent public statements by public authorities that refer to a suspect/accused person as guilty before the finding of guilt has been made by law. Measures must also be taken to ensure that suspects/accused persons are not presented as guilty in public or during court appearances through the use of restraints.

1.2 Further, the Presumption of Innocence Directive recognises the right to remain silent and the right not to incriminate oneself. It also recognises the right not to have negative inferences drawn from the exercise of the right to remain silent. However, it is also recognised that 'cooperative' behaviour by suspects and accused persons can be taken into consideration for sentencing purposes.

1.3 Finally, the Directive affirms that suspects and accused persons have the right to be present at the trial that can result in the determination of their guilt or innocence.

2 The presumption of innocence in Albanian law

2.1 The presumption of innocence is a constitutional right under Albanian law,[107] and it is recognised in the CPC.[108]

Public references to guilt

2.2 There are no general provisions in Albanian law that prohibit public references to guilt by public officials before a suspect or accused person is found guilty by law. There are also no rules on how public authorities should speak to the media about the criminal proceedings.

2.3 However, there are various internal regulations and acts that restrict certain types of statements by criminal justice professionals that violate the presumption of innocence:

1. Judges and Prosecutors are subject to restrictions on the information and opinions they can share publicly. For example, judges must not share information, make declarations, or openly express opinions about court cases before an official final decision has been made.[109] Prosecutors are required to exercise caution when expressing their personal thoughts or opinions on judges, witnesses and defendants, unless these statements are made to express how the law should be implemented.[110] Violations of these obligations are considered disciplinary breaches.

2. Judicial[111] and State[112] Police are also subject to limitations on the information they can share. It is forbidden for the State police to make public statements, that violate the principle of the presumption of innocence, the principle of non-discrimination, and the dignity of suspects, victims, and children.

[107] Article 30, Constitution of Albania.
[108] Article 4, CPC.
[109] Article 11, the Judges' Code of Ethics.
[110] Article 3 of General Prosecutors' order on the approval of rules of ethics and behaviour of prosecutors no. 114/2014..
[111] Article 14, Law on Judicial Police.
[112] Article 77, Law on State Police.

2.4 By contrast, there are no rules or laws that explicitly prohibit government officials or ministers to respect the presumption of innocence.

2.5 Lawyers and civil society organisations consulted for this study reported that the presumption of innocence is often not respected by public officials, especially by State employees, Ministers, the Prime Minister and Members of Parliament. These situations arise primarily in cases with significant publicity, where accused persons are effectively considered guilty by public opinion.

3 The media

3.1 There are regulations in place regarding the obligation of media to report on crimes and criminal proceedings without violating the principle of presumption of innocence. For example, the Code of Transmission for Audiovisual Media requires that the service provider respect the principle of the presumption of innocence, but this should not prevent proper reporting on issues of public interest. Journalists are also subject to a Code of Ethics which requires that the reporting of court proceedings (including the publication of images and their transmission) must be accurate, fair, unbiased and fully respect the right to a fair trial. Journalists should always respect the presumption of innocence, and they must not describe someone as a criminal before the final court decision is taken. Complaints regarding breaches of the presumption of innocence by media outlets may be raised before the Audio-visual Media Authority, the Albanian Media Council, and the Criminal and Civil Courts.

3.2 There are frequent violations of the presumption of innocence by media outlets. During the last 6 months of 2018, the Albanian Media Council monitored 40 online media outlets regarding breaches of the code of ethics, and it found 353 breaches regarding reporting on judicial proceedings and the presumption of innocence.[113]

4 Presentation of suspects

4.1 Suspects and accused persons are very often physically confined during trials. They are accompanied to the court in handcuffs, and in some cases, this is also shown by the media. While participating in court proceedings, the suspect/accused person is usually placed in a cage or a glass box (cages in courtrooms have been gradually replaced by glass boxes in recent years). It is also common practice for accused persons and suspects to be shown in public wearing handcuffs or electronic bracelets for security reasons.

4.2 According to the CPC, a defendant participates in the court proceedings as a free person, even when they are in pre-trial detention. Restrictive security measures such as the use of handcuffs and the wire/glass box are supposed to be exceptions to this rule and are legal only where required to prevent the person from escaping or to prevent violence.[114] However, according to the lawyers consulted in this study, these measures are applied in the majority of criminal proceedings, irrespective of the perceived danger posed by the individual, and the seriousness of the offence they are alleged to have committed. This amounts to a violation of both the CPC [115] and the Presumption of Innocence Directive.[116]

4.3 Concerns were also raised that glass boxes compromise the rights of the defence , by making it harder for suspects and accused persons to communicate with their lawyers during the trial.

[113] http://kshm.al/2019/01/29/kshm-publikon-shkeljet-e-etikes-ne-mediat-online/
[114] Article 344, CPC.
[115] Article 344, CPC.
[116] Article 5 of the Presumption of Innocence Directive.

5 The right to remain silent and not to incriminate oneself

5.1 The rights to remain silent and not to incriminate oneself are explicitly recognised under Albanian law. Article 34a(c) CPC, in particular, recognises the right to remain silent, as well as the right not to answer certain questions. The defendant is informed in the Letter of Rights of the right to remain silent before being questioned for the first time, or before the execution of other procedural acts in which the presence of the defendant is required.[117] In cases of arrest or detention, the judicial police officer informs the detained/arrested person that they have no obligation to make statements, and that anything they say can be used against them.[118]

5.2 According to Article 37 CPC,[119] incriminating statements made by an individual before being formally accused cannot be used against them. In these cases, the proceeding authority interrupts the questioning and informs the person of the consequences of such declarations and on their right to be assisted by a lawyer.

5.3 Lawyers interviewed for this study reported that prosecutors sometimes pressure suspects and accused persons not to remain silent, by accusing them of being non-cooperative, or even threatening them. Suspects and accused persons have been threatened that they will be charged with other criminal offences such as the ''refusal to testify'', ''false declarations in front of the prosecution/ judicial police'' or for ''not reporting a crime''.

5.4 Further, the CPC provides the possibility of signing a cooperation agreement with the prosecution, under which the suspect or accused person provides important information to the prosecution about criminal acts which may incriminate them. In these cases, the prosecution can request the court to reduce the sentence or exempt the person from punishment altogether.[120] These laws can have a negative impact on the free exercise of the right to remain silent as they incentivise suspects and accused persons to confess and even incriminate themselves (even if they are innocent).

6 Trials in *absentia*

6.1 The CPC allows a suspect/accused person to be tried in absentia under certain circumstances. If the defendant cannot be located despite reasonable efforts by the judicial police, the court can suspend the process for up to one year and order the judicial police to continue their search of the defendant.

6.2 Trials can take place in the absence of the defendant, but in the presence of a lawyer, if:

1. the defendant cannot be located after a year;
2. the defendant is known to be deliberately avoiding justice; or
3. the defendant is abroad and cannot be extradited to Albania.[121]

6.3 If the defendant appears after the commencement of in absentia proceedings, the court revokes its decision to hold the trial in absentia. When the defendant appears after the judicial review is declared closed, but the final decision has not yet been taken, they may ask to be questioned. Actions taken earlier remain valid but, when requested by the defendant, the court can decide to reinstate judicial examination, to take evidence from the defendant or to repeat procedural actions.[122] In accordance with Presumption of Innocence Directive,[123] the CPC establishes that if the person was tried in absentia resulting in a final court decision, the law requires the retrial of the case. The application for retrial has to be submitted within 30 days from receiving notification of the decision. Applications submitted before this deadline cannot be rejected by the court.[124]

[117] Article 34a/2, CPC.
[118] Article 255/1, CPC.
[119] Article 37, CPC.
[120] Article 37/a, CPC.
[121] Article 352, CPC.
[122] Article 352, CPC.
[123] Article 9 of the Presumption of Innocence Directive.
[124] Article 450, CPC.

6.5 Trials cannot be conducted for juvenile defendants in absentia. In these cases, the court suspends the trial indefinitely after making initial enquiries about the whereabouts of the defendant.[125]

6.6 Regarding reasonable efforts that must be made to locate the individual, the notification of the defendant is made by submitting to them personally a copy of the act together with the Letter of Rights. When it cannot be handed personally to the individual, the notification is made in the place where they live or at their workplace, by handing the act to either a cohabiting person, a neighbour, or a person working with them. If the defendant is a minor, they shall be notified through their parent or guardian, as well as under the special legislation on juveniles.[126] When the persons referred to above are absent, not appropriate, or refuse to take the act, the search for the defendant continues. If it is impossible to give notice this way, the act is deposited in the administrative centre of the neighbourhood or village where the defendant resides or works. The notice of the deposit is displayed on the gate of the defendant's house or the place where they works, on the court's notice board and on the courts' website.

7 Recommendations

7.1 The general principles of the presumption of innocence are reaffirmed in the Albanian Constitution and the Procedure Code, including the right to remain silent. However, provisions regarding 'specific aspects' of the presumption of innocence in the Presumption Innocence Directive, including the prohibition on public statements of guilt and the use of physical restraints, appear to be inadequately transposed and/or poorly enforced.

Restrictions on public statements and references to guilt

7.2 **There should be a clear legal prohibition on public references to guilt made by public authorities, including judges, prosecutors, ministers, prime minister, members of parliament and public servants.**

7.3 **There should be legal restrictions on statements made by public authorities (judges, prosecutors, ministers, prime minister, members of parliament, public servants) to the media regarding criminal proceedings to ensure that such statements do not violate the presumption of innocence.**

7.4 **Media regulatory bodies should be empowered to monitor and investigate breaches of the presumption of innocence more actively.**

7.5 **Journalists should be trained on human rights and ethical reporting on crimes and judicial proceedings.**

The use of restraints in public

7.6 **There should be stricter standards and more specific guidance on the use of physical restraints, so that they are only applied for security reasons.**

[125] Article 352, CPC.
[126] Code on Juvenile Justice.

Part 5:
Children directive

1 Directive (EU) 2016/800 On procedural safeguards for children who are suspects and accused persons in criminal proceedings (the '*Children Directive*')

1.1 The Children Directive lays down the common minimum rules concerning rights of children who are suspects or accused persons in criminal proceedings. It recognises that every child who comes into contact with the criminal justice system will have different needs and the ability of each to participate effectively in the criminal proceedings and obtain a fair trial will depend on the extent to which these needs are identified and accommodated. Child suspects and accused persons have rights that go beyond those which apply to suspects/accused persons more generally.

1.2 For example, child defendants should be provided with the legal assistance necessary to enable them to prepare and present a defence. The presence of a lawyer throughout the criminal proceedings is also an important safeguard against the infringement of procedural rights. Under Article 6 of the Children Directive, Member States must ensure that child suspects and accused persons not only have the right to access legal assistance, but also to 'ensure' that they are assisted by a lawyer.

1.3 Further, international standards require that children have the right to be heard in all matters affecting them and this obviously applies to children suspected of committing a criminal offence. The protection of the privacy of child defendants throughout criminal proceedings is also particularly important for the purpose of preventing the harm caused by undue publicity or by the process of labelling. Moreover, while the detention of child defendants may be necessary in some cases, it should be considered as a measure of last resort and special provisions should be made to ensure that the best of interests of the child are fully protected in detention and whenever alternative measures are imposed.

1.4 Given the many ways in which child defendants should be treated differently from adult defendants and the specific skills which are required in order to communicate effectively with child defendants, the rights of children are best protected by professionals who have received specialist training. One of the main issues identified by Fair Trials is that although many countries have systems to ensure that child suspects/accused persons are assisted by a lawyer, not all lawyers have the specialised training or skills needed to ensure effective legal representation.

2 Overview of the juvenile justice system in Albania

2.1 In 2017, the Parliament of Albania approved the Code of Criminal Justice for Children no.37/2017 (the '***CCJC***'), which paved the way for a new juvenile justice system in Albania based inter alia on the principle of the best interests of the child, protection from discrimination, and the right to be heard. The CCJC, which entered into force in January 2018, is largely based on the Children Directive, and it makes references to the UN Convention on the Rights of the Child. The CCJC consolidates all provisions referring to children in the Criminal Code, CPC, and the Law on the Rights and Treatment of Prisoners and Detainees.

2.2 The CCJC has greatly improved rights protections of children in conflict with the law. However, it remains a challenge to ensure that the required standards are implemented in practice.

2.2 In Albania, the minimum age of criminal responsibility is 14 years old for children who are that age at the time of the committing a felony, and 16 years old for children committing any kind of misdemeanours under the Criminal Code. The CCJC applies also to a person between the ages of 18 and 21, if the defendant was a minor at the time of committing a criminal offence. These individuals are referred to as "young adults". In addition, juveniles can be dealt with by the Juvenile[127] Section of the Courts until the age of 23.[128] According to the CCJC, children should be tried by the Juvenile section within the criminal chamber of district courts.[129] There are 7 juvenile sections in the District Courts covering 23 judicial districts.[130] Judges in juvenile sections are required by law to specialise in, and be trained on, juvenile justice.[131]

2.3 In order to make it easier to access data regarding children in conflict with the law, the Council of Ministers has adopted a new decision[132] on creating "The Integrated System of Juvenile Criminal Justice Data". The system includes the dissemination and updating of criminal justice data for juveniles and aims to collect real-time data, to improve access to justice and the administration of the juvenile justice system, coordinate inter-institutional efforts, and to unify and computerize juvenile justice data that assist in the analysis and improvement of policies related to juvenile criminal justice.

3 Statistics

3.1 Recent statistics on juvenile justice were obtained for this research from the Albanian Ministry of Justice.[133] In 2018, 195 juveniles were convicted of crimes, compared to 410 in 2015. In 2016, 464 children were sentenced with up to two years of imprisonment and 176 with 2-5 years of imprisonment. These numbers have dropped significantly in recent years following the introduction of the CCJC.

3.2 According to the data, the number of children in conflict with the law is higher for felonies than for misdemeanours committed by children, which might be a result of changes to criminal justice policy that resulted in the categorisation of more criminal offences as felonies.

3.3 The statistics also indicate that there is a higher number of male children convicted of committing crimes, whereas the number of female children is very low. Female children who commit crimes are placed in the country's only prison for women, along with adult inmates. Due to the low number of female children in detention, there is no special institution for them.

4 Assistance by a lawyer

4.1 Child suspects and accused persons should always be assisted by a lawyer from the earliest stages of the criminal justice process (i.e. arrest by the police), to ensure that they are able to exercise their rights effectively. In line with the Children Directive, the CCJC requires the mandatory presence of a lawyer for all procedural acts regarding a child. Research has found that the right of access to a lawyer from the first phases of proceedings (police questioning) is, generally, respected in practice.[134] Although the CCJC requires children to be assisted by specialist lawyers,[135] it is apparent that not all children have access to lawyers with special training on child rights.

[127] In this report terms "children", "juvenile" and "minor" are used as synonyms for the same intention.
[128] Article 23/6, CCJC.
[129] Article 27/1, CCJC.
[130] Decree of President Nr.6218, date 7.7.2009.
[131] Article 27/3, CCJC.
[132] DCM nr. 149 dated 20.03.2019.
[133] Statistics provided by the Ministry of Justice, through a request of information no 4131 dated 20.5.2019.ts
[134] https://ahc.org.al/wp-content/uploads/2019/02/Monitorimi-i-te-drejtave-te-personave-ne-Komisariate_Drejtorite-e-Policise_Janar-2019.pdf.
[135] Article 31, CCJC.

4.2 In compliance with Article 18 of the Children Directive, Albanian laws ensure legal aid for children.[136] Children are able to apply for legal aid using forms recently approved by the Ministry of Justice.[137] However, the same form is used for all suspects and accused person, and they are not specially adapted for use by children. The failure to make legal aid forms child-friendly, by using more suitable, accessible language makes the process of requesting such help for very challenging. Further, although these forms were published recently on the Ministry of Justice website, they are not well-known by the general public.[138] This lack of information leads to low take-up of legal aid which undermines access to justice. According to the Ministry of Justice, there were no applications for free legal aid from minors in criminal cases between January 2015-April 2019.[139]

4.3 According to the CCJC, it is obligatory for juveniles to be represented by a specialist lawyer in court.[140] However, there are no effective mechanisms for identifying a specialist lawyer. There is no list of trained professionals available to police stations, courts, and prosecution offices.[141]

5 Questioning and audio-visual recording of questioning of child suspects and accused persons

5.1 The rules on the questioning of children in Albania partially differ from the minimum rules set out in the Children Directive. Under Article 9 of the directive, Member States must ensure that the questioning of children by police or other law enforcement authorities is audio-visually recorded where it is proportionate in the circumstances. Under Albanian law, audio-visual recording of the questioning process is only obligatory for juveniles that are victims and/or witnesses (especially of sexual exploitation or violence).[142]

5.2 This provision does not apply to children who are suspects or accused persons in criminal proceedings.[143] In practice, only written records are made. However, there are other procedural guarantees regarding the questioning of child suspects and accused persons.[144] In particular, the prosecuting body consults the psychologist on the content of questions to be posed to the child in order to phrase the question properly, in order to facilitate the child giving testimony, and to avoid intimidation during the process. The language used during the questioning of the child must be as friendly as possible and communication must be as clear as possible.

5.3 Requirements during the questioning process involve breaks upon request of the child, legal representative or psychologist and a prohibition on questioning during the night. There is no limitation in the law or in practice on the duration or the number of times a child suspect/accused person may be questioned.

5.4 According to child rights organisations that were interviewed for this study, there is a higher chance of children incriminating themselves after being questioned several times. Sometimes the repetition of the questioning happens because of irregularities and lack of recording during the first questioning. There have also been irregularities in recordings of police interviews.

5.5 Lawyers consulted for this study also have reported many cases of breaches of procedures and appropriate treatment during questioning, including prolonged interviews, and discussing irrelevant or inappropriate matters in the presence of the child. Children sometimes changed their testimonies under the influence of their parents or the judicial police officer.

[136] Article 36, CCJC.
[137] https://drejtesia.gov.al/ëp-content/uploads/2019/04/URDHER-Nr.225-date-25.3.2019-PER-MIRATIMIN-E-FORMULAREVE-TE-NDIHMES-JURIDIKE-TE-GARANTUAR-NGA-SHTETI.pdf.
[138] https://ahc.org.al/wp-content/uploads/2019/12/Raport-Ndihma-Juridike-per-publikim-_-Komiteti-Shqiptar-i-Helsinkit.pdf.
[139] Information provided by the Ministry of Justice, through request of information no 4131, 20.5.2019; https://www.unicef.org/albania/child-friendly-justice.
[140] Article 31, CCJC.
[141] Institutional Mechanism for Implementation of the Juvenile Justice Strategy Meeting, 12 November 2019.
[142] Article 39, 41, CCJC
[143] Article 76, CCJC.
[144] Article 77, CCJC

5.6 There have been efforts to ensure that children are interviewed in child-friendly surroundings. Police stations have set up "Juvenile Interview Units" based on Order No. 715, dated 5 June 2019. Based on this Order, and with the support of civil society organisations, several police stations have created special facilities for interviewing children.[145]

5.7 However, even in police stations that have child-friendly facilities, child rights organisations have stated that there is a general lack of willingness by the police conduct interviews in these spaces, and that they prefer to question children in the offices of the judicial police in the same spaces as adults.

6 Right to an individual assessment

6.1 Individual assessment is a procedure that should be carried out when making decisions related to the child. The criteria set in the CCJC in Albania are similar to the provisions of the Children Directive and include age, level of development, living conditions, upbringing and development, education, health conditions, family situation, and other circumstances which allow individual assessment. However, there is some ambiguity regarding the stage at which this assessment should be carried out. The Children Directive states that the assessment should be carried out at the earliest appropriate stage of the proceedings and before indictment, and in any event by the beginning of the trial hearing at the court.[146] In Albania, the court and prosecution are responsible for ensuring that individual assessments are carried out. These two bodies can request, where 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 their personality, accountability and the extent of their responsibility.[147]

6.2 The individual assessment report describes the special needs of a child, risk of the child committing a criminal offence and other elements depending on the case, as well as the proper measures recommended to facilitate the development and integration of the child into society. An individual assessment is mandatory when:

1. an alternative measure to criminal proceedings is imposed;
2. the type of detention is set;
3. the sentence decision is executed; and
4. the request for conditional release is examined.[148]

6.3 According to the Children Directive, qualified personnel should carry out the assessment following a multidisciplinary approach and, where appropriate, in the presence of the holder of parental responsibility and/or a specialised professional. The CCJC does not prescribe the method for conducting the assessment but does prescribe the institutions responsible for it. In cases "a" and "b" of the mandatory assessment set out above, the individual assessment report is prepared by the expert/group of experts or the Probation Service, and in cases "c" and "ç", the report is prepared by the Prison Service (from the institution where the juvenile is executing their criminal sentence) and/or Probation Service. Where appropriate, the above-mentioned bodies take into account the opinion of the Unit for Protection of the rights of the child[149] when preparing the individual assessment report.

[145] Institutional Mechanism for Implementation of the Juvenile Justice Strategy Meeting, 12 November 2019.
[146] Article 7 of the Children Directive.
[147] Article 22, CCJC.
[148] Article 47, CCJC.
[149] These bodies are established at municipality level and are responsible of the situation of each child under the municipality jurisdiction.

6.4 The CCJC goes further than the Directive regarding the people involved in the individual assessment, providing that the responsible experts can obtain the necessary information from any natural and/or legal person (public and/or private) considered to be a facilitator in this process.

6.5 The individual assessment procedure is obligatory following the entry into force of the CCJC in January 2018. Data from the Probation Service states that during 2018, 48 individual assessments were carried out, all required by the courts. In 2019, the number increased to 70 individual assessments required by the courts (69) and prosecution office (1).[150] More individual assessments are conducted by private experts than by state institutions.[151] Reports provided by privates experts are usually paid for by the suspect/accused person or by the state.

7 Right to a medical examination

7.1 In compliance with the Children Directive, Albanian legislation recognises the right to a medical examination for children deprived of liberty.[152] Children have the right to a medical examination at the earliest stage of the criminal proceedings. The medical examination is carried out in the police station where children are taken to after arrest. Further and more specialised medical examinations can be ordered by other authorities involved in the process, such as the courts and prosecutors on a case by case basis.

7.2 In practice however, children are not getting prompt, appropriate medical examinations. Police stations do not always have access to a doctor, and medical examinations are often limited and inadequate.[153]

8 Holders of parental responsibility and appropriate adults

8.1 Holders of parental responsibility in Albania are considered legal representatives of the child. As such, Albanian legislation ensures their presence during all stages of criminal proceedings, including during questioning by the police. The child has the right to participate, directly and/or through the legal representative, in any decision-making process affecting the child.[154] In addition, under Article 49 of the CCJC, the presence of a legal representative is mandatory in procedural acts involving the child. During the investigation and trial, the prosecutor and judge respectively may only prohibit the legal representative of a child in conflict with law from attending procedural acts if this is necessary for the best interest of the child.[155]

8.2 This provision is similar to the Children Directive. Under Article 15 of the Directive, the presence of the holder of parental responsibility is required during court hearings. The Directive also requires the presence of the parental responsibility holder during other stages of the proceedings if it is in the best interest of the child and if their presence won't prejudice the criminal proceedings.

8.3 Psycho-social support is available for arrested children. This is usually provided by psychologists that are employed by institutions, by local schools, or by local non-profit organisations. For example, the Regional Directorate of Police in Tirana has signed an agreement with a local organisation to ensure the provision of a psychologist or social worker for all cases and proceedings involving a child. However, this institution has limited staff, with only 2 psychologists in the organisation covering 6 police stations. In each of the 12 local police directorates there is only one psychologist.[156]

[150] Information provided by the Probation Service, through request of information no 1594, date 17.01.2020.
[151] Information provided by the Ministry of Justice, through request of information no 1018 date 13.12.2019.
[152] Article 8 of the Children Directive and Article 79 CCJC.
[153] https://ahc.org.al/wp-content/uploads/2019/02/Monitorimi-i-te-drejtave-te-personave-ne-Komisariate_Drejtorite-e-Policise_Janar-2019.pdf.
[154] Article 16, CCJC.
[155] Article 49, CCJC.
[156] Information provided by the State Police electronically, through request for information dated 27.6.2019.

8.4 Experts consulted for this study stated that support from psychologists is usually available, but that there have been cases of children being questioned in their absence. Cases have also been reported of psychologists signing the register as though they were present during questioning (even if they were not there).[157] In addition, lawyers interviewed for this study stated that there have been several reported cases of minors being pressured to respond to questions of the police without the presence of an adult (the holder of the parental responsibility), psychologist or a lawyer.

9 Right of children to appear in person and participate in their trial

9.1 In compliance with Article 16 of the Children Directive, the CCJC recognises the right of participation in the trial including the right of the child to be heard and to express their own views (taking into consideration the age and maturity of the child). Under Albanian law, the children do not have to be present at all stages of their criminal proceedings. However, the CCJC recognises that the child's non-participation should not worsen their position and/or be used to their disadvantage.[158] The trial, in particular, should only be held in the presence of the child. However, the court (ex officio or upon request) may remove the child from the courtroom when examining evidence, if to do so would be in the best interest of the child. The period that the child is absent during the judicial process should be as short as possible.

10 Deprivation of liberty

10.1 The CCJC emphasises avoiding criminal proceedings wherever possible, and prioritises alternative measures, including restorative justice measures, over the deprivation of liberty. The deprivation of liberty is a measure of last resort, to be taken only if no other measures are appropriate.[159] This is an innovation of the CCJC and that has had quick results in the 2 years since its entry into force. In January 2020 there were only 23 juveniles in prison, of which only 5 had been sentenced to imprisonment while the others were in pre-trial detention.[160] Children are detained only in cases where they are accused of offences carrying a penalty of 7 years' imprisonment or more. For crimes carrying a sentence of 7 years' detention or less, courts should impose alternative sentences. The Probation Service handed down 144 alternative sentences for the period January-June 2019.[161]

10.2 In Albania, the prison service for juveniles includes the Institute of Re-education in Kavaje[162] and 3 juvenile sections in adults' prisons in Korca, Lezha and Vlora. In these institutions, children deprived of liberty are usually (but not always) placed in different spaces from adults.[163] Monitoring visits conducted by human rights organisations such as the Albanian Helsinki Committee ('AHC'), found that children are not sufficiently separated from adult detainees in certain detention centres and prisons, due to a lack of appropriate infrastructure. For example, in the prison in Korça, it was found during monitoring that minors were placed on the same floor with adults, and in several cases, they were encouraged by the adult convicts to act against order and security. In addition, the AHC found that even where children are held separately from adults, there were concerns in relation to the poor conditions of detention which do not meet the basic standards regarding food, toilets and other needs of juveniles.

10.3 In 2018, the Ministry of Justice decided to place all juveniles in the institution in Kavaja, aiming to reduce the likelihood of recidivism among juveniles in conflict with the law and their contact with adults. The situation of juveniles has improved in this institution, but children accommodated in Kavaja below the age of 18 do not benefit from being classified as young adults[164] until they are 21 years old. When they turn 18, they are transferred to an adult's prison.

[157] https://ahc.org.al/wp-content/uploads/2019/02/Monitorimi-i-te-drejtave-te-personave-ne-Komisariate_Drejtorite-e-Policise_Janar-2019.pdf
[158] Article 16, CCJC.
[159] Articles 14, 86, and 94, CCJC.
[160] Visit to Kavaja, January 16th 2020.
[161] Institutional Mechanism for Implementation of the Juvenile Justice Strategy Meeting, 12 November 2019.
[162] Commonly known as 'juveniles' prison'.
[163] Article 75, CCJC.
[164] For instance, like being tried in Juvenile Sections of the Court.

10.4 If a child is arrested, courts must review the arrest within 48 hours.[165] According to lawyers, this deadline is generally respected, but child rights organisations interviewed for this study stated that they are aware of cases where there have been delays.

10.5 Furthermore, Article 98 CCJC introduced the concept of 'restriction of liberty'. Restriction of liberty is an alternative measure to detention which places the child in an institution/centre under supervision, without removing them from society or the community, and it is aimed at educating and rehabilitating children through special programmes. It is foreseen that this will be a semi-open institution where children sentenced under Article 98 CCJC will live their daily life in the community but will be accommodated in the institution during the night. However, although this provision entered into force on January 2018, it is currently not possible for judges to impose this sentence because the institution has not yet been built.

11 Right to privacy

11.1 Similar to the relevant provision of the Children Directive, the CCJC has provisions regarding the protection of personal data and the private life of juveniles in conflict with the law. Court hearings that involve children are held behind closed doors. In practice, courts implement this provision strictly, and there is evidence that judges are unwilling even to accept requests to monitor court hearings where a subject is a child, whether a victim, suspect or accused person.[166] In addition, courts can undertake further measures to protect the privacy of the child. Identification or publication, in any form, of personal data of the child shall be prohibited, unless otherwise provided for by the law on personal data protection. Violation of this provision constitutes a criminal offence according to the provisions of the Criminal Code. However, in practice, the media has breached this provision several times by publishing names and other data that identify the juveniles.

12 Timely and diligent treatment of cases

12.1 The CCJC has set concrete deadlines for procedures and judgments in the courts of different levels for cases of children in conflict with the law. Article 88 of the CCJC states that trials involving a child in conflict with the law shall be conducted without delay and with priority. The CCJC imposes the following deadlines:

1. The case of a child in conflict with the law shall be sent to court not later than 3 months from the recording of the name in the register, except when, during this period, the child is accused of another criminal offence or in cases of criminal offences tried by the Court Against Corruption and Organised Crime. The time limits foreseen in the CPC shall apply to these cases.
2. The Court of First Instance shall conclude the examination of the case within the shortest possible time period but not later than 6 months from the date of deposit of the documents with the Court.
3. The Court of Appeal shall conclude the case within the shortest possible time period but not later than 2 months from the date of deposit of the documents with the Court.
4. The High Court shall examine admissibility of recourse and try the case as quickly as possible.

12.2 In the majority of cases, these deadlines appear to be met by the courts. Children accommodated in the Institution of Re-education in Kavaja in pre-trial detention stay at the institution for a relatively short period of time, from 2 months to 2 years for children accused of serious felonies and tried by the Court against Corruption and Organised Crime.[167]

[165] Article 85, CCJC.
[166] Data from Albanian Helsinki Committee.
[167] Idem.

13 Training

13.1 The CCJC has a chapter on the training and specialisation of the competent authorities in the process of criminal justice for children. Since January 2018, a considerable number of professionals including judges, prosecutors, police officers, probation officers, etc have been trained.

Training of judges and prosecutors

13.2 During the academic year 2018-2019, the School of Magistrates held 8 training sessions on child rights with regards to the new Code on Juvenile Justice and the legislative changes in this area.[168] These trainings are available for judges, prosecutors, officers of the judicial police, state attorneys, officers of the academy of security etc. Some of the main training activities were organised with the support of international donors. The School of Magistrates, in cooperation with the Albanian-Swedish programme on juvenile justice, has trained 52 magistrates in total, including judges and prosecutors who will deal with cases involving juveniles at the Juvenile Sections in the respective courts. As foreseen in the CCJC, trainings have been delivered in such way to include (without being limited to) all topics provided in Article 26 of the CCJC.[169]

Training police officers

13.3 The General Directory of the State Police includes a section on minors and domestic violence with a staff of 3 people. In each of the 12 local directorates of police across Albania, there is one specialist working on child protection and domestic violence. In police stations, depending on the territory they cover and the number of cases identified, there are 1-3 specialists on minors and domestic violence. In any case that involves children, whether as a victim or a suspect/accused person, the above-mentioned professionals should be present and administer such cases.

13.4 The trainings that police have received have covered the following topics, according to Article 26 of the CCJC:[170]

1. the standards and principles that guarantee juvenile rights;
2. ethical principles and obligations;
3. training and assessment techniques, critical situations, risk assessment, referral of case and guaranteeing the principle of confidentiality;
4. training related to the techniques of questioning minors, child psychology and communication with the child in a language appropriate for child; and
5. methods of mandatory work for professionals working with minors.

Delivery of training

13.4 The authority in charge of training police officers is the Academy of Security, responsible for initial and continuous training of the State Police staff.[171] The curricula is based on the code of juvenile justice and exchange of experience with international experts from SIDA and UNICEF. The training is 70 hours long.[172] Further, in light of the establishment of the new child-friendly premises in the police stations, the Juvenile Interview Unit requires a new approach, both in the manner and techniques of interviewing and in the procedure for documenting the interview process. Therefore, the State Police is in process of delivering a curriculum called “Interviewing Techniques for the Interviewing Unit”, for which there will be psychologists and trained specialists dealing with proceedings.

[168] Information provided by the School of Magistrates through request for information and by the office of the General Prosecutor through request for information no. 443 20.5.2019.
[169] Some of the topics covered were: Juvenile justice, Children in contact with the law; Restorative justice and mediation for children; The child victim in criminal proceedings; the best interest of the child; Communication with children and questioning from judges and prosecutors; preparing procedural acts regarding juvenile justice; Building trust through spoken language, cultural, social
[170] Information provided from the General Police Directory through request for information no. 4105 20.5.2019.
[171] During 2019 police officers dealing with children cases have been trained also from different donors. Around 12 police officers have been trained in the framework of the Albanian-Swedish programme on juvenile justice (Institutional Mechanism for Implementation of the Juvenile Justice Strategy Meeting Report, 12 November 2019).

Training of probation officers

13.5 During 2019, several trainings were held by the Albanian-Swedish juvenile justice program at the Probation Service. From this program, a total of 7 different trainings and seminars have been conducted so far, with 25 probation officers assigned to deal with juvenile justice.[173]

Training psychologists

13.6 In 2019, the Order of Psychologists developed training for psychologists in the field of juvenile justice, which resulted in 107 psychologists being certified as experts in the evaluation and assisting of children. However, it remains a challenge for psychologists to disseminate the lists of new specialised psychologists to all justice institutions (Court, Prosecutor, Police Districts etc.).

13,7 In addition to training professionals of the institutional justice chain dealing with children, there have been continuous efforts on training other specialists involved in the process, such as child protection professionals, part of the Child Protection Units. To date, there have been around 160 professionals trained by different organisations like UNICEF, World Vision, and Terre des Hommes.

14 Recommendations

14.1 The CCJC, and practical measures to implement its provisions, provide some encouraging examples of implementing the Children Directive. For example, the Children Code provides that there should be alternatives to the deprivation of liberty through special institutions that facilitate rehabilitation whilst ensuring regular contact with family members. Various police stations have a specialist 'juvenile justice unit' and child-friendly spaces for conducting interviews.

14.2 The CCJC is still a relatively new instrument, and further monitoring is required to assess its effectiveness more fully. While many of its provisions align with, or even surpass the standards in the Children Directive, experiences so far suggest that not all of these high standards are being enforced in practice.

Legal and other assistance

14.3 **Access to free legal aid should be made easier, with legal aid forms adapted for use by children.**

14.4 **There should be effective mechanisms to ensure that children are assisted by lawyers who have specialist training to represent child suspects/accused persons.**

14.5 **There should be stricter enforcement of the right to be assisted by a lawyer and to be accompanied by an appropriate adult.**

Questioning of child suspects/accused persons

14.6 **There should be clearer guidance and standards for interviewing children in conflict with the law which limits the number of times minors can be questioned by the authorities.**

14.7 **There should be more child-friendly facilities at police stations and other places where children in conflict with the law are questioned, and police and prosecutors should be required to use these facilities, if they are available.**

14.8 **Interviews with child suspects and accused persons should be audio-visually recorded.**

14.9 **More psychologists are needed in police stations to assist during the questioning of minors and respond to their needs.**

[172] Information provided from the General Police Directory through request for information no. 4105 20.5.2019.
[173] Institutional Mechanism for Implementation of the Juvenile Justice Strategy Meeting Report, 12 November 2019.

Individual assessments and medical examinations

14.10 **There should be no cost implications for child suspects/accused persons or for their families for individual assessments to be carried out, and these assessments should be carried out by public bodies such as the Probation Service or municipal Child Protection Units to ensure that they are free.**

14.11 **The State Police should take the necessary measures to ensure doctors are available at directorates/police stations.**

Deprivation of liberty

14.12 **There need to be stronger, more effective measures to ensure that child detainees are not mixed with adult detainees.**

14.13 **Special institutions must be built for minors for the 'restriction of liberty' sentence as foreseen in the Article 98 CCJC to enable the courts to use this new alternative measure.**

14.14 **Young adults (between 18 and 21 years old) should complete their detention in the special institution for juveniles, rather than be treated as 'adults'.**

Privacy

14.15 **The media should take self-regulatory measures to achieve objectives set out in the CCJC regarding the protection of children's personal data and privacy.**

Training

14.16 **Training should be available to all criminal justice professionals involved in juvenile justice proceedings. These should be mandatory and not dependent on funding from the donor community.**

[6] EU acquis, Chapter 23 Judiciary and fundamental rights

Conclusion

Changes made to Albanian legislation in recent years have helped to align local laws with the EU's minimum standards in the Roadmap Directives, and Albanian criminal procedure rules now appear to be compliant with EU laws, with only a few exceptions. The accession process, and, in particular the Roadmap Directives, seem to be having a positive impact on defence rights, and they are helping to ensure compliance with existing human rights standards, especially those under the European Convention on Human Rights ('ECHR'). Sweeping reforms introduced by changes to the Criminal Procedure Code in 2017 have greatly enhanced procedural safeguards for criminal suspects and accused persons, and the introduction of the Children Code in the same year has resulted in significant improvements for the rights of children in conflict with the law.

However, a closer inspection of laws, policies, and practices in Albania raises doubts about the practical accessibility of some of the rights contained in the Roadmap Directives. Although domestic laws are mostly compatible with the main operative provisions in the Directives, there are notable practical and legal barriers to effective implementation in several areas. The main challenge for Albania now is to go beyond the process of legislative changes to transpose the wording of the Directives, and to ensure that the standards in the Roadmap Directives are supported by broader legal and practical frameworks that facilitate the real and meaningful exercise of suspects' and accused persons' rights.

These challenges need to be addressed through various methods and by various stakeholders. They range from overhauling the legal aid system to ensure that free legal aid is easily available and making specific changes procedures on the provision of information to suspects, to more practical initiatives, such as the establishment of a functional duty-lawyer scheme and better resourcing of juvenile justice institutions. Many of these changes need to be effected by public authorities and law-makers. Equally crucial is the role of civil society and defence lawyers to ensure oversight of how suspects and accused persons are being treated in practice. It is important that defence lawyers are trained and mobilised to use the Directives and to demand that the relevant standards are respected, and civil society should be supported in their systemic oversight role and in their role as advocates for change.

The challenges being faced by Albania are by no means unique. Fair Trials has noted that many barriers to effective implementation of the Directive are similar to those identified in current EU Member States, including ineffective quality controls on interpretation and translation, inadequate systems for facilitating early access to legal advice, and the overuse physical restraints in court proceedings.12 Not all of these issues have yet been successfully addressed in the EU, but the fact that Albania shares many fair trial rights challenges with EU Member States means that there are likely to be considerable benefits to the sharing of experiences, and continued dialogue between activists across different jurisdictions.

It should also be emphasised that although the immediate objective of the Albanian government in transposing the Directives seems to be to progress its application to join the EU, defence rights must not be regarded merely as a tick-box exercise for accession. While the Roadmap Directives can greatly assist the improvement of criminal justice systems, it does not amount to exhaustive guidance on fair trial rights. There are significant challenges, such as pre-trial detention and racial discrimination that are common to criminal justice systems across Europe but which have not yet been addressed sufficiently in targeted EU laws. Improvements to fundamental rights protections and the rule of law cannot be achieved solely through the narrow lens of the Roadmap Directives – these challenges must instead be tackled through wider range of measures and with broader objectives to strengthen fair trial rights.

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