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**REPUBLIC OF ALBANIA
THE PARLIAMENT**

LAW

No. 37/2017

CODE OF CRIMINAL JUSTICE FOR CHILDREN

Based on article 81, paragraph 2 and 83 paragraph 1 of the Constitution, on the proposal of a member of parliament,

THE PARLIAMENT

OF THE REPUBLIC OF ALBANIA

DECIDED:

CHAPTER I

GENERAL PROVISIONS

Article 1

Object

1. The Code of Criminal Justice for Children (hereinafter referred to as the Code) contains special provisions on criminal liability of children; procedural rules relating to investigation, criminal prosecution, court proceedings, execution of criminal sentences, rehabilitation or other measures involving a child in conflict with the law, as well as a child victim and/or witness of the criminal offence.

2. This Code contains provisions applicable even to young adults from 18 to 21 years of age as foreseen in its individual articles.

Article 2

Purpose

The purpose of this Code is to:

1. Guarantee a legal framework on criminal justice for children which is in line with the Constitution, United Nations Organisation (UN) Convention on the Rights of the Child and other international standards and norms which aim at protecting children and the best interest of child effectively.

2. Promote reintegration of the child in conflict with the criminal law and the assuming by the child of a constructive role in society.

3. Ensure re-socialization and rehabilitation of the child who has committed the criminal offence.

4. Protect the rights of child victim and/or witness of the criminal offence.

5. Prevent re-victimization and secondary victimization of the child who has been earlier a victim of a criminal offence.

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6. Prevent the re-commission of criminal offences by the child.
7. Protect public order principles in the process of administering of criminal justice for children.
8. Enhance accountability and professionalism of the competent bodies administering cases of criminal justice for children.
9. Ensure educational and prevention measures against children who commit criminal offences and ensure establishment of mechanisms to supervise their enforcement.

Article 3 **Definitions**

These terms in this Code shall have the following meaning:

1. "Alternatives to imprisonment" is any measure that does not amount to a deprivation/restriction of liberty, which the body competent for criminal justice system may impose against the child at any stage.
2. "Criminal justice for children" means proceedings related to criminal offences, including investigation, criminal prosecution, court proceedings, execution of sentences, any other measures involving a child in conflict with the law, victim or witness of a criminal offence;
3. "Child" is any person under 18 years of age.
4. "Child in conflict with the law" is any person who has reached the age of criminal responsibility up to 18 years of age, against whom there is a reasonable doubt to believe that the child has committed a criminal offence, has been summoned as a defendant and/or the child has been sentenced by a final court decision for the commission of a criminal offence.
5. "Child victim" is any person under 18 years of age who has suffered moral, physical or material damage due to a criminal offence.
6. "Child witness" is any person under 18 years of age who may have information about a criminal offence.
7. "Young adult" is any person from 18 to 21 years of age who is accused of the commission of a criminal offence, when he was a child.
8. "Relative" is the person who has close family, blood or marriage relationship with the child.
9. "Best interest of a child" means the right of the child to a healthy physical, mental, moral, spiritual, social development and the right to enjoy family and social life suitable to the child.
10. "Information" means any data which are appropriate to the age and maturity of the child and which is given to the child to exercise his rights fully, unless the provision of such information is contrary to the best interest of the child.
11. "Minimum age of criminal responsibility" is 14 years of age in case of commission of a felony and 16 years of age in case of commission of misdemeanours foreseen by the Criminal Code;
12. "Restorative justice measure" is any measure allowing the child in conflict with the law to understand the responsibility and redress the consequences of a criminal offence, compensate damage and/or reconcile with the victim/injured party and other persons affected by the criminal offence, in which the child who has committed the criminal offence and the injured party participate jointly and actively to redress the consequences of a criminal offence, usually with the assistance of an independent third party.
13. "Mediation" is the process of extra-judicial and dialogue-based settlement between a child who has committed the criminal offence and the victim led by the mediator and aiming at settling the dispute between them and the consequences emerging from the criminal offence as well as improving relations between them whether or not it is applied as a diversion measure.

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14. "Unit for Protection of Rights of the Child" is the structure for the protection of the child at local level under the law in force on the rights and protection of the child.

15. "Competent body/participant in administering of criminal justice for children" is, when appropriate, any judge, prosecutor, judicial police officer, state police officer, defence counsel, psychologist, social worker, mediator, employee of the Unit for Protection of Rights of the Child and probation service, employee of rehabilitation institution for children and detention and prison employee, as well as any other structure/official involved in this process who exercise the responsibilities and competences foreseen in this Code and who are trained and specialised in criminal cases involving children and young adults.

16. "Legal representative" is the parent, relative or child's guardian, who participate in criminal justice proceedings involving children to protect interests of the child.

17. "Procedural representative" is the person as per the meaning defined in the law in force on the rights and protection of the child who represents the child procedurally, according to the provisions of this Code.

18. "Trusted person" is the adult person indicated by the child and accepted by the competent body who accompanies the child throughout the stages of criminal prosecution.

19. "Rehabilitation Centre/Institution for children" is a structure or programme where children whether sentenced or not, are placed or involved, which is equipped with the appropriate infrastructure and staff to meet the special needs of the child and execute the court decision.

20. "Re-victimization" is inflicting harm on a child victim of a criminal offence due to a new criminal offence linked to the previous one.

21. "Re-socialization/rehabilitation" is encouraging and developing in children of a sense of responsibility and respect for the rights of others, the facilitation of physical, mental, spiritual, moral and social development of children and preparing them to reintegrate into society.

22. "Incentive" means several additional benefits in addition to those the child is entitled to on regular basis, because of good behaviour and implementation of the rehabilitation and reintegration program.

23. "Diversion" is the alternative measure for non-initiation, suspension or dismissal of criminal proceedings against the child in conflict with the law, according to the provisions of this Code;

24. "Secondary/repeated victimization" is the situation where a child victim of a criminal offence may suffer damage because of involvement in criminal justice proceedings.

Article 4 **Scope of application**

1. This Code shall apply only to the procedure of administering of justice for the child in conflict with the law, and child victim and/or witness of criminal offences.

2. This Code, in the cases foreseen by Article 27 paragraph 5 therein, shall apply to a person from 18 to 21 years of age, if he/she is a defendant for a criminal offence committed when he was a child.

3. The provisions foreseen in the Code do not apply to children who commit criminal offences under the age of criminal responsibility, as criminal proceedings against them may not be initiated or if initiated, they shall be dismissed immediately. In such case, the child protection structures shall act and all the measures foreseen by the law on the rights and protection of children shall apply in order to provide them with procedural rights, assistance

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and service similar to the child in conflict with the law/victim or witness concerning the cross-examination process and contact with the police and prosecution bodies.

Article 5

Relation to other laws

The provisions of the Criminal Code, Criminal Procedure Code and other laws shall apply to the criminal justice process for children only in issues which are not governed by this Code, or if they contain regulations that are more favourable to children.

Article 6

Applicable legislation

1. This Code is based on principles embodied in the Constitution of the Republic of Albania, the UN Convention on the Rights of the Child, other international acts ratified by the Republic of Albania and universally recognized principles regarding criminal justice for children.

2. The provisions of this Code may not be construed or applied in ways limiting the guarantees and Minimum Standard Rules related to criminal justice for children and the explicit rights in international acts ratified by the Republic of Albania, European Union *Acquis* and the UN Convention on the Rights of the Child.

Article 7

Age of the child

1. A child, for purposes of criminal responsibility for crimes, is the person who has reached the age of 14 years, but who has not reached the age of 18 years, at the time of commission of the crime.

2. A child, for purposes of criminal responsibility for misdemeanours, is the person who has reached the age of 16 years, but who has not reached the age of 18 years, at the time of commission of the misdemeanour.

3. If it is impossible to determine exactly the age of the person, but there are reasons to believe that he/she is a child, he/she shall be considered a child, in the sense of this Code, until age is determined.

4. The provisions of paragraph 2 of this article shall apply even to the child victim or/and witness of the criminal offence.

CHAPTER II

PRINCIPLES OF CRIMINAL JUSTICE FOR CHILDREN

Article 8

Guiding principles of criminal justice for children

1. The principles of this Code shall have an effect on its entire content and they shall be applied by every person and competent body in every action and decision related to the child in conflict with the law, child victim and/or witness of the criminal offence.

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2. The principles of this Code shall be applied even to administrative actions of the police and other bodies performing administrative activity in the context of criminal justice for children.

Article 9

Presumption of innocence

1. Every child in conflict with the law shall be presumed innocent until guilt is established by a final court decision.

2. Any doubt on the charges against the child shall be deemed in his/her favour.

Article 10

Principle of the best interest of the child

1. The best interest of the child shall be a primary consideration by the competent bodies in any decision taken and activity performed under this Code.

2. In implementing this principle, the following shall be considered:

a) needs of the child for physical and psychological development, education and health, security and sustainability and also child upbringing/belonging to a family;

b) views of the child, in accordance with the age and maturity of the child;

c) history of the child, considering the special situations of abuse, neglect, exploitation or other forms of child violence, and the potential risk that similar situations may occur in the future;

ç) capacity of the parents or persons in charge of child upbringing to respond to the needs of the child;

d) continuity of personal relations between the child and the parents, with whom the child has gender, social and/or spiritual relations.

3. Decisions and acts of the competent bodies must contain a special reasoning related to how the best interest of the child is analysed and how it will be ensured.

Article 11

Principle of protection from discrimination

1. The rights deriving from this Code shall be guaranteed, without any discrimination, to any child in conflict with the law, victim or witness, irrespective of gender, race, colour, ethnic origin, language, gender identity, sexual orientation, political beliefs, religious or philosophical, economic condition, educational or social, pregnancy, parental affiliation, parental responsibility, family or marital status, civil status, residence, health condition, genetic predisposition, disability, belonging to a particular group and any situation of the child, parents or legal representatives of the child.

2. Rights of the child, foreseen in this Code, are protected from all forms of discrimination on one of the grounds foreseen in paragraph 1 of this article.

Article 12

Right to harmonious development of the child

1. The right of the child to physical, mental, spiritual, moral and social development shall be considered in any decision and proceedings related to criminal justice for children.

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2. Decisions and acts of the competent bodies must contain a special reasoning related to how the right of the child to this development will be assessed and how paragraph 1 of this article will be applied.

Article 13

Principle of proportionality

Every measure taken against a child in conflict with the law must be proportionate to the circumstances of commission of the criminal offence, personality of the child, in accordance with the age, background and education, personal, family, social and environmental conditions, developmental and other needs of the child, including, where appropriate, even special needs.

Article 14

Prevalence of alternative measures of diversion

1. In criminal justice proceedings, in order to achieve the purposes of this Code and other justice for children-related laws, priority shall be given to the alternative measures of diversion from criminal prosecution.

2. Alternative measures aiming at diversion from criminal prosecution of the child or enforcement of restorative justice measures shall be considered the first option. Each competent body when making such an assessment shall reflect in the respective acts the fact that alternative measure of diversion serves better the purpose of re-socialization, rehabilitation of the child and prevention of violation of the law than the holding of the child criminally liable and enforcing criminal law.

3. Approach to criminal proceedings against a child in conflict with the law, where appropriate, feasible and necessary, shall be diverted, provided that the rights and protection of the child are fully respected.

4. Any measure used against a child as alternative measure of diversion from criminal prosecution shall contribute to the protection of the rights and legal guarantees of the child.

Article 15

Restriction or deprivation of liberty as a measure of last resort

1. Arrest, detention or imprisonment of a child shall not be imposed if the aim may be achieved through a more lenient measure.

2. Arrest, detention or imprisonment of a child shall apply in accordance with the provisions of this Code, as well as the criminal procedural law, to the extent this Code does not foresee otherwise.

3. The measures foreseen in paragraph 2 of this article shall be used only as a last resort, for a shortest time possible, and they shall be subject to periodic review by the court.

Article 16

Child participation in the process

1. The right of participation in the process includes the right of the child to be heard and express own views which are given due weight in accordance with the age and maturity of the child. Where a child seeks to be heard, the request shall be accepted, except for important reasons which are reasoned in the respective decision. If the child is unable to exercise this right, he/she may do so through the parent as a legal representative.

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2. The child has the right to participate, directly and/or through the legal representative, in any decision-making process affecting the child.

3. The child may not be obliged to participate in the process in person. Non-participation may not aggravate his/her position or/and be used at his/her disadvantage.

4. The prosecutor and the court create all the conditions and take any measures to encourage the child to participate in criminal proceedings against him/her, if so required for the best interest of the child.

5. Any actions taken by the competent body during the proceedings conducted in the presence of the child must be appropriate to the age and maturity of the child.

6. Necessary adaptation and support is ensured through the manners foreseen in ratified international acts concerning disabled persons and the law in force on inclusion and accessibility of disabled persons.

7. If the claims of a child and his legal/procedural representative are contradictory, the competent body shall consider the claim that serves the best interest of the child.

Article 17

Examination done promptly and with preference

1. All decisions and actions under this Code from the start of the criminal proceedings until the execution of the court decision, shall be taken promptly, with preference and without unjustified delay based on the best interest of the child and respecting the rights of the child.

2. Any competent body shall, promptly, within the time limits defined in this Code, and with preference, examine cases of the child in conflict with the law and the cases of the child victim and witness, by making sure that the criminal process, in each stage, does not aggravate the trauma experienced by the child and that the criminal justice system for children provides, where appropriate, proper assistance to the child.

Article 18

Mandatory presence of the psychologist

1. The presence of the psychologist shall be mandatory in any stage of criminal proceedings with the child in conflict with the law, as well as during questioning of the child victim or witness, irrespective of the age over or under 14 years of age.

2. The psychologist, where appropriate, shall guarantee psychological support of the child and assess his statements, in accordance with the mental development of the child.

3. The presence of the psychologist makes sure that the child in conflict with the law, the child victim and/or witness is questioned in a proper manner and testimony-giving is facilitated with due care to avoid intimidation from or reluctance of the child during the process.

4. The competent bodies, where appropriate and if necessary, make sure to provide for the presence of the same psychologist throughout the criminal justice process involving children and only if this serves to the best interest of the child.

5. The psychologist, who assumes the role of the emotional supporter of the child during investigation and trial proceedings may not be assigned by the court to assume the role of the expert, by preparing the psychological assessment for the same child.

CHAPTER III

PROCEDURAL RIGHTS AND GUARANTEES OF THE CHILD

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IN CONFLICT WITH THE LAW

Article 19

Rights of the child in conflict with the law

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

2. The child is entitled to protection and special procedures at all stages of the criminal justice process involving children.

3. The child shall be entitled to the following rights at any stage of criminal proceedings:

a) the right to free legal and psychological aid or any other appropriate assistance necessary for their preparation and submission of the defence;

b) the right to be informed immediately in a way that is appropriate to their individual development;

c) the right to be provided with a free of charge translator/interpreter unless they understand or speak the language used or use the sign language;

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

d) the right not to be forced to give testimony or admit guilt;

dh) the right to cross-examine witnesses of the accusation body and ensure participation and questioning of witnesses of the defence, under equal terms;

e) the right to assistance from the consular service;

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

3. The court in the case foreseen in paragraph 3 letter “ç” of this article concerning the trusted person has the right to refuse the trusted person if the presence of the latter will have a negative impact on rehabilitation and reintegration of the child. In this case the court must issue a reasoned decision on the grounds of refusal.

Article 20

Legal and psychological assistance to the child

1. The child in conflict with the law, the child victim or witness at any stage of criminal justice for children, are entitled to free legal and psychological assistance provided by the state according to the respective legislation.

2. The child witness is provided free psychological assistance when needed by the child.

Article 21

Protection of privacy of the child

1. The right of the child to privacy shall be fully respected at any stage of criminal justice for children, with due care to avoid harming the child.

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

3. Information on previous sentences against the child shall not be made public.

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

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5. Personal data over a criminal offence committed by a child under 18 years of age may be identified or published only upon the consent of the child unless otherwise foreseen by the law on personal data protection.

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

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

Article 22

Individual assessment of the child

1. The body administering the process shall treat a child with special attention and care throughout any stages of criminal justice for children.

2. When making decisions related to the child, account shall be taken of their individual characteristics including: age, level of development, living conditions, upbringing and development, education, health conditions, family situation, and other circumstances which allow individual assessment.

3. The court/the prosecutor, before taking any decision on a child, shall summon, 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 and accountability and the extent of their responsibility.

4. If the court/prosecutor upon completion of the individual assessment find that a child suffers mental disorders making the child irresponsible, the child shall be exempt from criminal liability and, where necessary, placed to a specialized and independent medical institution according to the provisions of the Code of Criminal Procedure.

Article 23

Free services for the child in the criminal justice system

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

2. The fees for these services are covered by the budget of institutions and executed by the respective institutions where the service is provided in line with the legislation in force.

3. The procedure of provision of services to the child in the criminal justice system is regulated by the provisions of this Code and the legislation in force, unless otherwise provided for by this Code.

Article 24

Rights of child victim and/or witness of the criminal offence

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

CHAPTER IV

TRAINING AND SPECIALISATION OF COMPETENT BODIES IN CRIMINAL JUSTICE PROCESS INVOLVING CHILDREN

Article 25

Specialization of persons administering and assisting the criminal justice process involving children

1. The competent bodies take all the relevant measures to make sure that the persons dealing with the children have the necessary knowledge, highest professional awareness for the protection of rights of the child in conflict with the law, child victim or witness and take the necessary measures for their irremovability from these positions.

2. The competent bodies, according to this Code guarantee and make sure that any person who has been sentenced by a final court decision for a criminal offence committed intentionally against the child or domestic violence offence shall be prohibited from working and providing any services to the child.

3. The competent bodies and non-profit organisations providing services to the child take all the adequate measures to make sure that the persons sentenced for criminal offences against children will have no contact with the child.

4. Persons administering the criminal justice process involving children must be specialised and trained specifically in the field of protection of rights of the child. Exemption is made only to those cases where the act or omissions of the child endanger public security and in foreseen cases of the situation of flagrancy under the provisions of the Criminal Procedure Code. In such event, the non-specialized person, after the preliminary measures are taken, shall immediately notify the specialized person/structures to resume this process.

5. The competent bodies, in proceedings involving children, shall make sure that the specialised employees may assist the child in the criminal justice process.

6. Violation of paragraph 3 of this article shall constitute a criminal offence according to the Criminal Code.

Article 26

Training topics

1. Any person assigned by the competent body administering criminal justice for children shall be trained and gain specific knowledge mainly related to:

a) methodology of communication with the child in conflict with the law and communication with the child victim and/or witness of the criminal offence;

b) standards and principles guaranteeing the rights of the child;

c) principles and ethical obligations related to their functions;

ç) signs and symptoms indicating that a criminal offence has been committed against a child;

d) skills and techniques related to the assessment of critical situations, risk assessment, referral of cases and guaranteeing of the principle of confidentiality;

dh) skills related to the technique of cross-examination of children, child psychology and communication with the child in a language convenient to the child;

e) dynamics and nature of violence against the child, effect and consequences including the physical and psychological as well as that of the incitement to commit the criminal offence;

ë) techniques and special measures for the support and protection of the child victim and witness;

f) methods of mandatory work for the professionals working with the children; as well as

g) other similar fields related to criminal justice for children.

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2. The training topics are specific depending on the tasks of the professionals of the competent bodies and the position of the child in criminal justice for children. Their training is mandatory and continuous.

Article 27

Court jurisdiction over juvenile justice cases

1. The child in conflict with the law shall be tried by the sections for children established in the judicial district courts, according to the provisions of the legislation in force on organisation of the judicial power in the Republic of Albania.

2. Moreover the sections are competent to try adult defendants charged with commission of criminal offences against the child victim.

3. The judge assigned to try the child in these sections must be specialised and trained on criminal justice for children.

4. Where a child commits a criminal offence together with an adult person, the former shall be tried by the sections for children of the judicial district courts, according to the provisions of this Code, except for cases foreseen in article 80, paragraph 1 of the Code of Criminal Procedure.

5. A person over the age of 18 years, but younger than 21 years, who is accused of commission of a criminal offence, at the time the person was a child, he/she shall be tried by the section for children.

6. The jurisdiction of the section for children in the judicial district courts applies no longer when the child reaches the age of 23 years.

Article 28

Judicial examination of cases involving a child

1. When the victim is a child and tried by a panel of judges in judicial district courts and appeal courts, at least one judge must be specialised and trained in criminal justice for children.

2. In judicial district courts where because of the number of judges it is impossible to set up the section for children, at least one of the judges, when the case is tried by three judges, must be a judge specialised and trained in criminal justice for children.

Article 29

Training and specialisation of prosecutors and judicial police officers

1. Criminal prosecution in criminal justice cases involving children shall be conducted by prosecutors trained and specialized in this field.

2. The judicial police officers handling criminal justice cases involving children shall be trained and specialized in criminal justice for children.

Article 30

Training and specialisation of State Police employees

An employee specialised and trained in criminal justice for children shall perform the actions foreseen by the law on the State Police in relation to the child.

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Article 31 **Defence counsel**

1. The child in conflict with the law or the victim shall be defended by defence counsels specialised in justice for children, except when the child or legal representative of the child choose another defence counsel.

2. The National Chamber of Advocacy makes available a list of lawyers specialised in juvenile justice to the free legal aid institutions.

3. The institution administering free legal aid, in cases foreseen by law, provides immediately legal assistance upon the request of the child or any competent body. When the request is made by the child, it may be submitted in any form and before the competent body according to the rules foreseen by the legislation in force.

Article 32 **Other persons specialized in juvenile justice**

1. The justice system for children includes the employee of the Unit for Protection of Rights of the Child, psychologist, procedural representative, mediator, probation officer, the employee of rehabilitation and detention centre for children, who are specialized in justice for children.

2. The School of Magistrates, the Academy of Security, the Order of the Psychologist/Social Worker, the National Chamber of Advocacy, National Chamber of Mediators, Probation Service and State Agency for the Rights and Protection of the Child and other institutions take measures and draft training programmes.

3. The competent bodies, foreseen in paragraph 2 of this article, shall draft and update the register of those who are trained in criminal justice for children.

CHAPTER V

CHILD VICTIM AND WITNESS OF THE CRIMINAL OFFENCE

Article 33 **General principles**

1. The competent bodies in cases involving the child victim and/or witness, shall be particularly careful in order:

a) to treat the child victim or witness of the criminal offence with care, kindness and sensitivity which respect their dignity throughout the process, considering their personal situation and immediate and special needs, age, gender, disabilities, where applicable, and maturity;

b) to protect privacy of the child victim or witness. Interference in the private life of the child, if necessary, must be at the lowest possible level defined by the law in order to ensure the necessary evidence of the criminal process;

c) to take all the measures to bind any participant administering justice for children, who has information concerning the child victim or witness, to maintain confidentiality of the entire information obtained in the course of duty and/or during performance of duty;

ç) to publish information about the identity of the child witness or victim only upon permission of the court.

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2. The rules concerning intimate and medical check-up of the child victim or witness are foreseen in article 82 of this Code and the Code of Criminal Procedure, provided it does not contradict this Code.

3. Violation of paragraph 1, letter “c” of this article shall constitute a criminal offence according to the Criminal Code.

Article 34

Right of the child victim to be informed

1. In order to prevent the risk of re-victimisation and secondary victimisation, the legal representative, the defence counsel and the psychologist as well as, where appropriate, and if possible, the trusted person of the child shall participate in the procedural actions involving the child victim.

2. The competent body informs immediately and during the entire process the child victim, his legal or procedural representative and the defence counsel of:

a) criminal justice proceedings involving adults and children including the importance and role of the child victim, time of testimony and manner to be used for the cross-examination during investigation and trial;

b) support mechanisms for the child victim when filing a complaint, participation in investigation and judicial proceedings, including the provision of a defence counsel to the child;

c) place and time of cross-examination;

ç) protective measures available to the child;

d) existing legal means for revision of decisions entailing consequences on the child victim;

dh) rights of the child victim applicable in the national and international legislation ratified by the Republic of Albania;

e) possibility to request damages from the offender of the criminal offence, according to the respective legislation;

ë) available restorative justice programmes and their functioning;

f) possibility of respective services including health, psychological, social, financial and legal services as well as the manner of their provision;

3. In relation to the cases foreseen in paragraph 2 of this article, if the child has not been informed directly by the competent body, this obligation shall be fulfilled, where appropriate, by the procedural representative or the defence counsel of the child. The child shall be notified in such a way so that the information will be appropriate and understandable by the child.

4. At any stage of proceedings, the legal representative of a child witness/victim shall be entitled to:

a) express his/her views on the needs of the child before the prosecuting body;

b) be informed of the charges brought against the defendant;

c) be informed of the relationship between the child and the defendant;

ç) obtain information about the progress of the process and decisions concerning the security measure imposed against the defendant, as well as the release of the defendant or sentenced persons from prison or detention facilities, unless this poses a real danger to the defendant or the sentenced person.

d) complain against a court decision issued by the court, irrespective of whether this right is exercised or not by the case prosecutor.

5. The judge during trial and the prosecutor during investigation may preclude the legal representative of a child witness/victim from participating in procedural actions only if this is indispensable for the best interest of the child.

Article 35

Tasks of the Unit for Protection of the rights of the child concerning the child witness and victim

1. The representative of the Unit for Protection of Rights of the Child is the support person in cases involving the child victim and witness and, inter alia, it has the duty to:

- a) support the child emotionally;
- b) provide support during the entire criminal process. Such support may include measures to minimise the negative consequences of the criminal offence, measures to assist the child during the daily activity, and measures in relation to administrative cases over circumstances of the concrete case;
- c) advise in case the following of a therapy or professional consultancy is necessary;
- ç) be in contact with relatives, friends and defence counsel of the child;
- d) inform the child of health care, psychological or social services, and the available means of receiving such services;
- dh) keep the child informed of their procedural status, the importance of testimony giving, duration, form, as well as the procedural rules of cross-examination;
- e) inform the child of the time and place of cross-examination and execution of other procedural actions;
- ë) inform the child of their right to appeal against procedural actions foreseen by law;
- f) avoid, where appropriate, improper and/or unpleasant contact with the child by placing the child in a separate room in between the hearings, or taking other measures to protect the best interest of the child, in cooperation with the defence counsel or in absence of the latter, in cooperation with the child and legal representative;
- g) ask the court to take protective measures, when necessary, in cooperation with the defence counsel or in his/her absence, in cooperation with the child and the legal representative;
- gj) request the taking of special measures if they are necessary considering the circumstances of the child.

2. The representative of the Unit for Protection of the rights of the child, if assigned in the capacity of the procedural representative, in cases of the child victim and witness under 14 years of age, shall give as well the consent for child's testimony giving.

Article 36

Legal aid to the child victim

1. The child victim, throughout the justice process, has the right to free defence by a defence counsel chosen from the respective list compiled by the National Chamber of Advocacy.

2. The provisions of article 51 of this Code shall apply to the foreign child victim and witness.

Article 37

Protective measures for the child victim or witness

1. At any stage of criminal proceedings, when the safety of the child victim or witness is at risk, where appropriate, the prosecutor, the judicial police or the Unit for Protection of the Rights of the child shall take protective measures including:

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a) avoid direct contact between a child victim or witness and the accused person at any stage in the proceedings;

b) file a request for the issuing of the "restriction order" by the court. In this case the request shall be recorded in a special register and it shall be recorded on the day of its filing. In such case the provisions of the legislation in force on measures against violence in family relations;

c) file a request imposition of the security measure of "imprisonment" or "house arrest" against the accused under the condition of having no contact with the child;

ç) file a request for the protective measures to be taken in relation to the child victim or witness by the police or other structures and for the keeping of the secret of the location of the child;

d) make or request from the competent authorities other protective measures that are deemed appropriate.

2. Where the court finds the risk against the child victim or witness it may impose even ex officio protective measures foreseen in paragraph 1 letter "b", "c" and "ç" of this article.

Article 38

Notification of the child victim or witness

1. If the child is a victim or witness, the prosecuting body shall take all the measures in order for the child to be notified:

a) in such a way so that information will be appropriate and understandable by the child even in case of disability of the child;

b) directly or through the legal/procedural representative.

2. In case of a conflict of interest with the legal representative or when because of the very young age of the child, direct notification of the child is impossible, the child shall be notified through the procedural representative, defence counsel or psychologist.

3. A copy of the notification shall be served or where appropriate delivered to the defence counsel or legal representative of the child.

Article 39

Special rules of questioning the child victim or witness

1. The judge, when giving testimony may put the child victim or witness at serious risk of life or health, in accordance with the age, during trial shall ensure:

a) cross-examination of the child witness/victim by using devices that alter the image and/or voice of a witness/victim, cross-examination behind a non-transparent screen, or distant cross-examination;

b) cross-examination of the child witness/victim before a court hearing starts in the presence of the defence counsel of the child and video recording of the cross-examination of the child;

c) follow up of the process and cross-examination of the child witness or victim, when possible and appropriate by the same persons and the limitation, as much as possible of the number of cross-examinations.

2. The competent bodies shall make sure that in any case confrontation of the child victim with the accused person in the premises where the process takes place shall be avoided.

3. The court proceedings shall be held in camera when a child victim or witness is involved.

4. The court, concerning the child victim or witness, according to the provisions of paragraph 1 of this article, shall make sure that:

a) the child is questioned in friendly premises and outside the court premises;

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b) evidence is secured within the shortest possible period after initiation of criminal proceedings in order to avoid the negative effects deriving from a lengthy process;

c) questioning is not repeated at other trial instances in order to avoid re-victimization of the child, unless otherwise foreseen in the law;

ç) other measures deemed appropriate shall be taken.

5. The child victim and witness shall be cross-examined without delay after the reporting of facts to the respective bodies.

6. The same rules shall be applied by other competent bodies even during the cross-examination of the child victim and witness.

Article 40

Special rules for cross-examining the child 14-18 years of age

1. In addition to the rules foreseen in article 361/a of the Code of Criminal Procedure, the child over the age of 14 years give testimony when the defendant is not present. In such case, the judge orders the temporary removal of the defendant from the courtroom ensuring the mandatory presence of the defence counsel of the defendant in court proceedings.

2. The court, where appropriate, in case of application of paragraph 1 of this article, shall inform the child of the right to request the defendant to be present. If so requested by the child, the court assesses the request immediately, given the concrete circumstances, maturity of the child, risk of re-victimisation and secondary victimization and decides on the request.

Article 41

Special rules of cross-examination of the child victim and/or witness of sexual exploitation or sexual violence

1. In addition to the rules foreseen in article 58/b of the Code of Criminal Procedure, the rules foreseen in article 40 of this Code shall apply to the cross-examination of the child victim and/or witness of sexual exploitation or sexual violence. Audio and video recording of these children during cross-examination shall be mandatory.

2. The audio and video recorded testimony given by the child may be used during the court hearing.

3. The testimony of the child victim of sexual exploitation and/or sexual abuse may be heard in the courtroom without the child being present, through the use of the necessary communication technology.

4. No child witness or victim of domestic violence is questioned in the presence of abusive parent or relative, during the procedure issuing the protection order, emergency protection order.

5. In cases involving child victim or witness of sexual exploitation and/or sexual abuse, the court proceedings is held in-camera.

Article 42

Special rules for cross-examination of the child victim/witness under 14 years of age

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1. All the guarantees and rights foreseen by this Code and article 361/a of the Code of Criminal Procedure shall apply, to the greatest possible extent, for the child victim and witness, under 14 years of age, in addition to the provisions of this article.

2. Children under 14 years of age may be cross-examined only with the consent and in the presence of their legal/procedural representative, psychologist and defence counsel. The legal/procedural representative is entitled to express his/her views on the questions addressed to the child.

3. The legal representative shall not be allowed to participate if this conflicts with the best interest of the child and he is suspected of commission of unlawful act and/or omissions.

4. The child under 14 years of age shall be explained in a clear and understandable way and through examples, the importance of telling the truth and the consequences deriving on third persons from failure to tell the truth. The child is explained that he has no criminal liability for the criminal offence, for refusal to give testimony or giving false testimony.

5. The prosecuting body shall preliminarily consult the psychologist on the content of questions to be made to the child in order to make the question properly, facilitate the giving of testimony, avoid intimidation or reluctance from the process.

Article 43

Measures to protect the privacy and well-being of the child victim and witness

The court shall, ex officio, at the request of a child victim or witness, child's legal/procedural representative and/or child's defence counsel, considering the best interest of the child, order, where appropriate, the taking of one or several adequate and appropriate measures to protect the privacy and physical and mental well-being of the child and to prevent suffering and secondary victimization including:

a) expunging from the public record any names, addresses, educational institutions, and/or workplaces, professions or any other information that could be used to identify the child;

b) prohibiting the defence counsel of the defendant and the child victim/witness from disclosing the identity of the child or any materials or information that could lead to identifying the child;

c) ordering the non-disclosure of any records that identify the child to the extent deemed necessary by the court;

ç) assigning a number to the child for the purpose of preparing the defence of the accused, date of birth and the full name of the child, where appropriate, shall be disclosed within a reasonable period;

d) taking measures not to disclose the identity of the child including: alteration of the image/appearance/presentation or voice; testifying behind an opaque shield; cross-examination in another place and simultaneous transmission to the courtroom by means of closed-circuit television; videotaping (audio and video recording) cross-examination of the child witness prior to the hearing, in which case the defence counsel of the accused attends examination and is given the opportunity to examine the child witness or victim; communication through a qualified and suitable mediator, including the translator/interpreter for children with hearing, sight, speech or other disabilities, but not limited only to these;

dh) holding in-camera hearings;

e) giving orders to temporarily remove the accused from the courtroom if the child refuses to give testimony in the presence of the accused or if circumstances show that the child may be inhibited from speaking the truth in that person's presence. In such cases, the defence counsel

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of the child shall remain in the courtroom and question the child, and the accused's right of confrontation shall thus be guaranteed;

ë) allowing recesses during the child's testimony;

f) taking any other measures that the court may deem necessary, including, where applicable, anonymity, taking into account the best interests of the child and the rights of the accused.

Article 44

Restorative justice measures

1. The competent body shall inform of the restorative justice programmes the child in conflict with the law and the victim, the legal or procedural representative, and where appropriate, the defence counsel of the child.

2. The competent body shall inform the child in conflict with the law, the legal representative or the procedural representative and, where appropriate, the defence counsel of the child, of the possibility to request restitution and compensation of damage in the court if the programme of restorative justice is not completed.

Article 45

Right to compensation for damage

1. The child victim of the criminal offence and the child's legal representative shall be informed and explained the decision of the court concerning the respective criminal offence, in the most appropriate way for the age and maturity of the child.

2. The court, where appropriate, shall inform the child victim of the criminal offence and child's legal representative of the right to compensation for damage.

CHAPTER VI

GENERAL RULES OF COURT PROCEEDINGS INVOLVING CHILDREN IN CONFLICT WITH THE LAW

Article 46

Determining the age of the child

1. If there is uncertainty about the age of a person, the prosecuting body, pursuant to a motion of a party or on own initiative, shall issue immediately a ruling determining the age of the child.

2. The age shall be determined on the basis of the complete evaluation of any available information, including official documents such as birth certificates, school data, medical data, declaration of parents for the age, or the self-declaration of the child and a report based on a medical examination.

3. If, even after verification and expertise, the age of the child is again uncertain, it shall be presumed that the person is a child.

4. If the age of the child has been determined roughly, the younger age of the child shall be taken into account when deciding on criminal liability.

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Article 47

Individual assessment report

1. The prosecutor/court in the process of individual assessment shall rely on the level of development, living conditions, upbringing and development, education, health status, family situation and other circumstances of the child which allow an assessment of the characteristics of personality of the child, behaviour and needs of the child, including even the special needs.

2. The individual characteristics of the child foreseen in Article 22 of this Code shall be reflected in the individual assessment report.

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

4. The prosecutor/court shall request as mandatory the preparation and consideration of the individual assessment report when:

- a) the alternative measure of diversion is imposed;
- b) the type of punishment is set;
- c) the sentence decision is executed; as well as
- ç) the request for conditional release is examined.

5. The prosecutor/court must observe that the time limit of preparation of the report does not preclude the progress and time limit of the concrete criminal case.

6. In the stages foreseen in letter “a” and “b” paragraph 4 of this article, the individual assessment report is prepared by the expert/group of experts or the Probation Service according to the provisions of article 22 of this Code. In the cases foreseen in letter “c” and “ç” paragraph 4 of this article, this report is prepared by the Juvenile Institution of Execution of Criminal Sentences (JIECS) and/or Probation service. Where appropriate, the above-mentioned bodies take the opinion of the Unit for Protection of the rights of the child when preparing the individual assessment report.

7. During the preparation of the individual assessment of the child, the expert or the group of experts, representative of the Probation Service, Institution of Execution of Criminal Sentences or where appropriate the Unit for Protection of the rights of the child shall meet, freely, the child defendant and obtain the necessary information from any natural or/and legal person, public and/or private considered to be a facilitator in this process.

8. The individual assessment report shall be taken into account at any stage of criminal proceedings. When preparing an individual assessment report in each subsequent stage of criminal proceedings, information contained in a previous individual assessment report shall be taken into account.

9. The methodology, rules and standards for the preparation of the individual assessment report foreseen by this article shall be determined according to the legislation in the respective areas.

Article 48

Child protection

1. The legal representative of a child may choose and assign, independently, a defence counsel, taking into account the best interest of the child.

2. If a child in conflict with the law fails to choose a defence counsel, the competent body performing the respective procedural action shall assign immediately the defence counsel according to the provisions of the Code and special laws on legal aid, to the extent it does not contradict this Code.

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3. The request for assignment of a defence counsel, notification of the child and consent of the child and, in the absence of such consent, the consent of the procedural or legal representative, are recorded in a special record. The record, where appropriate, shall be signed by the child or legal/procedural representative of the child and defence lawyer.

4. In any case, participation of the defence counsel is mandatory.

5. The statements of the suspected child that are not made in the presence of the defence counsel may not be used as evidence.

Article 49

Mandatory presence in procedural actions involving the child

1. Any procedural actions with respect to a child shall be attended by child's defence counsel, legal representative and psychologist. An exemption shall be made only if the act or omissions of the child endanger public security and/or in foreseen cases regarding the situation of flagrancy, according to the provisions of the Code of Criminal Procedure.

2. The judge during trial, and the prosecutor at the stage of investigation, may prohibit the legal representative of a child in conflict with law from attending procedural actions only if this is necessary for the best interest of the child.

Article 50

Right of the child to communicate in a language they understand

1. A child shall be assisted by a free of charge interpreter who shall be present in each procedural action if the child does not understand, does not understand properly, partially or fully, or cannot speak the language of the proceedings against the child. An exemption shall be made only if the act or omissions of the child endanger public security and in foreseen cases regarding the situation of flagrancy according to the provisions of the Code of Criminal Procedure.

2. The interpreter shall meet the child before the trial or procedural action to determine whether they can understand each-other.

3. The disabled child has the right to free of charge services required to be informed of and communicate about the case and participate in the proceedings.

Article 51

Right to consular assistance

1. A foreign child in conflict with the law shall have the right to assistance from the representative of diplomatic missions or consular posts of their country at any stage of the proceedings.

2. If the child, arrested or detained, is a foreign citizen, the ministry responsible for foreign affairs shall be notified in shortest time and in any case before the cross-examination and it shall notify thereof the diplomatic mission or consular post of the respective state.

3. If a child is citizen of a country that has no diplomatic mission or consular post in Albania, is a refugee or a stateless person, they shall be given the opportunity, through the ministry responsible for foreign affairs, to contact the diplomatic mission of the country that assumes the responsibility over interests of the child or any national or international organization in the field of human rights, which mission is to protect the child.

4. The provisions of this article shall apply even in case the child, foreign citizen, is a victim of trafficking, kidnapping or wrongful retention.

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Article 52

Splitting cases involving a child from the common case involving an adult

1. If the child is accused of a criminal offence in relation to which an adult has been accused as well, the case shall be tried according to article 27 paragraph 4 of this Code.

2. Where possible, the cases involving a child shall be tried separately from those involving adults, provided this does not preclude the complete, objective and quick examination of the case.

3. In any event, the child shall enjoy the rights and guarantees foreseen by this Code and the Code of Criminal Procedure.

Article 53

Child notification

1. The child in conflict with the law shall be notified according to the rules foreseen in the Code of Criminal Procedure.

2. The child in conflict with the law shall be notified in such a way so that the information will be appropriate and understandable by the child including the cases of children with special needs because of disability.

3. The child in conflict with the law shall be notified, where appropriate, through the legal/procedural representative or the director of the institution where the child has been placed.

4. A copy of the notification to summon the child defendant shall be served or sent to defence counsel of the child or child's legal representative.

Article 54

Prohibition of use of force, other means and firearms

1. No force and other coercive means shall be used during arrest, movement outside the institution, enforcement of security measures or punishment of a child, except for exceptional/extraordinary cases, when all the other means to arrest the child, prevent self-harm or harm to others have been exhausted and ineffective, and unless the purpose foreseen in the law may not be attained through other less harmful means.

2. Force and other coercive means may, in no case, be used on a pregnant child unless the child has the intention to harm herself.

3. In the case provided for by paragraph 1 of this Article, the only form of force and other means that are allowed shall be physical restraint, handcuffs and other stringent means. In order to prevent group disobedience and/or mass disorder, repel an attack and arrest an armed person other stringent means may be used including rubber batons, restraining nets, tear gas and/or water cannons.

4. In any event, physical restraint and other means:

a) shall be applied for the shortest time possible;

b) shall be applied to attain an objective stipulated by law, and shall be proportionate to the circumstances;

c) shall not be applied in a degrading or humiliating manner and shall not constitute torture or maltreatment.

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5. Firearms may not be used against a child, unless the child is armed and immediately poses a direct and imminent threat to the life or health of a third person and if it is impossible to prevent such threat through other means.

6. Firearms shall not be used when the child is escaping prison or detention facilities.

7. The person who uses force and/or other means, according to this article, shall notify immediately thereof the superior and, if necessary, the head of the institution concerning such use, by providing the reasons why other measures could not have been used.

8. The direct superior shall ensure immediately the medical examination of the child. A person who uses force and/ or other means shall prepare a written report thereon. The report shall contain information on the use of force and/or other means, the justification for using them and other related information.

9. Each case of use of force and other means shall be recorded in the respective registry-book.

10. The registry-book and its data shall be made available to children, their legal representative and/or lawyer, court and authorities that, according to the legislation in force, inspect and/or supervise this activity.

11. The right to use the means under paragraph 3 of this article shall be entitled only to the persons who are specifically trained for their use, according to the rules in force on the use of firearms.

CHAPTER VII

DIVERSION FROM CRIMINAL PROSECUTION AND PUNISHMENT THROUGH ALTERNATIVE MEASURES

Article 55

Criteria and conditions for application of diversion from criminal prosecution

1. The competent body in any case shall assess the taking of the measure of diversion against the child in conflict with the law.

2. The competent body, when taking the decision to apply diversion from criminal prosecution shall assess the best interest of the child, the severity of the committed criminal offence and respective punishment foreseen, the age of the child, level of guilt, suffered damage, intimidating effect of criminal prosecution, behaviour of the child after committing the criminal offence and the individual assessment report prepared according to article 47 of this Code.

3. In particular, diversion by the competent body shall be applied if:

a) there is sufficient evidence for a reasonable doubt that the child has committed a criminal offence punished by a maximum of 5 years of imprisonment or fine;

b) the child confesses and explains the criminal offence in the presence of the lawyer;

c) the child is not criminally reported over commission of a criminal offence or the child is not a recidivist;

ç) the child and, where appropriate, child's legal/procedural representative give written consent to the application of diversion;

d) the child failed to participate earlier in a programme of application of the measure of diversion from criminal prosecution and/or mediation;

dh) punishment of the child for those offences does not serve to improving their behaviour;

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e) considering the best interest of the child, it is considered whether or not there is any public interest in instituting criminal proceedings or resuming the already instituted criminal proceedings.

4. The competent body, after taking the decision to apply diversion, may request information from the parents, legal guardians, institutions that are familiar with the activity of the child, including where appropriate, even the Unit for Protection of the rights of the child, as well as the opinion of the expert, according to the needs of the child and the process.

Article 56

Procedure for application of the measure of diversion by the prosecutor

1. The prosecutor may decide applying diversion before the judicial examination of the case starts.

2. Diversion against the child in conflict with the law may be applied upon initiative of the prosecutor or upon request of the child in conflict with the law or child's representative.

3. If the measure of diversion is taken upon initiative of the prosecutor, the latter shall propose to the child in conflict with the law the measure of diversion from criminal prosecution and in case the child gives consents to this measure, the prosecutor shall decide its application definitively.

4. If the request/proposal of the prosecutor on application of diversion is not accepted by the child in conflict with the law, a record shall be kept indicating the reasons of rejection by the child. The record shall be signed by the prosecutor and the child or where appropriate, child's legal or procedural representative.

5. The child in conflict with the law or child's representative, upon a reasoned request, shall request the prosecutor to apply the measure of diversion. In such case, the prosecutor through a reasoned decision shall decide whether or not to apply diversion.

6. If the prosecutor refuses the request for application of diversion, the child in conflict with the law or child's representative shall have the right to request application of diversion from criminal prosecution before a court within 15 days from notification of the refusal decision.

Article 57

Procedure and application of the measure of diversion by the court

1. The court as well may decide, where appropriate, on the application of the measure of diversion.

2. The court, on its own initiative or upon a reasoned request of parties, social worker or psychologist may decide remanding the case to the prosecutor to proceed with the application of diversion. The court, before taking this decision, shall hear the child and obtain the child's consent.

3. The court may apply the measure of diversion in the stage of adjudication before a final decision is taken.

Article 58

Consequences of application of the measure of diversion

1. Application of the measure of diversion by the prosecutor is a circumstance for non-initiation of criminal proceedings, if criminal proceedings has not been initiated and a

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circumstance for its dismissal if criminal proceedings has been initiated.

2. This decision shall be notified to the head of the prosecutor's office and the victim in order for the latter to have the possibility to claim compensation where appropriate. This decision shall be notified even to the defence counsel, legal and/or procedural representative where appropriate.

3. If diversion measure is taken, the prosecutor shall decide non-initiating criminal proceedings or dismissing the criminal case and shall conclude an agreement with the child on the type of the diversion measure and/or mediation.

4. The elements of the agreement concluded between the parties on the measure of diversion and/or mediation, as well as rules of application of the respective programme, foreseen in this agreement, shall be determined by an order of the Minister of Justice.

Article 59

Consent to the diversion measure

1. Diversion from criminal prosecution shall be applied only upon written consent of the child and when appropriate of the legal representative as well.

2. In the absence of the legal representative of the child, either when he is not found or the child has no contact with him, or the legal representative is in a conflict of interest with the child, the competent body shall assign a procedural representative who may give consent to the diversion measure.

3. Prior to obtaining the consent, the child shall be provided with counselling and free legal aid service in order to understand the proposed diversion measure and whether it is appropriate to and acceptable by them.

4. During negotiation of the agreement on the diversion measure, the child shall be assisted by the defence counsel.

5. The agreement according to paragraph 4 of this article shall be signed by the child and child's defence counsel.

Article 60

Guarantees of the child concerning application of the diversion measure

1. Before applying a measure of diversion from criminal prosecution, the child and child's defence counsel and, where appropriate, legal representative, shall have the right to be provided with detailed information about the nature of diversion from criminal prosecution, its duration, conditions and manner of application as well as the consequences for failure to fulfil the measures of diversion.

2. It shall be explained to the child verbally and in writing or in the proper forms of communication based on the special capacity of the child that consent to diversion is voluntary and that the child has the right to waiver at any stage.

3. If the child does not have a defence counsel, the child and child's legal representative shall be informed on the right to have a defence counsel.

4. Admission of a criminal offence by a child and information collected on the child during the process of diversion may not be used in court against the child.

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Article 61

Conditionality on the decision to apply the measure of diversion

1. The prosecutor may decide suspending investigation in order to apply diversion conditionally, if the child in conflict with the law requests and guarantees fulfilment of the following obligations:

- a) remedy or compensation of damage caused by the criminal offence according to child's skills and where appropriate;
- b) involvement into restorative justice and mediation programme;
- c) involvement in the actions of a humanitarian organisation or community activities or environmental protection;
- ç) treatment for drug addiction or other addictions.

2. If the child fulfils the obligations according to paragraph 1 of this article, the prosecutor shall decide dismissing criminal proceedings against the child definitively.

Article 62

Possible alternative measures of diversion from criminal prosecution

1. Alternative measures of diversion from criminal prosecution may include:

- a) restorative justice and mediation programmes;
- b) advising the child and family;
- c) verbal warning;
- ç) written warning;
- d) mandatory measures;
- dh) placement in foster care;

2. Several measures foreseen in paragraph 1 of this Article may be applied to the child simultaneously. These measures shall be determined on the basis of the individual assessment report, according to the rules foreseen in Article 47 of this Code.

3. Diversion measures shall be reasonable and proportionate to the needs of the child in conflict with the law and the victim. No obligation may be imposed on the child in the course of diversion which may cause loss of dignity, humiliation, or exclusion from the regular educational processes and/or primary employment, as well as harm to the child's physical and/or mental health.

4. Imposition of a diversion measure more severe than the minimum punishment provided for by law for the committed criminal offence shall not be allowed.

5. Alternative measures of diversion foreseen in paragraph 1 of this article shall be taken, where appropriate, by the prosecutor's office or the court.

Article 63

Restorative justice and/or mediation programmes

1. The prosecuting body shall decide on the application of the restorative justice programme in compliance with the legislation on mediation, in order to give to the child the possibility to redress the consequences of the criminal offence committed against the victim, community and/or society.

2. The restorative justice programme, according to paragraph 1 of this Article, may be

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applied if:

a) the child, defence counsel and where appropriate the legal representative give freely the consent to such a decision; and

b) any agreement to redress the consequences of the criminal offence committed by the child is reasonable or appropriate.

3. When the child has no parents or a conflict of interest exists between the parents and the child, consent under paragraph 2, letter “a” of this Article may be given by one of the procedural representatives according to the provisions of article 3, paragraph 17 of this Code.

4. Restorative justice programme foreseen in paragraph 1 of this article may foresee that the child be asked to:

a) accept and show understanding of the liability for the criminal offence and the consequences on the victim;

b) compensate the damage caused to the victim, community and/or society;

c) ask forgiveness to the victim; and

ç) undertake actions acceptable by the victim or/and community.

5. Restorative justice measures taken in compliance with the provisions of this article, may include involvement in a diversion and mediation programme, public works, and/or any other programmes that lead to redressing consequences of the criminal offence committed by a child.

6. Family and group mediation is an alternative measure for diversion from criminal prosecution that brings together the victim and the child in conflict with the law, their relatives, persons from their social group, representatives from public agencies for the child protection, supervision and prevention of juvenile delinquency. The accused and his family in this process are expected to conclude an agreement with the victim that includes damage compensation, fulfilment of obligations undertaken by the victim and intended to keep the accused person away from similar future situations.

Article 64

Mediation procedure

1. Mediation as an extra-judicial proceedings is conducted by the mediator according to the provisions of this Code and the law in force on mediation.

2. Mediation may be developed only upon free consent to mediation expressed by both the child accused of the criminal offence and the injured party. The consent given must be written in a record of the prosecuting body.

3. Mediation may be organised only in the presence of the child, offender of the criminal offence and the injured party.

4. The legal representative of the child, the psychologist, the employee of the Unit for Protection of the rights of the child, the prosecutor, and/or other persons assigned by him may participate in the mediation process upon consent of the parties. The prosecutor, where necessary, may participate in the mediation process.

5. Mediation to settle disputes, where appropriate, may be applied as a diversion measure and a possibility that leads to the improvement of relations between the child offender and victim of the criminal offence.

6. The prosecutor during investigation and the judge during trial, where appropriate, may propose mediation if they deem that this is the most adequate alternative considering the nature of the criminal offence, the circumstances of commission of the criminal offence, the past of the child, the possibility of restoration of normal relations between the child and the injured

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party, the possibility of reducing harm to the injured party, the possibility to rehabilitate and re-integrate the child in the society.

7. If the proposal of the prosecutor/judge on mediation is accepted by the parties, then the prosecutor/judge shall decide suspending the criminal process for a period of not longer than 45 days. If the mediation agreement is concluded, the prosecutor/judge decides dismissing the case. If the mediation agreement is not concluded after 45 days, suspension shall become invalid and the case investigation/trial shall be resumed.

8. The costs of the mediation procedure shall be incurred according to the legislation in force.

Article 65

Advising the child and the family

1. Advising consists in informing the child and/or family of the commission of a harmful, dangerous offence, that constitutes a criminal offence and has negative consequences on the victim and the community.

2. The competent body shall advise the child and/or child's family when this measure is considered adequate and in the interest of the child and that it will have a positive impact on the child's behaviour.

3. The competent body, where appropriate, shall entrust the Unit for Protection of the rights of the child or social and/or psychological services with the drafting of a plan concerning the advisory service and the measurement of its effects on a step by step basis.

Article 66

Verbal warning

1. Verbal warning includes all the explanations given to the child by the competent bodies on the damage caused by his/her actions and the consequences deriving from re-commission of a criminal offence.

2. In such case, verbal warning given to the child shall be kept in a special register which form shall be determined by order of the Minister of Justice.

Article 67

Written warning

1. A written warning includes the recording in a record of all explanations, according to article 65 of this Code, which are given to the child by the competent bodies.

2. A copy of the record is given to the child and child's legal representative.

3. The form of the written warning and information to be included therein shall be determined by order of the Minister of Justice.

Article 68

Mandatory measures

1. The mandatory measures against the child may be taken to prohibit him/her from:

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a) contacting/meeting a given person;
b) going to/visiting a certain place;
c) changing the place of residence;
ç) leaving home during a specific period/time;
d) leaving a location or a given administrative unit without permission;
dh) performing other actions which are an obstacle to their re-socialization and rehabilitation.

2. The mandatory measures on a child include:

a) starting or resuming studies in an educational institution;
b) starting work taking into account and applying the provisions of the Labour Code;
c) participating in educational, correctional and/or medical treatment programmes;
ç) fulfilling other obligations that facilitate their re-socialization and rehabilitation and prevent them from re-commission of a criminal offence.

3. The mandatory measure, imposed according to paragraph 2 letter "a", "b" and "c" of this article, shall be notified not only to the child and child's legal/procedural representative but also to the responsible authority in education and/or vocational training, employment, health, Probation Service and Unit for Protection of the rights of the child.

4. The competent body shall determine, where appropriate, that the Probation Service or the Unit for Protection of the rights of the child shall enforce and monitor the mandatory measures foreseen under this article.

Article 69

Placing a child in foster care

1. A child shall be placed in foster care in an educational and/or correctional programme if the care of the parent or guardian of the child in conflict with the law for the upbringing, behaviour and personality development of the child is inadequate to fulfil the aim of the mandatory measures and if constant care and supervision by a person or specialised service is necessary.

2. The educational and/or correctional programme shall be provided, where appropriate, by the responsible institutions defined by the legislation in force on the rights and protection of children. The responsible authorities under this legislation shall assign persons specialised for the application of constant care. The latter in cooperation with the child, the parent, guardian, social welfare and educational institutions, doctors and other professionals, shall influence on constant basis on the personality and behaviour of the child, take care of their treatment and monitor the fulfilment of obligations, according to an individual plan.

3. Placement in foster care is decided, where appropriate, by the prosecutor or the court for a period from six months to two years.

4. Constant care and supervision may be carried out without the need to separate the child completely and permanently from the previous premises. In this way, the child may be committed to the specialised service for 24 hours or partial duration which varies from 4 to 8 hours.

5. When deciding placement in foster care, the prosecuting body shall consider that execution does not preclude the regular education and employment of the child as well as their involvement in effective activities. The activities shall be appropriate to the age, development, skills and interests of the child aiming at development of the sense of responsibility.

6. The parents of a child placed in foster care may be involved in the process of application of this measure provided that it does not contradict the interests of the child. The prosecuting

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body, by imposing this measure, shall give to the parents or the guardian special instructions and impose on them the obligation to collaborate with the specialised person in relation to the issues that may arise.

7. When the prosecuting deems the effective enforcement of the given measure to be necessary, may order as well that the child fulfils one or several mandatory measures, foreseen in article 68 of this Code.

8. The service specialised for the application of the measure of placement in foster care shall inform the prosecutor in case of failure to fulfil the obligations according to this article.

9. Specialised service shall be provided by the disciplinary/educational centre set up according to the legislation on the protection of the rights of the child.

10. In case of a disabled child, the provisions of this article shall be applied by the specialised professionals according to the disability and according to the legislation on inclusion and accessibility.

Article 70

Fulfilment of alternative measures of diversion from criminal prosecution

1. If the alternative measure of diversion from criminal prosecution is taken against the child who has committed a criminal offence, and this measure is fulfilled, no charges over the same criminal offence may be brought against the child.

2. If the child fulfils the obligations under the diversion agreement, the prosecutor shall decide dismissing the proceedings immediately.

3. The child who has fulfilled the alternative measure of diversion from criminal prosecution shall neither be considered sentenced for a criminal offence and not be treated as a person with a criminal record.

4. Fulfilment of the measure of diversion from criminal prosecution is carried out and monitored by the Probation Service in cooperation with the mediation service.

Article 71

Failure to fulfil the alternative measures of diversion from criminal prosecution

1. If the child intentionally fails to fulfil the measure of diversion from criminal prosecution, the Probation Service shall inform in writing the prosecutor by explaining in detail the time, place, manner and circumstances of non-fulfilment and the personal situation of the child.

2. The child, the parents or, where appropriate, the legal representatives are informed by the Probation Service of the consequences of failure to fulfil the requirements and obligations of the diversion measure and rules of examination in case of such failure.

3. Failure to fulfil the conditions and obligations deriving from the measure of diversion from criminal prosecution shall not constitute a criminal offence and shall not automatically result in restriction or deprivation of liberty of the child. Even in this case, deprivation of freedom shall be considered the last resort by the competent bodies.

Article 72

Procedure in case of failure to fulfil the alternative measure of diversion from criminal prosecution

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1. The prosecutor, in cases foreseen by article 71 of this Code, may decide changing or revoking, partially or fully, the measure of diversion after a detailed examination of the reported facts.

2. The prosecutor, in any case, shall set a special hearing, hear the views of the child providing reasons for failure to fulfil the measure by applying even the provisions of article 59 of this Code related to the consent of the child.

3. The prosecutor, where necessary, may request a new psychological, psychiatric assessment or an opinion on the previous reports of the experts.

4. The prosecutor after examining this measure and other measures shall contact the child, the legal representative and hear the opinion of the employee of the Probation Service and may decide:

- a) revoking or upholding the decision for diversion from criminal prosecution;
- b) altering the type of measure of diversion;
- c) extending the duration of the agreement.

5. Where the prosecuting body decides to re-initiate proceedings against the child, it shall consider the part of the measure that is already fulfilled by the child during the enforcement of the alternative measure of diversion.

6. In the event of revocation of the diversion decision, the prosecutor, by a reasoned decision, shall decide repealing the decision for non-initiation of investigation or the decision for dismissal of the case already initiated and, decide re-initiating a new investigation.

7. In the event of revocation of the diversion decision, the acts performed by the child to fulfil the measure of diversion from criminal prosecution shall be examined during the trial.

8. Accepting the responsibility for a criminal offence in order to apply an alternative measure of diversion from criminal prosecution shall not be used during trial against the child.

9. If the child does not fulfil the special obligations that have been ordered, or the child refuses, or in other ways, interferes in the enforcement of the constant supervisory measure, the court may decide, where possible, for this reason, to commit the child to an educational/disciplinary institution/centre for an uninterrupted stay of not more than one month.

10. The procedure applied by the Probation Service when it deems non-fulfilment of the diversion measure shall be determined by the decision of the Council of Ministers.

CHAPTER VIII

ELEMENTS OF THE PROCESS OF INVESTIGATION OF THE CHILD IN CONFLICT WITH THE LAW

Article 73

Notification of arrest or detention of a child

1. The prosecuting body, upon the child's arrest, shall inform the latter of the right to notify the parent and in his/her absence, another adult person indicated and accepted by the child.

2. The prosecuting body shall take immediately all the necessary measures to notify, where appropriate, the legal or procedural representative of the child in accordance with the rules foreseen in this Code.

3. The prosecuting body, once committing the child to the premises of the respective institution, shall notify the child's legal representative or the person indicated by the child of

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the arrest, the location of the detention centre and explain the reasons of arrest and shall make available to him/her a copy of the Letter of Rights.

Article 74

Assignment and notification of a legal/procedural representative

1. The prosecuting body shall notify immediately the Unit for Protection of the rights of the child if:

- a) it is impossible to locate the legal representative;
- b) it is obvious that the legal representative of the child has abused with the child or in the case of a domestic crime;
- c) there are doubts over impartiality of the legal representative of the child concerning the nature of their relations with the family member who has been injured;
- ç) one of the types of conflict of interests is in place.

2. The above-mentioned persons foreseen in paragraph 1 of this article shall not be allowed to be informed of the child-related documents.

3. The prosecuting body shall assign a person from the list submitted by Unit for Protection of the rights of the child to make the procedural representation, if:

- a) it is impossible to local the child's legal representative, within an hour from accompanying of the child to the premises of a prosecuting body;
- b) the child does not live with the legal representative and/or refuses to contact him/her;
- c) the legal representative acts contrary to the interests of the child;
- ç) the child is a victim of or witness to a criminal offence committed by the child's legal representative;
- d) the legal representative is accused of the same criminal offence as the child;
- dh) the legal representative is not available.

4. In any case, when assigning the procedural representative the views of the child must be taken into consideration.

5. The provisions on the legal representative are fully applicable, where appropriate, even to the procedural representative concerning the criminal process.

Article 75

Conditions of the child in detention facilities

1. The child in detention facilities shall be entitled to all the rights entitled to by the child in prison.

2. The child in detention facilities shall be placed in premises separated from adults.

3. Children are placed in separate premises by gender.

4. The child, when in detention, where appropriate and in accordance with the age, sex and personality, shall be provided with social, educational, psychological, medical and physical assistance.

Article 76

Cross-examination of the child in conflict with the law

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1. The prosecuting body, during the stages of criminal proceedings, shall guarantee the application of rights of the child in order to protecting the child from self-incrimination by guaranteeing the right to remain silent and not to testify.

2. The prosecuting body, during cross-examination of the child shall guarantee decent treatment in compliance with the international standards of human rights and rights of the child.

3. The physical and/or psychological maltreatment of a child during cross-examination or with the intent to obtain any information from the child shall be prohibited.

4. The prosecuting body shall preliminarily consult the psychologist on the content of questions to be made to the child in order to make the question properly, facilitate the giving of testimony, avoid intimidation or reluctance from the process.

5. The child shall be questioned in the presence of the defence counsel and psychologist. The legal/procedural representative may participate during interrogation if the child so consents.

6. The language used during the cross-examination of the child must be as friendly as possible and communication must be as clearly as possible.

7. When questioning the child in conflict with the law, in addition to the provisions of this article, where appropriate, the provisions of the Code of Criminal Procedure shall apply to the extent they do not contradict this Code.

Article 77

Procedural guarantees of cross-examination of the child in conflict with the law

1. The child, the legal representative or the psychologist have the right to request breaks during the cross-examination of the child.

2. The competent body, when cross-examining the child, shall arrange the time for break in accordance with the age, development level and other circumstances of the child.

3. Cross-examination of the child during the night, from 22⁰⁰ - 8⁰⁰ shall be prohibited.

4. The child shall be provided with food at least once in every 4 hours from 8⁰⁰-22⁰⁰ and water without any limits. The child shall be guaranteed the right to use the toilet at any time.

5. The prosecutor and the judicial police officer, during investigation, have the right to prohibit the participation of the legal representative during procedural actions, only if this serves to the best interest of the child.

6. The competent bodies, during cross-examination of the child in justice proceedings involving the child in conflict with the law shall limit to the greatest possible extent the number of cross-examinations.

7. The child under 14 years of age who has committed a criminal offence shall be cross-examined after the child is explained in a clear and understandable way that the child has no criminal responsibility because of the age. Moreover, the child shall be explained that the child has no criminal liability if the child refuses to testify or gives false testimony.

8. The rules set forth in this article shall apply even to the administrative actions of the police and other bodies performing administrative activity in the context of criminal justice for children.

Article 78

Strip search of a child

1. The prosecuting bodies, during the strip search, shall guarantee protection of privacy and dignity of the child.

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2. The prosecuting bodies, in any case, shall explain to the child the reasons of the strip search, in a language understood by the child.

3. The judicial police officer shall inform the child of the act based on which strip search is decided.

4. The strip search shall be carried out by persons of the same sex or as per the choice of the child.

5. The presence of the defence counsel is mandatory in each case of strip search of a child.

Article 79

Intimate search/medical examination of a child

1. An intimate search consists of the actions related to the physical search/examination of a child's body orifices other than the mouth.

2. Intimate search of the child may take place only upon a court decision unless health and life of the child is at stake, in emergency cases, and there are reasonable grounds to believe that information to be obtained may be lost, become void or the obtained evidence may be destroyed.

3. In all cases, an item and/or material is taken from the child's body in premises provided with a licence to perform a medical activity, in the presence of a certified physician and nurse of the same sex as the child, and in the presence of the legal representative and defence counsel.

4. Search and other procedural actions to take off, fully or partially, the child's clothing, shall take place only upon a court decision taken after hearing the views of the child and in the presence of a legal representative and defence counsel, except for the cases which pose a threat to public security and in the foreseen cases of flagrancy, under the provisions of the Code of Criminal Procedure.

5. The intimate search shall be carried out by persons of the same sex as the child or of the sex of the child's choice.

6. In cases provided for under paragraph 2 and 4 of this Article, the Court shall decide within 12 hours from the depositing of the request, without participation of the parties.

7. If the child does not agree with the participation of the legal representative during the search foreseen under paragraph 2 and 4 of this Article, or if the legal representative cannot participate, the procedural actions shall be carried out in the presence of the procedural representative assigned according to the provisions of this Code.

8. The presence of the defence counsel of the child is mandatory in each case of strip search/intimate search and medical examination of a child.

9. Mandatory taking of biological samples from the child or mandatory medical procedures shall be made according to the rules foreseen in article 201 letter "a" of the Code of Criminal Procedure.

Article 80

Content of the decision of intimate search and medical examination

The decision of the court concerning the request for intimate search and medical examination, in addition to the provisions of Article 383 of the Code of Criminal Procedure, shall contain:

- a) the subject who has filed the request to the court;
- b) the identity of the child against whom the action is taken;

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- c) the reasonable grounds for carrying out such procedural action;
- ç) the object, item or substance and related data which may result during the search;
- d) the time period of execution of decision;
- dh) the body executing the decision.

CHAPTER IX

SECURITY MEASURES

Article 81

Imposition of a security measure

1. A more severe security measure shall not be imposed against a child, if the same purpose can be achieved through a more lenient measure.
2. When a security measure against a child is requested to be imposed, the prosecutor in the request, and the Court in its decision shall consider and provide reasons related to the best interest of the child, the child's specific needs and the request not to interrupt the educational process, upbringing and normal development of a child.
3. The judge when determining the security measure shall hear the child in person and take the decision immediately thereafter.

Article 82

Special security measures against the child

- In addition to the security measures foreseen in the Code of Criminal Procedure against the child in conflict with the law, the following measures may be imposed:
- a) placing a child under supervision;
 - b) placing a child to a specialised service.

Article 83

Placing a child under supervision

1. A child is placed under supervision in order to make sure the child's presence whenever required before the judicial police officer, the prosecutor or the court. This measure is implemented by the parent, relative, specialised institution or person who undertake to guarantee the behaviour of the child and supervise whether or not the behaviour of the child is adequate.
2. A child shall be placed under supervision, according to paragraph 1 of this Article, only upon the consent of the child and of supervisor.
3. The supervisor may waive the supervision of the child, at any time, if he/she considers that he/she may not make sure the presence of the child whenever required by the competent body and the respectable behaviour of the child. The supervisor shall notify the court thereof immediately.
4. The supervisor may be substituted in case of waiver or failure to supervise.
5. If supervision of the child fails due to objective reasons unrelated to the supervisor, the court shall decide substituting him/her.
6. When failure is due to acts or omissions of the supervisor, the court orders punishing the latter by a fine of up to ALL 20 000.

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7. The court order shall not be subject to appeal.

8. The Court, where appropriate, shall decide substituting the supervisor or the security measure against the child.

Article 84

Placing a child to a specialised service

1. Placing a child to a specialised service shall be imposed against a child whose interests require special attention and supervision, and which because of the concrete circumstances cannot be realized by a parent or close relatives.

2. Specialised service is provided by institutions or legal persons licensed even for this purpose and in compliance with the law on the rights and protection of the child.

3. The rules on manner of organisation, functioning of specialised service, programmes and manner of their funding shall be approved by decision of the Council of Ministers.

Article 85

Duration and validation of arrest or detention of the child

1. A child may be arrested or detained in compliance with the provisions of the Code of Criminal Procedure and this Code.

2. The prosecutor shall, without delay, when forthwith release is not ordered, but however, within 48 hours from arrest or detention, request their validation by the competent court.

3. Failure to meet this deadline shall make the arrest or detention powerless and the child shall be released immediately, unless the court assesses them and imposes a security measure.

4. The judge, when examining the validation of arrest or detention shall hear the child directly and take the decision immediately thereafter.

Article 86

Criteria for imposition of arrest against a child

In addition to the provisions of Article 228 of the Code of Criminal Procedure, the measure of arrest in prison may be imposed against a child as a last alternative and only upon fulfilment of one of the following criteria:

a) the sanction foreseen for the criminal offence of which the child is accused is imprisonment and the minimum sentence is over 7 years;

b) the measure is indispensable, because the child:

i) is a threat to himself/herself and/or to others and such threat may not be avoided by any other way;

ii) tries to flee justice.

Article 87

Enforcement of the measure of arrest against the child

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1. The court even on its own initiation, after hearing the parties shall decide continuation, replacement or revocation of the measure every month following the enforcement of the arrest decision.

2. The prosecutor has the burden of proof to provide reasons on the continuation of the measure of arrest in prison.

3. The provisions of the Code of Criminal Procedure shall apply, to the greatest possible extent to the detention of the child in conflict with the law.

4. The child, irrespective of the provision in paragraph 3 of this article may not be detained for a period longer than half the period of detention set for the adult, according to the Code of Criminal Procedure.

CHAPTER X

ELEMENTS OF THE TRIAL PROCESS OF THE CHILD IN CONFLICT WITH THE LAW

Article 88

Fair and speedy trial

1. The trial involving a child in conflict with the law shall be conducted considering respect for the principle provided for in Article 17 of this Code on the examination without delay and with priority.

2. 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 for the cases when during such 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 Code of Criminal Procedure shall apply to these cases.

3. 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 depositing of the documents with the Court.

4. The Court of Appeal shall conclude the review of the case within the shortest possible time period but not later than 2 months from the date of depositing of the documents with the Court.

5. The High Court shall examine admissibility of recourse and try the case as quickly as possible.

Article 89

Trial in camera

The trial of a child in conflict with the law shall be held in camera.

Article 90

Child participation in trial

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1. The child may not be tried in absentia.
2. The Court shall guarantee child participation in trial through:
 - a) conduction of a process appropriate for the understanding ability of the child;
 - b) frequent consecutive breaks and within a reasonable time, in accordance with the age, health conditions, special needs, including the needs related to disability and other circumstances of the child.

Article 91

Trial in the presence of a child and restrictions

1. Trial shall be held only in the presence of the child.
2. The court, ex officio or upon the request of the party may take a decision concerning the removal of the child from the courtroom during examination of one or more evidence, if this serves to the best interest of the child.
3. The child shall be absent during the judicial process for the shortest time possible.
4. The judge during trial shall have the right to prohibit participation of the legal representative during procedural actions, only for the best interest of the child.
5. The court, once the decision under paragraph 2 of this article is taken, shall explain to the parties the right to object such decision in the same hearing, by presenting their arguments to the court. In case of objection, the court shall suspend examination of evidence until a decision is taken. The decision accepting or refusing objection shall be taken immediately.
6. Once the child returns to the courtroom, the Court shall explain to the child, to the extent it is necessary and understandable, the content of evidence examined during child's absence.
7. In all cases when the court examines evidence in absence of the child, the defence counsel or legal representative shall be present.

Article 92

Admission of guilt by the child

1. During investigation and trial, the child defendant may not be compelled to make statements of self-criminal liability.
2. The silence of the child during the investigation and trial may not be considered as an admission of guilt.
3. If the child admits guilt, the Court, in any case, shall make sure that such admission is not for reasons related to the age, development and ability of the child to perceive and understand fear of a possible conviction or prolongation of the duration of cross-examination.

CHAPTER XI

PURPOSE AND TYPES OF PUNISHMENTS AGAINST THE CHILD

Article 93

Purpose of punishment

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The purpose of punishment imposed against a child is re-socialisation, rehabilitation and prevention of recidivism or commission of another criminal offence, by providing care, assistance to and supervision of the child.

Article 94

General principles of punishment

1. During the decision-making process, the court shall consider that imprisonment of the child is the last possible resort that is considered only if the measures of diversion foreseen in Chapter VII of this Code are inappropriate.

2. The court, when taking the decision, shall consider primarily the best interest of the child and the individual assessment report.

3. The court, when taking the decision against a child who has been declared guilty of a criminal offence, shall consider as well:

- a) treatment of a child in an appropriate manner to ensure child's well-being;
- b) adaptation to the circumstances and seriousness of the criminal offence, as well as the age, individual circumstances and special needs of the child;
- c) promotion of reintegration of the child and child's involvement, as much as possible, in a constructive role in the society;
- ç) provision of an individual plan concerning the above-said;
- d) imposition of the most appropriate sentence to correct the behaviour of the child.

4. The penalty order foreseen in article 406/a to 406/f of the Code of Criminal Procedure shall not apply in the case of the child in conflict with the law.

5. Judgement upon agreement, foreseen in article 406/d to 406/f of the Code of Criminal Procedure, shall apply in the case of application of diversion measure against the child in conflict with the law.

Article 95

Types of punishment against the child

1. Punishment imposed against a child shall be non-imprisonment punishment and punishment to imprisonment.

2. Non-imprisonment punishment shall comprise:

- a) restriction of liberty;
- b) house arrest;
- c) fine;
- ç) community work;
- d) prohibition to performing an activity;
- dh) fulfilment of certain obligations.

Article 96

Classifying and imposing punishment against the child

1. Punishment against a child shall be classified into main and supplementary punishment.

2. Main punishment shall consist in:

- a) imprisonment;

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b) restriction of liberty;

c) fine.

3. Supplementary punishment shall consist in:

a) prohibition to performing an activity;

b) community work;

c) fulfilment of certain obligations;

ç) house arrest.

4. Only one main punishment may be imposed against the child.

5. The main punishment may be imposed along with no more than two supplementary punishments.

6. One or several measures, foreseen in Chapter VII of this Code may be imposed along with the punishment.

Article 97

Imprisonment

1. A child may be imprisoned only if he has committed a criminal offence which the minimum of the punishment is foreseen to be 7 years and such punishment is necessary because of the nature, high social risk of the criminal offence and level of guilt.

2. Imprisonment punishment against the child may not be more than half the punishment foreseen by the law for the committed criminal offence, but not more than 12 years.

3. The court, when setting the extent of punishment against the child, shall consider and pay special attention to all the circumstances related to the maturity of the child and the time required for the education and vocational training of the child. However, depending on the level of guilt, punishment may be imposed for a shorter period when it is considered adequate to achieve its aim.

Article 98

Restriction of liberty

1. Restriction of liberty is the placement of a child in a certain institution/centre under supervision without isolation from the society and community aiming at education and rehabilitation through special programmes.

2. In facilities where restriction of liberty is enforced:

a) the level of security measures is low;

b) the number of children placed in these facilities is lower in order to enable their individual treatment;

c) the dimensions of these premises are such that they facilitate access and contact of the child with the family members.

3. Facilities where restriction of liberty is enforced:

a) are distributed geographically in the entire territory of the country in order to ensure contact of children with their family members;

b) are integrated with the social, economic and cultural environment of the community.

4. The child's liberty shall not be restricted for a period of over three years.

5. Special regulations related to the operation of facilities and setting of their security level, standards of educational and rehabilitation programmes, in case of restriction of liberty, shall be set forth in a decision of the Council of Ministers.

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Article 99

Fine

1. A fine may be imposed on a child if the child possesses monetary incomes from a legitimate source.

2. If the fine is imposed on a child, the amount shall be half the amount of the fine imposed against an adult under similar conditions according to the provisions of the Criminal Code.

Article 100

Prohibition to performing an activity

1. The child may be prohibited from performing a certain activity for a period from one to three years, if the courts deems it irrelevant for the rehabilitation of the child and prevention of commission by the child of other criminal offences.

2. A child may be prohibited from performing a given activity according to paragraph 1 of this article up to 18 years of age.

Article 101

Community service

1. Community service shall be imposed on a child for a period of 40 to 300 hours. The daily duration of community service may not exceed 4 hours per day.

2. If imprisonment is substituted with community work, the duration of community work may be longer in time. In such case, conversion shall be made according to article 109 of this Code.

3. In case of enforcement of a decision for community work as a supplementary decision, community work may be imposed for a shorter duration than the minimum hours foreseen in paragraph 1 of this article.

4. Community service is decided in such a way that it does not preclude the educational process of the child and it may be followed by the obligation to follow a vocational course.

5. In cases when a decision imposing community work is taken, it is necessary that the child be assigned to a work place which experience thereto will serve to the child to become a respectable person.

6. Community service, as a supplementary decision, may be imposed on a child even in the cases when the respective article of the Criminal Code does not foresee it as a type of punishment.

Article 102

Fulfilment of certain obligations

1. The court may order the child in conflict with the criminal law to fulfil one or more obligations including:

- a) attend mandatory education, or where appropriate, an educational programme;
- b) attend a vocational training programme under the law on vocational training;

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c) fulfil the obligations deriving from the employment relations provided because of the social employment programmes;

ç) redress the civil damage caused;

d) follow a rehabilitation programme, psychological or medical treatment, including, where appropriate, detoxification treatment because of use of alcohol or drugs;

dh) refrain from going to certain places;

e) refrain from staying with certain persons who may have a negative influence on their behaviour and education;

2. The court, where appropriate, may order, to the extent applicable, even the obligations foreseen by article 60 of the Criminal Code or other obligations deemed to be in the best interest of the child.

3. The Decision of the Council of Ministers shall define the competent authorities and procedure to be followed by them in case of orders of the court, according to paragraph 1 of this article.

Article 103

House arrest

1. House arrest foresees the obligation of the child not to leave, for a given period of time, their permanent or temporary residence, or a given place where the child stays or is treated temporarily.

2. House arrest may last for a period from 6 months to 1 year.

3. House arrest shall apply in the case of criminal offences which are punished by not more than 5 years of imprisonment.

4. House arrest shall be imposed in such a way so as not to preclude the educational process and/or employment of the child.

5. House arrest may be monitored electronically.

Article 104

Suspension of execution of imprisonment sentence

1. If the court orders imprisonment for up to five years, and the child has not been convicted in the past for the intentional commission of a criminal offence, the court may decide suspending the execution of the imprisonment sentence and order the sentenced person to contact the Probation Service and to be placed under probation, provided that during the probation period the child does not commit another criminal offence.

2. When the court decides according to paragraph 1 of this article, it shall apply the provisions of article 59 of the Criminal Code.

Article 105

Rules on non-imprisonment sentence

The court, when imposing a non-imprisonment sentence against the child, may set one or several mandatory measures as provided under Article 68 of this Code. In such cases, no mandatory measure shall be imposed against a child if they are impossible to be fulfilled by the child or exceed the mental and physical capacities of the child.

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Article 106

Punishment below the minimum punishment foreseen by the law

The court, given the low dangerousness of the child and the criminal offence, the concrete circumstances of its commission, the previous behaviour of the child, the fact that the child has no criminal record, the presence of several mitigating circumstances and absence of aggravating circumstances, may impose a punishment below the minimum punishment or a lenient type of punishment than the one foreseen by the relevant provisions.

CHAPTER XII

EXECUTION OF SENTENCES

Article 107

Execution of non-imprisonment sentences

1. Non-imprisonment sentences foreseen by this Code shall be executed by the General Directorate of Probation Services.

2. The child shall continue serving a non-imprisonment sentence or conditional punishment, as determined in the decision against a child even if the child has reached 18 years of age before execution or during execution of this decision. In such case, the relevant provisions of this Code shall apply.

3. In case of violation of the regimen defined for execution of the non-imprisonment sentence against a child, the Probation Service shall draft a warning note, which, where appropriate, shall be handed to or sent via registered mail to the sentenced child against receipt of acknowledgement.

4. If the child departs from serving the non-imprisonment sentence, conditional punishment or fulfilment of an obligation, the Probation Service after verifying the facts and the circumstances, shall report to the prosecutor and where appropriate, propose changing the decision.

5. The prosecutor, where appropriate, may request the court to change the decision.

6. The court, when examining the request, shall hear the prosecutor, the child, the defence counsel and take the opinion of the representative of the Probation Service and legal representative of the child.

7. The Court, upon request of the parties, may examine even other evidence.

8. In this case, the Court shall take a decision within one week from the submission of the request.

Article 108

Commission of a criminal offence during execution of non-imprisonment sentence

1. If within the period that the non-imprisonment sentence or conditional punishment is served, the child commits a criminal offence, the Probation Service shall notify the prosecutor who, where appropriate, shall approach the court.

2. If within the period that the non-imprisonment sentence or conditional punishment is served the child commits another minor offence or offence committed due to negligence and

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the child is declared guilty, the Court, where appropriate, may decide whether or not to change the respective decision.

3. If the child commits an intentional crime or a crime which punishment is foreseen to be over 8 years of imprisonment, and the child is declared guilty, the court upon the request of the prosecutor may revoke the non-imprisonment sentence and take a decision to enforce the imprisonment sentence for the remaining part of the sentence considering that imprisonment is the last resort.

Article 109

Calculations for the purpose of converting the sentence

The court when changing the punishment decision for purposes of converting the punishment shall make a calculation by considering the following as equal to one another:

- a) 10 hours of community service, to
- b) a fine of five thousand ALL, to
- c) three days of house arrest, to
- ç) two days of restriction of liberty, to
- d) one day of imprisonment.

Article 110

Placing a child in detention and prison facilities

1. A child defendant, against whom the security measure of detention is taken, shall be placed only in the juvenile section of detention facilities, whereas the child sentenced to imprisonment shall be placed in the institution of execution of criminal sentences for children.

2. The services in detention and prison institutions where the child defendant/sentenced is placed must be in compliance with the requirements of respect for health and dignity of the child and serve to re-socialisation, re-integration, rehabilitation and prevention of recidivism or commission of another criminal offence by providing care, assistance and supervision to the child.

3. To guarantee the best interest of the child, the respective detention or prison facility shall be provided with sufficient number of staff, qualified and trained on constant basis.

4. The staff of detention and prison facilities for children shall consist of at least a doctor, a nurse, a psychologist, a social worker. The institution, where appropriate must provide the assistance of a paediatrician, psychiatric doctor or other specialists according to the needs and the defined inspection regime.

5. Children in Institutions of Execution of Criminal Sentences for children or sections for children shall be under visual and/or electronic monitoring and control. Special rules concerning monitoring and control shall be defined in the General Regulation of Prisons.

Article 111

Special rules of execution of the imprisonment sentence

1. Special measures which guarantee standards defined in the Constitution, ratified international agreements and provisions of this Code shall be taken to serve to the special interests of protection of and care for the child.

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2. The General Regulation of Prisons specifically provides for rules on:
- a) structure and functioning of the Institutions of Execution of Criminal Sentences for children;
 - b) individual planning of execution of sentence by the child;
 - c) implementation of forms of incentives and other measures for sentenced children;
 - ç) imposing of disciplinary measures against sentenced children;
 - d) procedure of processing the requests and complaints of sentenced children;
 - dh) organization of rehabilitation process for sentenced children;
 - e) conditions for implementation of security measures and the use of special means in relation to sentenced children;
 - ë) functioning of record-books and personal files of sentenced children;
 - f) visual and/or electronic monitoring and control of sentenced children;
 - g) detailed conditions for execution of the imprisonment sentence against the sentenced children.

Article 112

Defence counsel of the child during execution

1. In order to enforce the rights in the process of execution of criminal sentences, the child shall be assigned an ex officio defence counsel according to the provisions of this Code and the legislation in force.

2. The defence counsel, upon the consent of the child and based on the best interest of the child, may be the same defence counsel who represented the child in the previous stages of the process.

CHAPTER XIII

CONDITIONS OF AND RULES ON CHILDREN IN DETENTION AND PRISON FACILITIES

Article 113

Special places for the child defendant/sentenced

1. The child defendant/sentenced shall be placed in premises separated from the detainee/sentenced adult.

2. The placement, keeping or movement of the child outside an institution together with an adult shall be prohibited.

3. The detainee/sentenced female child shall be placed in premises separated from the detainee/sentenced male child.

4. Paragraph 2 and 3 of this article shall be an exemption to the rule where the children, irrespective of the gender, and the children participate together with the adults in the rehabilitation, educational, cultural, sports and other activities of cultural and educational nature.

5. In order to ensure a safe environment for the children in respective institution/section, children shall be separated by age-group, type and seriousness of the criminal offence, physical and mental development, and other characteristics taking into account the best interest of the child.

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6. Detailed rules on the detention and prison facilities of children in conflict with the law shall be defined in the General Regulation of Prisons.

Article 114

Medical, psychological examination and relevant placement in facilities

1. A child, immediately after admission with the prison or detention facility must be examined by a doctor, in order to identify and record any marks/information or previous maltreatment or any physical or mental harm requiring medical care. The doctor, after examining the child, shall prepare a report describing the fact whether or not the marks/information are found in relation to the child, maltreatment or injury as described above.

2. Every child must be interviewed not later than 24 hours from the moment of admission, by a psychologist or social worker and a psychological and social report must be prepared to identify and describe any factors related to the type and level of care and programme needed for the treatment of the child.

3. The reports mentioned in paragraph 1 and 2 of this article shall be submitted to the head of the Institution of Execution of Criminal Sentences for children in order to establish the most appropriate placement of the child within the premises and the type and level of care and programme to be followed. When special treatment and rehabilitation is necessary and the duration of stay in the premises allows, the staff trained for this purpose shall prepare an individual treatment plan indicating the objectives and the period, the means, stages and steps to be taken to deal with those objectives.

Article 115

Medical care and treatment of children

1. A detainee/sentenced child shall be provided with medical care and treatment, including but not limited to:

- a) psychiatric/psychological and mental health services;
- b) drug and alcohol rehabilitation services;
- c) dental and ophthalmologic care;
- ç) sexual and reproduction health care service;
- d) HIV/AIDS treatment;
- dh) services related to premature childbirth in the case of pregnant girls; and
- e) regular medical check-ups including, where appropriate, gynaecological examination;
- ë) care to discovering any other situation which may hinder integration of the child in the society.

2. Any prison or detention facilities for children must ensure immediate access to the adequate medical objects/facilities and equipment in relation to the number and requests of the prisoners and staff trained for the preventive medical care and treatment of medical emergencies.

3. If necessary medical care may not be provided within the prison/detention institution, the child shall have the right to obtain a permit and in an emergency case, to be given permission to undergo medical check-up and receive the necessary medical treatment.

4. A child who is sick or complaints of a sickness or shows symptoms of physical or mental problems must be immediately examined/checked by the doctor.

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5. Consent of the child to any medical treatment must be obtained once the child is informed thereof.

6. When life of the child may be at risk or the child may suffer permanent health injury and refuses to give consent to medical treatment, such consent must be obtained by the parent or legal representative of the child and in their absence by the court.

7. When according to the doctor urgent treatment is required to protect the health or life of the child and/or health of others, treatment shall be provided without obtaining first the consent of the parent or legal representative of the child.

8. The child shall be examined and treated by a doctor of the same gender or gender of the child's choice.

9. Each medical treatment period shall be calculated as part of the period of the sentence of the child.

10. If, following medical examination, it is found that the child has suffered physical abuse or sexual abuse before placement or during stay in an Institution of Execution of Criminal Sentences for children, the doctor shall immediately notify the competent prosecutor's office. Following such notification, the prosecutor's office shall take measures, immediately, to provide free legal advice in order to support the child in any claim.

11. The medical report and the treatment data shall be recorded and kept in the personal file of the child. Such data shall be transferred to any other institution of execution of criminal sentences where the child may be placed.

Article 116

Living conditions and nutrition of children

1. Special care shall be shown to the living conditions and nutrition of the defendant/sentenced child as compared to the conditions of other defendants and sentenced persons.

2. The living conditions and nutrition must be in accordance with their age, situation and special needs of the child.

3. The Institution of Execution of Criminal Sentence for children shall make sure that the sentenced children exercise their right to move independently inside the institution's territory, under the rules defined in the daily schedule and individual programme for serving the sentence.

4. The child sentenced to imprisonment shall have the right to facilities and services that meet all the conditions for the human health and dignity. Facilities and services include:

a) the sleeping area which consists of an individual bed in a separate room, unless it is necessary that the child shares the bedroom which may be monitored without causing any stress to the child;

b) adequate and clean individual bed that is suitable for the climate;

c) a shelf where to keep personal items; and

ç) adequate clean sanitary premises which observe the need for privacy and special needs of child's gender.

5. The sentenced child shall be allowed to wear own clothes provided they are suitable and in compliance with the respective rules. If the child has permission to leave the premises where sentence is being served, the child shall not wear any clothing that identifies the child as a sentenced person.

6. The sentenced child shall have the right to be provided with adequate water and food with nutritional values relevant to the age and special needs of the child.

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Article 117

Organization of educational and rehabilitation programmes

1. The defendant/sentenced child/young adult must be provided basic compulsory education, and where appropriate, even secondary or high education.

2. The education process in prisons and detention facilities must be in compliance with the standards of education in the Republic of Albania.

3. The education and rehabilitation process shall be organised during detention and imprisonment so that the defendant/sentenced child will be provided general and/or vocational education possibly outside the prison and detention facilities. The education process, in exceptional cases, must take place in the prison/detention facilities where the child shall attend vocational education/training.

4. The young adult/child prisoner shall have access to vocational training, according to their interests and skills, which will be useful to them for employment after leaving the institution.

5. The documentation proving education of the defendant/sentenced young adult/child during the time they were defendants or serving sentence shall not contain any information identifying the child as former-sentenced persons or identifying a previous conviction.

6. Special and individual educational programmes shall be organized for the sentenced child who has learning difficulty because of any disabilities and the child who has not attended school.

7. The educational process in institutions of execution of criminal sentences for children shall be regulated by a joint order of the Minister of Justice and the minister in charge of education.

Article 118

Possibilities for employment and housing

1. A child is entitled to remunerated work. The Institution of Execution of Criminal Sentences for children shall encourage remunerated work. Where possible, the defendant/sentenced child may work even outside this institution in accordance with the provisions of the Labour Code related to employment of children.

2. A child shall work after the study schedule.

3. It shall be prohibited employing persons who serve a sentence, persons awaiting trial in detention facilities or persons who have been sentenced in the past to perform maintenance work in the Institution of Execution of Criminal Sentences for children.

4. A defendant/sentenced child may work only if such activity facilitates vocational education, employment after release and provided that it does not impede child's education.

5. The child's work and education shall not exceed 8 hours per day.

6. The child and young adults shall avail themselves of the social programmes foreseen by the law on social housing.

Article 119

Sports and recovery

1. A child in conflict with the law is provided access to daily walking, sports and recovery activities, through the use of adequate sports equipment in an appropriate area.

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2. Children, including disabled children, are provided with physical and recovery training programmes.

Article 120

Contact with the family and friends

1. For the purpose of re-integration into society and reduction of negative social consequences of restriction of liberty, the child sentenced to imprisonment and the detainee child shall enjoy same rights related to the establishment of contact with the family and the social group.

2. The child sentenced to imprisonment and the detainee child shall be effectively guaranteed the right to regular and frequent relations with the family, the person of their choice and social group as well as the right to receive correspondence, unless this goes contrary to the best interest of the child.

3. The child shall have the right to:

a) 8 visits per month by family members/friends and, as an incentive, 2 bonus visits per month. If the family members and the friends are unable to visit the child within the scheduled time period, the competent body shall ensure the right to visit the child at a time convenient to them and the child;

b) 4 visits per year to the family and bonus visits as an incentive;

c) at least 1 visit due to health or emotional problems;

ç) not less than 4 phone calls per month, free of charge, where each phone call shall not last more than 15 minutes, and, as an incentive, unlimited phone calls at one's own expenses; If the child lacks financial means, this right shall be guaranteed free of charge by the competent body where the child is placed;

d) 4 video-conferences per month and, as an incentive, 2 additional video-conferences per month;

dh) unlimited number of letters and parcels;

e) personal TV and radio;

ë) spending from own personal account, on monthly basis, to buy food, personal equipment and other goods, from a store inside the territory of the rehabilitation premise.

4. The child entitled to the rights foreseen by this article shall be guaranteed the right to privacy.

5. The manner of fulfilment of the rights according to this article shall be foreseen in the General Regulation of Prisons.

Article 121

Leave for the child punished by imprisonment

1. The child punished by imprisonment shall have the right to a short leave, three times a year, from the facility where sentence is being served. The duration of such leave shall not exceed 15 days. Such duration shall include even the time required for the journey to the child's family or destination.

2. A child punished by imprisonment shall have the right to a short leave from the premise where sentence is being served, if the child:

a) has served not less than one third of the punishment, in case the child is punished by up to three years of imprisonment;

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b) has served not less than half of the punishment, in case the child is punished by up to eight years of imprisonment;

c) has served not less than two thirds of the punishment, in case the child is punished by over eight years of imprisonment;

Article 122

Temporary transfer of the child to another facility

1. A child arrested/sentenced may be temporarily transferred to another facility for children if such measure is indispensable for the child's safety or the safety of other children. In such case, the rules on transfer shall be foreseen in the General Regulation of Prisons.

2. Once the child is transferred to another facility:

a) the child's legal representative shall be informed of the child's location;

b) the child shall undergo medical examination;

c) the child shall be entitled to a phone call not longer than 15 minutes.

Article 123

Keeping the convict in the rehabilitation facility or transferring to another penitentiary institution

1. A child shall serve punishment according to an individual plan. A multi-disciplinary group at the institution of execution of criminal sentences for children shall make the initial assessment based on which the Individual Plan shall be prepared. A social worker shall be assigned as case manager and shall be responsible for the implementation of the Individual Plan. The child shall be questioned and give consent to the Individual Plan.

2. The sentenced person who reaches the age of 18 years shall not be allowed to stay in the Institutions of Execution of Criminal Sentences for children and he/she shall be transferred to an adults' institution to serve the punishment.

Article 124

Forms of incentives to a sentenced child

1. In case the child shows a good and respectable behaviour, involvement in educational programmes and activities carried out in the juvenile penitentiary institution, the competent body shall implement the following form of incentives to the child:

a) releasing a statement of gratitude;

b) early removal of a disciplinary sanction;

c) granting the right to an additional visit;

ç) granting the right to an additional video-conference conversation;

d) granting the right to an additional telephone call;

dh) consenting objects that are not banned to be received by the sentenced persons inside the juvenile penitentiary institution;

e) granting the right to use a computer;

ë) fulfilling a wish that is deemed feasible and proportional.

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2. The types and nature of items that children are entitled to receive under letter “dh”, paragraph 1 of this Article, shall be foreseen in the General Regulation of Prisons.

Article 125

Limits to enforcing disciplinary measures

1. The administration of the juvenile penitentiary institution shall be authorized to use disciplinary measures against the child in case of a disciplinary misconduct committed by the latter.

2. A disciplinary measure must be the last resort taken in relation to the behaviour of the child.

3. Work may not be a disciplinary measure.

4. The imposed disciplinary measures shall not result in violation or threat to the dignity of the child, violent, inhuman, degrading treatment or physical or mental health damage. It shall be prohibited taking as disciplinary measures the following actions, but not limited thereto:

a) physical or corporal sanctions;

b) placement in isolation;

c) food deprivation or limitation;

ç) medical care deprivation or restriction;

d) prohibition or restriction to meeting or contacting family members.

5. Special rules on enforcement of this article shall be foreseen in the General Regulation of Prisons.

Article 126

Types of disciplinary measures

1. The administration of a juvenile penitentiary institution shall be authorized to use the following disciplinary measures:

a) notice of caution in the form of warning;

b) limitation for up to one month of the right to use the allowed items, except for food and medication given by the doctor;

c) limitation for up to one month of the right to buy from the shop located in the premises of the Institution of Execution of Criminal Sentences for children, except for items which guarantee the rights foreseen in article 116 of this Code;

ç) limitation for up to one month of the right to receive parcels.

2. Placing the child serving sentence in special/isolated premises shall be prohibited.

3. The disciplinary measures provided under letters “c” and “ç” of paragraph 1 herein, shall not exceed 3 months within one year.

4. Special rules on enforcement of this article shall be foreseen in the General Regulation of Prisons.

Article 127

Proceedings for the imposition of disciplinary measures

1. The disciplinary misconduct committed by a child arrested/sentenced shall be examined in a hearing, unless the child breaches the order, or hinders the hearing, fails to appear at the

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hearing or refuses to participate therein. Such fact shall be recorded in the minutes kept during the hearing.

2. During the hearing, the child arrested/sentenced shall have the right to remain seated, take notes and give verbal explanations.

3. The child arrested/sentenced has the right to a defence counsel in the hearing where the disciplinary misconduct is examined. Before a hearing starts, the child shall be informed of the right to have a defence counsel. Such right shall be exercised within 6 hours from the provision of information, if the child so consents. If the defence counsel fails to appear on time, an ex officio lawyer shall be assigned to the child. The child shall consent to the ex officio lawyer. Expenses for the ex officio lawyer shall be covered according to the provisions of the legislation on legal aid.

4. Special rules on the proceedings related to the disciplinary measure against the child and the respective authorities shall be defined in the General Regulation of Prisons.

Article 128

Information on the right to complaint

1. The child arrested/sentenced has the right to appeal against any decision or other measure taken by the authorities of detention, prison staff or other sentences.

2. The respective staff of the Institution of Execution of Criminal Sentences for children where the child arrested/sentenced is placed shall give immediately to the child the possibility to be informed in writing of his rights and duties, including the right to appeal and the rules of appeal foreseen by law.

3. A child who cannot read and write shall take the above-mentioned information verbally, in the presence of a person who keeps the records and the child shall confirm by signing.

4. Information shall be given to the child in a form that the child understands. The same shall apply to the disabled child.

Article 129

Conditional release

1. A sentenced child may be granted conditional release from serving the sentence only if the child has served:

a) not less than one third of the imprisonment sentence in case the child has been punished by up to three years of imprisonment;

b) not less than one half of the imprisonment sentence in case the child has been punished by up to eight years of imprisonment;

c) not less than two thirds of the imprisonment sentence in case the child has been punished by over eight years of imprisonment.

2. In the cases provided under paragraph 1 of this Article, the imprisonment term served by the child shall not be less than three months.

3. The Institution of Execution of Criminal Sentences for children not later than three months from the date closest to the conditional release, shall notify the Probation Service of the possible release of the child. The Probation Service shall analyse the behaviour of the child during the serving of the sentence, the facts and data of previous criminal acts, the child's personality, the family situation, nature of crime committed by the child and other circumstances that may affect the taking of a decision on early release.

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4. When a child is granted conditional release from a community work, the imprisonment term already served in the form of community work shall be included in the period foreseen under paragraph 1 of this Article according to the calculation which equals 10 hours of community work to one day imprisonment.

5. When a child is granted conditional release from serving a sentence of restriction of liberty, the imprisonment term already served in the form of restriction of liberty shall be included in the period foreseen under paragraph 1 of this Article, according to the calculation which equal one day of restricted liberty to one day of imprisonment.

6. In case a decision refusing conditional release is taken, the court must indicate measures to be taken in the future by the child and the staff of the Institution of Execution of Criminal Sentences for children in order to be granted conditional release in the future.

Article 130

Decision on conditional release

1. The court upon a reasoned decision shall decide admitting or refusing the request for conditional release of the child. The decision shall contain a full assessment of the progress towards the re-socialization, rehabilitation and willingness of the child for release, along with the views expressed by the child, the staff of the Institution of Execution of Criminal Sentences for children and the Probation Service.

2. The decision on conditional release shall contain the conditions imposed on the child, which fulfilment aims at supporting the child in the course of reintegration and re-socialization.

3. The conditions must be created to the child and the child must be assisted to fulfil the obligations imposed under the release decision.

4. If a child violates the conditions set in the release decision, the court shall have the right to revoke the release decision.

5. The decision to return the child back to the penitentiary institution may be taken even if the child constitutes a risk to himself/herself or other which may not be avoided in the community or if the child is sentenced for another criminal offence.

6. The child shall have the right to appeal against the decision according to the legislation in force.

Article 131

Replacing the remainder of the sentence

The remainder of imprisonment sentence may be replaced with community work or restriction of liberty, only if the child has served:

a) not less than one fourth of the imprisonment sentence in case the child has been punished by up to three years of imprisonment;

b) not less than one third of the imprisonment sentence in case the child has been punished by up to eight years of imprisonment;

c) not less than one half of the imprisonment sentence in case the child has been punished by over eight years of imprisonment.

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Article 132

Periodical review of conditional release

1. The review of the possibility for conditional release of a child shall be made every three months by the court upon request of the sentenced child.

2. A periodic review shall:

a) include a full assessment of the rehabilitation process and the time when the child will be ready for release;

b) take into account the opinion of the child and the possibilities to leave the child under supervision;

c) include a written recommendation on release or continuation of serving punishment by the child.

CHAPTER XIV

PREPARATION FOR RELEASE FROM IECS, CARE, REHABILITATION AND RESOCIALISATION

Article 133

Preparing for release after serving the sentence

1. The main aim of the rehabilitation activity in the penitentiary facility for children is to prepare the child for release in order to ensure rehabilitation and return of the child in the society.

2. The administration of the Institution of Execution of Criminal Sentences for children, for the purposes of paragraph 1 of this article shall take measures, from the very beginning and through daily updating, to draft a special plan together with the child, family and in cooperation with the child protection structures.

3. The administration of the Institution of Execution of Criminal Sentences for children, shall make sure that the child understands the content of the plan.

4. For the performance of rehabilitation activities, the Crime Prevention Centre for children and young adults shall be set up at the Ministry of Justice to monitor and protect children/young adults after serving sentence according to the provisions of this article. Specific rules concerning the structure and organisational structure of the Crime Prevention Centre for Children and Young Adults shall be determined by decision of the Council of Ministers.

5. After serving two thirds of imprisonment term, but not less than three months before the date the punishment ends, the staff of the Institution of Execution of Criminal Sentences for children, shall:

a) inform of the date the punishment of the child ends, the child's legal representative and the Crime Prevention Centre for Children and Young Adults and the Unit for Protection of the rights of the child;

b) provide the child with psychological and educational support to be prepared for release;

c) give the child the possibility to make short visits at home;

ç) prepare a file with data on social situation of the child, with the purpose to strengthen the child's re-socialization;

d) provide the child with information understandable by the child in order to have appropriate access to aftercare and support after serving sentence;

dh) collaborate with health care institution in the place of residence of the child in order to implement the reintegration programme for the aspects related to the child's health.

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6. The representatives of the Crime Prevention Centre for Children and Young Adults in cooperation with the Unit for Protection of the rights of the child shall:

- a) take all the necessary measures in order for the child to understand the terms and conditions of rehabilitation and re-socialization programs;
- b) become familiar with the file containing data on social inclusion of children in detention or prison facilities;
- c) meet the child in adequate premises;
- ç) approve the rehabilitation and re-socialization programmes not later than three months from the submission of the request, if the child so requests;
- d) ensure compliance with and review of programmes in prison facilities, if necessary.

7. Not earlier than three months before the lapse of the time limit for conditional release and not earlier than three months from serving the imprisonment sentence, the staff of the Institution of Execution of Criminal Sentences for children shall:

- a) inform the child, child's legal representative and the Probation Service of the date the punishment ends;
- b) inform in writing the Crime Prevention Centre for Children and Young Adults, the Probation Service, the Unit for Protection of the rights of the child, of the family risk and social/environmental risk and of the needs of children outside IECS.

8. The representative of the Probation Service shall:

- a) make an assessment of family and social/environmental risks and the needs of the child outside IECS;
- b) issue the required documentation for the conditional release of the child, based on the assessment of the family and social/environmental risk of the child outside IECS.

9. The forms and rules for drafting the documentation on conditional release and the assessment of risk and the family and social/environmental needs foreseen in this article shall be defined by instruction of the Minister of Justice.

10. In order to prepare the rehabilitation and re-socialization programme, for a period not exceeding three months from the release of children from IECS, where appropriate, the Probation Service and the staff of the Institution of Execution of Criminal Sentences for children shall cooperate with the Crime Prevention Centre for Children and Young adults, the Probation Service, local government bodies of the administrative unit and Unit for Protection of the rights of the child of the place of residence or intended place of residence of the child.

Article 134

Support after release

1. The competent bodies shall support the child after release in order to enable their successful re-integration.

2. In order to support the re-integration process, the local government bodies in cooperation with the child protection structures at local level shall provide, according to the legislation in force, shelter appropriate to the child who is homeless.

3. The body competent for the protection of the rights of children shall coordinate the implementation of the reintegration and supervision of services to the child, at least up to 6 months after release.

4. The child must be supported to have, at least:

- a) adequate clothing;
- b) psychological support;
- c) travel costs to the place of residence;

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ç) possibility to attend vocational training courses, unless the child is supported by the family.

Article 135

Supervision after serving punishment and conditional sentence

1. After release, the child, where appropriate, placed again with the parents or legal guardian and they shall be guaranteed protection according to the legislation on protection of rights of the child.

2. The Crime Prevention Centre for Children and Young adults in cooperation with the Unit for Protection of the rights of the child shall coordinate and implement the rehabilitation and re-socialization programme for at least six months after punishment is served or conditional release and it shall monitor the progress of the implementation of the plan for re-socialisation of the child.

CHAPTER XV

KEEPING AND STORAGE OF DATA IN THE SYSTEM OF JUSTICE FOR CHILDREN

Article 136

Database of criminal justice for children

1. In order to keep the data of criminal cases involving a child in conflict with the law, child victim and witness of criminal offences, the Integrated Data System of Criminal Justice for Children shall be created.

2. The system shall contain only information that is necessary for this purpose.

3. The system shall include entry and update of data related to criminal justice for children and its aim is to:

a) collect data and arrange them as well as follow them on real time basis;

b) improve justice access to children subjects of this Code and ensure good-administration of justice for children;

c) coordinate inter-institutional efforts in order to enable provision of quick solutions when the child is denied justice access, is subject to abuse or violation of rights, or the procedural guarantees foreseen by the legislation in force are not observed;

ç) unify and digitalise data collection in order to create a statistical database that will be useful for the analysis and direction of improvement of policy related to criminal justice for children.

4. The system shall contain updated electronic data on each stage of criminal proceedings including the execution of the criminal decision involving children subjects of this Code.

Article 137

Responsible institutions

1. The system shall be administered by the Ministry of Justice.

2. The Ministry of Justice, police, prosecutor's offices, courts, institutions of execution of criminal sentences and probation service offices shall enter and update data in the system and

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access this system according to the rules defined by the respective institutions for use and updating of data as well as the access levels.

3. The Ministry of Justice after establishment and full operation of the electronic case management system in the justice system shall cooperate with the Information Technology Centre of the Justice System for the electronic dissemination of data related to the indexing of files of children by the prosecutor's offices and courts, upon completion of respective processes.

4. Creation, organisation, functioning and characteristics on the use and access to the data system, primary and secondary data and information provider shall be defined by decision of the Council of Ministers.

5. The responsible institutions according to this article, by the areas of activity, based on this law and the decision of the Council of Ministers, shall issue orders for the approval of detailed rules on the use of the system by their subordinate institutions.

Article 138

Informing and destruction of the personal file

1. The identity of children and their family members must not be communicated to any person who is not authorised by law to be informed thereof.

2. The legal authorisation to obtain information must be strictly limited to persons and institutions requesting special information about a particular case by avoiding public disclosure of all the names of subjects according to this Code.

3. A sentenced child may be informed of their personal file until the file is destroyed.

4. After release of the child, the rules on the storage and destruction of the files foreseen by the law on archives in the Republic of Albania shall apply to the personal file of the child.

Article 139

Retaining the file of the child punished by non-imprisonment

The rules on the retention and destruction of the file, foreseen by the law on archives in the Republic of Albania, shall apply to the complete file of execution of sentence against the child who has been punished by non-imprisonment or conditional punishment.

CHAPTER XVI

TRANSITORY AND FINAL PROVISIONS

Article 140

Enforcement of provisions of this Code and retroactive effect

1. The provisions of this Code shall start to apply as of 1st January 2018 to all the cases being investigated, tried or executed.

2. The provisions of this Code shall have retroactive effect only if this improves the condition and position of the child and it is in the best interest of the child.

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3. The provisions of this Code, which enforcement requires the establishment of institutions or provisions of several and specialised services, shall become effective progressively according to the provisions of this article.

4. The Ministry of Justice and the ministry responsible for public order and security, within 6 months from the entry into force of this Code, shall adapt and equip the premises for cross-examination of the child, according to the provisions of article 39 of this Code;

5. Within 6 months from the entry into force of this Code, each competent body, according to this Code, shall prepare the list of persons who will be specialised in justice for children cases, approve the training programme and organise their training, in accordance with Chapter IV of this Code.

6. Within the 1st of January 2019, the provisions related to the activity of the competent institutions and authorities performing the functions related to the placement of the child under supervision, according to provisions of article 83 and 84 of this Code; providing specialised service for the placement in foster care according to article 69 of this Code; seeing to the fulfilment of obligations by the child, according to article 102, paragraph 3 of this Code; restricting liberty according to article 98 of this Code; providing services that guarantee sports and recovery of disabled persons, according to the provisions of article 119 of this Code shall start to be applied and enter into force; as well as it shall be established the Crime Prevention Centre for Children and Young Adults, according to the provisions of article 133, paragraph 4 of this Code.

Article 141 **Sub-legal acts**

1. The Council of Ministers within 6 months from the entry into force of this Code shall be in charge of issuing new sub-legal acts or amending the existing ones according to the provisions of this Code and they shall make possible fulfilment of obligations foreseen in article 72, paragraph 10; 84, paragraph 3; 98, paragraph 5; 102, paragraph 3; 110, paragraph 5; 111, paragraph 2; 113, paragraph 6; 120, paragraph 5; 122, paragraph 1; 124, paragraph 2; 125, paragraph 5; 126, paragraph 4; 127, paragraph 4; 133, paragraph 4; 137, paragraph 4 and 137, paragraph 5.

2. The respective ministers within 6 months from the entry into force of this Code shall be in charge of issuing new sub-legal acts according to the provisions of this Code and they shall make possible fulfilment of obligations foreseen in article 59, paragraph 4; 66 paragraph 2, 67 paragraph 2 and 117 paragraph 7.

Article 142 **Repeals**

1. All other provisions contained in legal and sub-legal acts which are contrary to the provisions of this Code shall be repealed upon entry into force of this Code.

2. The sub-legal acts concerning criminal justice for children shall apply to the extent they do not contradict the principles and provisions of this Code until the new sub-legal acts implementing this law are issued.

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Article 143
Entry into force

This Code enters into force on 1 January 2018.

SPEAKER

ILIR META

Adopted on 30.3.2017